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SC SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lancaster County

R. Knox McMahon, Circuit Court Judge

JUNIOR L. KIKER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000150

APPENDIX

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INDEX

INDEX.....	i
GUILTY PLEA TRANSCRIPT DATED SEPTEMBER 16, 2013.....	1
NOTICE OF APPEAL	27
ORDER DISMISSING APPEAL	29
REMITTITUR	30
APPLICATION FOR POST-CONVICTION RELIEF	31
RETURN	42
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED AUGUST 11, 2015	47
APPLICANT’S EXHIBIT # 1 (GUILTY PLEA AFFIDAVIT)	112
STATE’S EXHIBIT # 1 (LETTER)	115
ORDER OF DISMISSAL	117
INDICTMENTS AND SENTENCE SHEETS	127

1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF LANCASTER
4 2009-GS-29-1121 TO 1123

5

6 State of South Carolina

7 vs.

8 Junior L. Kiker

9

10

11 Lancaster, South Carolina

12 September 16, 2013

13 Before the Honorable J. Ernest Kinard, Jr.

14

15 APPEARANCES

16 For the State: Doug Barfield

17 For the Defendant: Jason Turnblad

18

19 Reported by: Michael C. Watkins

20 Official Court Reporter

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1	Guilty Plea Hearing:	3
2	Sentence:	25
3	Certificate:	27
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5	NO EXHIBITS	
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1 MR. BARFIELD: Your Honor, this is Junior Lee Kiker
2 represented by Mr. Jason Turnblad. Mr. Kiker is indicted in
3 2011-GS-29-1121 with the offense of murder, 1122 with the
4 offense of burglary first degree, 1123 with the offense of
5 armed robbery, and 1124 with the offense of possession of a
6 firearm during the commission of a violent crime. All four
7 of these indictments have been true billed by the grand
8 jury. Mr. Kiker is present today scheduled for trial but
9 changing his plea to guilty. It's a negotiated plea, he is
10 pleading guilty as charged on all four indictments. The
11 negotiation is concurrent sentences and 30 years on the
12 murder. I'm handing up the indictments, the sentence sheets
13 and Mr. Turnblad I think has a plea affidavit for you. I do
14 have family members here who would like to speak at the
15 appropriate time.

16 THE COURT: Do you have the plea affidavit --

17 MR. TURNBLAD: Yes, Your Honor.

18 THE COURT: -- and advisement of rights form? Mr.
19 Kiker you are about 30 give or take?

20 THE DEFENDANT: 31, yes, sir.

21 THE COURT: You live in Lancaster?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now, you understand I don't know anything
24 about the case believe it or not, I don't even know -- other
25 than the nature of the charges.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Now, the solicitor is going to fill me in
3 about what you allegedly did. But the bottom line is if you
4 plead guilty to these charges you can get lots of time, but
5 if it's negotiated what that means is I can accept it or
6 reject it but I can't alter it. In other words, if you
7 plead guilty to these four charges you get a 30 year
8 sentence, you understand that.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And it's not like -- murder itself goes
11 from 30 years to life, you know, but I couldn't give you 32
12 years, I'm limited to 30. But by like token on an armed
13 robbery which goes up to 30 I couldn't give you, you know,
14 probation for instance on some of these other charges.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: So you have talked this over with your
17 attorney, I guess.

18 THE DEFENDANT: Yes, sir, we discussed it.

19 THE COURT: And you went over this advisement of rights
20 form.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: What is your educational background?

23 THE DEFENDANT: My educational background? I have an
24 eighth grade education. But I became manager of the Fat
25 Boys Produce Company in Charlotte, 1801 Yorkmont Road,

1 fifteen years there.

2 THE COURT: You can read and write pretty good.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: If you plead not guilty to any charge and
5 the State wants to proceed with this we've got a jury right
6 down the hall.

7 THE DEFENDANT: Waiting, yes, sir.

8 THE COURT: You can get a jury trial. In a jury trial
9 you don't have to prove you're not guilty, in fact, the
10 State has the burden of proof beyond a reasonable doubt and
11 they've got to convince 12 jurors unanimously that you
12 committed the crime embraced within the indictment, do you
13 understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Again, if you plead guilty you don't get a
16 charge. You can plead not guilty to some of these charges,
17 you can get a trial on anything you pled not guilty to, do
18 you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: If you plead guilty you get no trial. In a
21 trial before the jury is selected you get certain strikes we
22 call them, you can remove jurors as they're presented. You
23 have actually ten, the State has ten and eventually 12
24 jurors would be seated, then you don't have to prove you're
25 not guilty. I mentioned earlier you are presumed innocent.

1 The State has got to convince 12 jurors unanimously beyond a
2 reasonable doubt that you committed a crime. You get to
3 participate fully in the trial. You could make various
4 motions to exclude evidence, to exclude testimony. Again,
5 since I don't know anything about the facts at this point I
6 can't tell you what potential motions you might be able to
7 make. But in any event, if you plead guilty you don't make
8 any motions, you just get sentenced, and the negotiated
9 sentence is up to 30. You've been advised by your attorney
10 murder is 30 to life, burglary in the first degree is 15
11 years to life, armed robbery is ten to 30, and possession of
12 a weapon while committing a violent crime is five years. If
13 you hadn't negotiated it the sentences could have been run
14 up on you, although it's hard to give more than life plus
15 five, plus 30 and so forth, do you understand all that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Now, I don't know whether you've given any
18 statements to law enforcement or not, the State cannot make
19 you testify. If you have given a statement to law
20 enforcement while you were in custody and elected not to
21 testify you would be entitled to a hearing whether or not
22 any statements could come in. Did you confess or make any
23 admissions or anything to law enforcement?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Well --

1 THE DEFENDANT: But I was intoxicated during the
2 processing of the preliminary --

3 THE COURT: Well, you could then -- during the trial
4 you could move to exclude that statement being admitted, but
5 if you testified they can question you about it during the
6 trial.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: But again, they can't make you testify.
9 And if you were successful in getting the statement
10 suppressed, which I'm not ruling on because there's no
11 motion in front of me, the State couldn't put the statement
12 that you made in front of the jury, do you understand that?

13 THE DEFENDANT: They couldn't?

14 THE COURT: If you were successful in getting the
15 statement suppressed --

16 THE DEFENDANT: Yes, sir, I understand that.

17 THE COURT: -- they couldn't. Now, if you plead guilty
18 they can read it to me.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Now, you can also put up a defense, you
21 know. Again, I don't know anything about the facts, you've
22 talked it over with your lawyer. But like burglary, you
23 could say, "I entered the property with consent, I wasn't
24 intending to commit a crime inside or anything."

25 THE DEFENDANT: Yes, sir.

1 THE COURT: That's a defense to that. Again, I don't
2 know the factual background but you wave any possible
3 defenses you have if you plead guilty. In addition you can
4 call witnesses who can testify for you, like it could even
5 be that when the State alleges that these crimes were
6 committed you could have somebody say you were in Charlotte
7 and weren't even here, but if you plead guilty you admit you
8 committed the crimes and so forth. Now, these crimes; the
9 murder, the burglary first and the armed robbery, they have
10 very serious offenses, violent crimes and so forth, and they
11 constitute strikes, and unfortunately murder is a day for
12 day type sentence.

13 THE DEFENDANT: Is it day for day?

14 THE COURT: So if you were sentenced to life it would
15 be life, if you were sentenced to 30 years it's 30 years,
16 it's not 30 days, that's just murder. The burglary, the
17 armed robbery and the burglary first would carry 85 percent
18 sentences, so if you got 30 on these you would be eligible
19 for parole after 85 percent. That doesn't mean you get out
20 at that point. But the bottom line here, if you continue to
21 plead guilty I listen to the facts and I sentence you you
22 get 30 years and it's day for day. Do you understand? The
23 higher charge is the one that carries more.

24 THE DEFENDANT: So the sentence I get I get 30 years
25 day for day.

1 THE COURT: That's it.

2 THE DEFENDANT: So I don't get 85 percent on none of
3 them.

4 THE COURT: No, you don't get 85 percent on murder.
5 The other statements on this advisement of rights form, and
6 you understand them all? And are your answers correct? In
7 other words, you haven't had anything to drink or had any
8 alcohol today?

9 THE DEFENDANT: No, sir, I'm not under the influence.
10 I can take a drug test, alcohol test right now, I'm just a
11 little bit confused.

12 THE COURT: Well, I don't know --

13 THE DEFENDANT: Because when I signed that paper they
14 didn't say day for day, Your Honor, I didn't know that.
15 They were telling me 85, on the murder they said it would be
16 26 and a half.

17 THE COURT: Well, murder is day for day. But if you
18 pled guilty straight-up I wouldn't be limited to 30, chances
19 are I would give you more because it looks like you're
20 getting light, even though that's tough if you give somebody
21 30 when you could give them all the way to life. So if you
22 were found guilty and I gave you 42 years you would have to
23 serve 42 years on the murder charge. But I can't give you
24 more than thirty is the bottom line on a negotiated
25 sentence.

1 THE DEFENDANT: Yes, sir, I understand that part. I
2 just didn't understand the day for day part, I was told 85.

3 THE COURT: Well, that's what the statute says, I can't
4 help you with that. Do you have any questions about
5 anything?

6 THE DEFENDANT: No, sir.

7 THE COURT: All right. It looks like he understands it
8 bottom line, Solicitor. I didn't go over any of the factual
9 things, you're going to fill me in on that. You need to pay
10 attention, Mr. Kiker, because if you disagree with something
11 you need to tell me.

12 THE DEFENDANT: Yes, sir. I would like to have a
13 chance to speak when he gets finished.

14 MR. BARFIELD: Your Honor, this case occurred on July
15 16 of 2011, about 3:15 in the morning. There are four major
16 players in the case. One is the victim, David Scott
17 Brazzell, one is Mr. Kiker, codefendant Samantha Diane
18 Humphries and codefendant Cameron Leroy Maier. I'll tell
19 you how it all came to light and then I'll tell you how it
20 all happened. Ms. Humphries and victim Brazzell were on
21 again, off again boyfriend/girlfriend. Ms. Humphries lived
22 on I think either in Lancaster with
23 her family. Mr. Rutledge lived around -- excuse me, Mr.
24 Brazzell lived around the corner of ,
25 walking distance --

1 THE COURT: Okay. Solicitor, I know I'm interrupting
2 you but I didn't read the indictments to him because you
3 were going to fill me in on all of that so you need to talk
4 about the date that it happened too so we've got everything
5 on the record and there's no questions.

6 MR. BARFIELD: Yes, sir. It happened on July 16th of
7 2011, early morning hours. Ms. Humphries called the city
8 police department to report that Mr. Brazzell had been shot,
9 officers responded to the scene. Ms. Humphries said that
10 she went to Mr. Brazzell's house to visit with him in the
11 early morning hours, as she was there somebody burst in
12 through the door and fired shots and Mr. Brazzell went down.
13 She initially did not identify the shooter and claimed not
14 to know who the shooter was. She was taken from the scene
15 to the police department, questioned further, gave several
16 statements over the course of a little bit but eventually
17 indicated that Mr. Kiker was the one who had come in the
18 house and fired the shots which killed Mr. Brazzell. I will
19 go ahead and tell you, Mr. Brazzell was treated on the
20 scene, was taken to the Springs Hospital, efforts were being
21 made to get him airlifted to another facility, he died there
22 at the hospital before he could be airlifted. The autopsy
23 indicates that he had two gunshot wounds, one to the back
24 and another to the right arm which entered into his chest.
25 He died, basically bled to death internally from these two

1 gunshot wounds.

2 THE COURT: What kind of weapon was it?

3 MR. BARFIELD: It was a semiautomatic .25 caliber
4 pistol, and I will tell you a little bit more about
5 forensics in just a little bit.

6 THE COURT: Okay.

7 MR. BARFIELD: As Ms. Humphries was talking to the
8 police during those early morning hours she eventually
9 indicated Mr. Kiker was the shooter. She told police that
10 Mr. Kiker was at her house, again which is near the crime
11 scene. Police immediately went to the house, found
12 Mr. Kiker sleeping on the couch in the house and took him
13 into custody. They also got a search warrant for the house
14 and went there initially, didn't find a whole lot of any
15 evidentiary value initially. Mr. Kiker was taken to the
16 police department, he gave a statement which I will recount
17 for you in just a little by. But based on Mr. Kiker's
18 statement they went back to the house and got consent to
19 search the house again and, in fact, found Mr. Brazzell's
20 wallet, some lose money -- and some loose money in the
21 house. Ms. Humphries and Mr. Kiker in their statements both
22 admitted that during this incident Mr. Kiker left the house
23 with Mr. Brazzell's wallet and that the whole purpose in
24 going there was to get money. To kind of back up just a
25 little bit, Ms. Humphries knew Mr. Brazzell. Mr. Maier and

1 Mr. Kiker and Ms. Humphries were all together at Humphries'
2 house that night. They had actually been talking about
3 where they could get some money, and depending on whether
4 you believe Mr. Kiker or whether you believe Ms. Humphries
5 you have to determine whose idea it was to go to Mister --
6 whose idea it was to try to find some money somewhere. But
7 Ms. Humphries clearly knew Mr. Brazzell and apparently knew
8 that he might have some money, and the plan was -- according
9 to the combined statements essentially the plan was that
10 Ms. Humphries was going to go to Mr. Brazzell's house, get
11 in not by force but just because he knew her and ask for
12 money, and if she got money all is well, if he didn't give
13 money according to Kiker she was to give a signal by
14 stomping her feet and Kiker was going to come into the house
15 and get the money by other means, which is exactly what
16 happened. At the scene, Your Honor, two fired cartridge
17 cases were recovered, a fired bullet was recovered, and
18 again at autopsy another fired bullet was recovered. And
19 I've got to divert myself just a little bit and tell you
20 another little story. Three or four hours before this
21 incident happened Kiker and Maier were out in the Buford
22 Community at an acquaintance's house and got into a little
23 bit of an argument out there and we allege that Kiker had
24 the pistol with him out there, did not shoot anybody but
25 fired off a round out there in the country, that got

1 reported and a deputy responded. When the city police
2 department put two and two together they went back out the
3 next day or a day or so later and recovered a fired
4 cartridge case from that location. We also have a witness
5 prepared to testify that he went to pick up Kiker and Maier
6 out in Buford and brought them back to Lancaster just before
7 the shooting and that witness lived across the street from
8 the Humphries' house. Didn't recover a gun for a long time.
9 Kiker told police in his statement that the gun was left in
10 a trash can at the house of Ms. Humphries and when the
11 police went back and had consent to search the house the
12 same time they found the wallet and the money they looked
13 for the pistol but they did not find the pistol. In May of
14 2012 as opposed to July 2011 when this happened, in May of
15 2012 there was a young man over there at the house cleaning
16 up the yard, moved some siding that had been piled up,
17 started cutting the grass and under where the siding was
18 found was a towel and under that towel found a pistol. He
19 immediately called the police, the police went and recovered
20 the pistol. All the ballistics evidence was sent back to
21 SLED and SLED determined based on testing the gun, the fired
22 cartridge cases, the fired bullet in the house and the fired
23 bullet out of Mr. Brazzell's body, that that is the pistol
24 that killed David Scott Brazzell. Let me tell you just a
25 little bit about Mr. Kiker's statement. He did give a

1 statement on the early -- some time during the day on
2 July 16th of 2011. He admitted in that statement that he
3 went out to Buford out in the country when that incident
4 occurred. He indicated that Ms. Humphries was the one who
5 initiated the idea about getting the money. He said Ms.
6 Humphries -- he said the following about Ms. Humphries:
7 "She asked me first if I knew anybody we could rob, then I
8 asked her if she knew anybody we could rob, she scratched
9 her head and said that there was this one guy named David
10 who got paid that day, she thought he had \$400 or \$500 on
11 him." He indicates that, "Samantha and I walked down there,
12 Cam," Mr. Maier "Started to go with us but changes his mind.
13 Samantha knocked on the front door, I was on the side of the
14 house under the carport. Samantha went inside but did not
15 close both doors, they were both cracked where I would not
16 have to touch the door knobs. She was supposed to go inside
17 and ask him for some money, if he did not give her none she
18 was supposed to stomp her foot, I was then supposed to go
19 inside as if I was robbing him." He indicated he had a
20 white bandanna wrapped around his face, he had the
21 .25 caliber handgun. He went in the house. He says he
22 thought that Mr. Brazzell was fixing to get the drop on him
23 with Mr. Brazzell's firearm so he says he pulled the
24 trigger. "I shot him one time I think in the stomach. He
25 started to reach down again, I shot him a second time I

1 think in the back part of his shoulder. Samantha pitched me
2 the wallet and I went out." That's essentially what he
3 indicated he had done. The money was -- his statement about
4 the money and the wallet was consistent with what the police
5 had found. Your Honor, Ms. Humphries gave again several
6 statements. In the first one she was not implicating Mr.
7 Kiker claiming not to have any knowledge of who the
8 assailant was but gave eventually statements indicating that
9 Mr. Kiker was the shooter, and I'll tell you just a little
10 about what she said. "The door came open and Junior came
11 in, Junior shot twice. He promised me he wasn't going to
12 shoot him." They asked, "What were your intentions of going
13 to David's early this morning? Just for us to talk and get
14 some money. Did Junior plan on robbing David? Yes, but he
15 promised that he wouldn't." Referring to Junior she said,
16 "He left after getting David's wallet off the counter."
17 They asked what he was wearing and she also corroborated a
18 white bandanna and a black hoodie. A black hoodie was
19 recovered at the Humphries' house during the search warrant
20 and a white bandanna was recovered a couple of days later
21 from a family member who had found it in the house. Another
22 question was asked of Ms. Humphries, had they planned to rob
23 David, talking about Maier and Kiker, "Yeah. They wanted me
24 to take them there and they were going to get the money.
25 The plan was for me to go there and then they were going to

1 come in and rob David." Your Honor, Mr. Maier also gave a
2 statement. It's pretty clear from the entire investigation
3 that Mr. Maier kind of backed out of the deal before
4 actually going to Mr. Brazzell's house and he is charged
5 with other offenses accordingly. I think that's a fairly
6 accurate summary of the facts of the case, I'll give you his
7 record when you want that.

