

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Marlboro County

Thomas A. Russo, Circuit Court Judge

VONDELL MALACHI,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002429

A P P E N D I X

JOHN H. STROM
Appellate Defender

ALAN WILSON
Attorney General

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

CAITLIN HASTINGS
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

PLEA TRANSCRIPT 1

APPLICATION FOR POST-CONVICTION RELIEF 41

RETURN 49

POST-CONVICTION RELIEF HEARING TRANSCRIPT 55

COURT’S EXHIBIT #1 – GUILTY PLEA AFFIDAVIT 93

ORDER OF DISMISSAL 100

INDICTMENTS 107

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
 COUNTY OF MARION) 2007-GS-34-0807
) 2011-GS-34-0529
) 2011-GS-34-0530
) 2011-GS-34-0531

STATE OF SOUTH CAROLINA)
) PLAINTIFF)
 vs.) TRANSCRIPT OF RECORD)
)
 VONDELL A. MALACHI)
) DEFENDANT)

July 30, 2012
 Bennettsville, South Carolina

B E F O R E:

THE HONORABLE EDWARD B. COTTINGHAM, JUDGE.

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

MARY THOMAS JOHNSON LEE, ASSISTANT SOLICITOR
 Attorney for the State

HARRY R. EASTERLING, JR., ESQUIRE
 Attorney for the Defendant

WADE CROW, ESQUIRE
 Attorney for the Defendant

SUSAN ALDERMAN, MARLBORO COUNTY SHERIFF'S OFFICE

IRA DEASE, BENNETTSVILLE POLICE DEPARTMENT

A P P E A R A N C E S (continued):

BILLY CHEEKS, MARLBORO COUNTY SHERIFF'S OFFICE

JAMIE SEALES, MARLBORO COUNTY SHERIFF'S OFFICE

STEWART LINER, MARLBORO COUNTY SHERIFF'S OFFICE

MARY HERNDON, MARLBORO COUNTY SHERIFF'S OFFICE

JOYCE MALACHI, DEFENDANT'S MOTHER

DONNA EASTERLING, VICTIM'S STEPMOTHER

TENISHA EASTERLING, VICTIM'S SISTER

HATTIE O. GORDON
Circuit Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

| | |
|-----------------------------------|----|
| Colloquy | 5 |
| Sentence of the Court | 38 |
| Certificate of Reporter | 40 |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COURT'S EXHIBITS

| <u>NO</u> | <u>DESCRIPTION</u> | <u>ID</u> | <u>EV</u> |
|-----------|--------------------|-----------|-----------|
| 1 | Plea Sheet | 39 | 39 |

COLLOQUY

1
2 MS. JOHNSON LEE: Your Honor, this is the State v.
3 Vondell Malachi. Mr. Malachi, come forward.

4 THE COURT: All right. Mr. Crow, who are these other
5 folks that are standing with you?

6 MR. CROW: This is Mr. Malachi's mother.

7 THE COURT: And who are the others standing with him?

8 MS. JOHNSON LEE: Your Honor, on the right side of
9 the courtroom back here are members of the victim's
10 family.

11 THE COURT: I want to know who all is standing before
12 me.

13 POLICE OFFICER: Law enforcement. Police officers.

14 MR. CROW: And Mr. Malachi and me.

15 THE COURT: I want you to identify them for the
16 record. I know who they are.

17 MR. LINER: Deputy Stewart Liner with the Marlboro
18 County Sheriff's Office.

19 THE COURT: Thank you.

20 MS. HERNDON: Corporal Mary Herndon with the Marlboro
21 County Sheriff's Office.

22 THE COURT: That's what we need for the record.
23 Proceed.

24 MS. JOHNSON LEE: Yes, Your Honor. Your Honor, this
25 is the State v. Vondell Alsahn Malachi. Docket Number

1 2011-GS-34-529. Indictment for murder. True billed
 2 July 19th 2011. He is pleading guilty straight up to
 3 voluntary manslaughter.

4 Also Docket Number 2011-GS-34-530, the State v.
 5 Vondell Malachi. Indictment for failure to stop for a
 6 blue light. True billed July 19th 2011. He is pleading
 7 guilty as indicted. The recommendation is two years
 8 concurrent.

9 Docket Number 2011-GS-34 ---

10 THE COURT: What was your recommendation on the ---
 11 MS. JOHNSON LEE: Manslaughter is straight up, Your
 12 Honor.

13 THE COURT: All right. Two years.

14 MS. JOHNSON LEE: Two years on the failure to stop.

15 THE COURT: Okay.

16 MS. JOHNSON LEE: 2011-GS-34-531. Indictment for
 17 unlawful conduct towards a child. True billed July 19th
 18 2011. He's pleads guilty as indicted. The recommendation
 19 is two years concurrent on that one.

20 Also Indictment Number 2007-GS-34-0807. The State v.
 21 Vondell A. Malachi. Indictment for assault and battery
 22 with intent to kill. True billed August 2nd 2007. He is
 23 pleading guilty as indicted. The recommendation is a cap
 24 of ten years concurrent.

25 Your Honor, I'm handing up the sentencing sheets

1 along with the indictments as well as a copy of a form
2 from the County Jail. We are agreeing that he has a time
3 served credit of 180 days on those charges.

4 Present, Your Honor, is Detective -- Investigator
5 Susan Alderman with Marlboro County Sheriff's Office and
6 Investigator Ira Dease with the Bennettsville Police
7 Department. Multiple members of the victim's family are
8 present, Your Honor. Two are going to be the
9 spokespersons for the family today. They are Tenisha
10 Easterling who is the victim's sister and Donna Easterling
11 who is her stepmother.

12 THE COURT: Did the manslaughter charge and the
13 attempt to kill arise out of the same incident?

14 MS. JOHNSON LEE: No, Your Honor, they did not.

15 THE COURT: Are the victims here in that charge?

16 MS. JOHNSON LEE: The victim on the assault and
17 battery with intent to kill charge are not here. She was
18 notified by Ms. White, but she has not appeared.

19 THE COURT: So we are dealing with four charges?

20 MS. JOHNSON LEE: Correct, Your Honor.

21 THE COURT: All right. And it's ten cap on the
22 intent it kill. There is a two cap on the child's case,
23 and there is a two cap on the failure to stop for a blue
24 light. And he's pleading straight up to zero to 30
25 year -- two to 30 year manslaughter charge?

1 MS. JOHNSON LEE: Yes, Your Honor.

2 THE COURT: All right.

3 VONDELL MALACHI, after being duly sworn,
4 testified as follows:

5 THE COURT: Let the record reflect that Mr. Malachi
6 is represented by Mr. Easterling, Jr. of Goldberg and
7 Easterling and Mr. Ronnie Crow. Anybody else involved?

8 MR. CROW: No, sir. Mr. Harry Easterling, at one
9 time Sr. And I might add, Your Honor, this side of the
10 courtroom is the family of Mr. Malachi.

11 THE COURT: All right. Give me the -- did this arise
12 out of -- I understand this arose in the City of
13 Bennettsville and then proceeded to outside the County of
14 Marlboro? Tell me what the allegations are in so far,
15 first, as to the City of Bennettsville.

16 MR. DEASE: Your Honor, please the Court; that on the
17 afternoon of April 27th 2011 officers from the
18 Bennettsville Police Department received a call from 911
19 stating they had a gunshot victim at the hospital. At the
20 time of the incident it was undetermined where the
21 incident occurred. So our units went to the hospital, and
22 once they got to the hospital they found out who the
23 victim was involved that had gotten shot.

24 THE COURT: Who was that victim for the record?

25 MR. DEASE: Takeyia Easterling.

1 THE COURT: Proceed.

2 MR. DEASE: When I came on the scene it was later on
3 that afternoon. Well, that evening on around about
4 seven o'clock or so.

5 THE COURT: How soon did you get there after the 911
6 call?

7 MR. DEASE: It might have been around about
8 six o'clock because I was in a class in Columbia. I was
9 on my way back from Columbia that day.

10 THE COURT: Go ahead and tell me what occurred.

11 MR. DEASE: Throughout the investigation it was later
12 determined that the incident took place at the Woodland
13 Garden Park on Marlboro Street -- on North Marlboro
14 Street. That's right down the hill. S.L.E.D. Crime Scene
15 was called in to process the crime scene, and there was a
16 chase also. There was -- I don't know who all was
17 involved in that chase, but I had no part in that part.

18 THE COURT: Well, tell me what you did or what you
19 saw or what you know after you got to the hospital.

20 MR. DEASE: I did not go to the hospital, sir.

21 THE COURT: Well, who did?

22 MR. DEASE: I can't speak on that part.

23 THE COURT: Well, somebody needs to tell me what
24 happened.

25 MS. JOHNSON LEE: Your Honor, there are multiple

1 officers from multiple agencies involved in the case, but
2 basically what happened ---

3 THE COURT: You can give me a capsule of -- from your
4 conversations with them?

5 MS. JOHNSON LEE: Yes, Your Honor. Basically, what
6 happened was there were text messages going back and forth
7 between the victim and Mr. Malachi. They have a young
8 child in common who was the child in the unlawful
9 negligent case. They met at Shady Rest Park. Something
10 occurred between the two of them. He shot her. She was
11 taken to the hospital by him in his vehicle along with the
12 baby.

13 At the hospital he went inside, had someone from the
14 hospital come out and retrieve Miss Easterling from the
15 vehicle. He still had the baby. As he started to leave
16 there is conflicting stories as to whether he tossed the
17 baby out or laid the baby out, but the baby was placed out
18 of the vehicle on to the ground, basically.

19 THE COURT: Was the victim dead at that point?

20 MS. JOHNSON LEE: The victim was D.O.A., dead on
21 arrival, Your Honor. There was a chase through
22 Bennettsville approximately 20 minutes or so. There was a
23 standoff approximately 17 hours. He was in the car in
24 front of his mother's house with a gun in the vehicle with
25 him.

1 THE COURT: How did, not being there when he
2 allegedly dropped off the unfortunate victim, how did they
3 get in behind him? How did they see him? Did they see
4 him leave the hospital or what?

5 MS. JOHNSON LEE: Actually, Your Honor, Emily
6 Oxendine with the Bennettsville Police Department and
7 Deputy Chief -- Chief Deputy Charles Lemon both were at
8 the hospital, and each of them saw him putting the baby
9 out of the vehicle.

10 THE COURT: Okay.

11 MS. JOHNSON LEE: They witnessed that in person, and
12 then the chase ensued, Your Honor.

13 THE COURT: So they actually allegedly saw him at the
14 hospital?

15 MS. JOHNSON LEE: Correct, Your Honor.

16 THE COURT: And then the -- tell me about the ensuing
17 chase.

18 MS. JOHNSON LEE: Well, the ensuing chase, they ended
19 up at his mother's house. In front of the house in the
20 vehicle. He set there. He had the gun, and so there was
21 a standoff.

22 THE COURT: What kind of a gun?

23 MS. JOHNSON LEE: It was a handgun, Your Honor.

24 THE COURT: Was that handgun later determined to be
25 the deadly weapon?

1 MS. JOHNSON LEE: It was, Your Honor. S.L.E.D.
2 Firearms analysis showed that that gun fired the bullet
3 that killed Ms. Easterling.

4 THE COURT: Go ahead.

5 MS. JOHNSON LEE: Also, he had gunshot residue,
6 according to S.L.E.D, on both his jacket and his pants.
7 The victim had no gunshot residue on her clothing which is
8 additional evidence showing that he was the trigger
9 person.

10 Your Honor, with respect to the case with the child,
11 unlawful neglect, is putting the child out of that
12 vehicle. That certainly would constitute unlawful neglect
13 under the law.

14 Failure to stop is not stopping for the multiple blue
15 lights from the City Police and the Sheriff that were
16 chasing him.

17 THE COURT: Tell me about the apprehension of him.

18 MS. JOHNSON LEE: Your Honor, he finally gave himself
19 up. He was taken to the hospital. There were some mental
20 health issues. The doctors at the hospital committed him
21 to Columbia for a couple of days. When he was released
22 from mental health he came back to the County Jail where
23 he remained until me bonded out.

24 THE COURT: I may have read some statement in the
25 paper. Wasn't there a long standoff and S.L.E.D. was

1 called?

2 MS. JOHNSON LEE: It was approximately 17 hours, Your
3 Honor. S.L.E.D. was called as well as Chesterfield
4 County's S.W.A.T. Team.

5 THE COURT: Were you involved in the standoff?

6 MR. DEASE: I was down there, sir.

7 THE COURT: Well, it lasted 17 -- tell me about that.
8 Who can tell me about the standoff? Who was there to tell
9 me? Not you. I'll let you talk at the appropriate time.
10 I want it from the prosecuting -- your officers. Was
11 anybody there?

12 MR. LINER: I was, Your Honor.

13 THE COURT: Well, tell me about it.

14 MR. LINER: I have -- I was from the hospital. I was
15 one of the second -- one of the few cars. About the
16 second or third car behind. Followed the victim. I mean
17 followed the suspect all over town, out in the country.

18 THE COURT: He wouldn't stop for blue lights?

19 MR. LINER: Would not stop for the blue lights or
20 siren. Crossed the center line several times into
21 oncoming traffic. One being an 18 wheeler that was
22 completely off the road at one time.

23 THE COURT: You mean the 18 wheeler had to get off
24 the road?

25 MR. LINER: The 18 wheeler had to go completely to

1 the shoulder of the road. He finally pulled up in front
2 of his mother's house. Rolled up the windows. Locked the
3 doors, and from that point we tried to talk with him to
4 get him out of the vehicle.

5 THE COURT: How did you finally manage to get him out
6 of his mother's house?

7 MR. LINER: After that, sir, I was put on another
8 detail to where as far as him getting out of the vehicle I
9 do not know. I was not part of that. I was one of the
10 ones that was blocking off traffic to that area at the
11 time.

