

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**  
AUG - 7 2016  
**SC SUPREME COURT**

---

Appeal from Barnwell County

Honorable Diane Schafer Goodstein, Circuit Court Judge

---

SAMUEL JOHNICAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000820

---

A P P E N D I X

---

ROBERT M. PACHAK  
Appellate Defender

ALAN WILSON  
Attorney General

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

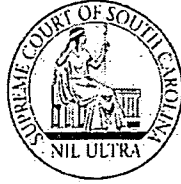
JULIE COLEMAN  
Assistant Attorney General  
Rembert Dennis Building  
1000 Assembly Street, Room 519  
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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**South Carolina Court Administration**  
South Carolina Supreme Court  
Columbia, South Carolina

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November 30, 2015

Caroline Collins  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211-1549

In re: **Samuel Bruce Johnican v State of S. Carolina, 2010GS0600105**

Dear Ms. Collins:

I am responding to your letter to Lisa Davenport dated November 24, 2015 requesting a transcript from proceedings before Judge Early on **June 28, 2010**.

Ms. Davenport is no longer employed by this agency and was required to turn her records over to this office. Pursuant to Rule 607, court reporter records are retained for a period of five years. If a transcript is not ordered within that five-year period, the records are destroyed. Unfortunately, the records to produce a transcript from proceedings heard before **November 2010** are no longer available. I am sorry that I am unable to assist you further.

Sincerely,

Desiree R. Allen  
Court Reporter Manager

THE STATE OF SOUTH CAROLINA )  
 COUNTY OF BARNWELL )

THE STATE )

v. )

Samual Bruce Johnican )

DEFENDANT. )

IN THE COURT OF GENERAL SESSIONS  
 SECOND JUDICIAL CIRCUIT

Warrant/Indictment Nos.: K-325067

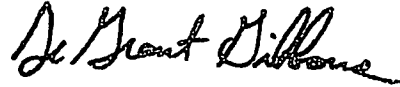
**DEMAND FOR PRELIMINARY HEARING**

FILED FOR RECORD  
 009 DEC 31 PM 2:45  
 RHONDA D. McELVEEN  
 CLERK OF COURT  
 BARNWELL COUNTY, S.C.

**TO THE CENTRALIZED PRELIMINARY HEARING COURT:**

**PLEASE TAKE NOTICE** that Samual Johnican, Defendant, does hereby demand a Preliminary Hearing upon the charge(s) against him/her contained in warrant number(s) K-325067.

**Second Judicial Circuit Public Defender**



DE Grant Gibbons

**Attorney for Defendant**

**Barnwell, South Carolina  
 December 29, 2009**

STATE OF SOUTH CAROLINA  
COUNTY OF BARNWELL.

IN THE COURT OF GENERAL SESSIONS  
FOR THE SECOND JUDICIAL CIRCUIT

State of South Carolina,

Indictment No.: 2010-GS-06-00105

v.

Samuel Bruce Johnican,

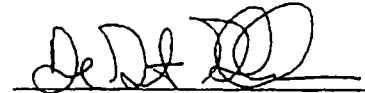
**MOTION TO RECONSIDER  
SENTENCE**

Defendant.

The Defendant in the above-captioned matter respectfully moves the Court to reconsider and reduce the sentence it imposed on the Defendant on May 11, 2010.

As grounds for the reconsideration and reduction, the Defendant urges that the interests of justice will be served by the granting of this request. The Defendant will present further grounds as necessary, both in open court and *in camera* at such date and time as the Court deems appropriate to set such a hearing.

Respectfully submitted,



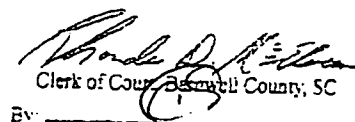
De Grant Gibbons  
Attorney for Defendant

Barnwell, South Carolina  
May 13, 2010

*Strong  
Please prepare a  
short written order  
Thanks  
JGC*

STATE OF SOUTH CAROLINA  
COUNTY OF BARNWELL  
I, Rhonda D. McElveen, Clerk of Court for Barnwell County,  
South Carolina do hereby certify that the foregoing  
constitutes a true and correct copy of the original  
documents which have been filed in my office this

MAY 12 2010

  
Clerk of Court, Barnwell County, SC

By: \_\_\_\_\_

STATE OF SOUTH CAROLINA  
COUNTY OF BARNWELL

State of South Carolina,

v.

Samuel Johnican,

Defendant:

IN THE COURT OF GENERAL SESSIONS  
FOR THE SECOND JUDICIAL CIRCUIT

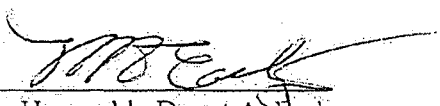
2010-GS-06-00105

ORDER DENYING  
MOTION TO RECONSIDER  
SENTENCE

The Defendant in the above-captioned matter came before the Court on June 28, 2010 in Aiken County, on a motion to reconsider and reduce the sentence it imposed on the Defendant on May 11, 2010 in the Barnwell County General Sessions Court. The Defendant waived his right to have the matter heard in Barnwell County.

After hearing from both the Defendant and the State, this Court finds that the original sentence was appropriate and that there are no grounds for any amendment or reduction of the sentence imposed.

THEREFORE, the motion is DENIED.

  
The Honorable Doyet A. Barly  
Chief Administrative Judge  
2<sup>nd</sup> Judicial Circuit

Aiken, South Carolina  
July 1, 2010

2010 JUL -7 AM 11:10  
RHONDA H. McELWEN  
CLERK OF COURT  
BARNWELL COUNTY, S.C.

## FORM 5

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

County of Barnwell )

340693 )

Samuel Bruce Johnian )

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

v. )

State of South Carolina )

2010 - CP - 06 - 179

APPLICATION FOR

POST-CONVICTION RELIEF

2010 AUG -2 PM 1:28  
 RECEIVED  
 CLERK OF COURT  
 BARNWELL COUNTY, S.C.

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 Perry Correctional Institute
2. Name and location of Court which imposed sentence Barnwell General Sessions
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2010-GS-0600105
  - (b) \_\_\_\_\_

- (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) May 11, 2010 "LWOP"
- (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. \_\_\_\_\_
- 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) Counsel Did Not Advise me I could appeal
- (b) \_\_\_\_\_

- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) Involuntary Guilty Plea
- (c) Due Process Violation, Equal protection of the law
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Memorandum will be sent once
- (b) PCR Counsel is appointed
- (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? ✓
- (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. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. /
- iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. /
- 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

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

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

(a) Because it is my first PCR and can  
 (b) only be raised in PCR  
 (c) \_\_\_\_\_

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

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

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. Grant Gibbons  
Barnwell's Public Defender's office  
 ii. Barnwell, S.C. 29812-  
 iii. \_\_\_\_\_  
 (b) the proceedings at which each such attorney represented you:  
 i. Guilty Plea  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_

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

Vacated

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

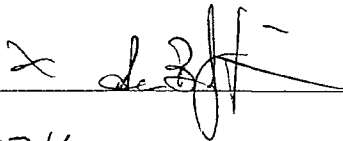
NO

STATE OF SOUTH CAROLINA )

County of Barnwell )

VERIFICATION

I, Samuel Bruce Johnson, 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.



SWORN to and subscribed before me this 27th  
day of July 2010.

 (L.S.)  
Notary Public

My Commission Expires: May 12th, 2011

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

I, Samuel Bruce Johnica, 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.

Samuel B. Johnica  
Applicant

SWORN or affirmed to and subscribed before me this  
27<sup>th</sup> day of July 2010.

[Signature]  
Notary Public

My Commission Expires: May 27<sup>th</sup> 2014

|                            |   |                                    |
|----------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA    | ) |                                    |
|                            | ) | IN THE COURT OF COMMON PLEAS       |
| COUNTY OF BARNWELL         | ) |                                    |
|                            | ) |                                    |
|                            | ) | 2010-CP-06-0179                    |
|                            | ) |                                    |
| Samual Johnican. # 340693. | ) |                                    |
|                            | ) |                                    |
| Applicant,                 | ) |                                    |
|                            | ) |                                    |
| v.                         | ) | <b>RETURN</b>                      |
|                            | ) | (Appointment of Counsel Requested) |
| State of South Carolina,   | ) |                                    |
|                            | ) |                                    |
| Respondent.                | ) |                                    |
|                            | ) |                                    |

---

The Respondent, making its Return to the application for post conviction relief (PCR) filed August 2, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Barnwell County Clerk of Court. The Applicant was indicted for Murder (2010-GS-06-0105). He was represented by DeGrant Gibbons, Esquire. On May 11, 2010, the Applicant pled guilty to before the Honorable Doyet A. Early, III. He was sentenced to life imprisonment. The Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Barnwell County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

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

1. "Ineffective assistance of counsel."
2. "Involuntary guilty plea."
3. "Due process violation, equal protection of the law."

Applicant has failed to set forth with specificity the grounds upon which the application is based and facts in support thereof. S.C. Code §17-27-50. Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

## III.

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

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

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

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

#### IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial.

Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

#### V.

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

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

## VI.

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

## VII.

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

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

MARY S. WILLIAMS  
Assistant Attorney General

By: Mary S. Williams  
ATTORNEYS FOR RESPONDENT

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

Feb. 16, 2011.

|                          |   |                              |
|--------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA  | ) |                              |
|                          | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF BARNWELL       | ) |                              |
|                          | ) |                              |
|                          | ) | 2010-CP-06-0179              |
|                          | ) |                              |
| SAMUAL JOHNICAN, 340693, | ) |                              |
|                          | ) |                              |
| Applicant,               | ) |                              |
|                          | ) |                              |
| vs                       | ) | AFFIDAVIT OF SERVICE BY MAIL |
|                          | ) |                              |
| STATE OF SOUTH CAROLINA, | ) |                              |
|                          | ) |                              |
| Respondent.              | ) |                              |
|                          | ) |                              |

---

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

**Daniel S. Haltiwanger, Esquire**  
**Richardson Patrick Westbrook & Brickman, LLC**  
**Post Office Box 1368**  
**Barnwell, SC 29812**

DATED this 16th day of February, 2011.

  
 Lauren Meara, Legal Assistant  
 For Respondent

|                          |   |                       |
|--------------------------|---|-----------------------|
| STATE OF SOUTH CAROLINA  | ) |                       |
|                          | ) | COURT OF COMMON PLEAS |
| COUNTY OF BARNWELL       | ) | 2010-CP-06-179        |
|                          | ) |                       |
|                          | ) |                       |
|                          | ) |                       |
| SAMUEL JOHNICAN,         | ) |                       |
| PLAINTIFF,               | ) |                       |
|                          | ) |                       |
| vs.                      | ) | TRANSCRIPT OF RECORD  |
|                          | ) |                       |
| STATE OF SOUTH CAROLINA, | ) |                       |
| DEFENDANT.               | ) |                       |
|                          | ) |                       |

---

January 20, 2016  
Barnwell, South Carolina

B E F O R E:

THE HONORABLE DIANE SCHAFER GOODSTEIN, JUDGE.

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

LANCE BOOZER, ESQ.  
Attorney for the Plaintiff

DANIEL GOURLEY, ESQ.  
Attorney for the Defendant

CRYSTAL HOLMES  
Circuit Court Reporter

# I N D E X

(PW) - Denotes Plaintiff's Witness  
(DW) - Denotes Defense Witness

|                                        | <u>Page No.</u> |
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| <u>(PW) SAMUEL JOHNICAN:</u>           |                 |
| Direct Examination by Mr. Boozer.....  | 5               |
| Cross-Examination by Mr. Gourley.....  | 43              |
| <u>(DW) GRANT GIBBONS:</u>             |                 |
| Direct Examination by Mr. Gourley..... | 52              |
| Cross-Examination by Mr. Boozer.....   | 65              |
| Examination by the Court.....          | 70              |

# E X H I B I T S

| <u>NO.</u>             | <u>DESCRIPTION</u> | <u>ID.</u> | <u>EVD.</u> |
|------------------------|--------------------|------------|-------------|
| (Applicant's Exhibits) |                    |            |             |
| 1                      | Medical Records    |            | 3           |

All Exhibits were retained by the Clerk of Court for Barnwell County.

P R O C E E D I N G S

(WHEREUPON, Applicant's Exhibit No. 1 was admitted into evidence.)

THE COURT: Yes, sir.

MR. GOURLEY: Yes, Your Honor, we're going to do Samuel Johnnican next.

THE COURT: Okay. Sure.