8 THE COURT: Okay. You can tell me his record.

9 MR. BARFIELD: Your Honor, in 2005 he's got it looks
10 like PWID cocaine. 2006 a petty larceny. In 2007 it looks
11 like he might have gotten a revocation on the cocaine, he
12 got a year active in 2007 probably for that same first
13 cocaine offense. In 2008 CDV first and simple assault and
14 battery and malicious injury to property. That's it.

15 THE COURT: Okay.

16 MR. BARFIELD: That's all from the State right now. I
17 do have family members who understand the negotiations, they
18 understand how this works but they do want to speak at the
19 appropriate time.

20 THE COURT: Okay. We'll listen to Mr. Turnblad first.

21 MR. TURNBLAD: Your Honor, my client here, Mr. Kiker,
22 he is 31 years old. He's been working as he stated earlier
23 as a manager for Fat Boys Produce which is his family's
24 produce company.

25 THE COURT: And how long have you represented him?

1 MR. TURNBLAD: I've represented him for about a year
2 and a half to two.

3 THE COURT: I was just making sure you had plenty of
4 time to talk to him.

5 MR. TURNBLAD: Yes, Your Honor. In fact, I was here in
6 front of you probably a little over a year ago and we had a
7 bond hearing. Your Honor, he's got two children, a 13 year
8 old and a nine year old that he cares deeply about. His
9 parents are here with him today as well, he has got good
10 family support. He found himself in a bad situation with
11 some people. I'm sure if he could go back in time and
12 change all of this back he wouldn't even be in that
13 situation at all. But, Your Honor, we would ask that you
14 accept the negotiated plea and sentence him to the
15 negotiated deal, Your Honor.

16 THE COURT: Okay. Now, of course, I didn't know
17 anything about the facts, I only know what the solicitor
18 says. But Mr. Kiker --

19 THE DEFENDANT: Yes, sir.

20 THE COURT: -- you know, in a murder trial sometimes
21 you have the option of not just guilty or not guilty, but
22 guilty of murder and guilty of manslaughter, do you
23 understand?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: I'm sure that you've discussed that with

1 your attorney. But now, manslaughter carries up to like 30
2 years, it's a violent crime, you do have to serve 85 percent
3 of it.

4 THE DEFENDANT: Yes, sir.

5 MR. BARFIELD: But again, everything could be added up,
6 so even if you got 30 years for manslaughter the Judge could
7 give you 30 on armed robbery consecutive to that and
8 that's -- but you just need to understand that it's not
9 necessarily just guilty or not guilty. And you might have a
10 defense like the gun went off, you probably wouldn't win
11 that, but you waive all defenses when you plead guilty. Do
12 you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, I don't know whether you want to say
15 something now or you want to wait until the victims say
16 whatever they want to say.

17 THE DEFENDANT: I just had a couple of questions about
18 what he just read. This is a capital murder case and
19 they -- no one has informed my lawyer or me about a pistol
20 that they had recovered that was the pistol of the man's
21 death. And another question is I had --

22 (Break in proceedings.)

23 THE DEFENDANT: I'm done. But I wanted to say that the
24 statement that Mr. Barfield wrote, the little girl had wrote
25 three different statements, Your Honor, and --

1 THE COURT: Well, you know, in a trial you could
2 question her about all of those statements.

3 THE DEFENDANT: Yes, sir. The only reason I'm not
4 taking this trial is because I'm not prepared. I filed a
5 motion for my phone records through Mark Grier and he did
6 not get them and I have the paperwork here, he's already
7 made a copy of it and all. The phone records would have
8 stated what some of his witnesses have stated, but it would
9 have helped out on everything.

10 THE COURT: Well, I know 30 years is a long time but
11 it's better than life.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. Solicitor, if any of the victims
14 would like to say something.

15 MR. BARFIELD: Your Honor, the victim's sister is
16 Debbie Patterson, victim's brother is Mark Brazzell, there
17 are other family members here. But I would invite whoever
18 wants to in whatever order you want to do it to step up to
19 this microphone, state your name, speak loudly and tell the
20 Judge what you want him to know.

21 SPEAKER: My name is Debbie Brazzell, I'm the oldest of
22 the four Brazzell kids, now there's only three. My mother
23 is gone and I'm their mother now. And I don't know Mr.
24 Kiker, I've never met him, I don't even think he knew my
25 brother. But his mother and father and family can go visit

1 him. My brother is cremated, I can't go visit him. I can't
2 take flowers anywhere. And, I mean, I don't -- I can't see
3 any nieces and nephews from him. It's your call because
4 you're the Judge, Your Honor, but whatever you can give him
5 I think it will be sufficient enough. I don't want him
6 dead, I don't know him because I'm trying to go to heaven.
7 I just want justice for my brother, because my brother was
8 in his own home not bothering nobody. And I think it takes
9 a lowdown person to go rob somebody and then shoot in their
10 house because he won't give them their money. And that's
11 all I've got to say. Thank you so much.

12 THE COURT: Okay. Thank you.

13 MR. BARFIELD: Mark? Anybody else? State your name
14 and your connection to the family.

15 SPEAKER: My name is Joy Funderburke, I was a real
16 close friend to the family. I don't know this gentleman
17 that's being accused in the courtroom today, but I did know
18 David. He had a kind heart and it's just a shame that you
19 can't sit in your house and because somebody wants to do
20 drugs let's break-in and kill this man to get a few dollars
21 because he had a long life ahead of them. And that's all
22 I've got to say.

23 THE COURT: Okay. Thank you.

24 MR. BARFIELD: Your Honor, for the record I have spent
25 a lot of time talking to the Brazzell family and I think

1 they're reasonably satisfied with what we're doing here
2 today. We've had those discussions -- every victim is going
3 to get up and say give him all you can, they understand that
4 30 years is going to be the sentence and they're okay with
5 that sentence.

6 THE COURT: Does his family want to speak? They have
7 the right, that's all, I'm not asking them to speak.

8 SPEAKER: I'm the mother of Junior Kiker. And I
9 understand what the sister is saying because I lost my
10 brother. I don't understand it all either, but I will
11 always say if the girl hadn't knocked on the door the man
12 would still be alive because Junior did not know where that
13 man lived that's gone. And my heart goes out for y'all
14 because I lost my brother, I know exactly what you're
15 saying, you can't talk to them, can't write them, I
16 understand. I swear I believe Samantha, I've heard one
17 thing, she was on the street corner trying to get a
18 cigarette from Mark Grier, she could have got a cigarette on
19 the street corner. Why wasn't she home with her baby that
20 was sick? I apologize. I don't think my son shot him. I
21 read the statements. It went from wet blood for dry blood
22 before Samantha even called 911. I don't know Samantha, I
23 don't want to know her. I'm sorry, I apologize, but I'll
24 take it to my grave that if she never knocked on the door
25 the man would still be alive. That's all I have to say.

1 THE COURT: Okay. All right. Mr. Kiker?

2 SPEAKER: Yes, sir.

3 THE COURT: You've been incarcerated?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You do get credit, you know, for the time
6 you've been in.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: That was explained to you.

9 THE DEFENDANT: Well, I had a plea sheet that I guess
10 Mr. Doug Barfield here sent and he wanted to dismiss a
11 couple of them, but I have jail time on those, too, I don't
12 know if it will help out or not. But the ones we --

13 MR. BARFIELD: He has a bunch of stuff other than this
14 pending. He did some time on this murder case before he
15 bonded out, they'll calculate how much time that is. He's
16 done some time on some other arrests also which we are not
17 resolving today.

18 THE COURT: Okay. I don't calculate for the time
19 you've been held, you get credit for the time you were held
20 on this charge. If you were held on another charge, just
21 say it was child support or something, I didn't know.

22 THE DEFENDANT: I'm sorry, Your Honor, I didn't
23 understand. I had a plea sheet that if I pled guilty to
24 this they would dismiss these two and that they would all --
25 I didn't understand that.

1 MR. TURNBLAD: He was in about ten, ten and a half
2 months I believe on these charges. By consent I'm sure
3 they'll give him credit.

4 THE COURT: The department will calculate it.

5 THE DEFENDANT: So what we're trying here today is only
6 the murder and only the --

7 THE COURT: No. Everything arising out of that
8 transaction that involved Mr. Brazzell back on July 16th
9 which is robbery and possession of a weapon, burglary and
10 murder.

11 MR. BARFIELD: And let me say this so the Court will
12 understand what Mr. Kiker is talking about. Mr. Turnblad
13 represents him only on the four charges arising out of the
14 homicide, Mr. Grier, I believe, represents him on all of his
15 other charges. I sent Mr. Turnblad a plea offer which
16 covered all of his charges in case they wanted to talk to me
17 about them. I'm still amenable to resolving all of those
18 other charges, but Mr. Turnblad is probably going to let
19 Mr. Grier converse with Mr. Kiker about the other stuff and
20 we can try to accommodate him if he's interested in that
21 before he gets gone from here today or tomorrow.

22 THE COURT: And he only represents you on these four
23 charges, Mr. Grier represents you on the others?

24 THE DEFENDANT: Yes, sir. I was under -- in the
25 paperwork that's what it said, that's what it stated. But

1 it also said he would be interested -- like Barfield says,
2 that's exactly what it said.

3 MR. BARFIELD: And I certainly would prefer him not to
4 go to SCDC with stuff still pending, if we can resolve it we
5 will.

6 THE COURT: If he would like to get rid of it but
7 that's not in front of me at this point.

8 MR. BARFIELD: We'll see if we can work that out before
9 Mr. Kiker departs Lancaster County in the next day or two.

10 THE COURT: All right. Mr. Kiker, on the murder 30
11 years, you'll get credit for the time that you have been
12 incarcerated. On the burglary first degree 30 years
13 concurrent, and you still get credit. On the armed robbery
14 30 years, that's concurrent, and you will get the same
15 amount of credit. And on the possession of a firearm five
16 years, that's concurrent.

17 THE DEFENDANT: You said that's day for day, right?

18 THE COURT: That should take care of everything. I
19 didn't mention this because you're going to be in there a
20 long time, but --

21 THE DEFENDANT: I wish you had the motion in front of
22 you that you could read and the paperwork that I had.

23 THE COURT: When you get out you're going to have these
24 violent crimes and serious crimes, if you commit another one
25 they can ask for life without parole even though the crime

1 you commit -- not that you'll ever commit another crime,
2 wouldn't carry that much time.

3 THE DEFENDANT: If I live 30 years, yes, sir.

4 THE COURT: That's right. Okay. That's the sentence.

5 (End of the hearing.)

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of General Sessions

J. Ernest Kinard, Jr., Presiding Circuit Judge – Lancaster County

Case No. 2011-GS-39-1121, 1122, 1123, 1124

Junior Lee Kiker, Jr.,

Appellant,

v.

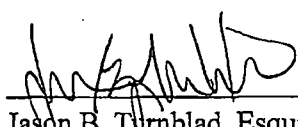
State of South Carolina

Respondent.

NOTICE OF APPEAL

Junior Lee Kiker, Jr. appeals his guilty plea and sentence in this case. The sentence was imposed by the Honorable J. Ernest Kinard, Jr., on September 16, 2013.

September 23, 2013



Jason B. Turnblad, Esquire
159 Main Street
Chesterfield, South Carolina 29709
(843) 623-5911
Attorney for Appellant

Other Counsel of Record:
The Honorable Douglas A. Barfield, Jr.
Solicitor - 6th Judicial Circuit
P.O. Box 607
Lancaster, SC 29721

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of General Sessions

J. Ernest Kinard, Jr., Presiding Circuit Judge – Lancaster County

Case No. 2011-GS-39-1121, 1122, 1123, 1124

Junior Lee Kiker, Jr.,

Appellant,

v.

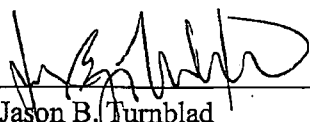
State of South Carolina

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent, State of South Carolina, by depositing a copy of it in the United States Mail, postage prepaid, on September 23, 2013, addressed to its attorney of record, The Honorable Douglas A. Barfield, Jr., Solicitor - 6th Judicial Circuit, Post Office Box 607, Lancaster, South Carolina, 29721.

September 23, 2013.



Jason B. Turnblad
159 Main Street
Chesterfield, South Carolina 29709
(843) 623-5911
Attorney for Appellant

The South Carolina Court of Appeals

The State, Respondent,

v.

Junior Kiker, Jr., Appellant.

Appellate Case No. 2013-002074

ORDER

Appellant has failed to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules (SCACR). Accordingly, this matter is dismissed, and the remittitur will be sent as required by Rule 221(b), SCACR.



FOR THE COURT

Columbia, South Carolina

cc:

Jason B. Turnblad

Robert Michael Dudek

Donald J. Zelenka

FILED

December 6, 2013



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 27, 2013

The Honorable Jeff L. Hammond
PO Box 1809
Lancaster SC 29721-1809

REMITTITUR

Re: The State v. Junior Kiker, Jr.
Lower Court Case No. 2011GS3901121, 2011GS3901122
2011GS3901123, 2011GS3901124
Appellate Case No. 2013-002074

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Junior Lee Kiker, Jr., 00321516
Jason B. Turnblad, Esquire
Robert Michael Dudek, Esquire
Donald J. Zelenka, Esquire

ATTORNEY GENERAL'S OFFICE

RECEIVED 12-27-13

ADMINISTRATIVE INSTRUCTIONS

8 12/31 FILE OPEN ✓ EN

 HAVE COPIES MADE

 ROUTE TO

 ORDER: TRANSCRIPT

 PEN RECORDS CLERK RECORD

 OTHER:

13-4396

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF Lancaster)

Junior L. Kiker #321516)

2014 CP 29 00633

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

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

Respondent,)INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick Correctional Institution
2. Name and location of Court which imposed sentence Lancaster General Sessions
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-29-1121 (d) 2011-GS-29-1124
 - (b) 2011-GS-29-1122
 - (c) 2011-GS-29-1123
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 9/16/2013, Murder, 30 yrs.
 - (b) 9/16/2013, Burglary first degree, 30 yrs.
 - (c) 9/16/2013 Armed Robbery, 30 yrs.
6. Possession of Firearm during the commission of a violent crime 5 yrs.

CLERK OF COURT
LANCASTER, SC

2014 MAY 15 PM 3:30

FILED
OFFICE OF CLERK
OF COURT

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
- (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?