12 THE COURT: Who can tell me about getting him out of
13 the house? Who was there?

14 MR. CHEEKS: If it please the Court, Your Honor.
15 What happened was they actually -- I want to say he wanted
16 a cigarette or something. They got him to step out of the
17 vehicle. When he got out of the vehicle to obtain that
18 cigarette they closed the door. When they closed the door
19 they rushed him and, of course, handcuffed him. The
20 pistol was still laying in the front seat.

21 THE COURT: During the standoff he was in the house?

22 MR. CHEEKS: No, sir. He was in his vehicle in front
23 of his house.

24 THE COURT: In the vehicle?

25 MR. CROW: Yes, sir. He never got out of the

1 vehicle.

2 THE COURT: Even though the house was surrounded he
3 didn't come out?

4 MR. CHEEKS: No, sir, he wouldn't.

5 THE COURT: Did he give any statement about what
6 occurred?

7 MR. DEASE: No, sir. I have not been able to speak
8 with him. From the time he was ---

9 THE COURT: There was a homicide. There was gunshot
10 residue on his hands and his clothing and none on the
11 victim?

12 MR. DEASE: None.

13 THE COURT: What does the medical report indicate as
14 to the distance of the firearm from her?

15 MR. DEASE: It's -- all I can say is it's close
16 range. They -- Lieutenant Jeff Crooks did a G.S.R. kit on
17 the victim at the hospital that night. It was -- there
18 was no evidence of G.S.R. on her person at all.

19 THE COURT: No evidence of what?

20 MR. DEASE: G.S.R, gunshot residue.

21 MS. JOHNSON LEE: Your Honor, if I may. The autopsy
22 report just indicates single ---

23 THE COURT: Give me the -- I just want a complete
24 record.

25 MS. JOHNSON LEE: Yes, Your Honor. "Single close

1 range penetrating gunshot wound into the head."

2 THE COURT: And that is the report of who?

3 MS. JOHNSON LEE: This is the report from the Medical
4 University of South Carolina from Dr. Cynthia Shandall who
5 is the attending pathologist.

6 THE COURT: What is her medical opinion as to the
7 cause of death?

8 MS. JOHNSON LEE: The medical opinion as to the
9 manner of death is homicide. Cause of death is cerebral
10 maceration due to close range penetrating gunshot wound to
11 head.

12 THE COURT: What type of weapon was allegedly used?

13 MS. JOHNSON LEE: Beg the Court's indulgence. And
14 I'll pull those S.L.E.D. reports, Your Honor.

15 THE COURT: I spent all last week in Lexington trying
16 a very similar case, and the issues that I'm asking of you
17 arose as a contest in that case. That's why I want the
18 record clear as to what occurred. I'd like to know what
19 kind of weapon it was.

20 MR. CROW: Your Honor, we can tell you.

21 MS. JOHNSON LEE: Your Honor, I believe it was a .38
22 based on information from law enforcement, and I'm trying
23 to find the S.L.E.D. report in the file, Your Honor.

24 THE COURT: All right. As I understand it some of
25 the victim's family is here.

1 MS. JOHNSON LEE: The victim's family is present.

2 THE COURT: Do they wish to be heard?

3 MS. JOHNSON LEE: They do, Your Honor. The two
4 spokespersons for the family are Donna Easterling. She
5 has a letter to read to the Court.

6 THE COURT: I will do that at that appropriate time.
7 All right. From the State, anything else you want to tell
8 me about what occurred?

9 MS. JOHNSON LEE: Your Honor, I just want to state
10 that I have the S.L.E.D. report. The gun in question is a
11 Taurus .38 Special Revolver. And if we had not pled today
12 they did swab the trigger and the handle and if we had not
13 had a plea today we would have had a Schmerber hearing to
14 have that handle checked for touch D.N.A.

15 Your Honor, I do also have the facts concerning the
16 A.B.W.I.K. case if Your Honor wishes to hear that.

17 THE COURT: The what?

18 MS. JOHNSON LEE: The facts concerning the A.B.W.I.K.
19 charge that he's pleading to if Your Honor wishes to hear
20 that, too.

21 THE COURT: Let me hear that too, please.

22 MS. JOHNSON LEE: Yes, Your Honor. On May the 24th
23 of 2007 Mr. Malachi and two other individuals were in a
24 vehicle that was involved in a drive by shooting. The
25 person whoever it was that they were aiming at was not

1 shot, but a bullet went through a house and Ms. Wilhelmina
2 Gregg who was 66 years old, laying in bed watching
3 television, bullet came through the house and actually hit
4 her in her abdomen, Your Honor. She did live.

5 THE COURT: Is that your victim's advocate?

6 MS. JOHNSON LEE: No, ma'am [sic]. The victim's
7 advocate is Ms. White who is seated behind me.

8 THE COURT: Who's is this on my right.

9 MS. ALDERMAN: Susan Alderman.

10 MS. JOHNSON LEE: Ms. Alderman is an investigator
11 with the Marlboro County Sheriff's Office.

12 THE COURT: Yes, Ms. Alderman. I didn't recognize
13 you in the light.

14 MS. ALDERMAN: Yes, sir.

15 THE COURT: Prior to my inquiring as to his guilt,
16 Mr. Crow, have you and Mr. Easterling fully advised him of
17 his constitutional rights?

18 MR. CROW: We have, Your Honor. And we've advised
19 him of the elements of every single charge he's been
20 charged with. And he has admitted that he discharged the
21 .38 pistol. No question about it.

22 THE COURT: Intentionally?

23 MR. CROW: Sir?

24 THE COURT: Intentionally?

25 MR. CROW: Well, yes, sir, intentionally. He

1 admitted that. And we have gone over everything with him.
2 We have explained his constitutional rights. He's 26
3 years-old.

4 THE COURT: Well, I'm going to go into that at the
5 appropriate time. I just want to make sure that before he
6 addresses my questions he's been fully advised again of
7 his absolute right to remain silent. You assert that to
8 me.

9 MR. CROW: Yes. Yes, sir, he has.

10 THE COURT: And you told him of his right,
11 absolutely, presumption of innocence and his right to a
12 trial by jury?

13 MR. CROW: Yes, sir, Your Honor. I told him
14 everything.

15 THE COURT: Does he understand that the State has the
16 burden of proving him guilty of this charge beyond a
17 reasonable doubt?

18 MR. CROW: Yes, he does, Your Honor. And I've done
19 this on several occasions. Mr. Easterling has been there,
20 and his mother has been present. So he has been.

21 THE COURT: You told him that he has the right to
22 confront the witnesses against him?

23 MR. CROW: Yes, sir.

24 THE COURT: You told him that he has the right to
25 remain silent if he chose to?

1 MR. CROW: Yes, sir.

2 THE COURT: You told him that if he remained silent I
3 would charge a jury that that fact could not be entered
4 into in their deliberations in the jury?

5 MR. CROW: Yes, sir. We've gone over it in great
6 detail, and he has signed for us a plea sheet with all
7 those things on it.

8 THE COURT: All right. And how old is he?

9 MR. CROW: Twenty-six years of age now.

10 THE COURT: Mr. Malachi, where do you correctly live?

11 MR. MALACHI: Bennettsville with my mother.

12 THE COURT: And how far did you go in school?

13 MR. MALACHI: Tenth grade.

14 THE COURT: Sir?

15 THE DEFENDANT: Tenth grade.

16 THE COURT: Tenth grade. Let's talk about several
17 charges here. You are charged with murder.

18 MR. MALACHI: Yes, sir.

19 THE COURT: Which is the intentional killing of
20 another human being upon sufficient legal provocation.
21 You understand that?

22 MR. MALACHI: Yes, sir.

23 THE COURT: And do you understand that the penalty
24 could be up to 30 years?

25 MR. MALACHI: Yes, sir.

1 THE COURT: You're charged with murder, but they are
2 letting you plead to the lesser included charge of
3 manslaughter.

4 MR. MALACHI: Yes.

5 THE COURT: Which is the intentional killing of
6 another human being. You understand that?

7 MR. MALACHI: Yes, sir.

8 THE COURT: Now, at any time you don't understand
9 what I'm saying to you please tell me. You would not
10 offend me by saying you don't understand me. In order to
11 convict you of manslaughter the State must prove beyond a
12 reasonable doubt that you intentionally and deliberately
13 caused the death of this young woman by shooting her in
14 the head with a pistol.

15 Are you pleading guilty to that charge?

16 MR. MALACHI: Yes, sir. To voluntary manslaughter.

17 THE COURT: Sir?

18 MR. MALACHI: To voluntary manslaughter, sir.

19 THE COURT: What he say?

20 MR. CROW: To voluntary manslaughter.

21 THE COURT: I understand that. You're pleading to
22 manslaughter?

23 MR. MALACHI: Yes, sir.

24 THE COURT: But you are pleading to the intentional
25 taking of another human life?

1 MR. MALACHI: Yes, sir.

2 THE COURT: No question about that. Now, you're
3 represented by two fine attorneys together that I'm known
4 for a number of years. Are you satisfied with their
5 representation?

6 MR. MALACHI: Yes, sir.

7 THE COURT: Do you understand that as to any of these
8 charges that if you had asked for a jury you're absolutely
9 entitled to that. First thing I would do is charge the
10 jury that you are presumed innocent; that you don't have
11 to prove a thing; that the State would have to prove you
12 guilty beyond a reasonable doubt. Do you understand that?

13 MR. MALACHI: Yes, sir.

14 THE COURT: If then we had a trial the State would
15 present its evidence against you including the doctor's
16 testimony, the S.L.E.D. testimony, the testimony of the
17 gun powder on your person, and such evidence as they
18 thought was appropriate.

19 You at that time, through your attorney, would have
20 the right to contest that testimony. Do you understand
21 that?

22 MR. MALACHI: Yes, sir.

23 THE COURT: After the State had presented its case
24 you could call in any witnesses on your behalf, you
25 understand?

1 MR. MALACHI: Yes, sir.

2 THE COURT: In addition you could elect to testify if
3 you chose to. If you elected not to testify I would
4 charge the jury that the fact that you did not testify
5 could not, must not be used against you in any way. Do
6 you understand?

7 MR. MALACHI: Yes, sir.

8 THE COURT: I again would tell the jury that you're
9 presumed innocent, and if they convicted you upon
10 manslaughter it would have to be unanimous and beyond a
11 reasonable doubt. Meaning all 12 jurors would have to
12 find evidence beyond a reasonable doubt of your guilt to
13 the charge of manslaughter. Do you understand?

14 MR. MALACHI: Yes, sir.

15 THE COURT: Now, do you have any questions about what
16 I'm saying to you?

17 MR. MALACHI: No, sir.

18 THE COURT: Now, the allegations are that after you
19 shot this unfortunate victim that you did take her to the
20 hospital; is that right?

21 MR. MALACHI: Yes, sir.

22 THE COURT: And were you the one engaged in the high
23 speed chase thereafter?

24 MR. MALACHI: Yes, sir.

25 THE COURT: And you left the baby at the hospital; is

1 that true?

2 MR. MALACHI: Yes, sir.

3 THE COURT: What kind of car were you in?

4 MR. MALACHI: An '85 Cutlass.

5 THE COURT: What kind of gun did you use to take the
6 life of that young lady?

7 MR. MALACHI: It was a .38.

8 THE COURT: .38. How many times did you shoot her?

9 MR. MALACHI: Just once.

10 THE COURT: And you shot her in the head, I believe?

11 MR. MALACHI: Yes, sir.

12 THE COURT: Any other questions the State would have
13 me profound?

14 MS. JOHNSON LEE: No, Your Honor.

15 THE COURT: How about it for the Defense?

16 MR. CROW: No, sir. Except when we address the
17 A.B.W.I.K. I'd like to say something.

18 THE COURT: I'll give you a full opportunity. So
19 you're pleading to the child's case, and you're pleading
20 to the failure to stop for a blue light, and how about the
21 assault and battery with intent to kill? Are you guilty
22 of that?

23 MR. MALACHI: Yes, sir.

24 THE COURT: And you're pleading freely and
25 voluntarily with the same waiver you did on the

1 manslaughter charge?

2 MR. MALACHI: Well, hold on.

3 MR. CROW: If it please, the hands of one is the
4 hands of all. He was not the shooter in that situation,
5 and he was not driving the vehicle. And it was a nine
6 millimeter used in that case.

7 THE COURT: Tell me what the allegations are against
8 him from the State. Y'all are not making this easy for me
9 with your presentation.

10 MR. CROW: He gave a full written confession.

11 THE COURT: Okay. I need to know these things.

12 MS. JOHNSON LEE: Yes, Judge, there were three
13 individuals in the car, Cedale Frazier, Eldrick Branley
14 and Vondell Malachi. They each gave statements each
15 implicating the other. They were in a vehicle. They
16 drove by a house on Hudson Street in the Town of
17 Bennettsville. They -- somebody in the car was firing at
18 a person on the sidewalk.

19 That person did not get shot, but a bullet when
20 through the house and hit Ms. Wilhelmina Gregg who was a
21 lady just watching t.v. in her bedroom. Hit her in the
22 stomach, and shot her instead.

23 Each of them gave statements implicating the other.
24 None of them took credit for being the shooter.

25 THE COURT: I believe I sentenced somebody in that,

1 didn't I, myself?

2 MS. JOHNSON LEE: On this particular case all three
3 of them are still pending, Your Honor.

4 THE COURT: Well, I had a bond hearing or something
5 on that set of fact on Hudson Street.

6 MS. JOHNSON LEE: Your Honor may have relieved Mr.
7 Powers. Delton Powers represented one of those
8 defendants, Mr. Eldrick Branley. And Your Honor may have
9 been the one to relieve Mr. Powers and ordered that the
10 Public Defender appoint someone else.

11 THE COURT: All right. On the incident on Hudson
12 Street.

13 MR. MALACHI: Yes, sir.

14 THE COURT: Were you in that car with those
15 individuals when that gun was fired?

16 MR. MALACHI: Yes, sir.

17 THE COURT: Who did you fire at? Who did they fire
18 at? Do you know?

19 MR. MALACHI: No, sir. I just was in the back seat.

20 THE COURT: Why did they fire?

21 MR. MALACHI: It was a lot of stuff was going on that
22 day.

23 THE COURT: I got you. And you understand that the
24 four of you together it really makes no difference which
25 one fired the gun?