MR. GOURLEY: This is Samuel Johnnican vs. State of South Carolina, docket number 2010-CP-06-0179. He is presently confined in the South Carolina Department of Corrections pursuant to orders at the Barnwell County Clerk of Court. He's indicted for murder and represented by Mr. Gibbons. On May 11th, 2010, he pled guilty before the Honorable Doyet A. Early, III. Judge Early sentenced him to life imprisonment. He did not appeal his guilty plea or sentence. He subsequently filed an application of post-conviction relief on August 2nd, 2010. He -- State filed its return on February 16th, 2011. And he is represented in this matter by Mr. Boozer. I'll turn it over to Mr. Boozer.

THE COURT: Yes, sir.

MR. BOOZER: Thank you, Your Honor, if I please the Court?

THE COURT: Yes.

MR. BOOZER: Judge, I've got a variety of documents I

1 received yesterday evening from Barnwell County Detention  
2 Center and I've provided those documents to counsel for  
3 the State. These are some medical records which my client  
4 had asked previously to get and we were granted funding to  
5 get that. And then we got it expedited yesterday.

6 Your Honor, I believe this is without objection. I  
7 would just move to make this a part of the applicant's  
8 record.

9 MR. GOURLEY: No objection, Your Honor.

10 THE COURT: Very well.

11 MR. BOOZER: Thank you, Your Honor.

12 Your Honor, at this time, we would call Mr. Johnican  
13 to the witness stand.

14 THE COURT: Okay. Yes, sir.

15 THE CLERK: Place your left on the Bible and raise  
16 your right hand.

17 THEREUPON,

18 SAMUEL JOHNICAN,

19 After having been duly sworn, testified as follows:

20 THE CLERK: Please have a seat in the witness box.  
21 State your full name for the Court and spell your last.

22 THE WITNESS: When I get up there?

23 THE CLERK: Yes.

24 THE WITNESS: Okay.

25 THE COURT: All right. Mr. Boozer, your witness.

1 MR. BOOZER: Thank you, Your Honor.

2 THE WITNESS: Samuel Johnican, J-o-h-n-i-c-a-n.

3 DIRECT EXAMINATION

4 BY MR. BOOZER:

5 Q Mr. Johnican, how are you doing today?

6 A I'm okay.

7 Q Okay. Do you know why we're here today?

8 A Yes, I do.

9 Q What are we doing here?

10 A We're here for my PCR to bring up the claims that I  
11 have which -- on my PCR.

12 Q Okay. So you filed an application for what's called  
13 post-conviction relief?

14 A Yes, I did.

15 Q In that application, you've made some allegations  
16 with regards to things your counsel did or didn't do as  
17 well as some other allegations?

18 A That's correct, yes.

19 Q And do you understand the only relief that this Court  
20 can give to you today is to give you a new trial in this  
21 case?

22 A Yes.

23 Q And is that what you're seeking?

24 A Yes.

25 Q Okay. Tell us, you're currently serving a life

1 sentence for murder?

2 A Yes.

3 Q Who was your lawyer?

4 A Grant Gibbons was.

5 Q Grant Gibbons was your attorney?

6 A Yes, uh-huh.

7 Q How did you come about having Mr. Gibbons as your  
8 lawyer?

9 A He was appointed because I was indigent at the time.

10 Q Okay. Was he your only lawyer throughout your case?

11 A Yes, he was.

12 Q Okay. Do you recall when you were first appointed  
13 Mr. Gibbons to represent you?

14 A Do I recall? Yeah, I got a letter. And I got the  
15 letter -- the letter was dated December 29th, 2010.

16 Q Okay. And when -- when was your plea?

17 A It was 05/11/2010.

18 Q Do you know or do you recall how many times you met  
19 with Mr. Gibbons prior to your plea?

20 A I want to say maybe three or four, maybe.

21 Q Okay. What would you guys discuss during your  
22 meetings?

23 A Well, I would tell him that it wasn't intended, that  
24 I don't know what came over me. I would tell him that,  
25 you know, I was very suicidal at the time. And I would be

1 crying most of the time. I wasn't -- I was overwhelmed  
2 for what had happened. And basically, it wasn't really  
3 too much being conversed between us.

4 Q Okay. Let me ask some more specific question.

5 A Okay. Sure.

6 Q Did Mr. Gibbons discuss with you defenses that you  
7 may have?

8 A He discussed no defenses, period. He said I had  
9 none.

10 Q Did he discuss and review with you any of the  
11 evidence that the State had in the case?

12 A He did not. He did not.

13 Q Did you ever see what's called a response to Rule 5  
14 discovery?

15 A I never seen a Rule 5 until October 26th, 2010, until  
16 I was incarcerated at Perry Correctional. That's the only  
17 time I got to see my discovery.

18 Q All right. Did you two discuss any sort of trial  
19 strategy should you have a trial?

20 A No, sir. If he had, I would have taken a trial with  
21 what I was faced with, yes.

22 Q All right. Now, you filed a number of PCR  
23 applications and amendments; is that right?

24 A Just amendments only, not applications. Just  
25 amendments to the application, yes.

1 Q And let -- just for convenience, let's kind of go  
2 through what your allegations are. I think some of them  
3 are probably doubled up.

4 A I think so, too.

5 Q Okay. So let's go through and we'll put on the  
6 record what your -- what your allegations are so that we  
7 can start going through those, okay?

8 A Okay.

9 Q So in your -- in your original application, you  
10 alleged ineffective assistance of counsel?

11 A Yes.

12 Q Involuntarily guilty plea?

13 A Yes.

14 Q As well as due process violations and equal  
15 protection?

16 A Yes.

17 Q After that, then you filed a number of amendments?

18 A Yes, I did.

19 Q All right. Well, let's go through those.

20 A Okay.

21 Q One of your allegations is that your lawyer filed, I  
22 guess, an appeal, but you contend that it was either late  
23 or that you had no knowledge of the appeal being filed?

24 A It was both. I was not informed and it was late, 51  
25 days late.

1 Q Okay. Tell the Court a little bit about that. Why  
2 do you think that?

3 A Oh, well, I mean, when Mr. Chambers had done the  
4 first amendment to my application, I -- well, put it this  
5 way, I remember the court date and they said you have a  
6 right to appeal. I was still shaken up because of the  
7 time I got and I was really -- I mean, after seeing my  
8 kids there, I was just totally shaken up.

9 Q Mr. Johnican --

10 A I'm sorry.

11 Q Madam Court Reporter needs to take down everything  
12 that you're saying today.

13 A Okay.

14 Q And I know you're a fast talker, but try to slow it  
15 down so that we can get everything down on the record,  
16 okay?

17 A Okay.

18 Q Keep going. I'm sorry.

19 A Okay. Ask the question again, I'll try to be more  
20 direct.

21 Q Sure. We were discussing about the appeal and you're  
22 alleging that you felt like your lawyer filed it late?

23 A He did. I received notice in the mail that he --  
24 that he filed it on the 7th of July, which was 51 days  
25 late. I was -- I was told that I had 10 days. And he

1       never went over any -- anything about an appeal or what I  
2       should appeal on or anything.

3       Q     Well, did you also have -- or did your lawyer also  
4       file for you what's called a motion to reconsider the  
5       sentence?

6       A     Yes. Yes, he did.

7       Q     Did you know he was filing that?

8       A     I had no idea until I got here.

9       Q     Was there an actual hearing on that motion?

10      A     Yes, it was.

11      Q     It was obviously denied?

12      A     Yes, it was.

13      Q     Now, you also allege that your counsel -- there's no  
14      indication that your lawyer attempted to negotiate a plea  
15      deal or a plea bargain for you?

16      A     That's correct.

17      Q     All right. What is it that you feel like your lawyer  
18      should have done or what was your lawyer telling you he  
19      was doing discussing -- doing in discussing with the  
20      solicitor a plea?

21      A     With the plea?

22      Q     Correct.

23      A     Oh, Mr. Boozer, I'm sorry. You got to say that  
24      again, I'm sorry. I kind of went to sleep on that one.

25      Q     Poorly worded. What was your lawyer doing on your

1       behalf to negotiate a plea for you?

2       A     Oh, nothing. He never mentioned -- he said -- one of  
3       the times he came to see me, the first thing he said was,  
4       You have no defense. I said, Is there any defense, like,  
5       you know, manslaughter or anything? And he -- I mean, you  
6       know, insane at the time of the crime, anything? He said,  
7       You have no defense. That's exactly what he told me.

8       Q     All right. You also have that your lawyer failed to  
9       undertake any meaningful trial preparation?

10      A     Oh, yes.

11      Q     Or investigation?

12      A     That's right.

13      Q     And that he failed to discuss any potential trial  
14      strategy with you?

15      A     Yes, sir.

16      Q     Tell the Court what you mean by those allegations.

17      A     What I mean by those allegations, well, I mean, for  
18      one, I met with him prior to the plea. I think it was  
19      maybe three -- or two or three days before the plea.

20             Let me go back a little further, Mr. Boozer. His  
21      investigator came to see me. I believe he came on the 7th  
22      of May. And I remember discussing with his investigator,  
23      I said, you know, what can I do about this? I mean, this  
24      is something that I didn't even do. And he says, Well,  
25      you know, Grant's going to be down here to talk to you.

1     You have a choice, you can have a trial or you can plea.  
2     And I said, Yeah, I want to take a trial. He said, No,  
3     you don't. You don't want to take a trial because your  
4     kids will be -- I mean, the media will be there. Your  
5     kids have already gone through enough. And, you know, I  
6     was shaken up. I mean, that's exactly what he said.

7     Q     Okay.

8     A     And then four days later, Grant came. I didn't  
9     remember talking to him that much. I mean, he finally  
10    asked me what the weapon was because I could not recall  
11    what it was, and I just told him a wrench, you know, just  
12    threw that out there. And he told me that he would not  
13    discuss any of that with the solicitor, but you know he  
14    did. It's on the transcript that he did. He told me it  
15    was a one-on-one conversation. And as soon as I told him  
16    that, he got up and left. He buzzed the people in the  
17    Barnwell County jail on the little speaker on the wall and  
18    he left. That was it.

19           And then when I went to the day of the -- can I  
20    discuss the day of the plea?

21    Q     Sure.

22    A     On the 11th of May, he came to me. I went in there  
23    and he sat down and he said, Look, Mr. Johnican -- he  
24    showed me a sentence sheet. And he said, This is what  
25    you've got right here. You've got 30 to life here. And I

1       said, Well, I'll just go ahead and take a trial then. You  
2       know, I mean, there's no need for me to plea to that. And  
3       he goes, Well, you know, you've got your previous record  
4       of burglary, 1990, which I received 60 days in jail and  
5       three years probation. And there was a 1984 drug  
6       trafficking conviction where I had two dime bags when I  
7       was 18. I was kid when that happened. And he said, Those  
8       are serious out here. Most serious being what you have  
9       now. You could get a life sentence, so you just better go  
10      ahead and plea and hope the Court gives you mercy.

11     Q       Well, let's kind of jump forward. We're jumping  
12      ahead a little bit, but let's --

13     A       Okay, I'm sorry.

14     Q       While we're on the subject, let's go ahead and tackle  
15      that one.

16     A       Okay.

17     Q       You're alleging that your lawyer -- you're alleging  
18      that there was a prior conviction in 1984 in California  
19      for trafficking in marijuana?

20     A       Yes.

21     Q       And then there was a prior conviction in California  
22      in 1990 for burglary?

23     A       Yes.

24     Q       Okay. And you allege that -- tell the Court  
25      specifically what your allegations are with regard to

1       that?

2       A     Okay. With the conviction of the 1984 drug  
3       trafficking, which I didn't even know that was on my  
4       record really. I mean, I had a feeling. It never stopped  
5       me from getting jobs, I never investigated, but I found  
6       out that I did -- yes, he was right, I did have the 1984  
7       conviction where I received one year probation. I was  
8       caught by the police in front of an apartment complex with  
9       two dime bags. And they said since I was selling those,  
10      they said it was trafficking. I received a year's  
11      probation for that.

12     Q     Okay.

13     A     Uh-huh.

14     Q     And so did you have any discussion with your lawyer  
15      about how this may affect your murder charge --

16     A     No, he --

17     Q     -- or plea?

18     A     Oh, yes, yes. Yes, Mr. Boozer, he said they would  
19      automatically be put on a life sentence. He said the plea  
20      with mercy, most likely those won't get mentioned, but as  
21      they did get mentioned there on the transcript and he  
22      didn't object to it. And I thought that was unfair.

23     Q     So are you saying that your lawyer told you that  
24      those two prior convictions would count basically as two  
25      strikes and if you were found guilty at trial, then you

1 would receive an automatic life sentence?