8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) filed (P.C.R.) Post-Conviction Relief
- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective assistance of counsel
- (b) Involuntary guilty plea
- (c) _____

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

-
- (a) see attached sheet
 - (b) see attached sheets
 - (c) _____

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

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

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

- (a) the specific nature thereof:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
- (c) the disposition thereof:
 - i. N/A
 - ii. N/A
 - iii. N/A

iv. N/a

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

No

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

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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

(a) first P.C.R. application

(b) N/A

(c) N/A

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? no
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
-
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Mr. Jason B. Tumblad; Wukela Law Firm; P.O. Box 13057; Florence, S.C. 29505
- ii. _____
- iii. N/A
- (b) the proceedings at which each such attorney represented you:
- i. Guilty plea
- ii. N/A
- iii. N/A
19. State clearly the relief you seek in filing this application:
Vacate conviction and sentence
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)

County of Lancaster, SC)
Junior Kiker)

VERIFICATION

I, _____, 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.

Junior Kiker

SWORN to and subscribed before me this 13
day of may, 2018.

Frank Kiker (L.S.)
Notary Public

My Commission Expires: 12.14.2019

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

Junior Kiker
I, _____, 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.

Junior Kiker
Applicant

SWORN or affirmed to and subscribed before me this

13 day of May, 2014

[Signature]
Notary Public

My Commission Expires: 12-16-2019

A T T A C H E D S H E E T S

1. INEFFECTIVE ASSISTANCE OF COUNSEL?

2. INVOLUNTARY GUILTY PLEA?

Respectfully submitted

Date 5-13-01 2014

x Junior Kibon

1. The Applicant asserts that, counsel was ineffective for advising the Applicant of his charge being reduced from murder to involuntary manslaughter.

M E M O R A N D U M O F L A W

It is true indeed, a defendant who pleads guilty on advice of counsel to collaterally attack the voluntariness of his plea only by showing that (1) counsel was ineffective and that (2) there is a reasonable probability that but for counsel's errors, the defendant would not have plead guilty, but would have insisted on going to trial. see Wolf b. State, 485 S.E.2d 367, (1997). When considering allegation on P.C.R., that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether information conveyed by the plea Judge cured any possible error made by counsel. see Moorehead v. State, 496 S.E.2d 415 (1998). The court will uphold the P.C.R. court's findings if there is any evidence of probative value to support them. Cherry v. State, 386 S.E.2d 624 (1989).

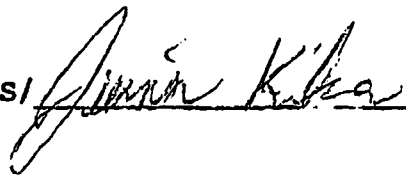
(The Court Applies A Two Prong Test)

There is a two-prong test for evaluating claims of ineffective assistance of counsel. The first prong of the test requires that a defendant show that his counsel's performance was deficient, such that it falls below an objective standard of reasonableness. Strickland v. Washington, 466 U.S. 668. 104 S.Ct 2052. 80 L.E.2d 674 (1984). Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991). The second part of the test requires a defendant to show there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. *Id.* Where there has been a guilty plea, the applicant must prove prejudice by showing that, but for counsel's

errors, there is a reasonable probability he would not have pleaded guilty, instead would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct 366, 88 L.E.2d 203 (1995); Alexander v. State, supra. Furthermore [a] defendant who pleads guilty upon the advice of counsel may only be convicted if the advice he received from counsel was not within the range of competence demanded of attorneys in criminal cases. Richardson v. state, 310 S.C. 360 426 S.E.2d 795, 797 (1993).

The applicant request that this court vacate the conviction and sentence.

Respectfully submitted.

SI 

C E R T I F I C A T E O F S E R V I C E

The undersigned hereby certify that he has cause to mail the foregoing P.C.R. Application to Lancaster County Clerk of Court this 13th day of MAY 2014, by depositing same in the U.S. mail postage prepaid.

SI *Alexander K. Kiser*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	C.A. No. 2014-CP-29-0633
	)	
Junior L. Kiker,	)	
S.C.D.C. No. 321516,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed May 15, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Lancaster County Clerk of Court's orders of commitment. The Applicant was indicted at the October 2011 term of the Lancaster County Grand Jury for murder (2011-GS-29-1121), first degree burglary (2011-GS-29-1122), armed robbery (2011-GS-29-1123), and the possession of a firearm during the commission of a violent crime (2011-GS-29-1124). Jason B. Turnblad, Esquire represented the Applicant.

The Applicant pled guilty as indicted. On September 16, 2013, the Honorable J. Ernest Kinard, Jr., sentenced Applicant to concurrent terms of thirty (30) years imprisonment for murder, first degree burglary, and armed robbery and five (5) years imprisonment for possession of a firearm.

Applicant timely filed a Notice of Appeal. By Order filed December 6, 2013, the South Carolina Court of Appeals dismissed the matter for failure to provide a sufficient explanation as

required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules. The Remittitur was sent on December 27, 2013.

Attached herewith and incorporated herein by reference are the records of the Lancaster County Clerk of Court regarding the subject convictions, Applicant's records from the Department of Corrections, the plea transcript and Applicant's appellate records.

II.

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

1. Ineffective assistance of counsel.
 - a. "Counsel was ineffective for advising the Applicant of his charge being reduced from murder to involuntary manslaughter."

III.

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

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel

“rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

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

IV.

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

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

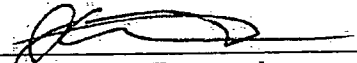
JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. CROOM HUNTER
Assistant Attorney General

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

By:


Attorneys for Respondent

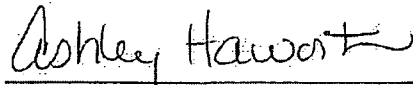
December 31st, 2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	
	)	
	)	2014-CP-29-0633
JUNIOR KIKER, #321516	)	
	)	
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** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. William Michael Hemlepp Jr., Esquire
W. Michael Hemlepp, Jr., Attorney at Law
3027 S. Paraham Road
York, SC 29745

DATED this 31ST day of December, 2014.



Ashley Haworth, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA

2 -----x

3 JUNIOR LEE KIKER

4 Petitioner,

5 Case No.

6 -against-

2014-CP-29-0633

7 STATE,

8 Respondent.

9 -----x

10 August 11 , 2015

11 Lancaster, S.C.

12

13 B E F O R E:

14 HONORABLE R. KNOX MCMAHON

15

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

17 NATHAN SHELDON, 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

	<u>I N D E X</u>			
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
1				
2				
3	Junior Kiker			
4	Mr. Sheldon	5		31
5	Mr. Hunter		24	
6	Harvey Kiker			
7	Mr. Sheldon	34		
8	Mr. Hunter		38	
9	Jason Turnblad			
10	Mr. Hunter	40		59
11	Mr. Sheldon		48	
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1 MR. HUNTER: May it please the Court. This is
2 case number 2014-CP-29-0633, Junior Kiker versus State
3 of South Carolina. Mr. Kiker is incarcerated with
4 SCDC pursuant to Lancaster County Clerk's orders. He
5 was indicted the October 2011 term of the Grand Jury
6 for murder, 2011-GS-29-1121; first degree burglary,
7 2011-GS- 29-1122; armed robbery, 2011-GS-29-1123;
8 possession of firearm during the commission of a
9 violent crime, 2011-GS-29-1124. He was represented by
10 Jason Turnblad. Mr. Kiker plead guilty as indicted
11 September 16, 2013. The Honorable J. Earnest Kinard
12 sentenced him to concurrent terms of thirty years
13 imprisonment for murder, first degree burglary and
14 armed robbery, as well as five years imprisonment for
15 possession of firearm.

16 A timely Notice of Appeal was filed, by Order filed
17 December 6, 2013. South Carolina Court of Appeals
18 dismissed the matter for failure to provide a
19 sufficient explanation as required by Rule 203
20 (d)(1)(B)(IV) of the South Carolina Appellant Court
21 Rules. The remitter was issued on December 27, 2013.

22 This application was filed on May 15, 2014. Mr.
23 Kiker is here today represented by Mr. Sheldon and the
24 State is ready to proceed.

25 THE COURT: Thank you, Mr. Sheldon.

1 MR. SHELDON: Thank you. Your Honor, may it
2 please the Court, we call Junior Kiker to the stand.

3 THE COURT: All right. If you come around and be
4 sworn for us.

5 JUNIOR LEE KIKER, called as a witness, having been
6 duly sworn by the clerk, was examined and testified as
7 follows:

8 MR. SHELDON: May it please the Court.

9 DIRECT EXAMINATION

10 BY SHELDON:

11 Q Mr. Kiker, please state your name for the record?

12 A Junior Kiker.

13 Q And are you currently incarcerated down in SCDC for
14 murder, first degree burglary, armed robbery and possession of a
15 weapon during a violent crime?

16 A Yes, sir, not only that but the murder I didn't commit.

17 THE COURT: Please just answer the question.

18 MR. KIKER: Yes, sir.

19 THE COURT: You may proceed.

20 MR. SHELDON: May I approach the witness, Your
21 Honor?

22 THE COURT: Yes, sir.

23 Q Mr. Kiker, I am going to show you a plea affidavit
24 thank you filed out. Do you recognize that document? Sir, does
25 thank you look familiar to you?

1 (WHEREUPON, a document was handed to the witness.)

2 A Yes, sir.

3 Q Is that your signature on the second page?

4 A I believe som yes, sir.

5 MR. SHELDON: We move to go ahead a put this plea
6 affidavit in as Applicant's Exhibit 1.

7 MR. HUNTER: No objection.

8 THE COURT: All right. Applicant's 1 is in
9 evidence without objection.

10 (Applicant's Exhibit 1, Plea Affidavit, received in
11 evidence as of this date.)

12 Q All right. So we have a plea affidavit that you filed
13 out on and signed on September 16, 2013, is that right?

14 A Yes, sir.

15 Q And is that the day you plead guilty to these charges?

16 A Yes, sir.

17 Q Okay. So now what I want to do is I want to back up to
18 the very beginning as to how Mr. Turnblad and Mr. Greer to some
19 extent, but I know that specific relief is against Mr. Trunblad.
20 How it came to be that you ended up pleading guilty to this
21 charge.

22 So let me start from the beginning. Who originally
23 represented you?

24 A Mark Greer.

25 Q And is Mark Greer with the Lancaster's Public

1 Defender's Office?

2 A Yes, he is.

3 Q And so, when did the crime occur?

4 A The whole the murder?

5 Q Yes.

6 A It was July 16, 2011.

7 Q So, on July 16, 2011 this murder occurs and then over
8 two years later the guilty plea ends up happening, is that
9 right?

10 A Yes, sir.

11 Q How long did Mr. Greer represent you on this murder
12 charge?

13 A A couple of months. Not very long, but in the
14 beginning -- I got the paper right here where I had Mr. Greer to
15 try and get the phone records to match the little girl's
16 statements, her momma's statements that she wrote, her momma's
17 statements and if so if we have got these records I would have
18 had a lot better chance of trying to prove a lot of things. Mr.
19 Turnblad he also knew about it, but he didn't even try to ask
20 for it. I got paperwork where Barfield denied the records.

21 Q Hold on. Slow down. Whose phone records were you
22 trying to get?

23 A The little girl's phone. The one they was talking on.
24 The ones that mean a lot. It's crucial evidence in this case
25 and I got all -- it all over there.

1 Q And I want to you pretend that the judge didn't know
2 anything about this case because I don't think he does other
3 then the transcript.

4 Whose the little girl?

5 A Samantha Humphries.

6 Q Was she a co-defendant in the case?

7 A She was number one suspect to start with.

8 Q Okay. So, initially you asked Mr. Greer to obtain her
9 phone records, is that correct?

10 A All phone records; mine, their's, everybody's, yes,
11 sir.

12 MR. SHELDON: Judge, I would like to point out that
13 in the transcript, Mr. Kiker does reference the fact
14 that he had asked for the phone records. It's just
15 collateral to the transcript. I think the transcript
16 is in the record so we would just point that out to
17 the Court.

18 Q So you asked Mr. Turnblad to obtain these phone records
19 as well, is that correct?

20 A Yes, I have paper work, yes, sir.

21 Q And was that ever done?

22 A No, it wasn't. No, sir.

23 Q So you think out of the gate had Mr. Greer or Mr.
24 Turnblad obtained these phone records of Miss Humphries that
25 things could have been different in this case, is that right?

1 A Yes, sir. Just like blue prints that they found out in
2 the murder scene if they would have done the investigation on
3 that like he asked him to it would have proven a lot. I have
4 that paperwork there too.

5 Q We are going to get to all that. I want to you just
6 stick with what we are talking about right now and that's the
7 phone records. Okay. You understand. We will get to
8 everything that happened in this case --

9 A All right.

10 Q -- so the Judge can keep it clean we are going to take
11 it one issue at the time.

12 A Yes, sir.

13 Q So you had originally asked them to get phone records
14 and they weren't gotten, is that correct?

15 A And also in the timeframe that you are suppose to get
16 them, I think the six weeks or eight weeks. I asked them.

17 Q But were you simply just asking for calls from person A
18 to person B?

19 A Phone records, text messages, phone calls the whole
20 nine.

21 Q So you also wanted, in addition to calls placed, calls
22 received, you wanted text messages and texts received?

23 A Everything between the victim and all of us suspects.
24 All three suspects.

25 Q How quickly after the murder occurs were you arrested?

1 A Within a six-hour period. I was asleep on the couch
2 babysitting a three-year old, Baylin, (phonetics) and seven-year
3 old, Aiden.

4 Q So if text messages had been received -- how quickly
5 after that were you appointed a public defender?

6 A That following Tuesday. They always get you on
7 Tuesday. I think that was Saturday I got locked up. I'm not
8 sure. I can't really recall the date. It was September -- it
9 July 16, 2011, but that following Tuesday they appointed me Mark
10 Green and I immediately told him to get the phone records. That
11 it was crucial.

12 Q How long after that did you hire Mr. Turnblad?

13 A My father would have to answer that question because he
14 is the one that hired him and he when he first came do see me he
15 said it was just a retainer right now. He was trying to get me
16 a bond is the first conversation Mr. Turnblad and I had.

17 Q Roughly how long after --

18 A Before Christmas. Before Christmas. Two months, three
19 months. As soon as I seen Mark Greer couldn't do what he was
20 going to do, right after the preliminary hearing didn't go like
21 it was suppose to I hired a paid attorney.

22 Q Okay. So a couple months afterwards you hired through
23 your father hired Mr. Turnblad, is that right?

24 A That's right.

25 Q And how quickly was he able to get you in for a bond?

1 A We went up Christmas and the way it worked he tried to
2 explain the way it worked to me. I ain't never heard nothing
3 like this before in my life, but the way the bond went if I did
4 not get tried before the court term of April 2012, my bond would
5 go in effect.

6 Q And in fact you ended up bonding out some time after
7 April 2012, is that right?

8 A Yes, I bonded out. My bond went in effect May the
9 10th, 2012. My people couldn't get to me fast enough. I got
10 out the 12th.

11 Q So you're out in jail in May of 2012 until the time of
12 the plea in September, is that correct?

13 A That's exactly right.

14 Q How much -- how many times did you meet with Mr.
15 Turnblad in that period of time?

16 A Me and my father went a few times. We paid him because
17 every time we go down there we get him to sign a receipt. And a
18 few times he come see me in jail too.

19 Q Would your father visit him with you typically?

20 A Yeah, me and my father. My mom be there some times but
21 she usually didn't go in. It was usually me and my father
22 stepped in and talk to him.

23 A Did you discuss trial strategy with him?

24 A I discussed a lot with him. I tried to tell him he
25 needed to check on the murder weapon and this and this and this.

1 The day my bond went in in effect, May the 10th is the day they
2 found the murder weapon. The man that found the murder weapon
3 is living with --

4 Q Hold on. We will get to that. Did you ask Mr.
5 Turnblad at some point to hire a private investigator in this?

6 A That was his call. He said that. He brought that to
7 our attention. He told me and my father that he was going to
8 hire a private investigator. I said that will be a great thing
9 to do, you know what I am saying, but it was his idea. I was
10 all for it.