1 MR. MALACHI: Yes, sir.

2 THE COURT: The hand of one is the hand of all. So
3 all of you were involved then. All of you knew what was
4 going on. But under this negotiation ten years on that.
5 That's going to be concurrent, too. All right. As
6 investigating officer for the City do you have anything to
7 add to this?

8 MS. ALDERMAN: For the County?

9 THE COURT: Ma'am?

10 MS. ALDERMAN: No, sir. I think Ms. Thomas has taken
11 care of that.

12 THE COURT: All right. Let me hear from the victim,
13 please.

14 MS. JOHNSON LEE: Your Honor, we have the
15 spokesperson ready. Just flip on the microphone there.
16 First is Donna Easterling, stepmother of the victim. And,
17 Your Honor, before she begins to read the family asks that
18 I hand up this portrait of Takeyia to Your Honor.

19 MS. D. EASTERLING: Takeyia was a beautiful and
20 cheerful girl. Very caring. Always smiling and ready go
21 giggle at anything. She was a sister that was loved by
22 and cherished like no other. Never grumbling about her
23 life. Living it to her destiny. She had an addictive
24 laugh and giggle that would make you laugh even if it
25 wasn't funny. She found humor in everything and loved all

1 little kids. Ever since she was little herself she was
2 the girl you'd want in your presence.

3 She longed to be a mother. On September 8th 2010 she
4 became one for a short time, seven months. On April 27,
5 2011 we don't know our daughter was living her last
6 moments; that were being faced with a gun and her death
7 that has left a dark hole in our family's hearts leaving
8 behind a son who also suffered from the abuse resulting in
9 brain trauma that has lead to cerebral palsy.

10 Takeyia never got her first mother's day or first
11 birthday with a son she adored and loved with all her
12 heart. And she thought you did as well. She lays in a
13 cold grave. Can never say or touch us with those words,
14 'I love you, too'. Words she always said so sharply.
15 They are deeply missed. Our family circle has been broken
16 all because of looking for love in all the wrong places.

17 All she wanted was to love you and be your mother's
18 daughter-in-law. Even after the abuse and trauma to your
19 25 week in gestation son she continued to love you and
20 stay with you. So just in the blink of an eye you could
21 take her life. That inflicted the most pain a family
22 could feel. You left her five year old sister at the time
23 without her best friend. They had a close bond. Shania
24 hates boys and she thinks that if you turn your back on
25 them they will kill you.

1 And she has to go to therapy. My husband, I've
2 watched dome someone who struggles with himself daily.
3 The hurt and the lost love of his first born daughter.
4 Me, I'm angry. You were supposed to love her. This what
5 happened does not define love. This what happened the
6 life she lived with you became a battlefield that she died
7 on. Love doesn't go there at any time.

8 Rose, she is lost without her first born. Words
9 cannot explain the torment on her heart or ours. Teneisha
10 lost her oldest sister and best friend. Sisters are like
11 that. And she has a nephew now that will never know his
12 aunt's warm heart or arms to lay in.

13 Her son, who we call T.J., he struggles to be strong
14 and happy. Beautiful child that carries his mother's
15 smile. A baby that was put into danger because of
16 selfishness. He will suffer with health issues the rest
17 of his life. Sadly, to say from the hands of his own
18 father. We want him to be loving and forgiving in life
19 for the main reason we don't want him to become you.

20 Our family has come to see justice done for a life of
21 a mother that deserved to be here but was not given a
22 chance. Who wins when there is a bullet against the
23 flesh. She didn't have a chance. Her life was just
24 stolen without a thought. Just your plan which was no act
25 of God. You took the most precious gift a person could

1 ask for. Even though she was 20 she was always our child
2 and always will be. All we can see are pictures and dirt
3 that covers a cold grave.

4 You have left a child here without a mother or a
5 father. A role that is left for us to play, but we can
6 never take her place now. And one day explaining what you
7 did is the hardest thing we'll ever have to do is explain
8 why. Thank you.

9 THE COURT: Thank you. Is there someone else who
10 wishes to speak? Come forward, please, if you will.
11 Okay. We've got a microphone. That's good. Go ahead.

12 MS. T. EASTERLING: I feel like Vondell shouldn't be
13 able to walk around. She shouldn't even be able to breath
14 air. He did that to her, and she did not deserve that.
15 All she did was wanted to love him. That's all. All she
16 wanted was for him to be there for their baby. She did
17 not expect him to hurt her. Every time we turned around
18 she was with him, behind him.

19 Nobody did not like her at first because of him. His
20 people did not like her. I ain't going to say everybody
21 in his family, but one certain person did not like her
22 while she was with him. And she loved him so strongly to
23 the point where she started turning on me for him.

24 He did not need to hurt her. She didn't do nothing
25 to him for him to hurt her. He did not have to do that to

1 her. He did not have to do that to that baby, and now
2 he's going be to grow up without a momma and without a
3 daddy. And he gone be with me, and now he's going to be
4 at my house and go to the graveyard, and I have to walk
5 past there to see her. I could not touch her no more the
6 way I want to.

7 I cannot walk out of my bedroom like I used to and go
8 next door to her and talk to her because of him. He does
9 not deserve to walk around no longer. The time that he
10 spent free when he was supposed to be locked up that is
11 more time he got and he don't need no more.

12 THE COURT: Thank you so much. Solicitor, we had a
13 pre-trial conference in connection to this with the
14 attorneys present. There was some thing about some text
15 messages. Tell me about that. I want a complete record
16 here, and I'm not getting it.

17 MS. JOHNSON LEE: Judge, there were text messages
18 going back and forth between the two of them that day.
19 There was an argument about another female he may have
20 been involved with who claimed that she was expecting his
21 child. The text messages regarding that.

22 And, apparently, she told him where she was at down
23 at the park, and so he went to the park. There was a lot
24 of texting going back and forth. A lot of angry text
25 messages that day.

1 THE COURT: She unfortunately told him that she was
2 at the park?

3 MS. JOHNSON LEE: She told him where she was at.

4 THE COURT: How did y'all determine that the incident
5 occurred at the park?

6 MS. JOHNSON LEE: Your Honor, I can't say everything
7 that law enforcement did. I do know that night it
8 happened there was an individual who posted on Facebook
9 while -- during the standoff itself that he had just seen
10 her 30 minutes before at the Shady Rest Park which is
11 commonly known as with pushing the baby on the swing.

12 I do know Investigator Feldner with the Sheriff's
13 Office went to the park. There was some blood on the
14 ground there and the scene was secured.

15 THE COURT: Who can tell me about that?

16 MS. JOHNSON LEE: Jamie Seales.

17 THE COURT: I just want a complete record here.

18 MR. DEASE: Your Honor, please the Court. On that
19 evening I think someone was concerned about the car cause
20 he was driving a car and they were looking for the car.
21 And our officer went out and looked around and found the
22 car down in the park down on Marlboro Street. And that's
23 where the crime scene was down at the park.

24 THE COURT: You investigated the crime scene
25 yourself.

1 MR. DEASE: S.L.E.D. was called in. They did.

2 THE COURT: What did S.L.E.D. find at the crime
3 scene?

4 MR. DEASE: There was some blood found on the ground.

5 THE COURT: That's all I wanted to know.

6 MR. SEALES: Just a large amount of blood. It was
7 indicative of a very violent act that happened there.
8 That's kind of how they determined it, and I think later
9 through the investigation that was confirmed.

10 THE COURT: Is that, Mr. Defendant, is that where you
11 look the life of this girl?

12 MR. MALACHI: Yes, sir.

13 THE COURT: All right. Mr. Crow, Mr. Easterling?

14 MR. CROW: If it please Your Honor I'm going to defer
15 a minute to Mr. Easterling, but I'd like to say to you,
16 based on my many years of practicing criminal law, I've
17 never seen anything with so many text messages going back
18 and forth between two parties.

19 THE COURT: What was the motive, if any, that
20 required him to intentionally take the life of the young
21 girl?

22 MR. CROW: Your Honor, from what I can gleam from
23 those text messages this young lady, the victim in this
24 case, insisted that he come to the park to discuss this
25 situation on Facebook. Mr. Easterling can better comment

1 about those text messages, but this is a tragedy for both
2 families. But it's unfortunate because I don't really
3 understand the terminology in texting, and I'd like to
4 defer to Mr. Easterling for that more so.

5 THE COURT: Mr. Easterling is considerably younger
6 than both of us and he would be cognitive of text
7 messaging. What do you want to tell me, Harry?

8 MR. EASTERLING: Well, Your Honor, please. Our
9 information comes from the Solicitor, and we received
10 pages upon pages of it. It appears that these two people
11 were engaged in a prolonged argument, basically, all day
12 which was based upon Mrs. Easterling's assertion that not
13 only was Mr. Malachi dating another woman, but he in fact
14 was to be the father of her child which later turned out
15 to be untrue.

16 That's another unfortunate thing, but there is --
17 Judge, this is not just one or two notes. I mean we're
18 talking about page after page of just back and forth
19 between them.

20 THE COURT: Tell me why the young man in the prime of
21 life would deliberately kill somebody he apparently had a
22 relationship with. And this baby was there, was it not?

23 MR. MALACHI: Yes, sir.

24 THE COURT: Why he you deliberately kill somebody.

25 MR. CROW: Your Honor, it's to the point that I think

1 the conversation I had with this young man, but all of
2 this texting and these conversations. He had a rocky
3 relationship, and it just pushed him to the point that he
4 lost control. He lost reason. That's what happened and
5 let me say this about the standoff that they talked about.

6 All of the text messages after he was in the car was
7 from the defendant and his family members asking him not
8 to hurt himself, not to kill himself.

9 THE COURT: Why didn't they go to the car and get
10 him?

11 MR. CROW: Law enforcement wouldn't let them.

12 THE COURT: No, the family.

13 MR. CROW: Law enforcement would not let them. His
14 mother is standing right here. They would not let her go
15 to the car.

16 THE COURT: Okay.

17 MR. CROW: And those were page and page of text
18 messages from his family asking him not to kill himself.
19 Please come out of the car. Don't do this, and that's the
20 way I glean them. Is that correct?

21 MR. MALACHI: Yes, sir.

22 THE COURT: Anything further from anybody?

23 MR. SEALES: No, sir, Your Honor.

24 THE COURT: Young man, you're 23 years-old?

25 MR. MALACHI: Twenty-six.

1 THE COURT: Twenty-six.

2 MR. CROW: And before you sentence him I'd like to
3 place one more thing on the record.

4 THE COURT: Sure.

5 MR. CROW: If it please Your Honor, I have explained
6 to him with Mr. Easterling present and his mother that
7 this young man is pleading to voluntary manslaughter. He
8 has no record except for a 2007 matter.

9 I told him he's facing 30 years in jail. There is no
10 parole. It's a felony. It's most serious, and whatever
11 he's sentenced to he will do approximately 85 percent of
12 the time. I've also told him, and he's asked me this
13 question, "How long will I be in prison?" I said, "I
14 can't tell you. I don't believe the Judge can tell you.
15 No one can tell you."

16 THE COURT: That is not a part of these proceedings.

17 MR. CROW: I told him that.

18 THE COURT: You can tell him this. Under the law he
19 is going to serve 85 percent of it, perhaps all of it
20 given the seriousness of the charge.

21 MR. CROW: I told him the same thing. I explained to
22 him about the most serious.

23 THE COURT: This has nothing to do with any probation
24 or parole.

25 MR. CROW: Yes, sir. I understand that. But I

1 wanted to put that on the record.

2 THE COURT: Sure.

3 MR. CROW: And I also told him about, you know,
4 the ---

5 THE COURT: About what?

6 MR. CROW: He could later file an appeal or something
7 if he didn't like it, but it had to be done within ten
8 days from today's -- he's sentenced. I don't think that
9 there is any misunderstanding because I told him all that.

10 THE COURT: Mr. Easterling, anything you want to tell
11 me further?

12 MR. EASTERLING: Yes, Your Honor. Your Honor,
13 please. It's highly unusual that a person who would
14 injure another under this set of circumstances would take
15 that person to the hospital. And we would just ask Your
16 Honor to consider that in rendering your verdict.

17 THE COURT: Young man, under the facts before me
18 could have easily been tried and convicted of murder. No
19 question about that. I think these good lawyers would
20 agree with me. The facts clearly show.

21 Young man, I just can't understand why at your age
22 having a fuss with the mother of your child you would
23 deliberately shoot her in the head. I just don't
24 understand it. And I tell you you are fortunate that the
25 State is not seeking a charge of murder from which you

1 will spend the rest of your life in jail. We regard this
2 matter very seriously.

3 SENTENCE OF THE COURT

4 As to the charge of manslaughter it is the judgment
5 of the Court that you be confined to the State
6 Penitentiary for a period of 25 years.

7 With reference to the A.B.W.I.K, ten years
8 concurrent.

9 With reference to failure to stop for a blue light,
10 two years concurrent.

11 With reference to the conduct towards the baby, two
12 years concurrent.

13 To be given credit for time served. Thank you, Mr.
14 Crow, Mr. Easterling. Thank you for your service in this
15 case.

16 MR. EASTERLING: Thank you, Your Honor.

17 THE COURT: Obviously, you've done a good job for
18 this defendant based on the terrible set of facts
19 involving the death of this young lady. But thank you so
20 much and the Court appreciates your efforts. Thank you.

21 Let record reflect that a Blair hearing was
22 previously held before another judge, and the defendant
23 was found competent in every respect and that Judge Burch
24 made a finding in the report.

25 That plea sheet is made a part of the record at the

1 request of Defense counsel.

2 (WHEREUPON, Court's Exhibit No. 1 was marked for
3 identification and received into evidence.)