2 A Yes, that's what he said. He said I have no hope.  
3 That's what he said, I have no hope.

4 Q Let's continue through your allegations. You also  
5 allege that your lawyer failed to request an independent  
6 examiner for a competency determination despite counsel's  
7 knowledge of applicant's impaired mental state?

8 A Yes, sir.

9 Q Tell the Court what you mean by that.

10 A Okay. The mental state I was in, I very suicidal,  
11 very remorseful --

12 Q Slow down a little bit.

13 A I'm sorry. I'm sorry. I was very suicidal, very  
14 remorseful. I never gave Grant any kind of indication  
15 that I meant to do this. It was just something that  
16 happened. Mr. Boozer, I'm sorry. You've got to answer  
17 your question again. I'm a little nervous. I'm sorry.

18 Q That's okay.

19 A Uh-huh.

20 Q This goes to your allegation, these are your words,  
21 okay?

22 A Okay.

23 Q That counsel failed to request an independent  
24 examiner for a competency determination --

25 A Yes.

1 Q -- pursuant to S.C. Code 44-23-410, despite counsel's  
2 knowledge of your mental state?

3 A That's correct. Yes. I asked him for an independent  
4 exam because when I was told that it was going to be a  
5 state examiner -- no, wait a minute. Wait a minute. Wait  
6 a minute. I remember going down to the place. This  
7 happened after I had the evaluation. See, when I had the  
8 evaluation, he did not meet with me to discuss the  
9 evaluation process with me. Okay. And that's one of my  
10 allegations.

11 Q Did you have a court-ordered evaluation?

12 A Yes, I did, uh-huh. And I have it right here if the  
13 Court needs to see it.

14 Q Okay. Keep going.

15 A Okay. When I was down there at the evaluation at  
16 Just Care in Columbia, it's on Farrow Road in Columbia, I  
17 was told that they just -- well, they just came and got  
18 me. They shackled me up. I was in unit one. They put me  
19 in a van and they shackled me. They put me in a van and I  
20 was taken to another area of the facility on the same  
21 property.

22 There a doctor -- it was two doctors, but the man, he  
23 was speaking the most, he said, Do you know why you're  
24 here? And I said, No, I don't know what I'm doing here  
25 with you because I was in another building. He said,

1       You're here to take a pretrial evaluation, okay. And that  
2       was it. That's the only time I knew about the evaluation.  
3       I remember when I went down to Just Care is because of  
4       suicidalness -- you know, suicidal, but I had no idea  
5       about the court-ordered exam and who I was going to see  
6       during that. I was not told by Mr. Gibbons that I was  
7       going to take an exam --

8       Q     Okay.

9       A     An evaluation.

10      Q     Before your evaluation, did you have any discussion  
11      with Mr. Gibbons that you were going to be --

12      A     I discussed with him on the phone -- I called him up  
13      there from Columbia. I said, you know, I didn't mean to  
14      do this, you know, I'm miserable and everything. During  
15      that conversation, a very short one, he said, I don't you  
16      didn't mean to do it, Mr. Johnnican. But he never  
17      mentioned about a court-ordered examination as discussed  
18      in the statute.

19      Q     Did you -- after your examination, did you ever  
20      discuss with Mr. Gibbons the findings of that exam?

21      A     No, I did not. He didn't discuss it with me.  
22      There's a facility called Polly Best in Barnwell. They  
23      took me over there and I was seen by some guy. I don't  
24      really recall his name. But that's when he looked on the  
25      evaluation and told me that they thought I was

1 malingering. And I said, What does that mean? And he  
2 said, Falsifying, lying.

3 And so that's when, you know, I went back to county  
4 jail. I think during one of our meetings, I told him that  
5 I wanted an independent exam. And he said he'd do it,  
6 but he never did. And I was going to pay for it myself  
7 because I had the money at the time.

8 Q Okay. Did you -- did you also -- was there ever any  
9 formal hearing on your competency to stand trial?

10 A No, sir, there wasn't. No hearing whatsoever.

11 Q All right. Did you feel that there should have been  
12 one?

13 A Oh, yeah. Well, you know, yes, I do because the  
14 statute states it. It's by law. And I was entitled to a  
15 hearing. That's a violation of the statute. You told me  
16 not to mention the statutes up here, but it was a  
17 violation of 44-23-430 and I never got the hearing.

18 Q Now, you've also alleged -- again, these are your  
19 allegations, that counsel was not prepared for trial  
20 during the term in which the case was called, and  
21 therefore, attempted to convince applicant to plead guilty  
22 to murder without my prior negotiations with the  
23 solicitor?

24 A Yes, sir.

25 Q I think you've already touched on that, but if want

1 to expand on it a little bit.

2 A No, it's just that, you know, here I am looking at so  
3 much time, I mean, anybody would take a trial. But he  
4 said -- see the fact is that I have those two records in  
5 California, which he said would be serious. No, he did  
6 not tell me that they fall under the youthful offender act  
7 out here and in California, I got charged as misdemeanors.

8 Q Going into the plea, did you have any discussion with  
9 Mr. Gibbons about what sort of sentence you should expect?

10 A He said, Look, you've got a window here, 30 to life.  
11 Go ahead and do this. This is the window that you have,  
12 30 to life. And I was, like I said, Your Honor -- I mean,  
13 Mr. Boozer, I said I wanted a trial, but he said the  
14 previous convictions, I would automatically be eliminated  
15 -- I mean, would receive a life sentence. I mean,  
16 nobody's going to --

17 Q So is that why you ultimately ended up pleading  
18 guilty?

19 A There you go. Because he said I had no defense and  
20 he said those two priors will make it three strikes for  
21 me, just better go on in. I was thinking 30 years would  
22 be better than just getting life, so I took his advice.

23 Q All right. Let's continue through your amendments  
24 and your allegations, okay?

25 A Sure.

1 Q I think you've already touched on this, but you've  
2 alleged that your lawyer failed to give a 10-day when you  
3 got seeks life without parole written notice?

4 A That's correct.

5 Q What do you think that's -- why do you have that  
6 allegation?

7 A Because one thing going on, Mr. Boozer, is that if  
8 they're seeking a life sentence on me -- which, you know,  
9 the solicitor, he mentions on the first page this is a  
10 straight-up guilty plea with no recommendations, okay. If  
11 I'm going to go in there and plead guilty to something, it  
12 should have been something, some kind of bargain. Oh, I'm  
13 sorry. I'm sorry. I should have been told about this  
14 ahead of time, otherwise, I would have gotten the 10-day  
15 notice. I didn't know what they was seeking on me. I  
16 never seen the indictment either until the day of the  
17 trial -- or the plea.

18 Q All right. Let's go on to another allegation that  
19 you've got. And that's that your lawyer did not bring up  
20 the fact that while applicant was a ward in county jail,  
21 the officer stated in their written statements that  
22 applicant was banging his head on the wall in the camera  
23 cell. This would have been an insanity defense at the  
24 time of the crime?

25 A Yes, he mentioned nothing about that. The only thing

1 Mr. Gibbons discussed was -- like I said, he didn't  
2 discuss anything. In court, he said -- the solicitor  
3 mentioned that when I was asked if I was married and I  
4 said I was, I was not speaking of my wife, I was speaking  
5 of my first wife. I didn't say anything about the  
6 previous -- I mean, the relationship that I was in at the  
7 time.

8 Q All right. You also have the judge did not ask you  
9 if you were pleading guilty freely and voluntarily; is  
10 that one of your allegations?

11 A Yes, it is. I looked at the transcript many times  
12 and it just says has anybody threatened, has anybody  
13 promised you or held out any reward? And I said, No -- I  
14 mean, yeah, no one's threatened me. I said that because,  
15 you know, the -- what we talked about with previous  
16 convictions, those are facts. I mean, those are facts  
17 alone itself. I do have those on my record. And I  
18 managed to get a copy of that, too.

19 Q All right. You've got another allegation. I'm going  
20 to paraphrase this one a bit.

21 A Thank you.

22 Q But you allege that you were never shown pictures of  
23 the crime scene?

24 A I never seen them.

25 Q Your lawyer never reviewed discovery with you?

1       A     I asked Mr. Gibbons, Mr. Boozer, to see the photos of  
2       the crime. This was way before court even came up. He  
3       said they were on his computer. When we went into -- when  
4       we went into the -- into the plea, the solicitor had  
5       copies of them. He had photos, okay. I didn't even know  
6       photos were going to be shown because I did not see  
7       anything in the evidence. And that's -- you know, that's  
8       basically it. I didn't know they were going to have  
9       photos there because I never seen them.

10      Q     Would you have liked to have seen those prior to your  
11      plea?

12      A     Yes, I was entitled to, yes. The law entitles me,  
13      yes. Yes, I would have liked to see everything in my  
14      motion of discovery.

15      Q     I think you've already discussed this, but let's just  
16      make sure it's on the record for you.

17      A     Okay.

18      Q     You say that after applicant's mental evaluation,  
19      applicant's attorney and applicant were to be notified  
20      about a hearing on my fitness to stand trial. There was  
21      no hearing and applicant feels he is being held  
22      unlawfully.

23      A     Yes, sir. We had the evaluation, but there was no  
24      hearing on the results of the evaluation for me to  
25      cross-examine the medical experts, so to speak, that

1 examined me.

2 Q All right. Again, you've got another amendment.

3 A Sure.

4 Q I think we're going to duplicate, but we'll get  
5 through these as well.

6 A Okay, sure.

7 Q You've alleged that the lawyer never showed you the  
8 State's evidence. We've already covered that?

9 A Yes.

10 Q You've also alleged that he gave you erroneous advice  
11 about your past convictions of burglary and drug  
12 trafficking. We've covered that?

13 A Okay.

14 Q All right. Attorney in court failed to give  
15 applicant a competency to stand trial hearing, we've  
16 covered that. Attorney failed to give State's 10-day  
17 notice to seek life without parole. I think we went over  
18 that one, correct?

19 A Yes.

20 Q All right. The lawyer did not meet with applicant  
21 prior to mental evaluation to stand trial. I think we  
22 covered that?

23 A We did.

24 Q All right. Attorney never got independent mental  
25 evaluation?

1       A     Correct.

2       Q     We've covered that?

3       A     Yes, we did.

4       Q     All right. Attorney did not conduct a pretrial  
5 investigation. Is there anything you need to elaborate on  
6 that?

7       A     Oh, yes. There was blood found on me in Morgan  
8 County, Georgia. He did not -- if you look at the  
9 transcript, I know where it's at if I can find it, that  
10 the blood was not even -- it was not analyzed yet. When  
11 we went to court, the solicitor stated yes, they found  
12 some blood on me, but we're still -- on the defendant, me,  
13 and he said, We're still waiting on those results. So he  
14 went in totally unprepared. He didn't do a thorough  
15 investigation at all. And can I add something to that,  
16 Mr. Boozer?

17      Q     Okay.

18      A     Okay. He also states that -- just give me a second  
19 here. Mr. Boozer, I just went blank for a minute. I'm  
20 sorry.

21      Q     Okay. Maybe we'll come back to that and let you  
22 think about it for a minute.

23      A     Yeah, you have to ask me that again. I kind of went  
24 blank. I will find it here.

25      Q     Let's continue through your allegations. I don't

1       they we've covered this one. Your attorney never asked if  
2       applicant had any character witnesses. Tell the Court --  
3       A     Oh, he never -- oh, yes, of course, Mr. Boozer. I  
4       was -- family mental history, he didn't interview none of  
5       my family members. He didn't interview my children. And  
6       he never asked me if I had any past use of anything like  
7       drugs. You know, I mean, I've had a past. I've had a  
8       past. And there's family mental history. My sister,  
9       she's got a mental condition right now that she's had for  
10      many years. And there was no -- he didn't do any  
11      investigation into my family. Didn't ask anything -- as a  
12      matter of fact, the day of court, there was none of my  
13      family members in the courtroom. I mean, he just say,  
14      come on and do this and hopefully that you'll get 30 years  
15      because you -- you just don't have a defense. I'm sorry,  
16      I probably went further than I was supposed to.

17      Q     That's fine. Okay. Now, you've alleged that your  
18      lawyer never explained the difference between murder and  
19      manslaughter and the elements?

20      A     He never explained them, nature or the elements of  
21      the crime. And that is in the transcript to where the  
22      judge did ask me did I -- did I understand the charges. I  
23      looked up charge in the dictionary. It's an accusation,  
24      okay. I said yes, because I thought it was just taking a  
25      life. But I was never -- it was never asked -- the judge

1       never asked me if he had explained the elements or the  
2       nature of the crime. He never asked me that. The judge  
3       never asked me that.