11 Q What was -- what did he indicate to you that he wanted
12 to get a private detective for?

13 A Because he seen the case wasn't right. First of all,
14 the DA did not give us phone records that matches the statement
15 of the victim -- you know what I saying. It was like they all
16 was trying to cover up and throw it off on me. It's like he
17 didn't ever care.

18 Q Did he indicate whether or not the private investigator
19 would be able to investigate specific shell cases and things
20 like that?

21 A Well, what it is it's a lot more than what it is, but
22 it's a PCR for ineffective counsel. In fact they found bullet
23 cases other places that match the murder weapon and I wanted to
24 investigate everything. Do you see what I am saying. I was
25 talking about investigating. It was his idea to come up with

1 it, but I wanted to investigate it because it was more to it
2 then what it seems and I have all the paper work there. And the
3 only reason I took the plea because I was scared. You know what
4 I'm saying. Well, we will get to that. Go ahead.

5 Q What did -- what about the murder weapon itself, when
6 was that found?

7 A May the 10th, sir. It's the day that my bond went in
8 effect. The day it went in effect. I didn't get out until the
9 next day.

10 Q When did you become aware that the murder weapon was
11 found?

12 A I really wasn't. I just heard the streets talk and
13 told Mr. Turnblad immediately and my father, I told him I said,
14 pop, I heard they found the murder weapon at the little girl's
15 house after she made bond, but I had it twisted just a little
16 bit. It was after my bond went in effect. But I got paper work
17 on it. It's right there.

18 Q Would the private investigator have had anything to do
19 with examining the murder weapon?

20 A Yes, sir. Yes, sir. Definitely. Yes, sir. And
21 bullets that come out of the man's body too, yes, sir.

22 Q And Mr. Turnblad discussed with you and he stated that
23 he was going to in fact hire an investigator to work on this
24 case, is that right?

25 A Exactly. Yes, sir.

1 Q To the best of your knowledge to this day has Mr.
2 Turnblad hired a private investigator?

3 A No, sir.

4 Q And you never met with a private investigator?

5 A No, sir.

6 Q How many times -- I mean, tell the Court briefly --
7 let's fast forward to the actual guilty plea. How did that come
8 about? What conversations did you have with him regarding
9 whether or not to plea or go to trial?

10 A Okay. Up until September, right, September 2013, all
11 before September 2013 all I kept saying was anything over 15 I
12 want to go trial. I want to go to trial. I want to take it to
13 trial. I want to take it to trial. Now when the third suspect
14 finally wrote a statement that matched what the little girl said
15 and the one that went on the run for two or three weeks before
16 he turned himself in. The only one that didn't have a GSR kit,
17 the one that I wanted phone records on so bad. All this. He
18 wrote a statement and Turnblad just gave up everything then and
19 told me if you don't take this plea you will get life.

20 I still didn't want to take it. I told the Judge I
21 wanted to smoke one more cigarette and I went out and call the
22 news and all. I did not want to take the plea. I was
23 threatened. I was -- and he told my father the same thing, if
24 he don't take the plea you will get life. And if I would add,
25 if he would have done any kind of investigation like on the

1 blueprints on the house where they found the gun cases where the
2 body was laying, it don't match, none of the statements.
3 Period.

4 The man didn't do any kind of investigation at all and I can
5 show you a little bit about that. Right there I got it right
6 there laid down on my desk.

7 Q So why did you decide to sign a guilty plea saying that
8 you were happy with his representation and things like that?

9 A Well, see that's the catch right there now. He said we
10 could go back later and change that part. He said was I happy
11 with my lawyer? Was I satisfied with my attorney? I said no,
12 not really. My exact words. My mother and father were in the
13 courtroom present in the little box. He checked it and said we
14 will come back later and fix it.

15 Q And so did -- and you indicated to --

16 A I even asked the judge if I could take it to trial. He
17 said I would have to represent my self. If I fired him that day
18 I would have to represent myself or get Mark Greer. I have all
19 that here too, the transcript of the court and all.

20 Q Let me ask you this about the transcript. When you
21 said -- you indicated in the transcript that you were only
22 taking this -- that were you only taking the plea because you
23 weren't prepared, is that correct?

24 A Exactly right. If the man would have done any
25 investigation we wouldn't even -- I mean, any jury in the world

1 would have convicted me not guilty.

2 Q Were you provided with copies of all your Discovery and
3 things like that?

4 A All but the murder weapon and that court papers that
5 you signed that I asked for when I left. I asked him. I told
6 my mom and daddy to get it cause they was locking me up. I said
7 make sure you all get of that paper that they checked. But the
8 murder weapon the whole time they had it since my bond went in
9 effect and don't you think it's stage just for the Court --

10 Q Don't ask me questions. I just want you to answer the
11 questions I am asking you.

12 A Yes, sir.

13 Q Okay. So, how many conversations total would you say
14 had you with Mr. Turnblad about trial strategy and things like
15 that?

16 A None really because we hadn't -- it wasn't even like he
17 try. At first he was all for the trial. He said don't plead to
18 nothing, but accessory before and after the fact of armed
19 robbery. You will probably get five to seven, because they
20 didn't have any physical evidence.

21 Q So when you originally -- when Mr. Turnblad was
22 originally hired to represent you did he give an opinion as to
23 what he thought you would receive?

24 A Yeah, I just told you.

25 Q And was was that?

1 A Accessory before and after the fact of armed robbery
2 probably five to seven because they found the victim's wallet
3 with my fingerprints on it at the girl's house not the murder
4 scene. The only thing the man did was get me the bond was the
5 only thing.

6 Q And so when does he finally relay the offer of the
7 negotiated thirty that you end up pleading to?

8 A September, all the way to the end. I got the paper
9 work right over there.

10 Q When you came to court that day to plead what did you
11 think you were pleading to?

12 A Well, he told the week before, but before the two weeks
13 before September I did not know I was getting thirty years. I
14 told the man anything over 15 I want to take it to trial. If he
15 invested the blueprints in the house, the bullet cases, his job
16 -- if he had done his job we wouldn't be sitting here today.

17 Q Were you noticed for trial when you showed up when you
18 ended up taking this plea?

19 A I'm sorry.

20 Q Were you noticed for trial the week when you end up
21 taking this plea?

22 A What do you mean noticed?

23 Q Were you scheduled to go to trial that week?

24 A It just popped up. It was a last minute thing. You
25 know what I mean. It was like last minute Barfield said lets go

1 to trial.

2 Q All right. So when you show up at the courthouse it is
3 either take the plea or go to trial that week is that a fair
4 statement or no?

5 A Take a plea today or take a trial and get life in
6 prison.

7 Q And that's what Mr. Did Mr. Barfield say that or did
8 Mr. Turnblad?

9 A Mr. Turnblad said that. He quoted that to me and my
10 father and my mother. He said you can either take this plea
11 Kiker or you can take it to trial and get life. They are going
12 to give you life is what he said. If you take this to trial you
13 were going to get life.

14 Q And were you prepared to go forward with the trial at
15 that time?

16 A No, sir, because I didn't have the proper investigation
17 done on my case.

18 Q Did that effect your -- your decision to plead guilty?

19 A Oh, yes, sir. Most definitely. Most definitely.

20 Q Had your attorney been actually prepared to take this
21 -- at any point in time prior to this did you say yes, I want to
22 take this thirty years?

23 A When I signed the paper, I mean at the end, you know.

24 Q Maybe that was a bad question. At any point prior to
25 the day you showed up in court?

1 A Oh, no, I wanted a trial. Anything over 15 I wanted a
2 trial because I knew where I was at and, I mean, see the judge
3 don't know anything about my case. But if you can look at a few
4 papers that I have. If they would have had my proper evidence
5 they would have seen. If you can see my background record that
6 I own my own business. My father's business. I'm a business
7 man in Charlotte, North Carolina. I have a lot of people on my
8 side, on my team. I don't really do a lot of -- you know, I
9 have been accused for a lot of things, but every time I try to
10 get them to take it to trial, take it to trial, they don't want
11 to unless they do some things like this. Like Barfield, if he
12 gave me the phone records that match the girl, number one
13 suspect, momma's statement, I mean -- I would have went to trial
14 by myself, I would have represent myself.

15 Q And there were several statements given by one of the
16 co-defendants in this case, is that right?

17 A That's the little girl. Three statements. First one
18 she didn't know what happened. Second one it couldn't have been
19 me because the shooter was taller or pudgier. And the third
20 one when they come back and said, you know, after the man died
21 this and this and this showing you my name, she knew where I was
22 at because I was babysitting her kids. She sent the police.

23 Q Did you and your attorney discuss the confrontation of
24 her at trial and the ability to examine -- cross-examine her on
25 all of those?

1 A I could have torn her apart on my own, yes.

2 Q That's not my question. Did you and your attorney
3 discuss what at trial your right to confront the co-defendants
4 in this case?

5 A Not to my knowledge because the man never talked about
6 trial, sir. He didn't want to go to trial from the beginning.

7 Q What about the statement that you gave in this case?

8 A I gave that statement and I can show you if I had my
9 proper things to where -- see, I thought could cover up for some
10 people. I was trying to help them out. I said if I tell this
11 right here because the little girl come home and Cam come back
12 to the house. They told me what happened. This, this and this
13 happened. I have proper paper work to show you. They found a
14 little bit of gun powder on the girl. The only one they didn't
15 find it on was Cam. I figured the would find out at the end
16 that all the way until Cam made his statement everything was
17 going good. The trial was going to come out. The truth was
18 going to come out. They knew exactly they was going to find
19 out what happened.

20 Q Let me stop you right there.

21 A And also the police put it in my head I'm talking about
22 they beat for like hours. Like eight hours to make a make a
23 statement, make a statement, make a statement.

24 Q Did your attorney discuss with you the what is called a
25 Jackson v. Denno hearing, the ability to challenge the

1 admissibility of the statement? Answer yes or no.

2 A No, sir, I ain't got no paperwork on that.

3 Q So at no point in time did you and your attorney sit
4 down and discuss the potential admissibility of your own
5 statement at trial?

6 A He said it was crucial because the way it was worded,
7 but if you get the preliminary hearing transcript before I had
8 Turnblad and had Mark Greer it will tell the whole -- it will
9 break the case down and tell the whole -- at trial -- if we
10 could take it to a trial, a real fair trial everything would
11 come out. I got the proper paperwork. I got everything. I
12 wrote the statement trying to cover for the little girl and I
13 also called my mother off of the detective's phone the day I did
14 it. I said, momma, I just did something that I didn't want to
15 do, but I want to save this little girl because she got kids and
16 I was looking out for Cam because, you know, Cam went on the run
17 you see. They didn't get all that, you know. I tried to cover
18 for him.

19 Q And you understand why you got a negotiated thirty. If
20 the Court were inclined to grant you a new trial for ineffective
21 assistance of counsel that the outcome could be somewhat
22 different? You could be subject to life in prison without the
23 possibility of parole?

24 A If I get a fair trial and they can prove me guilty of
25 murder I'm willing to accept life in prison because there ain't

1 no way, shape, form or fashion they can do it.

2 Q But knowing all that you still want -- your still
3 asking the court to grant this relief?

4 A I just want a fair trial. I just want a fair trial
5 show proper paper work I would like to have have an attorney to
6 investigate the little bit of things that I asked Turnblad to
7 investigate because it means a lot. I had asked Turnblad to
8 investigate the bullet cases where they found them in the
9 kitchen there's a bar. You fire an automatic weapon right here
10 the bullet cases ain't going to end up over yonder behind where
11 the speaker is. They are not from no automatic weapon. A buddy
12 of my mine pointed this out to me. I've never been in the
13 house. I've never seen the murder victim. A little guy guy
14 called Nikki Bee from Lancaster County knows the girl. Knows
15 the dude. He said Kiker, --

16 MR. HUNTER: Judge, I'm going to object.

17 A -- how did walk in and pop twice and the bullet casing
18 the go behind you. Turnblah said --

19 Q Quiet. There's an objection. You into need
20 to stop talking.

21 THE COURT: What was the objection?

22 MR. HUNTER: Hearsay.

23 THE COURT: Sustain the objection.

24 Q You can't say what somebody else said.

25 A He was telling me how the house looked and that's when

1 I asked for the blueprints and I did get the blueprints but I
2 didn't get no investigation to the blueprints.

3 Q And you believe it was your attorney's responsibility
4 to do the investigation as to the casings and where they were
5 found in the house?

6 A Of, course. Of course, it is definitely not mine.

7 Q Is there anything else other then the complete lack of
8 of investigation, the lack of hiring a private investigator, and
9 the essential coercion of the guilty plea itself that day?

10 A If the man wouldn't hadn't threatened -- hadn't
11 convinced me that I was getting life in prison I would never
12 have signed that. My father and mother will tell you that the
13 whole time I was hollering trial, trial, trial. I'm still
14 hollering trial.

15 Q What other complaints do you have of Mr. Turnblah in
16 this case?

17 A The man did not do anything that he said he was going
18 to do. Nothing. Even when I got the blueprints and showed him
19 what I know about it, look this is where they say I shot. This
20 is where they said I shot and how did this happen. He didn't
21 even care. He said they could have got kicked. How are you
22 going to kick bullet cases on top of a counter. You can't do
23 it. You see what I am saying. I mean, if he had done a proper
24 investigation we wouldn't be here today.

25 MR. SHELDON: Thank you, Your Honor. I don't have

1 any other questions for this witness.

2 THE COURT: Mr. Hunter.

3 MR. HUNTER: Yes, sir.

4 CROSS EXAMINATION

5 BY MR. HUNTER:

6 Q Good afternoon Mr. Kiker?

7 A Good afternoon sir.

8 Q So you acknowledge that you filled out this guilty plea
9 affidavit prior to your plea, is that correct?

10 A That's right.

11 Q Okay. Did Mr. Turnblad go over it with you?

12 A Yes, sir, and my mother and father was there too.

13 Q So he explained to you what this meant?

14 A Yes, sir.

15 Q That were you waiving your right to challenge the
16 evidence against you?

17 A Yes, sir.

18 Q That you were waiving your right to a trial?

19 A Yes, sir.

20 Q That you were you were pleading guilty?

21 A Yes, sir after he convinced me I was going to get life
22 if I didn't.

23 Q So it is fair to say that you plead guilty to avoid a
24 life sentence?

25 A No, I plead guilty to avoid -- to avoid not a fair

1 trial because I would not have got a fair trial with this man
2 representing me that day and the judge would not let me. I said
3 Your Honor, if I fired this man can I -- can I have time to get
4 another attorney. He said no you can use him, you can use Mark
5 Greer or you can represent yourself.

6 Q Is it fair to say you were unhappy with Mr. Turnblad at
7 the time of your plea?

8 A Yes, sir, very unhappy. Very hurt.

9 MR.HUNTER: May I approach, Your Honor.

10 THE COURT: Yes, sir.

11 Q Do you recognize this letter?

12 A Yeah, I recognize it.

13 Q Could you read the first sentence to the Court please
14 starting with "Dear Jason" at the very top.

15 A "Dear Jason. Thank you for representing me on my
16 murder case, however I talked it over with my dad about
17 retaining you for this appeal. I understand that I still own you
18 \$13,100. He should be getting in contact with you soon. Is
19 there any way possible you could send me a copy of my motions
20 along with my transcript.

21 Q Mr. Kiker, that's all I wanted to know.

22 A I just wanted the Court to know.

23 MR. HUNTER: Your Honor, I would like to admit this
24 in evidence as State's Exhibit One.

25 THE COURT: Mr. Sheldon.

1 MR. SHELDON: No objection, Your Honor.

2 THE COURT: Okay. States One is in evidence
3 without objection.

4 (Petitioner's Exhibit One, Letter, received in
5 evidence as of this date.)

6 Q Mr. Kiker, you state you were unhappy with Mr. Turnblad
7 at your plea but that letter you seem to thank him and tell him
8 that you want to retain him for your appeal as well?

9 A That's the only way I knew I could get my motion for
10 Discovery and I still ain't got the paperwork that they were
11 suppose to send. I got the letter on the desk right there.