4 . END OF TRANSCRIPT OF RECORD

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

FORM 5

STATE OF SOUTH CAROLINA)

County of Marlboro)

IN THE COURT OF COMMON PLEAS

Vondell Malachi #351776)
Full name and prison number (if any) of Applicant)

13-34-00145-

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

RECEIVED
MARLBORO

JUL 24 PM 1 52

FILED

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institution, Ridgeway, S.C.
2. Name and location of Court which imposed sentence Marlboro County Court of General Session
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) 2011-65-34-529 Unlawful neglect of Child, Failure to stop for

RECEIVED

JUL 25 2013
Referred to PCR 4

(b) blow light, Assault and battery with intent to kill,

(c) Voluntary Manslaughter

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

(a) July 30, 2012

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

No

8. If you answered "yes" to (7), list:

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

i. N/A

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) Trial Judge and Trial Counsel never advised me that

FILED
CLERK OF COURT
JUL 31 2012
MARIETTA, GA

FILED

- (b) I had a right to an appeal
- (c) _____

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

- (a) See Attach sheet 3 (a)
- (b) _____
- (c) _____

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

- (a) see Attach sheet 3 (a)
- (b) _____
- (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? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

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

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

RECEIVED
 DEPT. OF CORRECTIONS
 10/15/83

Applicant set forth this cause of action pursuant to the Jurisdiction that are set forth in Chapter 17 sec. 17-27-30 (a) (b) "Collateral" attack upon and ground of alleged error heretofore available under this writ form that are being submitted or amended.

Applicant assert ineffective Assistance of trial Counsel in this application. Pursuant to the SCR.Civ. P. Rule 71.1 (d)(e) states that the burden of proof is on the Applicant to show his entitlement for relief by a preponderance of the evidence and also for the appointment of Counsel for the hearing to insure that all available grounds for relief are included in the application and shall be amended if necessary. It would be Chronologically impossible for the Applicant to carry such a burden without the aid of the proper records and the appointment of Counsel to establish his Constitutional Claims.

The Applicant request that this Court appoint Counsel and order the Respondant to turn over all Lower Court records in the above mentioned application. Applicant, moves this Honorable Court to grant leave to attend the application in this cause of action for the above reasons:

Applicant seeks this Court approval of this application, so that Applicant right to a PCR won't be deem abandon, due to the fact that Applicant has only one year to file this application from the date of his Conviction.

Vondell Malachi
Vondell Malachi

Attach sheet 3 (a)

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

NO

FILED
JUL 24 PM 1 02
MILWAUKEE DISTRICT COURT
CLERK OF COURT
MILWAUKEE, WISCONSIN

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

(a) which grounds have been presented:

i. *N/A*

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

- (a) Trial Counsel never filed an appeal from my conviction
- (b) _____
- (c) _____

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

- (a) your arraignment and plea?
- (b) your trial, if any? _____
- (c) your sentencing?
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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. Wade Ronald Crow, Esq.
- ii. Harry R. Eastfelling, Jr. Esq.
- iii. _____

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

- i. Alta
- sentencing
- ii. _____
- iii. _____

MAR 10 1968
 CLERK
 DISTRICT COURT
 MAR 10 1968

FILED

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

New Trial

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Marlboro)

VERIFICATION

I, Vondell Malach, 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.

Vondell Malach

SWORN to and subscribed before me this 15th day of July, 2013.

Luchean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

FILED
JUL 24 PM 1 52
MARLBORO
CLERK

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

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.

Vondell Melachi
Applicant

SWORN or affirmed to and subscribed before me this
15th day of July, 2013.

Lucrecia Bryant
Notary Public

My Commission Expires: May 26, 2020

FILED
2013 JUN 24 PM 4:02
WILLIAM J. CLERK
MARLBOROUGH

| | | |
|---------------------------|---|---------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF MARLBORO |) | FOR THE FOURTH JUDICIAL CIRCUIT |
| Vondell Malachi, #351776, |) | Case No. 2013-CP-34-145 |
| |) | |
| Applicant, |) | |
| |) | |
| v. |) | RETURN |
| |) | |
| State of South Carolina, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

Respondent, making its Return to the Application for Post-Conviction Relief filed July 24, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marlboro County Clerk of Court. In August 2007, the Marlboro County Grand Jury indicted Applicant for assault and battery with intent to kill (2007-GS-34-807). In July 2011, the Grand Jury indicted Applicant for murder (2011-GS-34-529), failure to stop for a blue light (2011-GS-34-530), and unlawful conduct towards a child (2011-GS-34-531). Wade R. Crow, Esquire, and Harry R. Easterling, Jr., Esquire, represented Applicant. On July 30, 2012, Applicant pled guilty to assault and battery with intent to kill, voluntary manslaughter, failure to stop for a blue light, and unlawful conduct towards a child. The Honorable Edward B. Cottingham sentenced Applicant to concurrent terms of ten (10) years for assault and battery with intent to kill, twenty-five (25) years for voluntary manslaughter, two (2) years for failure to stop for a blue light, and two (2) years for unlawful conduct towards a child. Applicant did not appeal his plea or sentence.

II.

In his Application, Applicant alleges he is being held in custody unlawfully based on ineffective assistance of trial counsel.

Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCF.

Attached to this return and incorporated herein are the records of the Marlboro County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent moves pursuant to Rule 12(e), SCRCF, to require Applicant to provide a more definite statement of his allegations of ineffective assistance of counsel. The Uniform Post-Conviction Procedure Act requires applicants to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Furthermore, Rule 8(a), SCRCF, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief."

Question 11 of the PCR application asks Applicant to state concisely the supporting facts for each of his grounds for relief. In response to that question, Applicant fails to set forth any specific facts to explain his allegation. Respondent submits Applicant's allegations are so vague and ambiguous that Respondent cannot be reasonably required to frame a responsive return. Therefore,

Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter.

IV.

Without waiving its motion for a more definite statement in Part III, supra, Respondent submits Applicant's allegation of ineffective assistance of plea counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466

U.S. at 688). Second, plea 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

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

V.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VI.

WHEREFORE, having made its return, Respondent requests Applicant provide a more definite statement of his claims, and an evidentiary hearing be held on any claims so requiring one.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

May 30, 2014

State of South Carolina) In the Court of General Sessions
) Fourth Judicial Circuit
 County of Darlington) 2013-CP-34-00145

Vondell Malachi)
)
 Plaintiff,)
)
 Vs.) Transcript of Record
)
 State of South Carolina,)
)
 Defendant.)
)
 _____)

July 27, 2015
 Darlington, South Carolina

B e f o r e:

The Honorable Thomas A. Russo, Judge

A p p e a r a n c e s:

Tristan Shaffer, Esquire
 Attorney for the Plaintiff

Joshua L. Thomas, Esquire
 Attorney for the Defendant

Bonnie H. Kelly, CVR
 Circuit Court Reporter

I N D E X

| <u>WITNESS/DESCRIPTION</u> | | | | | <u>PAGE NO.</u> |
|------------------------------|--------|-------|-----------------------|---------|-----------------|
| Case Called/Mr. Thomas | | | | | 4 |
| Motion/Mr. Shaffer | | | | | 5 |
| Response/Mr. Thomas | | | | | 5 |
| Decision by the Court | | | | | 6 |
| | DIRECT | CROSS | REDIRECT | RECROSS | |
| | | | Vondell Malachi | | |
| Mr. Shaffer | 7 | | 16 | | |
| Mr. Thomas | | 13 | | | |
| | | | Wade R. Crowe | | |
| Mr. Shaffer | 17 | | 27 | | |
| Mr. Thomas | | 24 | | | |
| | | | Harry Easterling, Jr. | | |
| Mr. Thomas | 28 | | | | |
| Mr. Shaffer | | 31 | | | |
| Closing Argument/Mr. Shaffer | | | | | 33 |
| Closing Argument/Mr. Thomas | | | | | 34 |
| Ruling by the Court | | | | | 35 |
| Certificate Page | | | | | 38 |

E X H I B I T S

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>I.D.</u> | <u>EV.</u> |
|------------|----------------------------------|-------------|------------|
| S-1 | Plea Affidavit Document, 7 pages | 15 | 24 |

1 MR. THOMAS: Please the Court?

2 THE COURT: Yes, sir.

3 MR. THOMAS: This is *Vondell Malachi vs. the State of*
4 *South Carolina*. It's 2013-CP-34-145. This was an August,
5 2007 indictment for assault and battery with intent to kill
6 and then July 2011 indictments for murder, failure to stop
7 for a blue light, and unlawful conduct towards a child.

8 He was represented on those charges by Ronnie Crowe
9 and Harry Easterling, Jr.

10 He pled guilty on July 30, 2012 to ABWIK and the
11 lesser included voluntary manslaughter, failure to stop,
12 and unlawful neglect of a child.

13 Judge Cottingham sentenced him to 25 years for
14 voluntary manslaughter, concurrent 10 years for ABWIK, 2
15 years for failure to stop, and 2 years for unlawful
16 neglect.

17 He did not file an appeal. He did file this PCR July
18 24, 2013, alleging ineffective assistance of counsel. He's
19 represented on that by Mr. Shaffer.

20 We did have a motion for a more definite statement
21 that we kind of heard last term, and I've talked to Mr.
22 Shaffer. I'm going to let him put the allegations on the
23 record. I think he might have another matter.

24 THE COURT: All right. Mr. Shaffer.

25 MR. SHAFFER: Your Honor, the -- the allegations are

1 going to be that the guilty plea was involuntary. It was
2 rendered in voluntary based on the fact that they
3 misadvised him of his -- of possible defenses and the facts
4 in the case.

5 And Your Honor, I'm actually moving for a continuance
6 in this case. I've spoken to my client. My client has a -
7 - my -- my client has requested several times to get a copy
8 of his attorney's file. His attorney -- my understanding
9 is he's been unable to actually obtain a copy of the file.
10 He believes that by doing so, you know, by -- by giving the
11 file it might -- might shed some light on possible other
12 defenses.

13 I've spoken to him about the possible defenses for a
14 guilty plea. He's aware of that, but he -- he would like
15 to still go through the -- the attorney's file to review
16 and see if there's any possible additional defenses. So
17 he's asked for a -- asked me to ask for a continuance, Your
18 Honor.

19 THE COURT: All right.

20 MR. THOMAS: Your Honor, this is ---

21 THE COURT: Mr. Thomas?

22 MR. THOMAS: This is the second time it's been on a
23 roster. We had a, like I said, a motions hearing last time
24 with the specific intent of going forward today. The
25 victim's family has been notified. They're here. Mr.

1 Crowe and Mr. Easterling are here. The State's ready to
2 proceed. We would just object to a continuance.

3 THE COURT: I'm -- I'm not understanding what -- I --
4 I'm going to deny the motion to continue at this point.
5 The -- Mr. Crowe is present. Any questions regarding his
6 file you can certainly go into whatever you need to go
7 into.

8 But I will tell you, if -- if during the course of
9 this proceeding something comes up in that file that does
10 require additional time to address that -- that catches you
11 by surprise or whatever, then I'll consider at that point
12 continuing the matter to flesh out that issue.

13 But just -- just to continue it under the suspicion
14 that there may be something/may not be something, I think
15 we can determine that through today's proceeding.

16 MR. SHAFFER: Thank you, Your Honor.

17 THE COURT: So we'll go ahead and proceed, and I'll
18 give you whatever leeway you need to flesh out anything
19 that -- that's there.

20 MR. SHAFFER: Thank you.

21 THE COURT: All right. Ready to proceed?

22 MR. SHAFFER: Yes, Your Honor. The applicant would
23 actually call Vondell Malachi.

24 THE COURT: Mr. Malachi, if you'd please come around
25 to be sworn, sir.

DIRECT EXAMINATION BY MR. SHAFFER - VONDELL MALACHI

7

1 VONDELL MALACHI, having been first
2 duly sworn, testifies as follows:

3 DIRECT EXAMINATION BY MR. SHAFFER:

4 Q Mr. Malachi, where are you from, sir?

5 A From Bennettsville, South Carolina.

6 Q And where are you currently housed at?

7 A Lee Correctional.

8 Q Why are you currently incarcerated? What -- what is
9 the charge for what you're currently -- or you're currently
10 incarcerated?

11 A Voluntary manslaughter, assault and battery with
12 intent to kill, failure to stop for a blue light.

13 Q And you pled guilty to these charges, correct?

14 A Yes, sir.

15 Q Tell us a little bit about the allegations. What did
16 the State claim you do -- you did?

17 A They say I murdered someone.

18 Q Who was it?

19 A My baby mama.

20 Q And what happened with the other charges? How are
21 they saying that you unlawfully neglected a child, fail --
22 failed to stop for a blue light?

23 A It was a high-speed chase, and I laid my son on the
24 ground or whatever.

25 Q Okay. So you -- you left your son on the ground. And

1 this happened after the shooting?

2 A Yeah.

3 Q Now, who represented you for your -- your charges?

4 A Mr. Crowe and Easterling.

5 Q How did they come about representing you? Did you
6 hire them or were they appointed?

7 A My people hired them.

8 Q Do you know how much they paid them?

9 A Not exactly.

10 Q Okay. Do you know how much they were supposed to pay
11 them?

12 A Like 12,000 or something like that.

13 Q How many times did you meet with them?

14 A Maybe two, three times. Counting the times they came
15 to the County, too.

16 Q Well, how long were you locked up in the County before
17 you met -- before you got out on bond?

18 A Six months.

19 Q So you originally got arrested and then you were
20 locked up for six months, right?

21 A Yeah.

22 Q Okay. And then you -- you hired Mr. Crowe and
23 Easterling, right?

24 A Yeah.

25 Q And did they get you a bond?

1 A Yeah.

2 Q Okay. So they got you a bond at that point. How long
3 were you out on bond?

4 A Like 9/10 months.

5 Q Were you out on bond up until the time you pled
6 guilty?

7 A Yes, sir.

8 Q Okay. And you said that you met with them two or
9 three times. Does that include the times they met with you
10 on -- in the County?