4       Q     And why do you think that's important?

5       A     Well, Mr. Boozer, I was able to read some. That's to  
6       make sure that a defendant is shown -- I mean, if you've  
7       been charged with something, you should know what it is,  
8       you know, that you're being charged with. You should know  
9       what constitutes murder and I was not -- I was not told  
10      what constitutes murder.

11      Q     Well, is there an element that you've since learned  
12      pertaining to a murder charge that you feel like you did  
13      not do?

14      A     Yes.

15      Q     Okay. What is that?

16      A     Malice aforethought is planning.

17      Q     Did you discuss that with Mr. Gibbons?

18      A     Mr. Gibbons discussed nothing about this charge with  
19      me, period. He did not.

20      Q     All right. You have another allegation. I think we  
21      covered this, but you allege that your attorney lied in  
22      the beginning by saying applicant had absolutely no hope  
23      because of his two past serious convictions?

24      A     Yes, sir.

25      Q     We've covered that?

1       A     Yes, we did.

2       Q     All right.  You've also got applicant did not know he  
3       was being charged with murder until May 11, 2010, which  
4       was the day of court?

5       A     Yes, sir.  And can I add something to that, Mr.  
6       Boozer?  When we -- when I first got housed at the  
7       Barnwell County jail way before court, I remember going  
8       with a few people that were on like a chain.  You know, it  
9       was a bunch of us, maybe about 10 of us.  We were all  
10      chained together.  The lady did read over some stuff that  
11      I was -- she read over some things saying that I was being  
12      charged with murder.  And I just -- you know, I didn't  
13      even think about that.  I just, you know, said being  
14      charged with murder.  And at that time, I didn't know it  
15      was a difference between murder and manslaughter, nothing,  
16      so that was -- you know, being chained with a bunch of  
17      people, I didn't think that was important, but that was  
18      the only time I ever heard anything to do with murder  
19      concerning my case.

20      Q     All right.  You also alleged you never saw the  
21      indictment -- you never saw the indictment until the day  
22      before --

23      A     Yes.

24      Q     -- your plea?

25      A     Yes.  On May 11th, 2010, that's when I seen the

1       indictment.

2       Q     All right.

3       A     That's when he said you're being charged with murder.  
4       I was like okay.

5       Q     Now, you also have another amendment that was filed  
6       June 6th, 2014. And a number of these duplicate what  
7       you've already alleged.

8       A     Sure. Okay.

9       Q     So we'll go through the ones that you have not gotten  
10      on the record yet?

11      A     Okay.

12      Q     You alleged that your attorney's attitude towards  
13      defendant, which was you, was more like a prosecutor than  
14      a lawyer and you feel like this was a violation of the  
15      rules of professional conduct?

16      A     Yes, sir. It's on the transcript.

17      Q     Explain that to the Court.

18      A     On Line -- on Page -- Gibbons acted like an attorney,  
19      not an advocate. On Page 27, Line 8 through 10 --

20      Q     Hang on the second so everybody can flip to that  
21      page.

22      A     I go a little fast. I'm sorry.

23            THE COURT: I got it.

24            BY MR. BOOZER:

25      Q     Explain to the Court what you mean.

1       A     Mr. Gibbons said this is a horrendous crime with no  
2       justification. And that was on Line -- Page 27, Lines 8  
3       through 10. That, to me, you know, is he was acting more  
4       like an adversary and not an advocate. On Page 28, Lines  
5       3 through 5, you'll see the word horrendous again. So  
6       it's on there twice. And this is not coming out the  
7       solicitor's mouth, this is coming out of my public  
8       defender's mouth.

9       Q     Okay.

10      A     And I'd like to elaborate one more thing. This is --  
11      when I did get convicted, the Judge, he used the same  
12      wording. I've never seen a crime scene so horrendous.  
13      But the horrendous word started with Grant Gibbons. It  
14      didn't -- it started with him. And I think most likely  
15      the Judge probably just -- he just followed along with  
16      that.

17      Q     All right. So let's cover some of your other amended  
18      allegations. You've got your attorney was in violation of  
19      Rule 1.2, scope of representation between client and  
20      lawyer by not obeying your decision of going to trial when  
21      you stated that you wanted a trial?

22      A     That's right, yes.

23      Q     So you wanted a trial?

24      A     After I seen what was going on, yeah. 30 to life, I  
25      mean, yeah, I would take a trial. I mean, wouldn't

1       anybody?

2       Q     All right. Now, you also have that your lawyer was  
3       ineffective for failing to explain what the State must  
4       prove in order to establish malice aforethought?

5       A     That's correct.

6       Q     And we've already touched on that?

7       A     Yes, we did.

8       Q     Okay.

9           MR. BOOZER: Court's indulgence, Your Honor.

10       THE COURT: Okay.

11       BY MR. BOOZER:

12       Q     All right. You have another amendment where you  
13       allege that the transcript of your guilty plea does not  
14       contain a factual basis for pleading guilty?

15       A     Yeah, I was -- you know, a little misunderstanding  
16       what the factual basis is. I thought the factual basis  
17       would be why I'm pleading. And I didn't really get into  
18       -- I didn't get to study the factual basis. I just know  
19       that -- you know, I really thought, like I said, it would  
20       be why, you know, why I'm pleading. That's why I put that  
21       down, Mr. Boozer.

22       Q     Okay.

23       A     I didn't really get a full understanding of what the  
24       factuals were, factual basis and everything was. I still  
25       don't have that understanding.

1 Q All right. You also got a seventh amendment to your  
2 application. And a number of these have already been  
3 covered, so we'll --

4 A Sure.

5 Q We'll go through the ones that have not?

6 A Okay.

7 Q You've alleged that the applicant did not receive the  
8 MMPI, which is -- alleges the Minnesota Multiphasic  
9 Inventory psychological test was more than 50 years. What  
10 do you mean by that?

11 A Well, I didn't -- they didn't give that to me in the  
12 courthouse -- I'm sorry, at Just Care in Columbia. The  
13 way I learned about that was I read a case and they had  
14 used -- they had used that during a trial on how the  
15 person was asked certain questions. I don't think I took  
16 one of those multiphasic inventory examinations or test.

17 Q All right.

18 A I did take a test, but that was not in -- that didn't  
19 make it to the guilty plea. I don't even know what the  
20 test was, but I don't think it was the multiphasic  
21 inventory test.

22 Q Okay. You have an eighth and final amendment to your  
23 PCR application and that is that your lawyer did not show  
24 you the indictment until the day of court, which lacked  
25 subject matter jurisdiction by not showing the time of

1 death of the deceased, and that your attorney should have  
2 objected to the indictment. Explain to the Court what you  
3 mean.

4 A I will go back on that one, Mr. Boozer, because I  
5 don't think I was -- I thought time meant clock time, but  
6 to my understanding of that law now, when I rushed to send  
7 it off to have it amended, that's -- I was wrong for that  
8 one.

9 Q Okay. Let's go back to your plea transcript. Those  
10 are all your allegations that you've alleged, correct?

11 A Except for the ones I have myself. I have some more  
12 myself.

13 Q Well, it has to be filed, so I mean --

14 A Oh, they been filed. I have a copy of them. Hold on  
15 a moment. Yes, they're --

16 MR. BOOZER: Your Honor, may I approach the witness?

17 THE COURT: You may.

18 MR. BOOZER: Thank you.

19 THE WITNESS: Some of this you already mentioned.

20 BY MR. BOOZER:

21 Q Hang on. Mr. Johnican, do you have some filed  
22 allegations you feel we've not covered?

23 A Yes. If the Court will give me a minute, I'll call  
24 them off right when I see them. We've covered a lot.  
25 During this process before we came to court, I -- back in

1       -- you know, back in the past, I have many things and I  
2       may have done it twice, but there's some on here that I  
3       know we haven't gone over. And if I can just take a  
4       minute, I will -- I'm going to go over these in a second  
5       here if I can just have a moment.

6           MR. GOURLEY: Judge, just for the record, I would  
7       object to the pro se allegations. Even if they were  
8       filed, rule 11 requires that counsel adopt the  
9       allegations. Clearly, Mr. Johnnican hasn't even showed  
10      them to Mr. Boozer. Mr. Boozer has not had the  
11      opportunity to review them. And for those reasons, I  
12      would ask that those allegations not be presented here.

13          MR. BOOZER: Thank you, Your Honor, just briefly. I  
14      reviewed what Mr. Johnnican has in his packet that  
15      accompanies him to the witness stand. It appears what  
16      he's shown me are filed allegations. I'm not sure if he  
17      doesn't feel like we've not covered them to the extent he  
18      felt we needed to cover them.

19          THE COURT: I will let you go into it.

20          MR. BOOZER: Thank you, Your Honor.

21          THE COURT: Okay.

22      BY MR. BOOZER:

23      Q     Mr. Johnnican, if you would, without duplicating what  
24      we've already been through because I feel like we've gone  
25      through all your allegations, if there are any on your

1 filed amendments only --

2 A On filed amendments only, okay.

3 Q Okay. That you feel we have not put on the record  
4 yet.

5 A I will not say anything that has already been said.

6 Q Okay. Go ahead.

7 A Okay. Just a second here. Oh, yes, here's one that  
8 we didn't cover. Can I go ahead and say it now?

9 Q What is it?

10 A It's on -- it's -- this one was filed -- are you  
11 ready, Mr. Boozer?

12 Q I am.

13 A This one was filed on -- hold on just a minute. It  
14 was filed with the clerk of court on June 6th, 2014, at  
15 1:40 P M.

16 Q What allegation is it?

17 A Okay. This is what it says here -- you know what,  
18 Mr. Boozer, it says some of that we said, but some of it  
19 says the things that we haven't mentioned yet.

20 Q All right. So tell the Court what it is we haven't  
21 mentioned.

22 A Okay. The attorney, Grant Gibbons, was ineffective  
23 for advising Mr. Johnican, myself, to plead guilty before  
24 properly preparing and to investigate his case. In that,  
25 counsel failed to seek the necessary indicted for

1       psychological examination for the determination he was  
2       mentally ill or insane at the time the crime was  
3       committed, thereby entered a plea -- and thereby entering  
4       a plea accordingly.

5               We talked about the video already, that I was  
6       suicidal and that it shows -- I'll say this again because  
7       I don't think we talked about the video in the jail.  
8       Okay.

9       Q       Slow down for me.

10      A       Yes, sir. I'm ready. The record of the county jail  
11      video and documentation shows that --

12               THE COURT: You to have slow down.

13               THE WITNESS: Oh, I'm sorry. Okay. Yes, ma'am.

14      BY MR. BOOZER:

15      Q       You have to slow down a lot, Mr. Johnican. She  
16      can't type that fast.

17      A       I apologize. The record of the county jail video and  
18      documentation shows that Mr. Johnican was suicidal and  
19      depressed and possibly hallucinating. He suffered two  
20      head injuries in the past and was acting strangely on the  
21      day of the crime was committed. At the guilty plea  
22      proceeding, Mr. Gibbons stated he did not understand what  
23      happened or what motivated it. That is to say that malice  
24      is nowhere in the -- I never spoke with malice and through  
25      this crime. That is on the transcript, Page 27, Line 10,

1       that allegation.

2       Q     Okay. What else do you feel we've not covered?

3       A     Okay. We did -- we talked about the appeal already.

4       All right. Moving right along here.

5       Q     Don't mumble to yourself.

6       A     Oh, I'm sorry. Moving right along here. I'm sorry.

7       We've already went over never seen the evidence, right?

8       We've went through that?

9       Q     We have.

10      A     Okay. We went through this attorney in court failed  
11      to give applicant a copy of the stand trial hearing, we've  
12      already done that.

13      Q     We have.

14      A     Okay. I'm sorry it's doubled up a little bit here.

15           (Pause.)

16      A     Did we bring up anything in Morgan County jail?

17      Q     We have.

18      A     We have, okay.

19           THE WITNESS: Thank you, Your Honor, for your  
20      patience.

21           Here's another one here. This is number four on the  
22      same -- oh, I'm sorry, this one was filed on the -- 2014  
23      of February 10 with the clerk of court. Oh, yes, number  
24      four, solicitor stated on Page 19, Line 7 approximately  
25      250 photographs, all have which been -- that's Line 8,

1       have been provided to applicant's defense counsel,  
2       Attorney Charles T. Brooks, at the time. Applicant states  
3       he has never even seen one of those crime pictures that  
4       were used to convict him. As well, also, the judge never  
5       asked if applicant was shown the evidence. I think we  
6       might have covered that, too --

7       Q     We have.

8       A     -- but I wanted to put that down.

9       Q     We have.

10      A     You're right, some of these double up. I'm sorry. I  
11      think that's it.

12      Q     Okay. Mr. Johnican, let me ask you a few other  
13      questions here. Now, do you remember the day of your  
14      plea, do you remember being there?