12 Q So you think the only way could get your Discovery
13 information was by retaining --

14 A Yes, sir.

15 THE COURT: Our court reporter can't get two
16 people talking at the same time. Let him ask the
17 question.

18 Ask the question sir, Mr. Hunter.

19 MR. HUNTER: Beg the Court's indulgence just a
20 minute Your Honor.

21 Q Mr. Kiker, you bonded out on May 12th, correct?

22 A May the 11th wasn't it.

23 Q May the 11th. Either way you bonded out. You were out
24 on bond, correct?

25 A You what?

1 Q You were out on bond?

2 A Yes.

3 Q Okay. So how many times did you go to Mr. Turnblad's
4 office and talk to him about his case?

5 A I got receipts. I mean I didn't keep up with it. At
6 least a few. I ain't really keep up with it like that. He kept
7 telling me he would get back with me. He would get a private
8 investigator. He would do this. He would do that. He would
9 get the bullet cases. He'd do this. He'd do that. We just go
10 by pay him and see what he had.

11 Q So you went over there numerous times, but what you are
12 saying is you all never really talked about the case?

13 A I remember the day he got the pictures. When he
14 finally got the pictures. That was when he finally got them, he
15 was like there were are many pictures. It ain't really looking
16 over. I was like what, so many pictures it ain't looking over.
17 I'm pretty sure my father was there that day too.

18 MR. HUNTER: I beg the Court in/TUL /SKWREPBS Your
19 Honor.

20 THE COURT: Yes, sir.

21 Q Now Mr. Kiker, you gave a statement to the police,
22 didn't you?

23 A Yes, sir.

24 Q Now I believe a few minutes ago you testified, and I
25 may have misunderstood you, but did you say that the police beat

1 you in order to get that statement?

2 A They beat it out of me. They like just kept dragging
3 me and dragging me. Leaving me in holding cell for hours and
4 hours and hours and hours and they finally told one of the
5 people died and said this, this, this, and this so I just
6 matched the little girl's statement is what I did. The
7 statement she had I agreed. Ain't none of that is handwritten.
8 The police did it, and I was out of my mind high when I was
9 making the statement. When the detective got on the stand at
10 the preliminary hearing he said Kiker was high but he wasn't
11 bouncing off the walls.

12 Q So when Mr. Barfield, the solicitor at your plea, when
13 he told the judge what you had told him in your statement was
14 that not true? You hadn't actually confessed to those things?

15 A I just agreed to the paper writing and I signed it in
16 the end. I didn't hand write no statement.

17 Q Didn't the police recover the gun based your statement?

18 A No, sir. No, sir. They sure didn't. No, sir. They
19 didn't. They sure didn't. They recovered the man's wallet that
20 the little girl threw and I caught in my hands at her house.

21 Q That is not my question.

22 A No, sir. No, sir, they didn't. No, sir.

23 Q Okay. So you didn't tell the police the gun was left
24 in the trash can?

25 A I did.

1 Q And then they went and found?

2 A I went with them. I went with them and they did not
3 find it..

4 THE COURT: Two can't talk at the same time now.

5 Q The gun was found where you said it was, was it not??

6 A The gun was found in May, sir. This is July we are
7 talking about. This is almost a year later.

8 Q Well, how do you think it got there?

9 A It wasn't in no trash can.

10 Q It was where you told him it, was it not?

11 A If it was where I told them you don't think they dumped
12 the trash between now. Come on man. Use your head.

13 Q So you think the police planted the evidence?

14 A I don't know, sir. If you listen to me, my bond went
15 in to effect May the 10th. The gun was found May the 10th. The
16 people who found the gun and the people -- I got it all on
17 paper. I can prove it in trial. The gun was found May the 10th
18 when my bond went in effect and they the little girl seen I was
19 going to get out of jail and Cam knew I was going to tell
20 everything at trial. The gun was found. And not only that the
21 gun was shot.

22 Q Mr. Kiker please. Did you tell the police in your
23 statement that when you went over the victim's house you had a
24 white bandanna wrapped around your face?

25 A I did. Because it match the girl's, I did.

1 Q Now did you tell the police that you thought the victim
2 was fitting to be getting drunk on you and that's why you shot
3 him?

4 A I did.

5 Q And but now you say that is not what happened?

6 A I agreed. I didn't write this. I agreed, sir, and the
7 white bandanna was found on the little boy. I got that too.
8 When they come and get me they got me with all my clothes,
9 everything the man's wallet, the white bandanna that they said
10 right there the little boy had it on his head in somebody else's
11 house.

12 Q So are you saying today that you never wore the white
13 bandanna?

14 A I never had it that night. The little boy had it. They
15 recovered the bandanna from the people and sent it back over.
16 They couldn't even use it for evidence because the little boy
17 had it on his head.

18 Q Okay, then why did you tell the judge at your plea that
19 what the solicitor was telling him was incorrect?

20 A They told me I couldn't talk at my plea.

21 Q The judge didn't ask you?

22 A They told me -- they told me that if I didn't want to
23 represent myself or go with Barfield, you know, that's it. Its
24 over that. That's why all I want is a fair trial. I have
25 everything I need.

1 Q You don't recall the judge -- and the judge, this is on
2 page ten. You don't recall Judge Kinard tell me if you disagree
3 with something?

4 A He wasn't talking about the whole murder case. I mean
5 he was asking about court that day.

6 Q What did you think were you there for?

7 A For murder charge that I didn't commit and have I
8 evidence to prove.

9 MR. HUNTER: No further questions, Your Honor.

10 THE COURT: Redirect Mr. Sheldon:

11 MR. SHELDON: Briefly Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. SHELDON:

14 Q In reference to the gun -- I don't want to go over this
15 in long detail, but the crime happens in July of 2011, is that
16 right?

17 A Yes, sir.

18 Q And then the gun is found in May of 2012?

19 A Yes, sir. The day my bond went in effect.

20 Q But the gun wasn't -- the gun isn't exactly where you
21 said it was?

22 A No, sir. It's like the white bandanna. I left a
23 couple things missing because I didn't really know for sure what
24 they had done with it and all that was going to come out on
25 trial and I had that on paper work. Everything. Everything.

1 MR. SELDON: And Your Honor, on the issue
2 regarding the firearm to what extent is relevant in
3 this case I would just draw your attention to
4 Solicitor Barfield's recitation of the facts where it
5 describes exactly how this gun is found later on.

6 THE COURT: You are talking about some third-party
7 wrapped in a towel around the house.

8 MR. HUNTER: Yes, Your Honor.

9 THE DEFENDANT: But he was cutting grass though
10 around a lot of trees and -- do you know what I mean.
11 I got it right there if you want to see it.

12 THE COURT: I read the transcript. That's what I
13 understood it. Wrapped in a towel at the Hunter
14 residence or what at one time had been the Hunter's
15 residence.

16 THE DEFENDANT: No where near the trash can and
17 red doritos's bag.

18 Q Now on page ten, there was some debate on page ten of
19 the transcript where --

20 THE COURT: What page, I'm sorry.

21 MR. SHELTON: Page ten of the transcript.

22 Q Regarding your understanding of what's going on and you
23 are agreeing with things going on. Do you remember Mr. Hunter
24 asking you about that?

25 A Yes, but I really didn't really no what was going on

1 because I thought I had to paid attorney that was for me, you.
2 see. But when we got in the courtroom everything changed
3 between night and day. It was a whole different story now. You
4 know, it was like -- you know, I mean see, I don't really do
5 the law like that, you know.

6 Q The last thing I want to discuss with you Mr. Kiker, on
7 that same page, you indicated that you do understand but you
8 also were told -- in that same paragraph -- you were also told
9 that -- you also said that your attorney said that the murder
10 charge carried 85 percent, is that correct?

11 A It was suppose to have been 30 mandatory and then it
12 was suppose to be all my charges together and right now it's not
13 like that it's different. Just like the murder weapon, sir, if
14 he had done any investigation he would have known they would had
15 the murder weapon. For the whole year and some change you
16 didn't know they had the a murder weapon. That proves right
17 there, I mean. The paper work is right on the desk.

18 We're talking about capital case here, sir, and they with
19 held evidence on a capital case. They didn't even try to get.
20 I didn't have a chance.

21 MR. SHELDON: Thank you, Your Honor, I don't have
22 any more questions.

23 THE COURT: Recross.

24 MR. HUNTER: No, sir.

25 THE COURT: Thank you. Thank you, Mr. Kiker. You

1 may step down.

2 THE COURT: All right, Mr. Sheldon you may call
3 your next witness.

4 MR. SHELDON: Your Honor we call Harvey Kiker to
5 be stand.

6 THE COURT: All right, come on around.

7 WITNESS NAME, called as a witness, having been
8 duly sworn by the clerk, was examined and testified as
9 follows:

10 MR. SHELDON: May it please the Court, Your Honor.

11 THE COURT: Yes, sir.

12 DIRECT EXAMINATION

13 BY MR. SHELDON:

14 Q Mr. Kiker, please state your name for the record.

15 A Harvey Kiker.

16 Q And how do you know the applicant in this case, Junior
17 Kiker?

18 A He's my son.

19 Q You have been in the courtroom for the testimony that
20 he just gave, is that right?

21 A Yes, sir.

22 Q There has been some discussion. Were you actually the
23 one that hired Mr. Turnblad in this case?

24 A Yes.

25 Q And how much did you pay to retain him?

1 A I don't remember. Went and take him money several
2 times and sending him money orders and everything.

3 Q When you originally met with Mr. Turnblad was Mr. Kiker
4 present -- Mr. Junior Kiker present?

5 A No, sir.

6 Q He was incarcerated, is that right?

7 A Yes, sir.

8 Q What did you all -- what did you and Mr. Turnblad
9 discuss regarding his representation of your son?

10 A Well, I went down there to talk to him about it and he
11 said there were two of them. He said, well, we have to take it
12 to court. There will be two of us there. One was saying the
13 other one didn't say, you know. And he talked good. Like he
14 get five to seven years to start off and then he come by the
15 house one time with a plea bargain right before the court date
16 and told Junior Barfield said thirty years.

17 Q So, you were present with Junior Kiker at a lot of
18 these meetings as Mr. Turnblad's office is that right?

19 A Yes, sir.

20 Q And did the thirty year offer come up in any of these
21 meetings prior to right before court?

22 A No, sir.

23 Q Were you -- tell me about that five to seven years that
24 you just mentioned. Did that come from Mr. Turnblad?

25 A Yes, sir.

1 Q When you originally met with him was it your
2 understanding that his opinion of the case was that your son
3 would receive five to seven years?

4 A Yes, sir.

5 Q What about a private investigator? Did you all ever
6 talk about that?

7 A Well, he said something about one one time. I didn't
8 hear nothing else about it after that.

9 Q To the best of your knowledge did he ever hire a
10 private investigator?

11 A Not that I know of.

12 Q And you never met one, is that right?

13 A No, sir.

14 Q Was there ever a actual plea in writing to five to
15 seven years?

16 A No, sir.

17 Q So, would it be fair to say that essentially comes from
18 Mr. Turnblad's initial assessment of the case?

19 A Yes, sir.

20 Q Based on your meetings with Mr. Turnblad when did that
21 switch to that thirty-year sentence that he ends up getting?

22 A Right before the court date he showed up, Mr. Turnblad
23 showed up at my house and knocked on front door and he had the
24 paperwork in his hand and he talk to Barfield or somebody and
25 said that was the best Barfield was going to do, was thirty

1 years and he told my son that.

2 Q Did you have -- did you and your son discuss the case?

3 A A little bit. Not a whole lot.

4 Q So you all didn't talk about the case outside
5 essentially Mr. Turnblad's office, is that right?

6 A Not much.

7 Q Okay. When were you these meetings did you all ever
8 discuss with Mr. Turnblad and your son did you ever discuss
9 trial strategy or anything like that?

10 A Mr. Turnblad said, like I said, it will be two of them.
11 There's two lawyers in the office he was in. He said we took it
12 to court there would be two of them in court. He said one might
13 pick up something the other didn't pick up. In other words two
14 of them is better than one is what he was trying
15 telling me.

16 Q Were you under the impression that the case would go to
17 trial?

18 A Yes, sir, I thought it would.

19 Q And up until that final week before the plea the case
20 was essentially in a trial posture is that right?

21 A Uh-huh.

22 Q Did you believe Mr. Turnblad did everything he said he
23 was going to do for your son?

24 A No, not really. I believe he could have done more than
25 what] he did.

1 Q Based on your meetings and being present in his office
2 what other types of things he could have done?

3 A Well, I think he could have investigated the case a
4 little bit better, or something, you know. Found out, you know
5 what was going on. We asked him questions and he would say he
6 didn't know. My wife asked him we want to know who killed the
7 man. He asked -- she asked Jason did you find my son killed him
8 or what and Jason said, I didn't ask him that. So I figured,
9 you know, if he going be a lawyer you ask the man to start with.

10 Q So those were essentially your concerns with Mr.
11 Turnblad in this case, is that right?

12 A Yeah, right.

13 MR. SHELDON: Thank you, Your Honor. I don't have
14 any other questions.

15 THE COURT: Mr. Hunter.

16 MR. HUNTER: Just very briefly, Your Honor.

17 CROSS EXAMINATION

18 BY MR. HUNTER:

19 Q Mr. Kiker, I believe you testified that you and your
20 son didn't speak a whole lot about the facts of the case?

21 A Yes, sir.

22 Q Okay. Well then, but you don't think that Mr. Turnblad
23 did enough investing, is that right?

24 A The way it looks he didn't.

25 Q Well, my question is this, if and your son didn't speak

1 much about the facts of the case do you really know if there was
2 more out there to investigate then what Mr. Turnblad did?

3 A Well, I was in Mr. Turnblad's office every time there
4 was meeting and and sat down and talked to him. Me and my wife
5 went down there several times without my son and talked to him.
6 He talked good in the office, but he wasn't good on the street
7 and in the courtroom.

8 Q Is it safe to say, well -- - let me rephrase that. When
9 your son went to go plead that day did you know he was going to
10 plead to thirty years?

11 A No, not really.

12 Q So what did you think was going to happen that day?

13 A I figured, you know, he go up there and get thirty
14 years and he back down on there and reduce the sentence a little
15 bit.

16 Q Did Mr. Turnblad explain was a negotiated sentence was
17 to you?

18 A No.

19 MR. HUNTER: No further questions.

20 THE COURT: Recross?

21 MR. SHELTON: No, sir, Your Honor.

22 THE COURT: Thank you. Thank you, Mr. Kiker, you
23 may step down.

24 MR. KIKER: Thank you. Sir.

25 THE COURT: You may call your next witness Mr.

1 Sheldon.

2 MR. SHELDON: Your Honor, that is applicant's
3 case.

4 THE COURT: All right, Mr. Hunter.

5 MR. HUNTER: The State would call Mr. Turnblad.

6 THE COURT: Come around and be sworn please.

7 JASON TURNBLAD, called as a witness, having been
8 duly sworn by the clerk, was examined and testified as
9 follows:

10 DIRECT EXAMINATION

11 BY MR. HUNTER:

12 Q Good afternoon Mr. Turnblad.

13 A Good afternoon.

14 Q How long have you been practicing law?

15 A I guess eight years.

16 Q Okay, and what percentage of your practice is devoted
17 to criminal defense?

18 A The first five years was hundred percent criminal
19 defense. Now it is probably down to about 25 percent. I'm still
20 pretty involved in it.

21 Q Now you were retained in case, correct?

22 A Yes.

23 Q Okay. Do you recall how many times you met with or
24 discussed Mr. Kiker's case with him prior to his plea, just
25 roughly if you don't have an exact number.

1 A Roughly I know we spoke on the phone at less six times
2 the week before trial and met in person twice. Prior to that it
3 was about once a month after he bonded out we would meet. I
4 guess from May of 2012 to September of 2013 may be 12 to 15
5 times.

6 Q Okay. Did you file Rule 5 Brady motion in this case?

7 A Yes.

8 Q Okay. Did you have any trouble getting the Discovery
9 from the solicitor's office?

10 A Initially it took a little while to get everything. I
11 got some initial Discovery, but to get complete discovery it
12 took a little while, but I think we had it all by the time Mr.
13 Kiker bonded out.