11 A No. In the County -- they came about 2/3 times in the
12 county. So all together about 6 times.

13 Q Okay. What did they tell you about the charges
14 against you? Did they advise you about any -- anything?

15 A As of what?

16 Q Did they tell you about the evidence against you?

17 A Yeah.

18 Q What did they tell you?

19 A Bout the gun powder residue. That's basically it.

20 Q What do you mean about the gun-shot residue?

21 A They said it was on my pants, my jeans.

22 Q What explanation did you have for the shooting?

23 A I tell them it be an accident.

24 Q How was it an accident?

25 A Because, like, it was an accident.

1 Q Well, tell us how it happened.

2 A Like, when I go to the park, or whatever, like, it was
3 a little argument, or whatever, and it was a tussle for the
4 gun and the gun go off.

5 Q So there was an argument and then a tussle over the
6 gun?

7 A Yeah.

8 Q And did you tell this to your attorneys?

9 A Yeah.

10 Q What did they say about it.

11 A That it can't be no accident; and that if I ain't
12 plea, that they weren't going to trial with me, they want
13 to dismiss theyself [sic] as my attorney.

14 Q Could you repeat that last part...

15 A That if I didn't plea, that they was going to dismiss
16 -- dismiss themself as my attorney.

17 Q Why did they say they were going to dismiss themselves
18 as your attorney?

19 A I guess cause they didn't want to go for -- through
20 with the trial or whatever. I don't know.

21 Q Why did they say it couldn't be an accident?

22 A They tell me the only way it could be accident if I
23 was hunting or something, and I shot and it hit someone
24 else or something.

25 Q Did they discuss with you voluntary manslaughter?

1 A No.

2 Q Did they tell you what your defense would be if you
3 went to trial?

4 A No.

5 Q Y'all never talked about possible defenses if you went
6 to trial?

7 A No.

8 Q Why did you end up pleading guilty?

9 A Cause he say he wasn't going to trial with me, that he
10 was going dismiss hisself [sic] and that what he said,
11 that's -- just to plea.

12 MR. SHAFFER: Court's indulgence.

13 THE COURT: Yes, sir.

14 (Brief pause.)

15 Q Do you recall the judge asking you if anyone
16 threatened you to get you to plead guilty?

17 A No, sir.

18 Q You're saying you don't recall it or that it didn't
19 happen?

20 A I don't recall it.

21 Q Okay. If -- if I indicated that the transcript said
22 that, would you disagree with me?

23 A No, I wouldn't. I just don't recall it.

24 Q Okay. Do you think that you were forced into pleading
25 guilty?

1 A Yes, sir.

2 Q Why do you say that?

3 A Cause if I didn't plead, they were gonna dismiss
4 theyself [sic] out of counsel, and then that was just
5 wasting my people's money.

6 Q Okay. If they dismiss themselves, do you think you
7 would have gotten a public defender?

8 A I mean, yeah.

9 Q Okay. Around the time you pled guilty, they were
10 about to revoke your bond, correct?

11 A Something like that, yeah.

12 Q Was that why you pled guilty or not?

13 A Not.

14 Q What do you hope to accomplish by this PCR?

15 A Either getting a new trial or something.

16 Q Are you aware that by -- if you were successful in
17 this PCR, all the charges against you would come back --

18 A Yeah. Yes, sir.

19 Q And you face charges that -- and you face trial on all
20 those charges.

21 A Yes, sir.

22 Q Do you still want to go forward with your PCR knowing
23 that?

24 A Yes, sir.

25 MR. SHAFFER: No further questions.

1 THE COURT: Mr. Thomas?

2 CROSS-EXAMINATION BY MR. THOMAS:

3 Q You said you had about six total meetings with your
4 attorneys?

5 A Yes, sir.

6 Q And did -- did during any of those meetings, did you
7 get a chance to go over the discovery with them?

8 A No, sir.

9 Q So you never talked about the text messages?

10 A He showed them to me, but we didn't really talk about
11 them. He didn't give me no copy of them or nothing.

12 Q You said y'all did talk about the gunshot residue
13 though.

14 A Yeah.

15 Q Did you talk about how there was a high-speed chase
16 and you ended up in stand off with the police?

17 A I don't recall talking about that, but yeah.

18 Q So you don't recall talking about that.

19 A No, sir.

20 Q What did you tell them happened?

21 A I tell them it was a accident, that when I came to the
22 park, it was a argument, and more or less, it was a -- the
23 gun went off and it was a accident.

24 Q So y'all discussed that fully.

25 A Yes. I tell them that.

1 Q Did you talk about any potential defenses you could
2 have other than accident, self-defense, anything like that?

3 A No, sir.

4 Q Did you tell them you wanted to go to trial on these
5 charges?

6 A I mean, we didn't really talk about that cause he was
7 like he was gonna get me a plea or whatever.

8 Q So you wanted them to go negotiate your plea offer?

9 A That was -- he was talking about in the beginning,
10 yeah.

11 Q Is that what you wanted, though?

12 A No. I wanted to go to trial, but he was like he was
13 gonna dismiss hisself [sic] as my counsel. So it wasn't
14 use in me -- I ain't -- I ain't know what to do. I was
15 lost.

16 Q Do you remember at the plea hearing when the judge
17 asked you if you had any complaints about their
18 representation?

19 A I don't recall.

20 Q If I told you you told the judge you didn't have any
21 complaints about them, would that ring a bell?

22 A No.

23 Q Did you ever tell anybody at the plea hearing that you
24 wanted a trial?

25 A No, sir.

1 Q Did you ever tell anybody at the plea hearing that
2 these attorneys threatened to quit on you and didn't give
3 you discovery?

4 A No.

5 Q Did you ever tell anybody at the plea hearing -- when
6 the solicitor was reciting the facts, did you ever tell
7 him, no, it was an accident?

8 A My attorney said I couldn't state that was a accident
9 cause they would revoke the plea or something like that.

10 Q Well, I thought you didn't want to plea. I thought
11 you wanted to go to trial. Why didn't you say something?

12 A Cause he's telling me that the plea, at the time, was
13 the best thing or whatever. But I was -- still was
14 insisting on going to trial.

15 Q But yet you told the judge you wanted to enter a
16 guilty plea.

17 A Yes, sir.

18 Q You remember filling out a plea affidavit beforehand?

19 A What's that?

20 MR. THOMAS: Court's indulgence.

21 THE COURT: Yes, sir.

22 (Brief pause.)

23 (Marked State's Exhibit No. 1, 7 page plea offer
24 document.)

25 MR. THOMAS: I'm going to hand you what's been pre-

RE-DIRECT EXAMINATION BY MR. SHAFFER.- VONDELL MALACHI 16

1 marked as State's Exhibit No. 1. Take a look at that.

2 (The witness complies.)

3 Q Do you recall filling that document out?

4 A Yes, sir.

5 Q And on the last page -- or the next to the last page,
6 is that your signature on there?

7 A Yes, sir.

8 Q So you remember filling out the plea affidavit in this
9 case?

10 A I don't really remember filling it out, but I see I
11 filled it out.

12 MR. THOMAS: Thank you. That's all the questions I
13 have.

14 RE-DIRECT EXAMINATION BY MR. SHAFFER:

15 Q Mr. Thomas asked you about possible defenses that they
16 -- they discussed with you and you said that they didn't
17 discuss with you in any defenses. Had they discussed with
18 you possible defenses to this case, would you have decided
19 to go to trial instead of that?

20 A Yes, sir.

21 Q I'm sorry. What was your answer?

22 A I said, yes, sir.

23 Q Okay.

24 MR. SHAFFER: No further questions.

25 THE COURT: Anything further?

DIRECT EXAMINATION BY MR. SHAFFER - WADE R. CROWE 17

1 MR. THOMAS: Nothing further from the State for this
2 witness, Your Honor.

3 THE COURT: All right. Mr. Shaffer -- thank you, sir.
4 You may step down.

5 (The witness complies.)

6 THE COURT: Any other witnesses, sir?

7 MR. SHAFFER: Yes, Your Honor. Applicant would call
8 Ronnie Crowe.

9 THE COURT: All right. Mr. Crowe, if you'd please
10 come around.

11 WADE R. CROWE, having been first
12 duly sworn, testifies as follows:

13 DIRECT EXAMINATION BY MR. SHAFFER:

14 Q Mr. Crowe ---

15 THE COURT REPORTER: Excuse me just a second. Could
16 he state for the record his name? Would you state for the
17 record your name?

18 THE WITNESS: Wade R. Crowe, commonly called "Ronnie
19 Crowe."

20 Q Mr. Crowe, you represented Mr. Malachi, correct?

21 A I, along with Mr. Easterling, Jr., represented Mr.
22 Malachi, yes, sir.

23 Q You were retained to represent him?

24 A Yes, sir. We were retained.

25 Q How far -- how long had he been arrested and in jail

1 before you became retained to represent him?

2 A He had been arrested and sent to Columbia for
3 evaluation, and we waited several days after he got back.
4 His mother came to see Mr. Easterling, Sr. and Mr.
5 Easterling, Jr.; and they brought me into the case before
6 we ever went down and interviewed Mr. Malachi the first
7 time.

8 Q And what was your strategy after learning -- well,
9 first of all, can you tell us the allegations against him?

10 A We had told him basically what he was charged with,
11 and we started investigating and finding out because it was
12 a case involving the City of Bennettsville and the Marlboro
13 County Sheriff's Department. And we, of course, told him
14 he was charged with murder; and he was charged with
15 endangering the child, his child, which was in the car with
16 his mother at the time and then taking the child and the
17 mother to the hospital.

18 We did not have all of the documents at that time, and
19 as we moved on with the case, in our investigation, we
20 found out about the other charges.

21 Q Now, my understanding is he was at the park with the -
22 - the child and the child's mother. And the child's mother
23 got shot, and then he took her to the hospital; is that
24 correct?

25 A That's correct.

DIRECT EXAMINATION BY MR. SHAFFER - WADE R. CROWE 19

1 Q Okay. And then the police tried to find him, correct?

2 A Well, the police were called, I'm told, by the
3 hospital, and I think the city police got there first. I'm
4 not sure.

5 But there were several other police cars and there was
6 an allegation that he tossed the baby out after he
7 delivered his girlfriend to the ER. But later, when I
8 talked to the city officers, we found out that was not
9 true. He stopped and he laid the baby on the side and then
10 left.

11 And there was a high-speed chase and he was able to
12 talk, I think, to his mother and several other people. And
13 they pursued him, county and state and city, I think. And
14 he went to his mother's home where he lived, and stayed in
15 the car some 10 or 12, 14 hours --

16 Q Okay.

17 A -- barricaded in the car.

18 Q And eventually, he -- he gave himself up, correct?

19 A Eventually he gave himself up and -- but he never went
20 in the house, and he never, I don't think, got to talk to
21 his mother. But then police were there and they took
22 charge of everything.

23 Q Did he ever make any statements about why the shooting
24 occurred?

25 A Say again.

1 Q Did he ever make any statements about why the shooting
2 occurred, what happened with the shooting?

3 A No. As a matter of fact, when we first got into the
4 case, it took quite a while for him to get to talk to us
5 and discuss things with us. And we were able, during our
6 investigation of talking with him, to find out that he and
7 his girlfriend had exchanged a lot of text messages that
8 particular day. And also, there was something on Facebook,
9 and I'm not of that generation, so I didn't understand all
10 the texts until later. The Solicitor's Office got copies
11 of them and gave copies to us. And then we were able to
12 understand texts.

13 Q And what defenses did you discuss with him?

14 A We discussed everything with him. When we would get a
15 piece of evidence, we would show it to him, we would go
16 over it with him. We would also go over it with his
17 mother, who's sitting in the courtroom. We had her present
18 as much as we could. And we tried to keep him advised on
19 everything about what we're doing.

20 We had a lot of scientific evidence in this case. I
21 mean, we had a lot of stuff. SLED did a lot of
22 investigating.

23 Q Did you plan -- if -- if this case would have gone to
24 trial, what defense would you have presented?

25 A Based on my experience with all the evidence, he was

1 facing a very strong murder charge in this situation. And
2 I feel like he would probably have been convicted of
3 murder.

4 Q So you supported his decision to plead guilty, or you
5 encouraged him to plead guilty?

6 A I let everybody make that decision. But we explained
7 everything in great detail --

8 Q Okay.

9 A -- so they can make that ultimate decision.

10 The only thing I remember he questioned me about
11 several times was how much time he would have to spend in
12 prison. And I said, "I can't answer that. I don't believe
13 the judge can answer that. That would be determined on
14 what happens after you go to prison."

15 Q Now, my understanding, he was out on bond for maybe 9
16 or 10 months, correct?

17 A Yes, sir. As a matter of fact, it was very difficult
18 to get him a bond because of the -- the nature of the
19 crime. We proved to the Court that he was not a flight
20 risk. His mother was there, she testified he stayed at
21 home, and he was given a bond and he made bond.

22 And when he was out, we interviewed him many, many
23 times. Every time we'd get a piece of evidence in, we
24 would get he and his mother in. We'd go over all that with
25 them and show them everything.

1 Q Why did he end up pleading guilty when he did, I
2 guess?

3 A Well, the only thing, I mean, it'd been months since
4 he'd been indicted, and I -- and it was coming up for
5 trial. And we -- we were not, you know, I've been doing
6 this a long time and we've never told anyone that we
7 control the docket. That's left up to the Court. And we
8 were put on notice that this case was going to trial, and
9 we were -- we were getting ready for that.

10 And we laid the options out to him, and -- and with
11 the work of co-counsel who could understand the texting
12 much better than I could, we were able to convince the
13 Solicitor's Office that this was not murder, but it was
14 more manslaughter. And that was the way we approached it
15 with him and his mother.

16 THE WITNESS: And I believe they introduced a plea
17 sheet into the records, Your Honor.

18 THE COURT: Yes, sir.

19 A And I think his mother actually witnessed that at my
20 request.

21 THE COURT: I -- I think you're -- well, yeah. There
22 is a ---

23 A I think -- cause she was present at everything. And
24 on the last page --

25 THE COURT: "Joyce M. Malachi is the -- one of the

1 witnesses.