15      A     Oh, yeah, I remember.

16      Q     Okay. Did you understand what was going on that day?

17      A     No, I did not. No, I didn't. I was real confused.

18      Q     Okay. Do you recall the Judge asking you a number of  
19      questions at your plea?

20      A     Yes. One of the questions he asked me, Mr. Boozer,  
21      was -- oh, I'm sorry. Go ahead.

22      Q     Hang on one second.

23      A     Uh-huh.

24      Q     Now, do you recall -- and this is on Page 10 of the  
25      plea transcript.

1 A Okay.

2 Q Looking down beginning at Line 18.

3 A Okay. Wait a minute. Page 10, okay, I'm there.  
4 Line 18, you said?

5 Q Correct.

6 A Oh, yes. Okay.

7 Q Do you recall the Court asking you whether you were  
8 taking any prescription medications?

9 A Yes, I do recall that.

10 Q And you said no?

11 A Yeah, because I was ashamed to be taking medication.  
12 I just felt ashamed to say that.

13 Q But at that time, you were, in fact, taking some  
14 prescription medications?

15 A Yes, about three or four, I think.

16 Q Okay. Do you recall specifically what they were?

17 A I have no idea. I'm taking medication now and I'm  
18 going to tell you, I barely know the name of the stuff I'm  
19 taking now. But back then, no, I don't remember.

20 Q What's marked as Applicant's Exhibit 1, which are  
21 records from the Barnwell County Detention Center, if they  
22 indicate that you were taking what's called Trazodone as  
23 well as Salivaprone (ph) or Sivlaprone (ph)?

24 A Uh-huh.

25 Q Would you have any disagreement with that?

1 A No, sir, I don't. I've taken a lot of medications.

2 Q So you were taking prescription drugs that day?

3 A Yes, I was.

4 Q Do you also recall the Court asking you on the same  
5 page, Page 10, Line 20, Mr. Johnnican, are you today aware  
6 of any mental, nervous or emotional conditions which would  
7 keep you from understanding these proceedings, to which  
8 you replied, I don't think so?

9 A Yeah, I was at fault.

10 Q Well, the Court then follows up and said, Have you  
11 understood, sir?

12 A Uh-huh.

13 Q You said, Excuse me, no?

14 A Uh-huh.

15 Q Okay?

16 A Uh-huh.

17 THE COURT: That's a yes?

18 THE WITNESS: I'm sorry?

19 THE COURT: You're going uh-huh.

20 THE WITNESS: Oh, I'm sorry about that.

21 Mr. Boozer, yes, that's correct.

22 BY MR. BOOZER:

23 Q For the record, say yes instead of uh-huh and say  
24 no --

25 A I will. I apologize. I'm just real nervous, I'm

1       sorry.

2       Q     Now, we also flip over to Page 11.

3       A     Page 11, okay.

4       Q     We're looking down at Line 19?

5       A     Nineteen, okay.

6       Q     The Court says, All right. I find your decision to  
7       plead guilty to the murder of Denise Michelle Johnican to  
8       be freely, voluntarily and intelligent made?

9       A     Uh-huh.

10      Q     You've had the representation and then it stops?

11      A     Yes.

12      Q     And it says, Whereupon, the attorney conferred with  
13      the client. And the Court says, Mr. Gibbons, are we okay?  
14      The lawyer says, We are, Your Honor. He thought we were  
15      talking about the event itself, if he intelligently  
16      decided to do that. He knows what he's doing here today.  
17      What discussion, if you recall, were you having with your  
18      lawyer right at the moment?

19      A     Well, it wasn't about me being -- saying that I  
20      intelligently did this, that's not what it was because I  
21      never gave Grant anywhere through the transcript or any  
22      meetings that we had that I intended to do this. You know  
23      Mr. Boozer, I can tell you what it wasn't, but I don't  
24      remember exactly what it was that we talked about. I  
25      mean, I probably need some time to think about that, but I

1 know it wasn't what he said it was, that I intelligently  
2 decided to do it.

3 Q This is your opportunity to tell the Court that.

4 A Okay.

5 THE WITNESS: Just give me a second here, Your Honor,  
6 please.

7 (Pause.)

8 THE WITNESS: I'm back. I think it was something  
9 about when he said intelligently made -- when the Judge  
10 asked me if it was intelligently, I said, No, it's not  
11 intelligently. I didn't mean to do this. I believe  
12 that's exactly what I said. It was nothing about the  
13 event itself.

14 BY MR. BOOZER:

15 Q What was your state of -- what was your demeanor like  
16 at the plea, if you recall?

17 A Room was spinning. I was very sad. I know I had her  
18 family behind me. They were in the audience. I was  
19 wondering how come none of my family were notified to be  
20 there to give me some support, but I was never asked by  
21 Mr. Gibbons if I had any family members that would care to  
22 speak on my behalf.

23 Q Well, what was your --

24 A I was just feeling really shameful. I'm sorry, Mr.  
25 Boozer.

1 Q What was your state of mind that day?

2 A Not good.

3 Q Okay.

4 A Not as well as I am today.

5 Q And that's what I was going to ask you, is it  
6 different than how you are today?

7 A Well, today, I feel the effects of medication that I  
8 take now. Then, I was just hopeless. I mean, I was  
9 hopeless and I wanted to die. I mean, I didn't have any  
10 hope. I mean, before we went in that room, Grant told me  
11 about my past convictions, that they would get me life, so  
12 I'm already thinking I am messed up. I'm not -- there's  
13 no way that I can get any help, so I just went ahead and  
14 pled on his advice. And that's why I was in such a bad --  
15 a really messed up state of mind then, that and the  
16 medication, yeah.

17 Q Okay. Mr. Johnican, other than what we've already  
18 talked about, is there anything you have not covered with  
19 regard to your filed allegations?

20 A Mr. Boozer, I think we've gone over everything. As  
21 you stated earlier, we've kind of double dipped. It's  
22 like when I'm taking things in -- I'm taking things in and  
23 throwing things out that was already -- this is what I was  
24 doing while I was back at the prison trying to get my case  
25 together. I think we've covered everything without double

1 dipping.

2 MR. BOOZER: Thank you, Your Honor.

3 THE COURT: Thank you.

4 Cross-examination?

5 MR. GOURLEY: Yes, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. GOURLEY:

8 Q All right. Mr. Johnican, you testified that you met  
9 with Mr. Gibbons three to four times prior to your plea?

10 A Yes.

11 Q Okay. And during those meetings, you never had the  
12 opportunity to review the evidence or anything like that?

13 A No, sir, not as to Rule 5, I never seen it.

14 Q Y'all discuss about any kind of defenses or anything  
15 like that?

16 A No, we didn't.

17 Q All right. Did you give Mr. Gibbons any kind of  
18 leads or witnesses to look into?

19 A He never asked me for any. Otherwise, if he would  
20 have, I would have given him some.

21 Q Okay. But you never specifically told him or advised  
22 him of any witnesses, character witnesses or anything like  
23 that?

24 A Well, as far as my children -- wait a minute, yes, I  
25 did. Yes, I did. I apologize. I told him about Betty

1       Hicks, my wife's sister.

2       Q     Okay.

3       A     She could -- she would have testified -- she would  
4       have told the truth anyway. She would have testified that  
5       I was highly depressed for months.

6       Q     Okay.

7       A     And that would have been one of my witnesses. And my  
8       children.

9       Q     Okay.

10      A     Yeah, I told him that. I didn't even mention the  
11      kids -- I'm sorry, Mr. Gourley, I didn't mention the  
12      children, I just mentioned Betty Hicks.

13      Q     Okay.

14      A     I wasn't sure if I had to go back that far into my  
15      family history.

16      Q     Okay. And your children were present at the plea,  
17      right?

18      A     No, they weren't. They were in the back room. I  
19      didn't even know they were there.

20      Q     You don't recall your children testifying and talking  
21      to the Court during your plea?

22      A     Oh, I remember that, Mr. Gourley. I was not aware of  
23      that until after my plea was accepted and then they came  
24      out -- as you see, the solicitor states, Mr. Johnican has  
25      two of his children here, Samuel Johnican, Jr. and

1 Whitney. They're not out here to hear this, but they're  
2 in the back room. And that's when both of them came up.  
3 Samuel -- Whitney was first -- no, I think Samuel was  
4 first. Samuel was first and -- Samuel, Jr. and then  
5 Whitney, she came and she said some things. I can  
6 remember exactly what she said, I never thought I'd see  
7 you like this and -- I was crying a lot, you know, and --

8 Q Right.

9 A -- I said I'm sorry.

10 Q Okay.

11 MR. GOURLEY: And Your Honor, that starts on Page 22.

12 THE COURT: Yeah.

13 BY MR. GOURLEY:

14 Q Mr. Johnican, there's no disputing -- and I don't  
15 think you're disputing it here today that you did kill  
16 your wife, correct?

17 A Yeah, that's right.

18 Q And I think you told Mr. Gibbons that you killed her  
19 with a wrench?

20 A Yes.

21 Q Okay. And then you fled to Georgia, correct?

22 A Yes.

23 Q Okay. And you were arrested in Georgia, right?

24 A On the side of road, yes.

25 Q What county was that?

1 A That was Morgan County.

2 Q Okay. And at that point, you were taken into  
3 custody, right?

4 A Yes. Yes.

5 Q And you confessed to the crime, correct?

6 A Yes.

7 Q Okay. I just want to be clear on that. So what are  
8 you disputing here today, that you were mentally  
9 incompetent at the time --

10 A Mentally incompetent -- oh, I'm sorry, I'm sorry, Mr.  
11 Gourley.

12 Q That's okay.

13 A Uh-huh.

14 Q Go ahead.

15 A That I'm mentally incompetent, that the plea was  
16 taken without me knowing what was in the prosecutor's  
17 possession.

18 Q Okay.

19 A I didn't know what the prosecution had.

20 Q Okay. But again, you're not disputing that you did  
21 kill your wife?

22 A Yes, uh-huh, yes.

23 Q Okay. You recall the Judge going over your  
24 Constitutional rights during your plea?

25 A Not really, but it's in the transcript.

1 Q Okay. You're not disputing that you acknowledged to  
2 the Judge that you understood your Constitutional rights,  
3 are you, if it's in the transcript?

4 A It might be in the transcript that I say it, yeah.

5 Q Okay. Do you recall telling the Judge that you were  
6 satisfied with Mr. Gibbons's service?

7 A Uh-huh.

8 Q Okay.

9 THE COURT: That's a yes?

10 THE WITNESS: Yes. I'm sorry, Your Honor. Yes.

11 BY MR. GOURLEY:

12 Q And you weren't satisfied with Mr. Gibbons's  
13 services?

14 A I wasn't satisfied until afterwards, I mean -- well,  
15 let me go back a little bit, Mr. Gourley.

16 Q Okay.

17 A I asked for an independent examination. I did not  
18 get that. The Judge did not -- and this is one of my  
19 amendments. I don't know exactly where it is, but it's in  
20 my amendments somewhere, it might be in my folder over  
21 there, that the Judge asked me was I satisfied and I said,  
22 Yes. He said, Do you feel -- I think he said, Do you feel  
23 -- I don't know what page that's on. Hold on a minute.

24 Q It starts on Page 9.

25 A Starts on Page 9?

1 Q Yes, sir.

2 A Page 9.

3 Q Line 21.

4 A Okay. He says on Line 1 on Page 10, Mr. Gibbons has  
5 had -- he's asking me if I think he's had enough time to  
6 meet with me, enough time to research the law, enough time  
7 to investigate facts --

8 THE COURT: You've got to slow down for the court  
9 reporter.

10 THE WITNESS: I'm sorry, Judge. I apologize.

11 I'll start over. Mr. Gibbons -- this is the Judge  
12 asking me, Mr. Gibbons -- he asked me do I believe  
13 Mr. Gibbons had enough to meet with me and research the  
14 law, and I said, Yes. And he asked me was there anything  
15 that I wanted him to do today, and I said, No.

16 What I had amended was he never asked me was there  
17 anything that he did not do. And if he would have asked  
18 me that, I would have said yes, you know, I don't have no  
19 witnesses here. I do not have my -- okay, wait a minute.  
20 I'm loosing my train of thought here. That I wanted an  
21 independent evaluation.

22 BY MR. GOURLEY:

23 Q Okay.

24 A Because when he said -- when I went in that courtroom  
25 -- we already discussed what happened before I went in the

1 courtroom. He said, you know, you've got no defense.