14 Q Did you discuss the evidence or the Discovery with Mr.
15 Kiker?

16 A Yes.

17 Q Okay.

18 MR. HUNTER: Beg the Court's indulgence.

19 Q Now, did you discuss -- did you and Mr. Kiker discuss
20 his version of what happened?

21 A Yes.

22 Q Could you kind of go through that for the Court?

23 A Initially I don't like to ask criminal clients at least
24 on the first couple of meetings what exactly happened because if
25 they confess something to me it puts me in a tough position

1 representing them if they take it to trial. But we did go over
2 his statement and at some point in time I believe within early
3 to maybe mid-summer of 2013 a couple months after trial (sic) we
4 started going over his statement again and I was concerned
5 because of how detailed it was. It wasn't just a one sentence
6 type I was there and this happened. It was a pretty detailed
7 explanation of what happened. And at that point in time we were
8 talking about it and he was saying, you know, he was kind of
9 coerced into doing this by the police. That kind of thing and I
10 asked him how detailed it was. And finally he told me -- and at
11 that point in time it was privileged. But at this point in time
12 he told me the reason he knew all the details is because he was
13 there. So at that point in time I was going to be ethically
14 challenged to put him on the stand to say anything otherwise as
15 trial.

16 Q So he told you he did it?

17 A He didn't tell me that he pulled the trigger, but he
18 told me he was present.

19 Q Okay.

20 A And we discussed the hand of one is the hand of all,
21 accessory. Those types of things.

22 Q Okay. Did he have any defenses that you could have --
23 that you think would have been -- could have been successful at
24 trial?

25 A When we meet the week before court -- we spoke on the

1 phone a few times and I came over in person over their house
2 over in Buford and met with Mr. Kiker and met with his father
3 and they asked me at point in time his chances of walking out of
4 court after trial and typically I've always told people I can't
5 guarantee you one thing one way or the other, but in his case
6 realistically I told him I thought there was a zero percent
7 chance of him walking out of the courtroom.

8 Q Did you discuss the elements of the charges with Mr.
9 Kiker and the amount of of time it carried?

10 A Yes. In fact in my original contract with him on the
11 contract I have in there how much time the charge carries and
12 life is written on there.

13 Q And didn't the witness -- I believe it was Humpfries
14 identify Mr. Kiker as the shooter?

15 A Yes.

16 Q And you went over -- did you go over the plea affidavit
17 with Mr. Kiker?

18 A Yes.

19 Q Review his constitution rights?

20 A Yes.

21 Q Okay.

22 A In fact I got my own guilty plea checklist that I have
23 done on every case. I've probably done this between seven
24 hundred and one thousand times when I was a public defender, but
25 I go through this with every client. We started filling that

1 one out and got most of it filled out but they then they brought
2 me one. I didn't know that Judge Kinard had his own affidavit
3 that he wanted to have done so we stopped doing the one that I
4 typically used and used Judge Kinard's.

5 Q Okay. Did you ever -- did you explain what a
6 negotiated sentence meant?

7 A Yes.

8 Q Did he have any trouble understanding that?

9 A No, we spoke ahead of time. My hope the whole time
10 along was that we could have gotten something perhaps may be got
11 an involuntarily or accessory charge or something less than
12 murder. Doug Barfield was pretty adamant that he wanted to take
13 this case to trial and never extended a plea offer at any point
14 in time until the week before trial and that's when he offered
15 the negotiated thirty and that was all he was going to do.

16 Q So there was never any five to seven year plea offer or
17 any talk of something like that?

18 A No. We hoped if it was an involuntarily or something
19 along those lines, but there was never a plea offer at all.

20 Q Now once you received that negotiated thirty-year offer
21 did you discuss -- I mean, tell me how you went from receiving
22 that offer to Mr. Kiker ultimately pleading guilty?

23 A Give me one second. It looks like on the 10th of
24 September I spoke with Doug Barfield. I'm sorry. It looks like
25 me and Mr. Kiker spoke on the 12th of August and he was willing

1 to plead to ten years but would take up to 15. He wanted
2 something that was violent, a 85 sentence. Shortly after that
3 on August 23rd I spoke with Doug Barfield. He told me the other
4 two defendants were going to be witnesses. He would let me know
5 if they cut a plea deal so I could use that if necessary against
6 them at trial for testifying.

7 He told me he would be meeting with the victim's family
8 Monday and would give me an offer no later then Tuesday. He
9 thinks it would probably something we're not interested in. He
10 would let me know. Then on August 30th I spoke with the client.
11 Told him the offer -- told him offer is anything other then life
12 but the minimum we could get is thirty years on all the charges
13 concurrent. He is coming in next Tuesday to discuss. And then
14 on about a week later September 10th, spoke with Doug Barfield
15 again. He told me he could not come off of thirty. I had asked
16 him to do a involuntarily or something to get below thirty years
17 on. He told me he could not come off of thirty and would not
18 reduce it from murder at that time. They were going to
19 interview one of the co-defendants and that might change things,
20 and he told me what the offers were on the other co-defendants.
21 Co-defendant, Cameron, suspended five years on conspiracy.
22 Samatha straight up on armed robbery.

23 The very next day is when I met with Mr. Kiker and his father
24 at their house to discuss the case. Then on the 11th I called
25 Mr. Kiker to discuss the case. We set up another meeting just

1 to follow up again because I done this before I called Mark Gree
2 his former PD lawyer on the 12th to see if there is any
3 additional Discovery we hadn't received. Again on the 12th I
4 spoke with Doug Barfield. He said once again he would not come
5 off of murder but he would negotiate a specific number with me
6 only if we tell him it's a plea. And I spoke with Mr. Kiker
7 relaid Mr. Barfield's response. Told him we had to give him a
8 decision tomorrow otherwise it is going to have to be prepared
9 for trial.

10 The next day I spoke with the client's father. He wants
11 client to plead and is going to encourage him to do so. Later
12 that day spoke with client. He told me he would be there Monday
13 at nine for the plea. I spoke with Doug Barfield. Told him we
14 would plead. He would negotiate thirty concurrent on all the
15 charges and he also asked us to waive appeal, PCR and habeas
16 corpus in exchange for taking that and I told him I could not
17 ethically recommend that to my client so we would not be
18 accepting those provisions, but the thirty negotiated. Spoke to
19 client once again and confirmed the plea. Twice later that day
20 and we had to plead the following Monday.

21 Q Okay. Thank you. Did you discuss day-for-day versus
22 85 percent sentence?

23 A At the initial -- at my initial consultation with Mr.
24 Kiker. His parents did come to hire me and the attorney I was
25 working for at the time Trey Cox I think was in there. I can't

1 remember if he was in the initial meeting or the second meeting
2 I had with him. And I told them that I was happy to take
3 payment from them but I would have to confirm with Mr. Kiker
4 personally if wanted me to be his attorney. I would have to go
5 to the jail and see him so I went and saw him at the jail and we
6 discussed the charges and what murder carried at that point in
7 time.

8 Q Mr. Kiker brought up and issue of phone records. Did
9 you kind of explain how basically the phone records?

10 A He had talked about some stuff and I think I remember
11 seeing a letter in there that he had sent to Mark Greer at some
12 point in time talking about text messages and I had known from
13 previous experience that once a text message gets deleted its
14 pretty much gone and even if it hadn't been deleted getting the
15 records of those you have to do it within about a six to eight
16 week time period with most providers. At least Verizon and
17 Sprint save that data for about six to eight weeks. So by the
18 time -- I wasn't retained until November the 28th of 2011 so
19 about about four or five months after he was arrested, so it was
20 a little late for me to try and obtain that information.

21 Q Did you ever tell Mr. Kiker you would get a private
22 investigator?

23 A I told him that getting a private investigator may be a
24 good idea. That obviously I was privately retained attorney. I
25 wasn't appointed so I wasn't going to be paying out of pocket

1 for it. It would be an expense they would have to incur.

2 Q And they never did that, correct?

3 A No.

4 Q And would you have gone to trial with Mr. Kiker if he
5 insisted on going to trial?

6 A Yes. As I stated before I would have probably had
7 difficulty allowing him to testify. Obviously the decision to
8 testify on his own behalf is his decision, but I would ethically
9 had issues with being able to put him up and question him at
10 least at trial.

11 MR. HUNTER: No further questions. Thank you.

12 THE COURT: Thank you, Mr. Hunter. Mr. Sheldon.

13 MR. SHELDON: May it please the Court.

14 CROSS EXAMINATION

15 BY MR. SHELDON:

16 Q Mr. Turnblad, you stated that essentially you have been
17 practicing eight years?

18 A Yes.

19 Q It sounds like the last three years you kind of moved
20 on to greener pastures other than criminal defense, is that
21 right?

22 A Somewhat still do a lot of criminal defense.

23 Q But for the first five years you exclusively practiced
24 criminal defense?

25 A Yes.

1 Q How many murder cases did you take to trial in those
2 first five years?

3 A Lets see. I was never first chair. Second chair, one
4 or two, I think second chair.

5 Q And were those with public defender's office or
6 privately retained counsel?

7 A Public defender's office.

8 Q How many of those cases did you not use an investigator
9 on? Well, let me ask you this did the public defender have an
10 investigator?

11 A When I first started it was before the new public
12 defender system. It was when it was called Public Defender
13 Corporation System. We had an investigator at that point in
14 time and then once it moved over to the present public defender
15 system there were approved investigators that were appointed by
16 the court.

17 Q Wouldn't you agree that it is pretty much in any murder
18 case industry standard to have an investigator to assist with
19 the case?

20 A I don't think you can generally say in any murder case,
21 no.

22 Q You don't?

23 A No.

24 Q How many murder cases have you been involved in?

25 A I would safe a rough estimate 15 to 20.

1 Q And you don't use investigators on those cases?

2 A There was a few of them there was no need for
3 investigator, no.

4 Q But here -- and there may be some discrepancy. You
5 have a client asking for phone records, a gun is found eight
6 months later - asking for an investigation to be done. Don't
7 you think in order to effectively do that investigation you
8 needed an investigator?

9 A Yes. As I stated before being privately retained it
10 was going to be expense incurred by the client.

11 Q Did you recommend who you would use?

12 A I had a couple of ideas. I think I discussed at least
13 for ballistics and that kind of stuff Don Gurnt (phonetics) who
14 is in Columbia. I don't know if I mentioned the name of Al
15 Johnson in Charleston But Al Johnson if I didn't mention his
16 name is probably who I would use for phone records because he is
17 probably the best in South Carolina.

18 Q As part of your retainer agreement or as part of your
19 conference with people that you are about to retain, do you
20 explain to them that any investigation needed will be separate
21 and distinct from the money you are giving me?

22 A Yes.

23 Q And you don't budget that into your actual retainer?

24 A No.

25 Q How much did you actually get paid in this case?

1 A \$6,900.

2 Q Okay, and how much total did you quote?

3 A \$20,000.

4 Q So out of the \$20,000 they paid 6,900, is that right?

5 A Yes.

6 Q What about -- so, were you able to do the investigation
7 in to the issues that Mr. Kiker had on your own?

8 A As far as looking at the layout of the victim's body
9 and the house and where particular items of evidence were found
10 I was able to do that very easily on my own. There was very
11 vast amount of crime scene photographs. I had a blueprint of
12 the house.

13 I went to both where Mr. Kiker was arrested as well as to
14 the incident scene and checked all that out.

15 Q Were you provided all the Discovery? Was there a lot
16 of SLED evidence in this case?

17 A Yes.

18 Q And did you have opportunity to review that?

19 A Yes.

20 Q Did you review that with any experts or any gunshot --
21 did you retain or speak with any gunshot residue experts or
22 ballistic experts or shell casing experts or crime scene
23 reconstruction or any experts whatsoever?

24 A Not any experts. I discussed it pretty in depth with
25 members of the South Carolina Association of Criminal Defense

1 Lawyers, but not with any experts.

2 Q Which one of those members were you going to call at
3 trial as an expert?

4 A I wasn't going to call any of them necessarily as
5 expert, but I was going over the evidence and discussing. Most
6 of it I didn't think it was necessary to have have an expert so
7 I was discussing with members if they thought it was necessary.

8 Q But based on your own notes and what you just testified
9 to isn't it fair to say that this case wasn't really in a trial
10 posture up until the eve of the plea?

11 A Was or was not?

12 Q Was.

13 A Yes, it was.

14 Q And so -- well, and maybe I'm misunderstanding
15 something. So you all show up to court on September 13th or
16 16th, whatever day the plea is taken, and he pleads guilty to
17 this negotiated thirty, is that right?

18 A Yes.

19 Q And a few days prior it sounds like there were several
20 phone calls and visits made within a day, two, three days prior
21 to the plea, is that right?

22 A Yes.

23 Q Okay. But prior to those though, your kind of
24 negotiating with your right hand trying to get it 10 to 15 year
25 sentence, but in your left hand you got have in your mind this

1 case is in a trial posture, right?

2 A Sure.

3 Q So, what was your understanding with the solicitor's
4 office of when this case would in fact be called to trial if he
5 turned down the negotiated thirty?

6 A I got the jury list in here. The jury selection was
7 going to be later that morning and we would start trial the next
8 day.

9 Q So we got a case that is in trial posture for later
10 that day. This isn't going to be tried some time in January or
11 February?

12 A The next day.

13 Q So -- but you have no experts, you no investigators.
14 Where are your trial notes? Do you have any notes that would
15 have been used at trial to cross examine officers?

16 A I got a good bit in here. As I relayed earlier the
17 problem I had and I expressed this before to him was that he had
18 more or less admitted involvement to me.

19 Q And I understand your problem. Go ahead.

20 A And so my trial strategy at that point in time was just
21 going to be see if we can trip up one of the officers. Maybe
22 they made a mistake or as I explained I had the plea offers that
23 were given the co-defendants. Maybe trying to get the jury to
24 think these people took this plea deal to throw him under the
25 bus and expose that bias in their testimony. But that was the

1 extent of what kind of trial strategy.

2 Q Is it fair to say that gunshot residue in this case
3 wasn't actually an issue?

4 A Well the gunshot residue was taken too late for them to
5 test it.

6 THE DEFENDANT: Six hour period.

7 MR. SHELDON: Stop that. Stop talking.

8 A And so that was going to be part of my cross
9 examination of both SLED and the local people was that they did
10 not timely take this gunshot residue therefore they couldn't
11 exclude or include him as shooter.

12 Q So would there have been any need to hire a gunshot
13 residue expert in this case?

14 A No.

15 Q Would there have been any need to hire a ballistic's
16 expert?

17 A I don't think so.

18 Q So there is nothing that could have been -- there is
19 nothing in anything you received from the solicitor's office
20 that would have warranted further investigation by a private
21 investigator who could eventually testify at trial?

22 A Right.

23 Q There was no need for any of that?

24 A Not that I could find.

25 Q There was absolutely no need for any expert whatsoever

1 in this case at trial?

2 A Not from my discussions with the client and my
3 preparations.

4 Q Did you tell the client that he was going to get life
5 in prison if he didn't plead that day?

6 A I told him he would have a very good chance of getting
7 life in prison.

8 Q You don't think that's -- it sounds like your trial
9 judge is going to be Judge Kinard. You don't really think that
10 Judge Kinard would have given him life in prison?

11 A He is known to -- I think at times he trial tax a
12 little bit.

13 Q And you explained all that to Mr. Kiker?

14 A Yes.

15 MR. SHELDON: Beg the Court's indulgence.

16 THE COURT: Certainly.

17 Q Was Mr. Kiker's father present when he confessed to be
18 being at the crime scene?

19 A I can't recall. I know every time that Junior did come
20 to see me at the office he came with one of his two parents.
21 Some times we had conversations with both his parents in there.
22 I can't remember specifically if someone else was in that room,
23 but I do remember that Junior was sitting in the -- it would
24 have been the right hand chair in my office. I can't remember
25 if anybody else was in there or not.

1 Q Let's talk about that alleged statement a little bit
2 more. Did he actually confess to being the shooter?

3 A I asked him how did he know how detailed -- how was his
4 confession so detailed. Because like I said, some times you
5 have, yeah, I was there we did it. But this one was a two-page
6 long very detailed statement and I finally said, you know, if we
7 are going to try and throw this statement out how are you we
8 going to explain the fact that it was so detailed, and he said
9 because I was there. I didn't ask him if he actually pulled the
10 trigger but he tell me he was there.

11 Q So, had he prior been saying to you that he wasn't
12 there?

13 A Yes.

14 Q And is it fair to say that is where the ethical problem
15 comes in?

16 A Yes.

17 Q But co-defendants essentially change their statements a
18 lot, don't think?

19 A Yeah.

20 Q And so, if at trial you could have still argued that I
21 wasn't active participate, is that right?

22 A I think it would have hard to argue he wasn't active
23 based on how the statement is written. There is know doubt he
24 was definitely there and involved.