2 A Yeah. She -- she -- I had her -- we had her witness
3 that, too.

4 I read in the -- in the application that we didn't
5 tell him he could appeal. I specifically, in the
6 transcript, told him that he had 10 days to perfect an
7 appeal, and I always, always do that.

8 Q And you had said that you raised all the -- you had
9 told him about all the possible defenses. Do you remember
10 which ones specifically you went over with him?

11 A Every one of them, all of them. And I -- and I tell
12 them the elements and I have it there. And then I would
13 have the State evidence, I would have all the -- the SLED
14 reports and everything.

15 Q Did you discuss voluntary?

16 A Sir?

17 Q Did you discuss involuntary manslaughter with him?

18 A No. I mean, I told him what involuntary manslaughter
19 was. But I -- I did not -- in my opinion, I did not see
20 this as an involuntary manslaughter type situation.

21 Q Okay. And did you tell him that you didn't see it as
22 being involuntary manslaughter?

23 A Sir?

24 Q Oh, did you tell him that you did not think it was
25 going to be an involuntary manslaughter situation?

1 A I don't recall specifically telling him that, no.

2 Q Okay.

3 A I don't think he -- he asked very little. His mother
4 asked a lot more questions than he did.

5 Q Do you recall him saying that they fought over the
6 gun?

7 A No.

8 MR. SHAFFER: No further questions.

9 MR. THOMAS: May I approach, Your Honor?

10 THE COURT: Yes, sir.

11 CROSS-EXAMINATION BY MR. THOMAS:

12 Q I guess first things first. I'm going to show you
13 what's been pre-marked as Exhibit 1. Is that a true and
14 accurate copy of the plea affidavit y'all prepared?

15 A Say that again, sir.

16 Q Is that a true and accurate copy of the plea affidavit
17 y'all prepared?

18 A Yes, sir, it is.

19 MR. THOMAS: At this time, Your Honor, I'd move to
20 introduce that as State's Exhibit 1.

21 MR. SHAFFER: No objection.

22 THE COURT: Without objection, in evidence.

23 (State's Exhibit No. 1 in evidence.)

24 CROSS-EXAMINATION BY MR. THOMAS (continues):

25 Q I guess let's back up a little bit. How many meetings

1 do you think you had with Mr. Malachi?

2 A (No audible response.)

3 Q How many meetings do you think you had with Mr.
4 Malachi?

5 A Sir?

6 Q How many meetings do you think you had with Mr.
7 Malachi?

8 A Oh, my gracious. Probably a minimum of 50. Many
9 times at the jail, many times in Mr. Easterling's
10 conference room. We -- we met in the courthouse conference
11 room.

12 Q And you said during those meetings, you had an
13 opportunity to go over every piece of evidence with him?

14 A Everything. The Solicitor's Office opened their file.
15 They had an open-policy file for us.

16 Q And in terms of his version of what he said happened,
17 did he ever tell you -- you said he never told you there
18 was a struggle over the gun?

19 A No.

20 Q You said that involuntary wouldn't apply here. Why
21 wouldn't involuntary manslaughter be something?

22 A I don't remember him either -- even asking or
23 discussing involuntary manslaughter, except I told him that
24 was a lesser included offense. But you know, the evidence
25 was very strong in this case. All the circumstantial

1 evidence and all the scientific evidence was very strong.

2 Q And as far as sort of a self-defense theory, did you -
3 - ever thought self-defense was going to be something ---

4 A No.

5 Q --- that was applicable here?

6 A No. No self-defense.

7 Q And why is that?

8 A Well, it's just because of the situation of how the
9 circumstances -- how the body -- I mean, what the autopsy
10 revealed and what the evidence showed and the SLED reports
11 and there wasn't anything

12 Q And as far as accident goes, as to defense of
13 accident, why wouldn't the defense of accident apply ---

14 A I didn't -- the gunshot wound down through the top of
15 the skull. It appears that she was shot outside of the car
16 and he was still in the car. It was a situation where I
17 did not see it -- any struggle or any accident in this
18 situation.

19 Q As far as preparing for trial, you said you were
20 getting ready to try this case?

21 A Oh, yes, sir. We -- we were -- it was not a situation
22 where we wouldn't try the case at all.

23 Q So you would have been prepared to go to trial if he
24 asked you for one?

25 A We were.

RE-DIRECT EXAMINATION BY MR. SHAFFER - WADE R. CROWE 27

1 Q Did you ever threaten to quit if he didn't take that
2 plea offer?

3 A Sir?

4 Q Did you ever threaten to quit representing him if he
5 didn't accept the plea offer?

6 A No. Like I said, I've been in many cases, and I don't
7 think I've ever refused to represent anyone.

8 Q Did he ever tell you that he wanted a trial on this or
9 did he always want a plea offer?

10 A He never said to me, "I want a trial." I don't recall
11 him ever telling me, "I want a trial." I remember he spent
12 more time telling me he wanted a bond than a trial.

13 Q Thank you, Mr. Crowe. I think that's all I have for
14 you.

15 THE COURT: Anything on re-direct?

16 MR. SHAFFER: Yes, Your Honor.

17 RE-DIRECT EXAMINATION BY MR. SHAFFER:

18 Q You said that the evidence would have indicated that
19 she was outside of the car whenever the gunshot went off?

20 A Say again?

21 Q Did the evidence the State have say she was outside
22 the car when the gun went off?

23 A No. The evidence showed the gunshot wound to her --
24 to her skull in her head, and they -- everything -- there
25 were no powder -- no residue or nothing on her. It was all

DIRECT EXAMINATION BY MR. THOMAS - HARRY EASTERLING, JR. 28
1 on him, and the gun, it was actually in the car that he was
2 driving. It was still in the car -- that was the weapon --
3 when he was arrested.

4 Q Okay.

5 A There was no evidence she ever had her hand on the
6 gun.

7 Q Okay.

8 MR. SHAFFER: No further questions.

9 MR. THOMAS: No follow up.

10 THE COURT: Thank you, Mr. Crowe. You may step down,
11 sir.

12 THE WITNESS: Thank you.

13 (The witness exits the stand.)

14 MR. SHAFFER: Applicant rests, Your Honor.

15 THE COURT: Mr. Thomas, anything on behalf of the
16 State?

17 MR. THOMAS: State would just call Mr. Easterling to
18 the stand.

19 THE COURT: Mr. Easterling, if you'd please come
20 around to be sworn, sir.

21 HARRY EASTERLING, JR., having been
22 first duly sworn, testifies as follows:

23 DIRECT EXAMINATION BY MR. THOMAS:

24 Q Thank you, Mr. Easterling. Could you just, I guess,
25 tell us how you came to be involved in this case?

DIRECT EXAMINATION BY MR. THOMAS - HARRY EASTERLING, JR. 29

1 A Mr. Crowe told me that he had -- he heard there would
2 be some text messaging involved, and text messages tend to
3 use abbreviations. And he felt uncomfortable with that,
4 and he felt like that -- those texts would probably involve
5 the last conversation that this couple ever had. And so he
6 asked me to assist him from that standpoint.

7 Q And you had an opportunity to review all that
8 discovery that came in from the State?

9 A That's correct. And when we met at the detention
10 center with Mr. Malachi, I gave him a copy. I couldn't
11 leave it with him, but he spent a long part of our meeting
12 just reading through the texts.

13 Q And based on sort of your review of that and all of
14 the other evidence that came in, what sort of defenses did
15 y'all discuss?

16 A Well, Mr. Malachi -- it took a while for him to open
17 up. But we went through different sort of scenarios as to
18 how that meeting might have taken place.

19 There was -- he talked about the possibility of other
20 individuals in a car, shooting from a car. We talked about
21 maybe Ms. Easterling was upset and she took her own life.
22 Those sorts of things.

23 Q Did he ever discuss with you the possibility that
24 there might have been a struggle over the gun with her?

25 A I think he did.

DIRECT EXAMINATION BY MR. THOMAS - HARRY EASTERLING, JR. 30

1 Q And in terms of your discussions with him, what kind
2 of defenses could you have used at trial? Would you have
3 had any?

4 A Well, what we did is we told him basically, looking at
5 the evidence, it did not appear that -- that the case would
6 work out with any of those scenarios. I mean, the -- the
7 entry wound of the bullet, the gunshot residue.

8 We felt like our best case would depend upon the text
9 messages because they were very -- well, it was clear that
10 the party -- the couple's were arguing.

11 Q And in terms of sort of -- so voluntary manslaughter
12 would have been best case scenario?

13 A Yes.

14 Q And that's what he ended up pleading to?

15 A Yes, sir.

16 Q You also got to wrap up some other unrelated charges
17 with this?

18 A That's correct.

19 Q Were you there when he filled out the plea affidavit?

20 A Yes, sir. I read the affidavit and he initialed each
21 one of the questions as to his answer -- and the answers
22 are "yes" or "no." He signed it and his mother signed as a
23 witness.

24 Q Did he ever indicate to you during that process that
25 he didn't want to plead guilty, that he wanted a trial?

CROSS-EXAMINATION BY MR. SHAFFER - HARRY EASTERLING, JR. 31

1 A No.

2 Q And did he ever stop you or tug on you or Mr. Crowe
3 during the -- during the plea hearing and say, "I don't
4 want go through this. I want to go to trial"?

5 A No, sir.

6 Q Thank you, Mr. Easterling. That's all I have.

7 CROSS-EXAMINATION BY MR. SHAFFER:

8 Q So my understanding of your testimony was that the
9 reason it couldn't have been an accident, based off of the
10 fighting over the gun, would be the entry wound and the
11 direction of the bullet in her head?

12 A Yes, sir.

13 Q About how many -- did you have anything measuring how
14 far away the gun was or any estimate of how far away the
15 gun was?

16 A No, sir. But Mr. Malachi said he was seated in the
17 car. And you know, we all know where he would be in
18 relation to the ground and where her body would have been
19 in connection to the driver's window.

20 Q Is it possible she could have been bent over?

21 A It appeared that she was bent over with her head
22 towards the window, and that he shot her from the driver's
23 seat.

24 Q And you're not sure how far away she was from the --

25 A No, sir.

RE-DIRECT EXAMINATION BY MR. SHAFFER - HARRY EASTERLING, JR. 32

1 Q Did they do a gun-shot residue on her hands?

2 A They did.

3 Q Did they find anything?

4 A No, sir.

5 Q Did you explain to him what involuntary manslaughter
6 was?

7 A Mr. -- I would defer to Mr. Crowe on those matters.
8 Mr. Crowe was a public defender for a long time, and he was
9 basically the lead counsel in that.

10 Q Okay.

11 MR. SHAFFER: No further questions.

12 THE COURT: Anything else?

13 RE-DIRECT EXAMINATION BY MR. THOMAS:

14 Q Everything you just -- just discussed with Mr.
15 Shaffer, the evidence, the positioning of the bodies, you
16 discussed all that with Mr. Malachi?

17 A Yes, sir.

18 Q Thank you.

19 THE COURT: Thank you very much, sir. You may step
20 down.

21 THE WITNESS: Yes, sir.

22 (The witness exits the stand.)

23 MR. THOMAS: That's all from the State, Your Honor.

24 THE COURT: All right.

25 MR. THOMAS: And we'd ask that Mr. Easterling and Mr.

1 Crowe be excused.

2 THE COURT: Any objection?

3 MR. SHAFFER: No objection.

4 THE COURT: All right. Thank you very much,
5 gentlemen. You're free to go.

6 MR. CROWE: Thank you, Your Honor.

7 THE COURT: Mr. Shaffer.

8 MR. SHAFFER: Your Honor, I -- I think that certainly
9 there's some evidence here -- and actually, I think it's --
10 to some degree, agreed upon by counsel, that they didn't
11 believe that it was possible that he could prevent a
12 defense of accident or that he could prevent -- present the
13 lesser included of involuntary.

14 Obviously, I think that if he's fighting over a gun
15 like he's saying he was with her, that that's a
16 possibility. There might be issues with the entry wound
17 that might make it less probable, but I think that
18 certainly there's a possibility you could present those --
19 the lesser included or the defense in this case.

20 And I think that perhaps telling him that -- that it's
21 not a case that you could apply these is not exactly -- and
22 I -- I think what he said was I -- I didn't see that to be
23 the case in this situation; I didn't see that to be the --
24 the case, being -- I didn't see accident being a --
25 applying to these facts and I don't believe the involuntary

1 applied to those facts. I think that was Mr. Crowe's
2 testimony.

3 Certainly telling that to somebody who is -- you know,
4 who is facing the charges and saying you should plead
5 guilty because "I didn't see these to be the case," well,
6 he's relying on their judgement.

7 I think that you certainly could have presented those
8 -- those defenses had he gone to trial, and I don't think
9 that they conveyed to him, that he had a real option of
10 presenting those defenses at trial.

11 So we'd just ask that he -- that PCR be granted in
12 this case.

13 THE COURT: Thank you, sir. Mr. Thomas.

14 MR. THOMAS: Just in response to that. I think
15 testimony from both attorneys was pretty clear. They
16 discussed all of these facts, all the evidence with him.
17 They may have advised him that those defenses weren't
18 likely to be successful at trial, but they at least
19 discussed them with him.

20 You know, they also testified that if he had asked for
21 a trial, they would have gone forward and been prepared for
22 it. I think in this case he's -- as evidenced by the plea
23 colloquy here and the plea affidavit that he's admitted to
24 signing and -- and you know, he's waived any of those
25 defenses by pleading guilty. He waived it with a full

1 knowledge that those are things that can be presented at
2 trial. But he waived his right to a trial and we would
3 just ask that you deny the PCR.

4 THE COURT: All right. Obviously I listened to the
5 testimony. I went through the -- the plea colloquy here
6 with -- between Mr. Malachi and Judge Cottingham.

7 Also the -- the things that he raises in his
8 application -- he indicates he -- he didn't appeal after
9 the -- the plea because he wasn't informed of his right to
10 appeal. That seems to be contrary to what appears in the
11 record.