2 Q Okay. And to be clear, you were evaluated prior to  
3 your guilty plea, right?

4 A Yes.

5 Q You were found competent?

6 A Yes.

7 Q And at that point in time, you wanted a second  
8 evaluation, correct?

9 A Yes.

10 Q And that's what you feel like Mr. Gibbons was  
11 ineffective for failing to get that second evaluation  
12 done?

13 A Yes, because I asked for it and I had the money to  
14 pay for it.

15 Q Okay. Now, you also are testifying that Mr. Gibbons  
16 essentially advised you that were going to be facing a  
17 mandatory life without parole sentence due to your prior  
18 convictions?

19 A Yes.

20 Q Okay. Do you recall telling the Judge that no one  
21 was promising you or threatening you in order to get you  
22 to plea?

23 A And you know, Mr. Gourley, I did look at that, but I  
24 knew -- it's like this, there were facts. I look at that  
25 as a fact because the fact is I did have those prior

1 convictions.

2 Q Okay.

3 A So when he said threatening or anything, I said, no,  
4 but I was going by the facts.

5 Q Okay. Do you recall the Judge advising you of the  
6 one strike, two strike law?

7 A He did ask me that. I remember that, yeah. And to  
8 my knowledge, I thought we was just going to overlook  
9 those convictions. That's the only reason I went in that  
10 courtroom --

11 Q Okay.

12 A -- because of those convictions.

13 Q Okay.

14 A I mean, that's the only reason why I pled because of  
15 those prior convictions because I know they were on my  
16 record.

17 Q I got you.

18 A And they happened in California, of course.

19 MR. GOURLEY: Beg the Court's indulgence.

20 THE COURT: Okay.

21 BY MR. GOURLEY:

22 Q And I believe you testified earlier under oath that  
23 you accepted the plea for fear of facing a life sentence,  
24 right?

25 A Yes.

1 Q Okay.

2 A Because I was told I had no hope.

3 Q Okay.

4 THE DEFENSE: Judge, that's all I've got.

5 THE COURT: Thank you so much.

6 Redirect?

7 MR. BOOZER: No redirect, Your Honor.

8 THE COURT: All right. You can go back to your table  
9 with Mr. Boozer.

10 All right. Additional witnesses?

11 MR. BOOZER: Beg the Court's indulgence, Your Honor.

12 THE COURT: Yes, sir.

13 MR. BOOZER: No further witnesses, Your Honor.

14 THE COURT: Thank you, Mr. Boozer.

15 All right. Yes, sir.

16 MR. GOURLEY: Your Honor, I call Mr. Gibbons.

17 THE COURT: All right.

18 THEREUPON,

19 GRANT GIBBONS,

20 After having been duly sworn, testified as follows:

21 THE CLERK: Please have a seat in the witness box.

22 State your full name for the Court and spell your last.

23 THE WITNESS: My name is D. Grant Gibbons, last name  
24 is G-i-b-b-o-n-s.

25 THE COURT: Your witness.

1 MR. GOURLEY: Thank you, Judge.

2 DIRECT EXAMINATION

3 BY MR. GOURLEY:

4 Q Mr. Gibbons, how many times did you meet with  
5 Mr. Johnican prior to his plea approximately?

6 A I see, at least, four and my investigator I think met  
7 with him either once or twice.

8 Q Okay.

9 A In addition to that.

10 Q And did you have an opportunity to read the discovery  
11 materials with Mr. Johnican?

12 A We talked about what they had. We went over what the  
13 report contained. I told him I didn't want to give him a  
14 copy of it to have in the jail for other people to see,  
15 but we did go over the allegations, the fact that they  
16 found him in Georgia with what appeared to be his wife's  
17 blood and some other matter on him. He gave a video --  
18 basically, a video confession on tape soon after his  
19 arrest.

20 Q Okay.

21 A And during our first meeting, I also went over  
22 murder, what it carried, what the elements were and the  
23 other possible charges, any possible defenses, which at  
24 that time, I didn't see any defenses jumping out at me.

25 Q Did you specifically go over the malice element of

1 murder with Mr. Johnican?

2 A I did.

3 Q Did he seem to understand that?

4 A It -- I thought he understood. He was kind of like  
5 he is here today, he jumps around a little bit when we're  
6 talking. I thought he understood it.

7 Q Okay. And, obviously, Mr. Johnican was mentally  
8 evaluated?

9 A He was.

10 Q And he was found competent to stand trial?

11 A Uh-huh. He was taken -- he was sent there to Just  
12 Care by the detention center. And while he was there, I  
13 contacted the Court and we submitted an order for a mental  
14 evaluation to take care of that while he was up there.

15 Q Okay. Did Mr. Johnican ever request a second  
16 evaluation?

17 A Not to my recollection.

18 Q Is it your typical practice to get a second  
19 evaluation?

20 A If my client demands it and if I see any reason or  
21 anything that I find problems with in the State  
22 evaluation.

23 Q Did you see any problems or anything in the State  
24 evaluation in this case?

25 A I saw that he was depressed, which anybody in that

1 situation would have been depressed. He had some anxiety,  
2 which I think is a personality kind of situation. I  
3 didn't see anything further than that.

4 Q Okay. We talked briefly about defenses. Were there  
5 any defenses in this case in your opinion?

6 A I couldn't see anything from the actual report. I  
7 spoke with him and asked him if there were any possible  
8 witnesses, and he said, Well, they'll all be on the other  
9 side. What do you mean? Well, they would be my wife's  
10 family and they're the ones that have my children now.  
11 And he was --

12 He did give me a name of one of his relatives. He  
13 was concerned about dragging them through an embarrassing  
14 situation for the family. He was concerned about that.  
15 He was concerned about his children all the way through.  
16 And I asked him if any -- what he thought they would say  
17 and he said, Well, I'm sure they're staying with my wife's  
18 family. I'm sure they hate me. So I didn't take any  
19 steps to talk to them since they were so young.

20 Q Okay. Let's just start with the allegations that  
21 he's listed. Did you -- there was a motion for  
22 reconsideration filed, correct?

23 A Right.

24 Q And after the motion for reconsideration was denied,  
25 did you file an appeal?

1 A I did.

2 Q Okay. And that -- sorry.

3 A He pled guilty and during the plea, as he said, he  
4 got very emotional towards the end of it when his children  
5 were in the room. He was inconsolable. I mean, I hardly  
6 could communicate with him. We had like a one-day term of  
7 court, so just out of precaution, I filed a motion to  
8 reconsider with the Court, which was heard sometime later.

9 Q Okay.

10 A And during that time, the appeal time was not ready  
11 to start running until there was a final judgment in the  
12 case. So I didn't file an appeal until after the  
13 reconsideration was heard.

14 Q Okay. He's also alleged that you failed to attempt  
15 to negotiate on his behalf. Do you recall any kind of  
16 negotiations with the solicitor's office?

17 A I did have several meetings with the solicitor's  
18 office on this case. It -- the facts were overwhelming.  
19 It was a terrible crime scene. It was a terrible  
20 situation. They had indicated to me that they were not  
21 going to make any offers. They told me that if we did not  
22 enter the plea on the day that we did that during the  
23 August term of court, they would be trying the case, which  
24 was a couple months later. They mentioned his prior  
25 record. And they said they could file a life notice on

1 the case, which I relayed to him, and that's where that  
2 conversation came in. But we were not up for trial that  
3 day. We were there for a plea because the trial would  
4 have been in August if we hadn't gone through with it.

5 Q Okay. And regarding the LWOP, did you do any kind of  
6 research on the charges to determine whether or not they  
7 would count as strikes in South Carolina?

8 A Well, that was the first they had told me about it.  
9 I asked him if he had a trafficking conviction and he said  
10 he did. And I asked him some facts about the burglary  
11 conviction. I couldn't tell right away whether or not  
12 that would fall under a serious strike in South Carolina  
13 or not, but it very likely could have.

14 Q Okay.

15 A The trafficking charge, if you apply our law, would  
16 -- in my opinion would have been a strike.

17 Q Okay. But at that point in time prior to his plea or  
18 up to his plea, they had not noticed him for LWOP?

19 A They had not.

20 Q And did you explain that to him?

21 A I did.

22 Q What in your opinion was the driving factor in  
23 Mr. Johnican pleading guilty?

24 A Well, forensically, we couldn't -- I couldn't see a  
25 defense. It was going to be a traumatic trial for the

1 children, for the family involved, and for Mr. Johnican.  
2 I was concerned about how he would perform on the witness  
3 stand because he does kind of run and ramble and jump  
4 around quite a bit. And I didn't see good things  
5 happening if we had a trial.

6 Q Okay.

7 A And I explained that to him. And I explained to him  
8 that I thought the Judge would give him some kind of  
9 benefit if he stood up and apologized and pled guilty.

10 Q Right.

11 A And I was wrong.

12 Q Did you advise him that the Judge could give him 30  
13 to life?

14 A I gave him exactly what the Judge had as his options.  
15 It was a window.

16 Q Okay. Mr. Johnican also alleged that you failed to  
17 investigate this case. Can you just touch briefly on what  
18 you did as far as investigation?

19 A Well, I reviewed the evidence, I reviewed the video.  
20 I had my investigator go through the file and see if he  
21 saw anything from his law enforcement experience. There  
22 wasn't a whole lot there, but what was there was all bad.

23 He couldn't -- I asked him if there were any other  
24 witnesses that could shed any light on any situation, he  
25 said there were none. I asked him what caused this thing,

1       he couldn't give me a definite reason why this happened  
2       other than there was a lot of stress at home because he  
3       was out of work and he had missed taking his wife to a job  
4       interview. And that was as far as he could go.

5       Q     Okay. Were you preparing to take this case to trial?

6       A     As I said, it wasn't set for trial that week. It was  
7       going to be tried if it was going to be tried in August.  
8       I would have had no problem being ready for trial by  
9       August. I had been through the file and reviewed  
10      everything prior to that date already.

11      Q     Okay. Did you think to pursue any kind of insanity  
12      defense or anything like that?

13      A     Well, when I got back the evaluation report, I didn't  
14      see anything other than personality issues and depression,  
15      which neither of those, I felt, would be a viable mental  
16      health defense. I had no indication other than his  
17      anxiety --

18      Q     Uh-huh.

19      A     -- from our talks back and forth that there was any  
20      underlying problem that would rise to the level of being a  
21      defense.

22      Q     Okay. So based off of your interactions, you didn't  
23      feel he was suffering from any kind of psychotic or mental  
24      disorders?

25      A     He never mentioned to me anything about a head

1       injury, never mentioned anything to me about  
2       hallucinations, nothing like that.

3       Q     No family member has ever approached you to discuss  
4       his mental health history or anything like that?

5       A     I had no indication there was any mental health to  
6       discuss.

7       Q     Did you feel Mr. Johnican was entering his plea  
8       freely and voluntarily?

9       A     Yes.

10      Q     And I believe you touched on this earlier, but you  
11     did have the opportunity to review the discovery with  
12     Mr. Johnican, you just did not provide him a copy of it?

13      A     Right.

14      Q     Okay.

15      A     And I think we had some discussions about photographs  
16     and we talked about whether he even wanted to see them and  
17     he was real -- he got real upset at that point. So I  
18     don't know that I showed him all the photographs. I had  
19     them. I told him what was in them. I told him they were  
20     bad, but he really didn't want to see all of that.

21      Q     Okay. And again, he wasn't disputing that he did  
22     kill his wife?

23      A     No, he never did dispute he did kill his wife. He  
24     couldn't tell me what the one event was that triggered the  
25     offense. He kept telling -- starting from his video

1 confession, he would say he hit her several times. He  
2 wouldn't say what with, he wouldn't say how exactly it  
3 went down. And I had a conversation with him just before  
4 the plea and I said, Look, the Judge may ask you some  
5 details about this event --

6 Q Uh-huh.

7 A -- and, you know, we're trying to assure the Judge  
8 that you're being forthright and you're telling him  
9 everything you know. He may ask you what the instrument  
10 was and I think that if we're going to get any leniency or  
11 mercy, you better be prepared to tell him what it was and  
12 that's the first time he had told me what it was.

13 Q Okay. So in your experience, accepting the guilt and  
14 relaying all the facts to the plea judge is sometimes  
15 beneficial?

16 A Yeah, when it's all you've got, that's what you do.

17 Q Okay. Mr. Johnican has also alleged that you were  
18 ineffective for failing to get the blood found on his face  
19 analyzed. Is there any particular reason or would you  
20 have felt it beneficial to get the blood on his face  
21 analyzed?