25 Q And finally what about these phone records. Do you

1 agree that you still could have gotten records, just not
2 contents of text messages?

3 A Probably so.

4 Q You could have easily obtained any phone calls that
5 were made, is that right?

6 A Yes.

7 Q You could probably easily obtain any text messages that
8 was sent from point A to point B, right?

9 A Text messages depending -- probably not.

10 Q Not the context but the actual -- the actual fact that
11 a message was sent?

12 A Perhaps, depending on the carrier yes, sir.

13 Q And wouldn't you think if he believed that was
14 important part of the case shouldn't you have followed up on
15 that?

16 A My recollection was that it was all about text
17 messages. That Samantha was text messaging. It wasn't
18 necessarily phone calls.

19 Q And while I'm certainly am not going to disagree that
20 perhaps the phone industry standard is four to six-week period.
21 Is there anything in your file that suggests that you even tried
22 to obtain any of this?

23 A Probably not.

24 Q So, you are just simply relying on the fact that
25 typically these messages are gone, is that right?

1 A Yes.

2 Q Did you go to the evidence lab at Lancaster County and
3 look at all of the evidence?

4 A No.

5 Q Have you been to evidence lab since today? I mean to
6 this day have you been to the evidence lab?

7 A No.

8 Q So you don't know if the woman's phone -- the
9 co-defendants phone was confiscated and put into evidence?

10 A If I remember it was not. I don't recall. I have to
11 go through the Discovery again, but I don't it being seized. It
12 may have I been but I would have to look through all this.

13 Q And I don't want to make you do that, but one more
14 question for you. In a murder case where somebody is facing
15 life in prison, on a case in trial posture, where a jury is
16 about to be picked that afternoon and go to trial the next day
17 don't you think it's industry standard for a defense attorney to
18 at least go and examine what is in evidence?

19 A I would have examined it later that day. Sure, before
20 trial.

21 Q But you just said, you don't -- but you also testified
22 you didn't know if you needed any experts in this case but at
23 the same time how would you know if you need any experts if you
24 haven't been down to see the evidence?

25 A Based on the discusses with the client.

1 MR. SHELDON: Your Honor, I don't have any more
2 questions. Thank you.

3 THE COURT: Redirect.

4 MR. HUNTER: Just very briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. HUNTER:

7 Q Mr. Turnblad, would you have felt comfortable going to
8 trial if necessary?

9 A If he wanted an I trial I would have been comfortable
10 going to trial, yes.

11 Q Is it fair to say that the evidence against Mr. Kiker
12 was overwhelming?

13 A Yes.

14 MR. HUNTER: No further questions.

15 THE COURT: Recross.

16 MR. SHELDON: No, sir, Your Honor.

17 THE COURT: Thank you, Mr. Turnblad, you may step
18 down.

19 Any other witnesses.

20 MR. HUNTER: No, Your Honor.

21 THE COURT: Any other evidence or testimony Mr.
22 Sheldon?

23 MR. SHELDON: Beg the Court's indulgence, Your
24 Honor. I don't have any other witnesses.

25 THE COURT: All right. Thank you. Thank you bery

1 much.

2 MR.. SHELDON: At the appropriate time I would like
3 to make a motion.

4 THE COURT: All right, yes, sir.

5 MR. SHELDON: Your Honor, we would ask that the
6 Court grant the PCR relief in this case. You heard
7 the testimony from Mr. Kiker and his father, but more
8 importantly you heard the testimony from Mr. Turnblad.
9 Your Honor, it is just simply not at all effective. I
10 would go so far as to say it is pro se ineffective
11 duty to have a case in a trial posture where a jury is
12 about to be picked in the afternoon and be essentially
13 ill prepared for trial. I mean, it is just simply not
14 possible in a murder case in this State where the
15 lawyer could not have gone down to examine the
16 evidence. I mean, there were specific requests made
17 to obtain records and it wasn't done. It is different
18 if a case is in a plea posture as opposed to trial
19 posture. There is no dispute in this case that up
20 until essentially the day -- maybe two days prior to
21 this case being called to trial this case was in a
22 trial posture where all of a sudden it flips. And in
23 the actual plea Mr. Kiker I believe says he is
24 pleading guilty because he's not prepared for trial.
25 How that happens I don't know. This case lingered for

1 two years and nothing is done. Mr. Turnblad in the
2 transcript indicates that he represented him for a
3 year and a half on this case. A year and a half they
4 have had evidence and none of it has been examined by
5 his own attorney. Your Honor, we would say that is
6 ineffective assistance of counsel, and regardless of
7 whether or not there is a guilty plea in case or not
8 it's clear from the transcript that Mr. Kiker says he
9 is pleading guilty because he doesn't feel that he is
10 prepared for trial which in turns means he doesn't
11 feel that his lawyer is prepared for trial. And Your
12 Honor, based on his lawyer's testimony I tend to agree
13 with him. I don't think that it is industry's
14 standard not to hire an investigator. I don't think
15 it is industry's standard not to examine potential
16 expert witnesses. So, Your Honor, we would ask that
17 -- and I think that because of the ineffective nature
18 and the kind of rush to the court house plead to this
19 or you will get life in prison. I disagree that Judge
20 Kinard trial taxed, but that's irrelevant.

21 The fact that you say you are going to get life
22 even though the charge does carry life is just putting
23 more pressure on Mr. Kiker to plead as opposed to
24 going to trial. In addition we're not prepared to try
25 the case. So we would argue it is ineffective. I

1 think we've shown that. And Your Honor, I think that
2 because of the gravity of the ineffective assistance
3 in this case, the lack of essentially doing anything
4 that resembles trial prep, we would argue that the
5 outcome by definition would have been different. That
6 he is entitled to a fair trial in this case, and had
7 the lawyer done any of these things then he would
8 gotten that fair trial. I don't think we're ever
9 going to say what a jury would have done, but
10 certainly there would have been a trial with a lawyer
11 that was prepared to go to trial and therefore the
12 outcome by definition would have been different at
13 that time, Your Honor. So we would ask the Court to
14 vacate the sentence and grant a new trial.

15 THE COURT: Thank you, Mr. Sheldon. Mr. Hunter

16 MR. HUNTER: Just very briefly, Your Honor. The
17 State would argue that Mr. Kiker's record both from
18 the plea transcript as well the plea affidavit and the
19 letter written by Mr. Kiker to Mr. Turnblad shows that
20 Mr. Kiker's plea was entered knowingly, voluntarily
21 and intelligently. I think the plea affidavit is
22 clear that Mr. Turnblad went over everything with the
23 applicant. Mr. Kiker knew what he was waiving. He
24 knew he was waiving the ability to challenge the
25 evidence against him, and because he was waiving that he

1 can't come back now and say, you know, well, I don't
2 think Mr. Turnblad is prepared to go to trial. That's
3 just now not how it works, judge. I point Your Honor
4 to Davis v State, that 326 SC 283, a 1997 case. The
5 Court held in order to sustain the claim that the
6 applicant felt coerced because counsel was not ready
7 for trial. The applicant must show how additional
8 preparation would help if the case had gone to trial.
9 I don't think that Mr. Kiker has shown that today. We
10 got a lot of hypothetical. There is nothing put forth
11 in evidence today that shows the outcome of the trial
12 would have been different.

13 Mr. Turnblad testified that the evidence was
14 overwhelming. Mr. Kiker confessed to the police. His
15 confession pointed the police to the murder weapon.
16 Ballistics on the gun matched to the bullets found in
17 the victim and just based on those reasons, judge, I
18 don't think he has shown ineffectiveness and much less
19 prejudice at this point. So the State would ask you
20 to deny the application.

21 THE COURT: Thank you. Thank you, very much Mr.
22 Hunter. Anything in response Mr. Sheldon.

23 MR. SHELDON: No, Your Honor, we stand by our
24 motion.

25 THE COURT: All right. Thank you. Thank you very

1 much. If you all would just please -- I will take it
2 under advisement. If you please e-mail to me and to
3 each other simultaneous proposed orders.

4 MR. SHELDON: Thank you,.

5 THE COURT: Thank you very much.

6 (END OF TRANSCRIPT)

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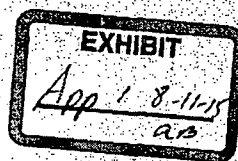
C E R T I F I C A T E

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 11th day of August, 2015.

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

February 9, 2016

Aileen Butler



THE STATE V. Junior Kiker Lancaster COUNTY GENERAL SESSIONS

INDICTMENT # 2011-65-29-1121, 1122, 1123 DEFENSE ATTORNEY Jason Tomblad
n24 SOLICITOR Doug Earfield

The Defendant avers that the Defendant desires to plead guilty to murder, Burglary 1st, Armed Robbery, Poss. of a Weapon and certifies to the Court that the answers to the following are true:

1. The Penalty(ies) for my charge(s) is/are: Murder 30 - Life, Burglary 1st 15 - life, Armed Robbery 10-30, Possession of weapon 5
2. The maximum sentence I could get is: life
3. Has the State agreed to recommend a sentence to the Judge? yes
 - (1) If so, what is that recommendation? 30 years negotiated
 - (2) If so, has anyone promised you anything else to get you to plead guilty or assured you as to a particular sentence? NO
4. Has anyone promised you anything else, threatened you or put any pressure on you to get you to plead guilty? NO
 If so, who and what? _____
5. Have you taken medications, drugs or alcohol within the last 24 hours? NO
 If yes, explain _____
6. Are you aware of any physical, emotional or nervous problem that might impact on your understanding of this plea? NO
 If yes, explain _____
7. Do you understand that if you plead NOT GUILTY you have the right to have the help of a lawyer at all stages of the proceedings, even if you cannot afford to employ one? YES ☒ NO ☐
8. Do you understand that when you plead guilty you give up your right to a jury trial? yes
9. Do you understand that in a trial you would be presumed to be innocent until the State proved you to be guilty beyond a reasonable doubt and all jurors unanimously agree on your guilty? YES ☒ NO ☐
10. Do you understand that in a trial you have the right to see and hear all witnesses called to testify against you and to confront, cross examine and question them? YES ☒ NO ☐
11. Do you understand that in a trial you have the right to take the witness stand and testify or not to take the witness stand as you choose, and that you cannot be required to take the witness stand? YES ☒ NO ☐

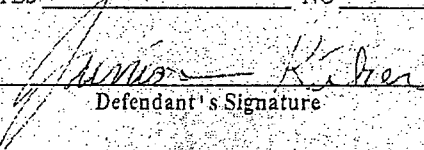
CERTIFIED TO BE A TRUE COPY

Jeff Hammond
 JEFF HAMMOND
 CLERK OF COMMON PLEAS
 AND GENERAL SESSIONS COURT
 LANCASTER COUNTY, S.C.

12. Do you understand that if you plead NOT GUILTY and that if you do not take the witness stand, they jury cannot take that as evidence against you? YES ☒ NO ☐
13. Do you understand that if you plead NOT GUILTY you have a right to use the subpoena power of the Court to get the attendance of any witnesses on your behalf at a trial whether they want to come or not? YES ☒ NO ☐
14. Do you know that if you plead GUILTY you will be found guilty without a trial and you will have given up all the rights mentioned in questions (9) to (14) along with your right to present any defense(s)? YES ☒ NO ☐
15. Have you made any statement(s) in which you admitted all or any part of the crime(s) to which you want to plead guilty? YES ☒ NO ☐
 * If YES, would you plead guilty if you knew the statement(s) could not be used against you? YES ☒ NO ☐
16. If you are on Parole or Probation, do you know this plea could result in a revocation? YES ☒ NO ☐
17. Has your lawyer gone over your rights and all circumstances of the charge(s) with you? YES ☒ NO ☐
18. Are you satisfied with your lawyer? YES ☒ NO ☐
19. Do you understand what you are doing and all the rights that you are giving up? YES ☒ NO ☐
20. Are you pleading guilty freely and voluntarily? YES ☒ NO ☐
21. Do you understand that you have a right to appeal from your sentence based on your plea but that you must appeal within 10 days of the sentence? YES ☒ NO ☐

DATE:

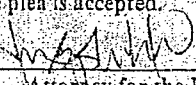
7.16.13


 Defendant's Signature

I certify that the above questions were answered by the Defendant after a full explanation of each question by the undersigned and in my opinion the Defendant understands the possible punishment for the charge(s) and his/her Constitutional rights that will be waived if the plea is accepted.

DATE:

7.16.13


 Attorney for the Defendant

Wednesday — 10 10 00

115

Dear Jason,

Thank you for representing me on my murder case. However I'm talking it over with my dad about retaining you for this appeal. I understand that I still owe you \$13,100. He should be getting in contact with you soon!

Is there anyway possible that you can send me a copy of my emotions along with the Transcript of the Preliminary Hearing + my Plea paper! I also need the Transcript of court on September 16th.

I'm not sure how long it will take to get back in court, but maybe once my dad talks with you, you could represent me on my Appeal, Or a P.R.

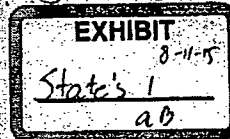
Please send me all the paperwork involving my case! I have 30 yrs to study on it!

P.S. I also understand that Samantha is not cooperating! So if Doug Barfield won't help me get a time reduction, maybe we could work something out where I could take the stand against her! Thank you for your help! Please let me know!

Thank you

Sincerely

Mr. Junior L. KIKER



LEGAL
MAIL
ONLY

LEGAL
MAIL
ONLY

LEGAL
MAIL
ONLY

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

Junior L. Kiker, #321516,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

Case No. 2014-CP-29-0633

ORDER OF DISMISSAL

2015 DEC 17 PM 11:16
CLERK OF COURT
LANCASTER, SC

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on May 15, 2014. Respondent made its return on December 31, 2014. An evidentiary hearing into the matter was convened on August 11, 2015, at the Lancaster County Courthouse. Applicant was present at the hearing and was represented by Nathan Sheldon, Esquire. Respondent was represented by Assistant Attorney General J. Croom Hunter of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Lancaster County Clerk of Court's orders of commitment. The Applicant was indicted at the October 2011 term of the Lancaster County Grand Jury for murder (2011-GS-29-1121), first degree burglary (2011-GS-29-1122), armed robbery (2011-GS-29-1123), and the possession of a firearm during the commission of a violent crime (2011-GS-29-1124). Jason B. Turnblad, Esquire represented the Applicant.

The Applicant pled guilty as indicted. On September 16, 2013, the Honorable J. Ernest Kinard, Jr., sentenced Applicant to concurrent terms of thirty (30) years imprisonment for murder, first degree burglary, and armed robbery and five (5) years imprisonment for possession of a firearm.

Applicant timely filed a Notice of Appeal. By Order filed December 6, 2013, the South Carolina Court of Appeals dismissed the matter for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules. The Remittitur was sent on December 27, 2013.

ALLEGATIONS

At the post-conviction relief hearing, Applicant proceeded to argue his confinement is unlawful based upon the following grounds:

1. Ineffective assistance of counsel.
 - a. Counsel failed to thoroughly prepare Applicant's case for trial.
 - b. Counsel failed to hire a private investigator.
 - c. Counsel failed to subpoena phone records.
2. Involuntary guilty plea.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. Applicant also presented testimony from his father, Harvey Kiker. The State presented testimony from plea counsel, Jason B. Turnblad, Esquire (Counsel). This Court also had before it a copy of the plea transcript, the Lancaster County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

As an initial matter, this Court finds the testimony of plea counsel to be credible. Conversely, this Court finds the testimony Applicant presented was not credible. This Court

finds the testimony of Applicant's father was credible; however, it was not beneficial to Applicant's case.

Applicant testified at the PCR hearing that he is imprisoned for a murder he did not commit, and that he pled guilty two years after the victim was murdered. Applicant testified that his main complaints with Counsel were that he felt Counsel did not prepare for trial, that Counsel did not hire a private investigator, and that Counsel did not subpoena certain phone records belonging to his codefendant Samantha Humphries. Applicant testified he met with Counsel numerous times, but they did not discuss a strategy for trial. Applicant maintained Counsel should have "done more," but Applicant failed to enumerate any specific actions Counsel could have taken to alleviate his guilt. Furthermore, Applicant testified the statement to the police was given under duress. Applicant adamantly denied his guilt at the PCR hearing, despite the overwhelming evidence to the contrary.