12 He then continues in his application and he sets forth
13 that -- one of his grounds is that the trial counsel never
14 filed an appeal from his conviction. He refers to
15 attachment sheet 3(A), and in there, he basically deals
16 with the appointment of counsel and doesn't really address
17 any other issues.

18 But basically, the things I've heard today is -- I --
19 I think it's -- it would be my belief or my understanding
20 that defense counsel would be failing in their -- their
21 duty if they didn't give their -- their -- their clients
22 their fair assessment of the evidence and their belief as
23 to what they could use as defense and what they couldn't
24 use as defense.

25 I didn't hear from anyone that they were not willing

1 to -- to -- to try the case, simply that they didn't
2 believe that accident or self-defense would be successful.
3 However, there was no indication that they -- they wouldn't
4 be willing to put forth those defenses if the case had gone
5 to trial.

6 As -- as I read through the State's Exhibit 1, the --
7 the plea -- I -- I don't know what it's referred to. Can I
8 -- could I have that document?

9 (Brief pause.)

10 THE COURT: "The affidavit of defendant for a guilty
11 plea." It's -- it's rather extensive and covers many of
12 the things we discussed here.

13 It discusses the negotiations, satisfaction with the
14 attorneys. There doesn't seem to be any issues involving
15 the attorneys or their unwillingness to try the case. It
16 discusses specifically "you understand you have the right
17 to appeal your guilty plea and the sentence within 10 days
18 of the date of the sentence."

19 It just seems to cover all of these issues and has
20 been signed by Mr. Malachi as well as the attorneys.

21 Under oath with Judge Cottingham, he refers to his
22 satisfaction with his attorneys, and that he's pleading
23 guilty because he is, in fact, guilty.

24 And I believe it even addressed some of those
25 questions on the defenses and understood that he waived

1 those defenses in entering his plea.

2 Everything that's before the Court here today would
3 indicate that the -- and -- and I'm going to rule that the
4 defense's motion be denied for PCR. I don't think he's
5 carried his -- his burden of proof, and I think the
6 appropriate decision is that his application be denied.

7 MR. THOMAS: Thank you.

8 THE COURT: Also, just for the record, I -- it didn't
9 appear to be anything that came forth in this hearing today
10 that would cause me any concern about the -- what may
11 appear in the files. And so I think this is appropriate
12 resolution.

13 MR. THOMAS: Thank you, Your Honor.

14 MR. SHAFFER: Thank you, Your Honor.

15

16 -- END OF TRANSCRIPT RECORD --

17

18

19

20

21

22

23

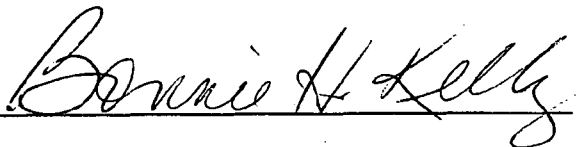
24

25

CERTIFICATE

1
2 I, the undersigned Bonnie H. Kelly, Official
3 Court Reporter for the Fifth Judicial Circuit of the
4 State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate, and complete transcript
6 of record of all the proceedings had and evidence
7 introduced in the hearing of the captioned cause,
8 relative to appeal, in the Fourth Circuit Court for
9 Darlington County, South Carolina, on the 27th day of
10 July, 2017.

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

13
14 
15

16 Bonnie H. Kelly, CVR

17 Official Court Reporter

18
19 Columbia, South Carolina

20 February 29, 2016

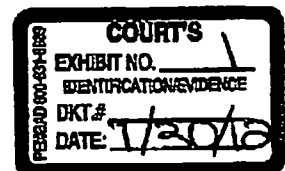
STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
) Indictment Nos. 07GS34-0807 (ABWIK -
 COUNTY OF MARLBORO) W. Gregg); 07GS34-0806 (ABWIK - NOL)
) 2011GS34-0529 (MURDER); 2011GS34-0530
 State of South Carolina) (FAIL STOP BLUE LGHT); 2011GS34-0531
) (UNLAWFUL COND/CHILD)
 vs.) Solicitor: Will Rogers, Esq
) Defense Attorneys: Wade R. Crow &
 Vondell Malachi) Harry R. Easterling, Jr.
)
 Defendant) AFFIDAVIT OF DEFENDANT FOR
) GUILTY PLEA
)

The Defendant states to the Court that the Defendant wants to plead guilty to the following charge(s):

In connection with the plea, I certify that the answers to the following questions are true, accurate and correct:

BACKGROUND OF DEFENDANT

1. How old are you? 26
2. How far did you go in school? 10th grade
3. (a) Can you read and write the English language? Yes No
 (b) Are you able to read and understand this form? Yes No
 (c) If not, who is explaining it to you and filling in your answers?
 Name of Person: no one
4. What kind of work do you do? Sopako f
5. Have you ever been treated for abuse of alcohol or drugs or for mental illness?
 Yes No
 If so, when? _____
 For how long? _____
 Did you successfully complete the program? Yes No
6. Have you taken any medication, drugs, or alcohol in the last 24 hours?
 Yes No
 If yes, what? _____
 How much? _____
 When? _____



- 7. Are you today under the influence of any medication, drugs, or alcohol?
 Yes No
- 8. Are you today aware of any physical, emotional, or nervous problem that might keep you from understanding what you are doing?
 Yes No
- 9. Have you ever been ordered by a Judge to submit to a mental evaluation to determine your competency to stand trial? * Yes No
 *Court Order requested an evaluation of competency to stand trial pursuant to State vs. Blair 275 SC 529 (1981) and SC Code 44-23-410 signed by Judge J. Michael Baxley at hearing May 24, 2011. Found currently competent at Evaluation conducted July 21, 2011.

WAIVER OF CONSTITUTIONAL RIGHTS

- 1. Do you understand that you have the, right to remain silent, which is your right against self-incrimination? You cannot be compelled to testify or give evidence against yourself. Do you understand this right?
 Yes No
- 2. Do you understand that you have a right to a jury trial; you have a right to have a jury decide whether or not you are guilty beyond a reasonable doubt. They would base their decision upon evidence which the state presents and on any evidence you might wish to introduce. In a trial, you could be presumed to be innocent, and the state would have to produce evidence that would convince all 12 members of the jury that you were guilty beyond a reasonable doubt. Do you understand this right?
 Yes No
- Do you wish to give up your right to a jury trial and plead guilty?
 Yes No
- 3. Do you understand that you have the right to confront and be confronted by the witnesses against you; that is, the right to see, hear, and cross-examine any witness that may be called against you during the trial and the right to subpoena and call witnesses in your own behalf. Do you understand these rights?
 Yes No
- 4. If your case has not yet been before the grand jury, you have the right to have the case presented to the grand jury. After hearing evidence, 12 of the 18 people on the grand jury would have to agree that you were probably guilty before the charge against you could be reported out as a True Bill ready for trial. A grand jury might return a No Bill, which would mean that the charge would be dismissed. Do you understand this right?
 Yes No

Do you wish to give up your right to have the grand jury examine your case?
 Yes No

- 5. Do you understand that when you plead guilty you give up these constitutional rights? Yes No
 Is that what you want to do? Yes No

Do you understand that you will not get a jury trial if you plead guilty?
 Yes No

NATURE OF THE CHARGE AND CONSEQUENCES OF PLEADING GUILTY

- 1. Have your attorneys discussed with you the charge(s) and possible punishment for the charge(s)? Yes No

- 2. What acts did you do which cause you to think that you are guilty of the charge or charges to which you now want to plead guilty?
~~By shooting~~ By shooting my girl friend.
Being with her when Mrs. Gregg was shoot

- 3. Are you pleading guilty for any reason other than the fact that you are guilty?
 Yes No

If so, what is the other reason? _____

- 4. As you understand, the maximum possible penalty for this/these charges is/are :
63 years

- 5. (If an offense with the graduated penalties), Do you understand that if you plead guilty to this offense and you are convicted at a later time of the same crime; the punishment will be higher next time?
 Yes No

- 6. Do you have any questions about the nature of the charge(s) against you and the possible punishments? Yes No

- 7. Do you understand that when you plead guilty you admit the truth of the charge(s) against you?
 Yes No

- 8. You may have defenses to the (charge (s) against you. The judge does not know whether you do or not. Do you understand that if you plead guilty you will waive or give up any defenses to the charge(s)?
 Yes No

- 9. You may have given an incriminating statement in this case. Do you understand that if you plead guilty you waive or give up the right to contest or challenge

whether such a statement was freely and voluntarily given in accordance with your constitutional rights? Yes No

10. Understanding the nature of the charge(s) against you and the consequences of a guilty plea, do you still wish to plead guilty? Yes No

PLEA NEGOTIATIONS

1. Has any plea agreement been made by you with the solicitor's office? Yes No

If so, exactly what do you understand the agreement to be?

30 years for all charges to run concurrent

2. Do you understand that the recommendations of the attorneys are not binding on the court and that the Judge could still sentence you up to the maximum if he/she felt it appropriate? Yes No

3. Do you still wish to plea guilty? Yes No

VOLUNTARINESS OF PLEA

1. Has anyone promised you anything or held out any hope of reward to get you to plead guilty? Yes No

If yes, explain: _____

2. Has anyone threatened you or used force to get you to plead guilty? Has any one used any pressure or intimidation to cause you to plead guilty? Yes No

If yes, explain: _____

3. Have you had enough time to make up your mind as whether or not you want to plead guilty? Yes No

4. Are you pleading guilty of your own free will and accord? Yes No

SATISFACTION WITH ATTORNEYS

1. Have your attorneys reviewed this form with you and answered any questions you have about it? Yes No

2. Are you satisfied with the manner in which your attorneys have advised you and represented you? Yes No

3. Have you talked with your attorneys as often and for as long as you feel necessary for them to properly represent you? Yes No

4. Do you need any more time to talk with your attorneys? Yes No

5. Have you understood your talks with your attorneys? Yes No

6. Have your attorneys done everything for you that you feel they could have done or should have done? Yes No

If no, explain: _____

7. Have your attorneys done anything in this case that you feel they should not have done? Yes No

If yes, explain: _____

8. Are you completely satisfied with your attorneys' services? Yes No

9. Do you have any complaint that you want to make about your attorneys, the solicitor, or any of the police officers? Yes No

If yes, explain: _____

10. Do you understand that you have a right to appeal your guilty plea and the sentence of the court and that you must do this within 10 days of the sentence? Yes No

CONCLUDING QUESTIONS

1. Do you understand all of these questions that you have answered? Yes No

If not, which ones did you not understand? _____

2. Do you now want to plead guilty? Yes No

Signed by me in the presence of my attorneys this 26 day of July, 2012.

Vondell Malachi
Vondell Malachi
Defendant

Sworn to before me this 26th
day of July, 2012.

Joyce M. Malachi
Witness

Judy R. East
Notary Public for South Carolina
My Commission Expires: 08/13/2012

I acknowledge that my prior criminal record is as follows:

None Or

Date of Conviction: Sentence:

Offense: County/State:

Date of Conviction: Sentence:

Offense: County/State:

Date of Conviction: Sentence:

Offense: County/State:

CERTIFICATE OF COUNSEL

1. Print your name and telephone number: _____
Wade R. Crow, 843-479-7171 / Harry R. Easterling Jr., (843) 479-2878
2. We represent the Defendant in this case.
3. We have read and fully explained to the Defendant the allegations contained in the indictment in this case.
4. To the best of our knowledge and belief, the statements, representations, and declarations made by the Defendant in the foregoing petition are in all respects accurate and true.
5. We have explained to the Defendant the charge(s) contained in the indictment, the possible punishment, and his constitutional rights including his right to a jury trial.
6. We have explained to the Defendant the right to have this case submitted to the grand jury for its consideration.
7. In our opinion, the Defendant understands the charge; the punishment, and the constitutional rights in this case.
8. The Defendant has indicated to us that he/she wishes to plead guilty.
9. The plea of guilty offered by the Defendant to count(s) accords with our understanding of the facts the Defendant has related to us, is consistent with our advice to the Defendant, and, in our opinion, is voluntarily and freely made.

Signed by us in the presence of the Defendant and after full discussion of the contents of this certificate with the Defendant, this 26th day of July, 2012.

Wade R. Crow
Attorney for Defendant

Harry R. Easterling Jr.
Attorney for Defendant

STATE OF SOUTH CAROLINA)
COUNTY OF MARLBORO)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT

Vondell Malachi, #351776,)

Case No. 2013-CP-34-145

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 24, 2013. Respondent made a timely Return on or about May 30, 2014. The Court convened an evidentiary hearing into the matter on July 27, 2015, at the Darlington County Courthouse. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsels, Wade R. Crow, Esquire, and Harry R. Easterling Jr., Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Darlington County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the pleadings, and the exhibits introduced at the hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marlboro County Clerk of Court. In August 2007, the Marlboro County Grand Jury indicted Applicant for assault and battery with intent to kill (2007-CR-341).

2015 OCT 16 11:53 AM
FILED
WILLIAM B. WILSON
CLERK OF COURT
MARLBORO COUNTY
A CERTIFIED TRUE COPY
WILLIAM B. WILSON
CLERK OF COURT
MARLBORO COUNTY

807). In July 2011, the Grand Jury indicted Applicant for murder (2011-GS-34-529), failure to stop for a blue light (2011-GS-34-530), and unlawful conduct towards a child (2011-GS-34-531). Wade R. Crow, Esquire, and Harry R. Easterling Jr., Esquire, (collectively, "plea counsel") represented Applicant. On July 30, 2012, Applicant pled guilty to assault and battery with intent to kill, voluntary manslaughter, failure to stop for a blue light, and unlawful conduct towards a child. The Honorable Edward B. Cottingham sentenced Applicant to concurrent terms of ten years for assault and battery with intent to kill, twenty-five years for voluntary manslaughter, two years for failure to stop for a blue light, and two years for unlawful conduct towards a child. Applicant did not appeal his plea or sentence.