22 A Well, based on what he told me, there was not really  
23 any question it was going to be his wife's blood.

24 Q Uh-huh.

25 A And I think it was waiting at SLED and by the August

1       date, they were going to have it ready. And there was no  
2       reason to doubt it was going to be her blood. Had I had  
3       any indication when it did come back, then I certainly  
4       would have gotten it tested, but I had no reason to doubt  
5       it based on what he told me and what I saw.

6       Q     Did y'all have any discussion about a manslaughter  
7       charge?

8       A     When we first met, I told him what the different  
9       levels of homicide were, murder, voluntary manslaughter,  
10      involuntary manslaughter and I told him what they carried  
11      and what the elements were. And I did -- I said I didn't  
12      see anything that would fit based on what I knew then  
13      except the murder charge.

14      Q     And why in your opinion would voluntary manslaughter  
15      not be applicable in this case?

16      A     Well, like I said, there was no provocation that I  
17      saw. There was no event that led up to it. There was no  
18      huge argument. There was no -- you know, he could not  
19      provide me with any reason other than an ongoing feeling  
20      of low self worth and his wife telling him he wasn't doing  
21      what he was supposed to be doing.

22      Q     Okay. Did you ever show him the indictment or  
23      anything like that?

24      A     I don't think I saw -- I don't think I saw the  
25      indictment until the plea.

1 Q Okay.

2 A I'm not sure exactly when it went to the grand jury.  
3 They usually don't give us those. Being that we weren't  
4 going to try it until August --

5 Q Right.

6 A -- I wouldn't have gotten it ahead of time.

7 Q But no question he was charged with murder?

8 A Yes, sir.

9 Q Okay. And he was aware of that prior to his plea?

10 A From the day we met, he knew he was charged with  
11 murder.

12 Q Okay.

13 MR. GOURLEY: Beg the Court's indulgence, Your Honor.

14 THE COURT: Okay.

15 BY MR. GOURLEY:

16 Q Mr. Johnican also pointed out that you characterized  
17 his crime as a horrendous crime, is there any particular  
18 reason why you would use that term?

19 A Well, other than it fit.

20 Q Yeah.

21 A I wanted to show the Judge that he knew how bad the  
22 situation was and he knew it was a terrible thing to do  
23 and he was sorry. I was just trying to be forthright.  
24 And the Judge was going to see how bad it was anyway.

25 Q Right. So it kind of fits along your lines of

1 mitigation of accepting the full responsibility and kind  
2 of owning up to what he's done?

3 A Correct.

4 Q Okay. To the best of your recollection, how was  
5 Mr. Johnican acting during his plea?

6 A He was very nervous, but he was -- he was there and  
7 he was acting fine all the way through the plea. When his  
8 children came in, which I believe was after the plea was  
9 accepted, he started sobbing and it got worse and worse as  
10 it went on. The Judge allowed him to hug his children.  
11 It got even worse at that point, but prior to his children  
12 coming in, he was fine.

13 Q Okay. So there was never a question that he was in  
14 some kind of fog or just kind of going through the motions  
15 during the plea?

16 A Not that I could see.

17 Q Okay. Did you ever tell him how to answer certain  
18 questions?

19 A There was a point where the Judge was asking about  
20 his freely and voluntarily entering the plea and he got my  
21 attention and asked to talk to me and we kind of stood  
22 back a little bit. He thought the Judge was asking if he  
23 freely and voluntarily killed his wife.

24 Q Uh-huh.

25 A And he did not want to say that. And I told him no,

1       that's not what he's asking you. He's asking you right  
2       now what you're doing pleading guilty. And that's what we  
3       cleared up and the Judge continued on.

4       Q     Okay.

5             MR. GOURLEY: Beg the Court's indulgence, Your Honor.

6             THE COURT: Okay.

7       BY MR. GOURLEY:

8       Q     Did Mr. Johnican ever give you any kind of witnesses  
9       or character witnesses to look into?

10      A     He didn't give me any character witnesses. He  
11      mentioned, I believe, his sister to me one time.

12      Q     Okay.

13      A     And then he gave me the names of his in-laws. Those  
14      are the only names I ever got.

15             MR. GOURLEY: Thank you, Mr. Gibbons.

16             Thank you, Judge.

17             THE COURT: All right. Cross-examination?

18             MR. BOOZER: Thank you, Your Honor.

19             THE COURT: I tell you what, let's take about a  
20      15-minute break.

21                     (Whereupon, a short recess was held.)

22             THE COURT: All right. Thank you.

23             Now, cross-examination.

24                             CROSS-EXAMINATION

25       BY MR. BOOZER:

1 Q Mr. Gibbons, how are you doing?

2 A Good, how are you?

3 Q I'm doing fine. Thank you. Going back to this, it's  
4 my understanding from the record that an evaluation was  
5 ordered to be conducted by Judge Early?

6 A Right.

7 Q Did -- what discussion did you have with Mr. Johnican  
8 either prior to or after the examination?

9 A I did --

10 Q About the examination?

11 A About getting the examination?

12 Q Correct.

13 A I think that it was pretty much Judge Early's  
14 directive when he found out he was at Just Care. He  
15 wanted to get him evaluated while he was there. When the  
16 evaluation came back, I did go over it with Mr. Johnican.  
17 I did go over the malingering information and we talked  
18 about that. And we moved on, didn't really stay on that a  
19 whole lot. He said he was doing better now that he had  
20 been up there and gotten some medicine.

21 Q Was there ever a formal hearing set to determine if  
22 he was competent to stand trial?

23 A Apart from the plea hearing?

24 Q Correct.

25 A No.

1 Q In observing Mr. Johnican today, is he any different  
2 today than he was at the plea, his demeanor and mannerisms  
3 and actions?

4 A He is a little calmer than he was then and a little  
5 more linear when he's talking. Other than that, he's  
6 about the same.

7 Q Was he fairly upset at the plea?

8 A As I said, he was -- he was fine. He was calm. He  
9 was acting just great up until the point his children came  
10 in the room.

11 Q I think you testified earlier you met, maybe, four  
12 times or so with the applicant. During those meetings,  
13 what was his demeanor?

14 A He was very anxious. I had to keep bringing him back  
15 on track on what we were talking about. He kept saying he  
16 didn't deserve pity. He didn't deserve to be alive. You  
17 know, that kind of thing. But we were able to get through  
18 anything we had to talk about.

19 Q At the plea, do you recall the Judge asking whether  
20 he was taking any sort of prescription medications or  
21 anything to that effect?

22 A Other than looking at the transcript and knowing  
23 Judge Early does that, I don't specifically recall that.

24 Q Were you aware that he was taking some medications at  
25 Barnwell County?

1       A     I knew that when he was at Just Care, they had given  
2       him something for depression, but that was the extent of  
3       anything I knew about.

4       Q     Did you have any discussion with Mr. Johnican about  
5       that?

6       A     Just in passing, he said they had given him some  
7       depression medicine, that he was feeling better.

8       Q     Did Mr. Johnican ever tell you that he actually  
9       wanted a trial?

10      A     Not in so many words. He was what if I want a trial?  
11      Why should we take it to trial? What if I did ask for a  
12      trial? What would happen if I had a trial? I don't  
13      recall him saying that I demand a trial or anything like  
14      that.

15      Q     Did you have any real expectation at the plea that he  
16      would receive a life sentence?

17      A     No.

18      Q     What was your expectation?

19      A     I had recently done some murder pleas in front of  
20      Judge Early that were pretty serious crimes and they -- I  
21      think one of them had gotten a 35-year sentence for an  
22      armed robbery/murder at a convenience store, another  
23      domestic-related received a 35, so I thought somewhere in  
24      that range would be what he would get. I was hoping for  
25      30.

1 Q Were you giving those sort of examples to  
2 Mr. Johnican prior to the plea?

3 A I don't do that because I don't want -- I told him it  
4 was between 30 and life. And I felt like if he went to  
5 trial, given the facts and everything involved that it  
6 would almost certainly be a life sentence. And we were  
7 hoping for 30.

8 Q What do you think his understanding going into the  
9 plea that day was as far as the sentencing, what kind of  
10 sentence he would receive?

11 A I think we both felt like he was going to receive  
12 something less than life. I don't know either of us knew  
13 exactly what that number would be. I had never seen the  
14 Judge, other than a death penalty case, give a life  
15 sentence on a plea.

16 Q What discussion did you have about -- with  
17 Mr. Johnican about if he did proceed to trial and he were  
18 found guilty what he would possibly -- what would he  
19 receive?

20 A I told him it would likely be a life sentence given  
21 the facts of the case.

22 Q Would it also be given that he had the two priors?

23 A You know, we talked about that, but that didn't  
24 really come up until the day -- like the day of the plea  
25 when the State said well, you know if we do this in

1 August, we will probably be filing a notice to seek a life  
2 sentence. At that point, we did discuss it. But before  
3 that, it had never really been talked about.

4 MR. BOOZER: Beg the Court's indulgence, Your Honor.

5 THE COURT: Okay.

6 BY MR. BOOZER:

7 Q Mr. Gibbons, looking through the transcript, on Page  
8 28 at the top on Line -- do you have a copy of the  
9 transcript?

10 A Somewhere.

11 Q And I'm happy to read to you what it says.

12 A I've got it here. What page?

13 Q Looking at Page 28 and then, basically, Lines 1  
14 through 3.

15 A Okay.

16 Q And it says, He's very sorry about what happened,  
17 Your Honor, and he wants to get help while he's in prison.  
18 He wants to get counseling. He wants to figure it out  
19 himself. Do you recall what you may have meant at that  
20 time, he wants to get help while he's in prison?

21 A Well, he was very upset, he was very emotional. He  
22 himself said -- you know, he couldn't give me an exact  
23 trigger for what spawned this thing. It was out of  
24 character for his past that I could see. It was out of  
25 character for his personality as I could see. And so I

1 was trying to tell the Judge that this wouldn't happen  
2 again, that he wants to figure out what the deal is, what  
3 made this happen and so forth. Because at that time, he  
4 couldn't give a good reason why it got so bad all of  
5 sudden like that.

6 MR. BOOZER: Beg the Court's indulgence, Your Honor.

7 THE COURT: Okay.

8 (Counsel confers with applicant.)

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

10 Thank you, Mr. Gibbons.

11 THE WITNESS: Thank you.

12 THE COURT: All right. Redirect?

13 MR. GOURLEY: No questions, Your Honor.

14 THE COURT: All right. I have just a couple.

15 EXAMINATION

16 BY THE COURT:

17 Q Mr. Gibbons, you said that the applicant had  
18 mentioned his sister and his in-laws to you as potential  
19 witnesses?

20 A Right.

21 Q Did you speak with them?

22 A I was going to talk to the in-laws and then he told  
23 me that they would be mad at him and he didn't want me to  
24 bring them into that.

25 Q And how about his sister?

1       A     He told me about sister. He gave me a phone number.  
2       And then again, he didn't want me to drag anybody else  
3       into it. He didn't want to embarrass his family, so I  
4       didn't go a whole further on that.

5       Q     Got you. In terms of any other mitigation evidence,  
6       what, if any, other mitigation evidence did you  
7       consider -- did you provide for the Court?

8       A     I provided for the Court that he was a loving father,  
9       his children loved him, that he had been a good provider  
10      at one point in time, that he didn't have anything in his  
11      record that would indicate he would do something like  
12      this, this was just an abolition, that once he got this  
13      straightened away, I didn't think he would a problem  
14      anymore is where I was going with the whole thing.

15      Q     Yeah. And so you were talking about the children  
16      being a mitigating factor, they certainly were warm and  
17      loving to their father?

18      A     They were. They came in and hugged him and he hugged  
19      them and it was very emotional. And the Judge gave him a  
20      few minutes to have contact with them. I thought  
21      everything was going in our favor up until the Judge gave  
22      his ruling.

23      Q     Yeah. And then also I noticed that he actually --  
24      also himself and apologized.

25      A     Correct.

1 Q And I just -- this is my reflective listening.

2 A Okay.

3 Q It seems to me that the strategy was to -- given  
4 everything that you've talked about already, the strategy  
5 of the trial was to plead?

6 A Correct.

7 Q To put up a case of mitigation?

8 A Correct.

9 Q And to accept responsibility?

10 A That's correct, Your Honor.

11 Q And to -- by doing so, hope that the Court would  
12 impose a sentence of less than life?

13 A That was our goal, Your Honor.

14 Q And as I understand what you're saying, given the --  
15 given the confession that was videotaped?

16 A Right.

17 Q And given the other evidence, based on your  
18 assessment of this case, there was going to be no defense  
19 that was going to be available to you?