Applicant's father testified he hired counsel but he did not recall how much counsel was paid for his services. Applicant's father testified he was present at many of the meetings between applicant and plea counsel. Applicant's father testified he thought Applicant's case would go to trial, and he thought Counsel could have done more to prepare the case. However, Applicant's father did not give any specifics as to what Counsel could have done better. Applicant's father further testified he did not discuss the particulars of the case with Applicant.

Counsel testified he has been practicing law for 8 years and has participated in 15 to 20 murder cases. Counsel testified that for the first 5 years of his practice, it was entirely devoted to criminal defense. Counsel testified he filed rule 5 and Brady motions and reviewed the discovery materials with applicant. Counsel testified he went over Applicant's statement with him. Counsel testified Applicant's statement was very detailed and that Applicant told Counsel he was present

at the scene of the crime. Counsel testified he discussed the hand of one, hand of all defense with Applicant. Counsel further testified that after Applicant told him he participated in the murder, he felt it would be difficult to present a successful defense at trial. Counsel testified that based upon the evidence presented in the discovery materials, he did not believe Applicant had any chance of winning at trial. Counsel testified that a witness identified Applicant as the shooter and Applicant's statement was damning. Counsel testified that Applicant told him someone at the jail told Applicant that his codefendants were planning to set him up to take the fall for the murder. Counsel testified he attempted to track down that lead but was unsuccessful. Counsel testified that between May, 2012 and September, 2013 he met with applicant between 12 and 15 times. With regard to the phone records Applicant wanted Counsel to subpoena, Counsel testified that by the time Applicant made him aware of the records, it was too late to get them because phone companies destroy records after a certain amount of time. Counsel testified he discussed hiring a private investigator with Applicant but he told Applicant that his family would have to pay for the investigator. Counsel testified he recommended Don Girndt should Applicant decide to hire an investigator. Counsel testified that a private investigator is not hired or needed for every murder case. Counsel testified he looked through the crime scene photos, went to the murder scene, and went to the location where Applicant was arrested. Counsel testified he also reviewed the evidence obtained from SLED. Counsel testified he believed it was not necessary to hire any experts. Counsel testified it would be difficult to argue at trial that Applicant was not an active participant in the victim's murder. Counsel testified he felt the evidence against Applicant was overwhelming, but he would have gone to trial if Applicant wished to do so. Finally, Counsel testified that Applicant mailed him a letter after his guilty plea, in which Applicant thanked Counsel for representing him on the charges and discussed the possibility of retaining Counsel



for his appeal. This letter was entered into evidence by the State.

INEFFECTIVE ASSISTANCE OF COUNSEL

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

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

This Court finds Applicant failed to demonstrate that Counsel's performance was deficient in any way. This Court further finds that Applicant presented no evidence to show any prejudice resulting from Counsel's representation. This Court finds that Counsel met with Applicant an adequate number of times and went over the evidence against him. This Court further finds that despite Applicant's allegations, Counsel conducted a thorough investigation into the facts of the case, as evidenced by Counsel's testimony that he visited the scene of the crime and attempted to locate the jailhouse informant. Additionally, Applicant has failed to show how any further investigation by Counsel or a private investigator would have been beneficial to Applicant, which precludes a finding of ineffectiveness. See Rollinson v. State, 346 S.C. 506, 552 S.E.2d 290 (2001).

With regard to the phone records that Applicant says Counsel should have subpoenaed, Applicant has also failed to meet his burden of showing how those phone records would have benefited him at trial. Applicant did not present any phone records as exhibits during the PCR hearing. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at PCR. See Underwood v. State, 309 S.C. 560, 425 S.E.2d (1992). As such, the allegations for failure to hire an expert and failure to subpoena the phone records are merely speculative and unfounded. Finally, this Court finds Counsel showed a thorough understanding of Applicant's case and was able to easily explain his reasoning for the way he approached Applicant's case.

Accordingly, this Court finds Applicant did not demonstrate any deficiencies in Counsel's representation. This Court finds that because Counsel's representation was well within the range of competence required in criminal cases, Applicant has further failed to make any showing that but for Counsel's alleged deficiencies, the result of Applicant's case would have



been any different. Moreover, this Court finds that even if Applicant were able to show any ineffectiveness on the part of Counsel, which he has failed to do, the overwhelming nature of the evidence against Applicant would preclude a finding of prejudice. See Mincey v. State, 314 S.C. 355, 444 S.E.2d 510 (1994).

INVOLUNTARY GUILTY PLEA

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

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)).

This Court finds Applicant has failed to demonstrate that his guilty plea was entered involuntarily. Once again, this Court finds Counsel's testimony to be credible and Applicant's testimony to be not credible, particularly in light of the letter that Applicant wrote to Counsel after his plea.

This Court finds Applicant was aware of the nature of the charges he was facing and the possible penalties. This Court finds Applicant was well aware that by pleading guilty he waived his ability to challenge the evidence against him. This Court further finds Applicant was well aware of the constitutional rights he was waiving by pleading guilty. This Court finds that Applicant made a well-reasoned decision to plead guilty, rather than proceed to a jury trial on the charges where Applicant not only confessed, but he was identified as the shooter by an eyewitness. This Court further finds that Applicant pled guilty voluntarily and of his own free will. This Court finds there is no evidence to suggest Applicant's plea was forced or coerced, despite Applicant's claim that he felt he did not have any other choice. This Court further finds that the plea judge thoroughly explained the consequences of Applicant's negotiated plea. Applicant testified that Counsel told him if he did not plead, he would be found guilty and sentenced to life in prison. However, Counsel's testimony indicated that he did not tell Applicant he would receive a specific sentence if found guilty. This court finds Counsel's testimony credible and does not believe that Counsel put undue pressure on Applicant to force him to plead guilty. As such, Applicant's claims are without merit.

Accordingly, this Court finds Applicant's guilty plea was knowingly and voluntarily entered. This Court finds that the evidence presented at the evidentiary hearing as well as contained within the guilty plea transcript clearly supports a finding that the guilty plea was not coerced or involuntary; rather, it was freely, knowingly, and voluntarily entered. This Court finds



Applicant was informed of the nature and elements of the offenses with which he was charged and to which he pled guilty. This Court further finds that Applicant was fully apprised of the rights he was forfeiting in order to plead guilty and that Applicant decided to go forward with his guilty plea.

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, the Court finds Applicant failed to present sufficient evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

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. Plea counsel rendered effective assistance in regard to the claims raised by Applicant. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

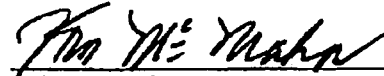
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a 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:

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

AND IT IS SO ORDERED this 10 day of DEC, 2015.



G. KNOX MCMAHON
Presiding Judge
Sixth Judicial Circuit

, South Carolina

DOCKET NO. 2011-GS-29-1121

The State of South Carolina

County of Lancaster

FILED
CLERK OF COURT
LANCASTER, SC

OCT 13 A 10:22

CLERK OF COURT
LANCASTER, SC

COURT OF GENERAL SESSIONS

OCTOBER TERM 2011

THE STATE
vs.

Junior Lee Kiker, Jr. 1121-24
Samantha Humphries 1115-17
Cameron M. D. 1131

Indictment for
Murder

SC Code: §16-3-10
CDR Code: 0116
Class: Felony, EXM

WITNESSES

Hartley - LPD #11-11735

ARREST WARRANT NUMBER/DOA

M701106 (DOA-7-16-11)

ACTION OF GRAND JURY

Foreperson of Grand Jury OCT 13 2011

Date:

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

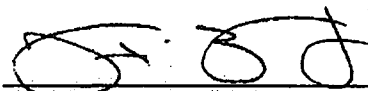
INDICTMENT

At a Court of General Sessions, convened on October 13, 2011, the Grand Jurors of Lancaster County present upon their oath:

MURDER

That Junior Lee Kiker, Jr., did at _____, in Lancaster County on or about July 16, 2011, feloniously, willfully, and of his malice aforethought kill and murder David Scott Brazzell by shooting him twice with a handgun and the victim did die as the proximate cause thereof on July 16, 2011, in violation of Section 16-3-10 of the *Code of Laws of South Carolina*.

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



Douglas A. Barfield, Jr., SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LANCASTER

STATE

VS.

Junior Lee Kiker, Jr.

AKA:

Race: W Sex: M Age: 31

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Lancaster, SC 29720

DL# SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

INDICTMENT/CASE#: 2011-GS-29 - 1121

A/W#: M701106

Date of Offense: 7/16/11

S.C. Code §: 16-3-10

CDR Code #: 0116

SENTENCE SHEET

TO: Murder

☐ CONVICTED OF or ☒ PLEADS

In violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense.☐ Defendant Waives Presentment to Grand Jury.

(def.'s Initials)

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

ATTEST:

Solicitor

SC Bar # 514

Defendant

Attorney for Defendant

SC Bar # 76366

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine: \$ _____

Random Drug/Alcohol Testing ☐

\$14-1-206 (Assessments 107.5%) \$ _____

Fine may be pd. in equal consecutive weekly/monthly

\$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ _____

pmts. of \$ _____ Beginning _____

\$14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

\$ _____ Paid to Public Defender Fund

\$56-5-2995 (DUI Assessment) \$12 \$ _____

Other: _____

\$56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

\$14-1-212 (Law Enforce. Funding) \$25 \$ _____

\$14-1-213 (Drug Court Surcharge) \$150 \$ _____

\$50-21-114 (BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

Clerk of Court/Deputy Clerk
Court Reporter: *Melissa J. [Signature]*

Presiding Judge

Judge Code: 2017-26

Sentence Date 9-16-13

DOCKET NO. 2011-GS-29- 1123-

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

OCTOBER TERM 2011

THE STATE
vs.

Junior Lee Kiker, Jr. 1121-24
Samantha Humphries 1115-17
Cameron M. Miller 1131

Indictment for

Burglary, First Degree

SC Code: §16-11-311(A)(3)
CDR Code: 0079
Class: Felony, EXM

WITNESSES

Hartley - LPD #11-11735

ARREST WARRANT NUMBER/DOA

M701123 (DOA 7-24-11)

ACTION OF GRAND JURY

Foreperson of Grand Jury OCT 13 2011
Date:

VERDICT

TRUE BILL

Foreperson of Petit Jury
Date:

FILED
CLERK OF COURT
OF COURT

2011 OCT 13 A 10:21

CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF LANCASTER)

At a Court of General Sessions, convened on October 13, 2011, the Grand Jurors of Lancaster County present upon their oath:

BURGLARY, FIRST DEGREE

That Junior Lee Kiker, Jr., did in Lancaster County on or about July 16, 2011, enter the dwelling of David Scott Brazzell without consent and with intent to commit a crime in the dwelling and the entering or remaining occurred in the nighttime in violation of §16-11-311(A)(3), *Code of Laws of South Carolina, (1976), as amended*.

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



Douglas A. Barfield, Jr., SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

IN THE COURT OF GENERAL SESSIONS

STATE

VS.

Junior Lee Kiker, Jr.

AKA:

Race: W Sex: M Age: 31

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Lancaster, SC 29720

DL# SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Burglary First Degree

In violation of § 16-11-311(A)(3) of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s Initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor SC Bar # 514 Defendant Attorney for Defendant SC Bar # 76366

WHEREFORE, the Defendant is committed to the State Department of Corrections ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

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

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

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

Clerk of Court/Deputy Clerk

Court Reporter: *Michele [Signature]*Presiding Judge *[Signature]*Judge Code: *2017-53*Sentence Date: *9-16-13*

DOCKET NO. 2011-GS-29- //23

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

OCTOBER TERM 2011

THE STATE
vs.

Junior Lee Kiker, Jr.
Samantha Humphries
Cameron M. H. H.

Indictment for
Armed Robbery

SC Code: §16-11-0330(A)
CDR Code: 0139
Class: Felony, A

WITNESSES

6 Hartley - LPD #11-11735

ARREST WARRANT NUMBER/DOA

M701124 (DOA 7-24-11)

ACTION OF GRAND JURY

[Signature]

For person of Grand Jury OCT 13 2011
Date:

VERDICT

TRUE BILL

For person of Petit Jury
Date:

FILED
OFFICE OF CLERK
OF COURT
2011 OCT 13 A 10:21
CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

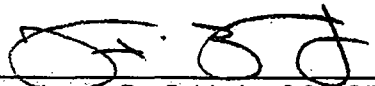
INDICTMENT

At a Court of General Sessions, convened on October 13, 2011, the Grand Jurors of Lancaster County present upon their oath:

ARMED ROBBERY

That Junior Lee Kiker, Jr., did in Lancaster County on or about July 16, 2011, while armed with a deadly weapon, to wit: a handgun feloniously take and carry away from the person or presence of David Scott Brazzell by means of force, threats or intimidation goods or money of David Scott Brazzell such goods or monies being described as follows: wallet and its contents including money, with the intent to deprive the owner permanently of such property, in violation of § 16-11-0330(A), *Code of Laws of South Carolina, (1976), as amended.*

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



Douglas A. Barfield, Jr., SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LANCASTER

STATE

VS

Junior Lee Kiker, Jr.

AKA:

Race: W Sex: M Age: 31

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Lancaster, SC 29720

DL#

SID#

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

INDICTMENT/CASE# 2011-GS-29 - 1123

AW#: M701124

Date of Offense: 7/16/11

S.C. Code §: 16-11-330(A)

CDR Code #: 0139

SENTENCE SHEET

In violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s Initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor SC Bar # 514 Defendant Attorney for Defendant SC Bar # 719366

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

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

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning

\$ _____ Paid to Public Defender Fund

Other: _____

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

Clerk of Court/Deputy Clerk

Court Reporter: Mike [Signature]

Presiding Judge

Judge Code: 2017

Sentence Date 9-16-13

DOCKET NO. 2011-GS-29- /124

FILED
OFFICE OF CLERK
OF COURT

2011 OCT 13 A 10:22

CLERK OF COURT
LANCASTER, SC

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

OCTOBER TERM 2011

THE STATE
vs.

Junior Lee Kiker, Jr.

1121-24

Samantha Humphries 115-17

Cameron Woelker 1131

Indictment for

Possession or Display of Firearm or
Knife During Commission of a Violent
Crime

SC Code: § 16-23-490
CDR Code: 0549
Class: Felony, F

WITNESSES

Harley - LPD #11-11735

ARREST WARRANT NUMBER/DOA

M701125 (DOA-7-24-11)

ACTION OF GRAND JURY


Foreperson of Grand Jury
Date: OCT 13 2011

VERDICT

TRUE BILL

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on October 13, 2011, the Grand Jurors of Lancaster County present upon their oath:

**POSSESSION OR DISPLAY OF FIREARM OR KNIFE DURING COMMISSION OF A
VIOLENT CRIME**

That Junior Lee Kiker, Jr., did in Lancaster County on or about July 16, 2011, possess or visibly display a firearm or knife, to wit: a handgun during his/her commission of a violent crime, to wit: Burglary First Degree, Armed Robbery, and Murder of David Scott Brazzell, in violation of §16-23-490, *Code of Laws of South Carolina, (1976), as amended.*

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



Douglas A. Barfield, Jr., SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

IN THE COURT OF GENERAL SESSIONS

STATE

VS.

Junior Lee Kiker, Jr.

AKA:

Race: W Sex: M Age: 31

DOB: [REDACTED] SS#: [REDACTED]

Address: 6051 Shiloh Unity Road

City, State, Zip: Lancaster, SC 29720

DL# [REDACTED] SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

INDICTMENT/CASE#: 2011-GS-29 - 1124

AW#: M701125

Date of Offense: 7/16/11

S.C. Code §: 16-23-490

CDR Code #: 0549

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Possession of Firearm During Commission of Violent Crime

In violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

514

Solicitor

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 3 days/months/years or ☐ under the Youthful Offender Act not to exceed 3 years and/or to pay a fine of \$ 500; provided that upon the service of 3 days/months/years and or payment of \$ 500; plus costs and assessments as applicable; the balance is suspended with probation for 3 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

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

Clerk of Court/Deputy Clerk

Court Reporter: [Signature]Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

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

Presiding Judge [Signature]Judge Code: 2017 52Sentence Date 9-16-13