II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully based on ineffective assistance of counsel. At the evidentiary hearing, Applicant alleged his guilty plea was not knowingly and voluntarily entered because plea counsel misadvised him about possible defenses and because plea counsel misadvised him about the facts of his case.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

A. Involuntary Guilty Plea

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin

2015 OCT 16 PM 11 53
FILED
WILLIAM B. JUNDORF
CLERK OF COURT
MARLBORO COUNTY
A CERTIFIED TRUE COPY
William B. Jundorf
CLERK OF COURT
MARLBORO COUNTY

v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Although Applicant asserts his guilty plea was involuntary, he must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). Accordingly, Applicant may collaterally attack the plea only by showing (1) plea counsel's advice was deficient and (2) there is a reasonable probability that, but for plea counsel's deficient advice, Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52 (1985); Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). Applicant must prove plea counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56 (quoting McMann v. Richardson, 397 U.S. 759 (1970)). However, the Court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against Applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [Applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

William B. Sturdivant

CLERK OF COURT
MARLBORO COUNTY

FILED
2015 OCT 16 AM 11 53
MARLBORO COUNTY
CLERK OF COURT
A CERTIFIED
TRUE COPY

The Court finds Applicant's allegation his plea was induced by the mis-advice of plea counsel to be without merit. Applicant testified he met with plea counsel approximately six times. He recalled reviewing the evidence against him. Applicant testified he explained to plea counsel that he accidentally shot the victim while they were fighting over the weapon. He recalled plea counsel telling him the evidence did not support an accident defense. He did not recall discussing the possibility of seeking an involuntary manslaughter charge at trial, nor did he recall discussing any other possible defenses he could present at trial. Applicant testified plea counsel threatened to stop representing him if he did not accept a plea offer. However, he admitted he did not make any complaints about plea counsel's representation when questioned about it at the plea hearing.

Mr. Crow testified he met with Applicant at least fifty times. He testified he discussed the charges with Applicant. He recalled reviewing the State's evidence with both Applicant and Applicant's mother. Crow testified he sought assistance from Mr. Easterling because there were several text messages between Applicant and the victim that needed to be reviewed. Crow testified Applicant did not inform him there was a struggle over the gun. He also testified the evidence otherwise did not support a theory of accident or self-defense. Regardless, Crow testified he possible defenses with Applicant. He further testified he never threatened to stop representing Applicant if he did not plea. Instead, he testified he explained Applicant's options, and Applicant made the decision to enter a plea. Crow did not recall Applicant ever asking for a trial. Crow also testified Applicant completed a plea affidavit prior to the plea (Resp. Ex. No. 1).

Mr. Easterling testified Crow sought his assistance with Applicant's case because of the technology involved in the text messages. Easterling recalled reviewing discovery with

FILED
2015 NOV 16 PM 1:11
WILLIAM B. BUNDERBUSH
CLERK OF COURT
MARLBORO COUNTY, VA
STREET COPY

William B. Bunderbush
CLERK OF COURT
MARLBORO COUNTY, VA

Applicant. He recalled discussing with Applicant several scenarios of how the victim may have been shot. He testified each alternative scenario Applicant gave him was not supported by the evidence. Easterling testified Applicant did not indicate he wanted a trial. Easterling also recalled Applicant completing the plea affidavit.

The Court finds the testimony of Mr. Crow and Mr. Easterling credible on this issue, while also finding Applicant's testimony not credible. Plea counsel fully discussed with Applicant the evidence in the case. They reviewed many possible scenarios of how the victim was shot. They also discussed the potential defenses to these charges.¹ Based on these discussions, they advised Applicant of his likelihood of success at trial. The Court finds not credible Applicant's allegation plea counsel threatened to stop representing him if he did not accept the plea offer. Instead, the Court finds credible Crow's testimony that he explained to Applicant the decision to enter a plea was Applicant's only. The Court also finds credible Crow's and Easterling's testimony that Applicant never indicated he wanted a trial on these charges. Plea counsel conducted a proper investigation, adequately conferred with Applicant, and were thoroughly competent in their representation.

Applicant failed to demonstrate plea counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56. Applicant also failed to demonstrate that, but for plea counsel's advice, he would not have entered a guilty plea. Id. at 59; see also Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (applicant must show "something that would have affected counsel's advice to [the applicant] to accept the plea

¹ Based on a review of the record, the Court agrees with plea counsel's assessment that the evidence would not have supported theories of accident, self-defense, or involuntary manslaughter. See Armstrong v. State, 306 S.C. 556, 557, 413 S.E.2d 803, 804 (1992) (counsel not ineffective for failing to advise of potential defense where no evidence exists to support the defense). The Court further notes plea counsel negotiated a favorable offer to plea to the lesser-included offense of voluntary manslaughter.

William B. Sunderland

Page 5 of 7 CLERK OF COURT
MARLBORO COUNTY

WILLIAM B. SUNDERS
CLERK OF COURT
MARLBORO COUNTY
20 OCT 16 11 53

FILED

bargain offered or that would have caused [the applicant] to decline to accept it"). Furthermore, the record before the Court shows Applicant entered his plea freely and voluntarily with a full understanding of the evidence against him. See Simpson v. State, 317 S.C. 506, 508, 455 S.E.2d 175, 176 (1995) ("To knowingly and voluntarily enter a plea of guilty, all that is required is that a defendant have a full understanding of the consequences of his plea and of the charges against him." (citing Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991))). Because Applicant entered his plea after being fully advised of possible defenses, his plea waived his right to raise any defenses to his crimes. See Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (knowing and voluntary plea waives non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence (citations omitted)). Applicant admitted at his plea and in his plea affidavit that he was satisfied with the services of plea counsel, and he has presented no credible evidence to justify his recantation of that admission. See Kolle v. State, 386 S.C. 578, 597 n.7, 690 S.E.2d 73, 83 n.7 (2010) (Kittredge, J., dissenting) (an inmate should not be able to collaterally attack a plea where counsel's alleged deficiency was known at the time of the plea and the inmate lied about counsel's performance at the plea). Accordingly, the Court finds Applicant failed to meet his burden to prove his guilty plea was induced by the mis-advice of counsel.

B. 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 any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

A CERTIFIED
TRUE COPY

William B. Jundt

CLERK OF COURT
MARLBORO COUNTY

2015 OCT 16 AM 11 53
WILLIAM B. JUNDT
CLERK OF COURT
MARLBORO COUNTY

FILED

IV. CONCLUSION

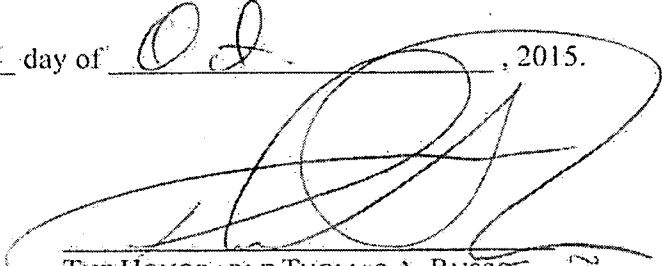
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 7th day of Oct, 2015.



THE HONORABLE THOMAS A. RUSSO
~~Presiding Judge~~
TRUE COPY

Arnone, South Carolina

William B. Sunderland

Page 7 of 7
CLERK OF COURT
MARLBORO COUNTY

WILLIAM B. SUNDARBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

2015 OCT 16 AM 11:53

FILED

WITNESSES

Det. Larry Bowman

BPD

[Handwritten signature]

FILED
AUG 3 PM 1 15
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

ARREST WARRANT #:

I078135

Arrested on May 25, 2007

ACTION OF GRAND JURY

8-2-07
Foreman: *C. D. [Signature]*
Grand Jury

True Bill

VERDICT

Foreman: _____
Petit Jury

Date: _____

DOCKET #: 07GS34-0807

THE STATE OF SOUTH CAROLINA

County of Marlboro

COURT OF GENERAL SESSIONS

Term: August, 2007

THE STATE

vs.

Vondell A. Malachi

I N D I C T M E N T F O R

0014

ASSAULT AND BATTERY WITH INTENT TO KILL

(16-3-620)

STATE OF SOUTH CAROLINA)
)
County of Marlboro)

INDICTMENT #07GS34-0807

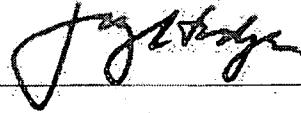
At a Court of General Sessions, convened on August 06, 2007
the Grand Jurors of Marlboro County present upon their oath:

COUNT: ASSAULT AND BATTERY WITH INTENT TO KILL
(16-3-620)

That Vondell A. Malachi along with co-defendant in the County of Marlboro
on or about May 24, 2007, violate Section 16-3-620 of the Code of Laws of South
Carolina (1976), as amended, in that he with malice aforethought, committed an
assault and battery upon Wilhelmenia Gregg by shooting from a vehicle (a 1986
Grand Marquis, white in color with tan top); with intent to kill the said
Wilhelmenia Gregg. This incident occurred at ■ Hudson Street in Bennettsville,
SC.

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

SOLICITOR: _____



2007 AUG 3 PM 1 15
WILLIAM B. FUNDERSURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

FILED

WITNESSES

Ira Dease, III

Bennettsville Police Department

Law Enforcement Case #: 411011

Ira Dease III 347

WAIVER OF PRESENTMENT

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

Defendant

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

Defendant

ARREST WARRANT NUMBER
1079919

ARRESTED ON: 2011-04-28

ACTION OF GRAND JURY

True Bill
Reid Althman
Grand Jury Foreperson

Date *7-18-11*

VERDICT

WILLIAM D. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

Petit Jury Foreperson

Date *2011 JUL 18 PM 1 50*

DOCKET NUMBER:
2011-GS-34-0529

The State of South Carolina

County of Marlboro

COURT OF GENERAL SESSIONS

Term:
July 2011

THE STATE

vs.

Vondell Alsahn Malachi

INDICTMENT FOR

Murder

§16-03-0010; 16-03-0020

CDR Code: 0116

William B. Rogers, Jr., Solicitor

FILED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF MARLBORO)

INDICTMENT FOR

Murder

§16-03-0010; 16-03-0020

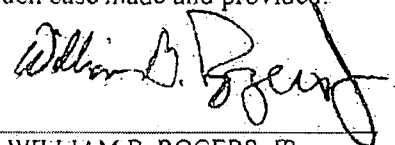
At a Court of General Sessions, convened on July 19, 2011, the Grand Jurors of Marlboro County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Vondell Alsahn Malachi did in Marlboro County, on or about April 27, 2011, willfully, feloniously, and intentionally kill the victim, Takeyia Easterling, with malice aforethought, either express or implied, by means of shooting, and the victim did die as a proximate result thereof on or about April 27, 2011 in Marlboro County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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



WILLIAM B. ROGERS, JR.
 SOLICITOR

WITNESSES

William Parker

Marlboro County Sheriff

Law Enforcement Case #: 2011002618

Susan Alder

S
347

WAIVER OF PRESENTMENT

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

Defendant

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

Defendant

ARREST WARRANT NUMBER
M730553

ARRESTED ON: 2011-04-29

ACTION OF GRAND JURY

True Bill

Red Althorn
Grand Jury Foreperson

Date *7-18-11*

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2011-GS-34-0530

The State of South Carolina

County of Marlboro

COURT OF GENERAL SESSIONS

Term:
July 2011

THE STATE

vs.

Vondell Alsaun Malachi

INDICTMENT FOR

Failure to Stop for a Blue Light

§56-05-0750(B)(1)

CDR Code: 0065

WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.
2011 JUL 19 PM 1 50

William B. Rogers, Jr., Solicitor

FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF MARLBORO)

INDICTMENT FOR

Failure to Stop for a Blue Light

§56-05-0750(B)(1)

At a Court of General Sessions, convened on July 19, 2011, the Grand Jurors of Marlboro County present upon their oath:

FAILURE TO STOP FOR BLUE LIGHT/SIREN

CDR: 0065 56-05-0750(B)(1)

That Vondell Alsahn Malachi did in Marlboro County on or about April 27, 2011, while operating a motor vehicle on a road, street, or highway of the State of South Carolina, fail to stop his motor vehicle when signaled to do so by a law enforcement vehicle, by means of a siren and/or flashing light, in violation of Section 56:05-0750(B)(1), S. C. Code of Laws, 1976, as amended.

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



WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

Susan Alderman

Marlboro County Sheriff

Law Enforcement Case #: 2011002618

Susan Alderman

S
347

WAIVER OF PRESENTMENT

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

Defendant

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

Defendant

ARREST WARRANT NUMBER
M730559

ARRESTED ON: 2011-05-24

ACTION OF GRAND JURY

True Bill

Reid Allison
Grand Jury Foreperson

Date *7-19-11*

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2011-GS-34-0531

The State of South Carolina

County of Marlboro

COURT OF GENERAL SESSIONS

Term:
July 2011

THE STATE

vs.

Vondell Alshah Malachi

INDICTMENT FOR

Unlawful Conduct Towards a Child

§20-07-0050

CDR Code: 2481

WILLIAM B. FUNDENBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.
2011 JUL 19 PM 1 50

William B. Rogers, Jr., Solicitor

FILED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF MARLBORO)

INDICTMENT FOR
 Unlawful Conduct Towards a Child

§20-07-0050

At a Court of General Sessions, convened on July 19, 2011, the Grand Jurors of Marlboro County present upon their oath:

UNLAWFUL CONDUCT TOWARDS A CHILD

CDR: 2481 63-5-70

That Vondell Alsahn Malachi did in Marlboro County on or about April 27, 2011, while being the parent or guardian, , [REDACTED] age 7 months old, place the child at unreasonable risk of harm affecting the child's life, physical or mental health, or safety; did willfully abandon the child; to wit: did place the minor child in a public roadway while attempting to evade law enforcement, in violation of Section 63-5-70, S. C. Code of Laws, 1976, as amended, previously codified as 20-7-50, S. C. Code of Laws, 1976, as amended.

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


 WILLIAM B. ROGERS, JR.

SOLICITOR