20 A Correct, I didn't see anything.

21 Q The only one that might have worked would have been  
22 insanity, but it went nowhere?

23 A I saw nothing when I got that report back that would  
24 give us a loophole.

25 Q And based on your -- again, based on your contact as

1 well as your investigator's contact, there was nothing  
2 that indicated that for you as well?

3 A That's correct.

4 Q And -- and as I understand it, what you're telling  
5 me, it was your belief that if you were to go trial -- and  
6 I have not seen any photographs.

7 A Right.

8 Q But I've read enough that these photographs must have  
9 been --

10 A Pretty gruesome.

11 Q I was going to say, you know, in any murder case, the  
12 photographs are very sad and heart wrenching, but I gather  
13 that these were worse than most to put it very bluntly?

14 A They were and the fact that it was a family member  
15 that did it made it even more heart -- I thought it would  
16 be worse for the jury to try to get through.

17 Q I understand. And so based on all of those  
18 considerations, when you came back to the -- back to your  
19 strategy, the strategy was to take responsibility, to have  
20 the mitigation, put that up and then through accepting  
21 responsibility and having the client plea as he did --

22 A That's right.

23 Q -- that the hope was it would be something less than  
24 life?

25 A That's right, Your Honor. And the solicitor, if I

1 recall correctly, wasn't going to -- if we went ahead and  
2 did the plea, he wasn't going to request life. He wasn't  
3 going to request anything. He was going to leave it up to  
4 the Judge.

5 Q And that was part of your conversations with him?

6 A Yes, ma'am.

7 Q And I didn't see in here where he did that.

8 A He didn't, he just gave the facts.

9 Q Okay. All right. And, of course, the victim's  
10 family were certainly entitled to talk, to speak --

11 A Correct.

12 Q -- as they did.

13 THE COURT: Any questions from anyone?

14 MR. GOURLEY: No, Your Honor.

15 MR. BOOZER: No, Your Honor.

16 THE COURT: Very well.

17 Thank you, sir.

18 THE WITNESS: Thank you, Judge.

19 MR. BOOZER: The State has no additional witnesses,  
20 Your Honor.

21 THE COURT: Very well.

22 Any reply?

23 MR. GOURLEY: No reply, Your Honor.

24 THE COURT: All right. Well, you all will have to  
25 leave it with me. I'm going to review these matters. I

1 will let you know my decision.

2 Anything further on behalf the applicant, Mr. Boozer?

3 MR. BOOZER: Nothing further, Your Honor.

4 THE COURT: Okay.

5 MR. GOURLEY: Nothing further, Your Honor.

6 THE COURT: Okay. Very well. Thank you all so very  
7 much.

8 \*\*\*\*\*END OF PROCEEDINGS\*\*\*\*\*  
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA )

COUNTY OF AIKEN )

I, PENNY M. JOHNSON, Official Court Reporter for the  
Second Judicial Circuit of the State of South Carolina, do  
hereby certify that the foregoing is a true, accurate, and  
complete Transcript of Record of the proceedings had and the  
evidence introduced in the trial of the captioned case,  
relative to appeal, in Court of Common Pleas for Barnwell  
County, South Carolina, on the 20th day of January, 2016.

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

June 20, 2016

Penny M. Johnson

Penny M. Johnson Court Reporter

My Commission Expires: 06/16/2018



South Carolina  
Department of  
Mental Health

Division of Inpatient Services  
Forensic Evaluation and Treatment Services  
Building #6  
7901 Farrow Road  
Columbia, South Carolina 29203  
Information: (803) 935-5600  
Fax: (803) 935-5544

April 29, 2010

Lauren Maurice  
Assistant Solicitor  
PO Box 845  
Barnwell, SC 29812

Re: The State of South Carolina vs. Johnnican, Samuel B.  
DMH Case #: 1019-5407  
Barnwell County, Court of General Sessions

Dear Assistant Solicitor Maurice:

In accordance with the court order issued by the Honorable Doyet A. Early, III, a competency to stand trial evaluation was conducted by the South Carolina Department of Mental Health, pursuant to S.C. Code Ann. § 44-23-410 (1976).

Please see the attached report for the results of this evaluation.

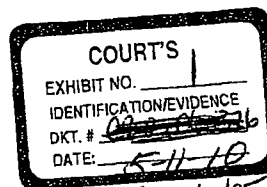
This 10 page document is certified to be the original court-ordered evaluation report issued pursuant to S.C. Code Ann. § 44-23-410 (1976).

4/29/10  
Date

Jeffrey S. Musick, Ph.D., ABPP  
Jeffrey Musick, Ph.D., ABPP  
Chief Psychologist  
Forensic Evaluation Services  
Department of Mental Health

cc: Grant Gibbons, Attorney at Law, PO Box 267, Barnwell, SC 29812

JM/tl



## DMH FORENSIC EVALUATION SERVICE

Type of Report: Competency to Stand Trial

DATES OF EVALUATION: March 8, 2010; March 31, 2010

DMH EXAMINERS: Michael Cross, M.D.  
Carol David, LISW-CP

OPINION OF COMPETENCY TO STAND TRIAL: Yes.

IDENTIFYING INFORMATION: Samuel Johnnican is a 44-year-old African-American male seen pursuant to a court order from the Barnwell County Court of General Sessions. The court order directed an evaluation of the defendant's competency to stand trial. The court order specified a charge of Murder. The order's basis stated "Concerned about competency due to the alleged crime and ongoing suspicious behavior."

Mr. Johnnican was emergently admitted to the DMH forensic inpatient unit on February 5, 2010 on civil commitment papers from the Barnwell County Detention Center and was an inpatient at the time of his evaluations.

STATEMENT OF NONCONFIDENTIALITY: Before each evaluation, Mr. Johnnican easily read information outlining the nature, purpose, and lack of confidentiality for any statements he might make. He displayed rational appreciation for this information. He stated he was willing to answer questions but declined to provide a signature on March 8, 2010. He was willing to his name during the March 31, 2010 evaluation.

DISPOSITION: Mr. Johnnican was a DMH forensic unit inpatient during each evaluation.

## SOURCES OF INFORMATION:

1. Barnwell County General Sessions Court Order
2. Review of his arrest warrant
3. Barnwell County investigative reports, intelligent updates, incident reports, and investigative timelines
4. Review of witness statements

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JOHNICAN, SAMUEL B.

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5. Review of the defendant's NCIC (California [1983 - 1996]), Georgia driver's license, BOLO information, and DMV information
6. Morgan County (Georgia) Sheriff's Department incident, arrest, booking, and property reports
7. Review of a Miranda form dated December 9, 2009
8. Search warrant, property reports, and crime scene logs
9. SLED forensic documents
10. Barnwell County Exemplification form
11. CAD incident report
12. Autopsy report of the decedent, Denise Johnican
13. Barnwell County Detention Center medical, mental health and disciplinary records of the defendant
14. Review of the defendant's Geo Care inpatient hospitalization from February 5, 2010 - April 6, 2010
15. A Psychological Consultation Report dated 3/25/10 authored by Sandra Stader, Ph.D.
16. Discussion with Dr. Stader
17. Forensic psychiatric interviews on March 8, 2010 and March 31, 2010 totaling 3 hours and 45 minutes

PAST SOCIAL HISTORY: Ms. Johnican repeatedly declined to provide contact information for a collateral source of information to psychiatric inpatient staff or to Ms. David so the following relied on the defendant's records and self-reports.

Records indicate he was born in Los Angeles. He has three siblings, one of whom was murdered years ago. He reported to others that he was twice expelled from high school. He stopped attending around or before the 11th grade. He stated he recently completed his high school diploma.

He married twice and has three children, ages 13, 11, and 6. He worked for many years as a truck driver, doing local deliveries. He was laid off about two years ago. He reported being on unemployment insurance, which ran out several months before his arrest. His wife and he recently moved from California to South Carolina. His NCIC noted arrests in California from 1983-96.

PAST PSYCHIATRIC HISTORY: Mr. Johnican denied past inpatient or outpatient psychiatric treatment before his arrest on 12/8/09. He was never a client of the Department of Mental Health and no records have been produced to indicate a prior psychiatric history.

*John*

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He evidently requested mental health services at the Barnwell County Detention Center after his arrest and was seen about 10 days after his arrest. He complained about anxiety, depression, and problems sleeping but denied feeling suicidal at the time. There was no evidence of psychotic thinking. Staff gave him psychiatric medications for his reported symptoms. On 01/09/10 at about 7:15 A.M., an officer alleged that the defendant was found standing on a toilet in his cell and appeared to be "poking" his toothbrush handle around the cell window. The records indicate that a hole was present around the window. An incident report states that later that day, at approximately 8:48 P.M., officers found a knotted sheet in his cell's air vent grating. Mr. Johnican explained to officers that he put the sheet there because he was trying to stop the cold air flow. Days later, he started to tell mental health that he was feeling overwhelmed over his legal charge. On 01/26/10, the defendant reported to an officer that he felt suicidal and officers found that he had ripped a blanket into four two-foot strips. He was placed on suicide watch. Three days later, the defendant allegedly told an officer "that he feels that he can not due [sic] jail time; he is not capable to serve time." Over the next few days, he allegedly made veiled threats, such as violence to officers should an escape opportunity arise. Records reflect simultaneous concerns that he was a suicide and escape risk. His behaviors appeared to escalate. For example, records state that on 01/30/10, he tried to rip his suicide blanket and he started to hit his head against a wall after it was taken away. He was admitted to DMH forensic inpatient unit on February 5, 2010.

**CURRENT PSYCHIATRY HOSPITALIZATION:** During his admission assessment, records indicate he was calm, "occasionally tearful," and that he perseverated on his charge. The record notes he was "fairly cooperative but evasive sometimes?" He apparently told the admitting psychiatrist that he was not suicidal at that time but had earlier told the admitting nurse he was. His admission diagnosis was Adjustment Disorder with depressed mood versus Major Depression Disorder. An antidepressant was given.

Mr. Johnican would not provide outside contact information for staff to contact his family or people who might know him.

Records indicate his clinical presentation and self-reports were "inconsistent and evasive at times and overly dramatic at other times"

*JSM*

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during the hospitalization. Objective signs of major depression were often absent. For example, while he endorsed a severely depressed mood and started endorsing suicidal ideation to staff, staff observed him consistently socializing, laughing, and playing games with peers without clear outward signs of depression. Records indicate normal sleeping and eating patterns. (Appetite and sleeping patterns are often disrupted in clinical depression.)

He endorsed suicidal ideation but denied suicidal planning or intent, factors which would place him in a more restricted level. During the hospitalization, records note he twice fabricated fabric or strings into "nooses," which were so poorly hidden that it suggested they were meant to be discovered. Staff found his first noose on 02/17/10 after it came out from his bed when he sat up to speak. Records note he became "manipulative and attention-seeking" on the evening of 3/7/10, the day prior to his court-ordered forensic psychiatric evaluation for competency to stand trial. Drawing attention to himself led to a room search, where his second "noose" made out of "loose towel thread" was found. Records indicate he evaded explaining either incident.

He was briefly placed on suicide watch which was later lowered to constant observation, where he remained for the rest of his hospitalization. While he continued to report suicidal ideation and little or no improvement in his mood, records note he continued to show little outward signs of depression when observed in the milieu. He continued to watch television, play games and cards with peers, read magazines, etc. His interactions with peers were documented during evening shifts. Records reflect concerns about the authenticity of his suicidal ideation, e.g. "convinced at this point that the patient is exaggerating the severity of his mood and (suicidal ideation) to avoid returning to jail." He was discharged on April 5, 2010 to the Barnwell County Detention Center. The psychiatric discharge diagnoses were: 1) Adjustment Disorder with Depressed Mood; and 2) "Possible Malingering of Suicidal Ideation."

**PAST SUBSTANCE USE HISTORY:** Mr. Johnican denied symptoms of alcohol abuse, withdrawal, or tolerance. He stated he has consumed alcohol periodically up until the time of his arrest. According to his inpatient admission record, he reported his high school expulsion was related to drugs and alcohol and that his wife requested he go to Alcoholics Anonymous. Detention center records indicate he reported consuming alcohol in the community before his recent arrest. The

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available history leads to questions about past alcohol-related impairments. However, a collateral historian was unavailable and he generally denied alcohol problems. As there is a paucity of information to either support or refute the veracity of these claims, it would be premature to offer a DSM-IV-TR substance disorder diagnosis at this time.

He stated he last consumed cannabis in 1996. He denied consumption of other illicit substances such as cocaine, stimulants, opiates, etc. He stated he took controlled prescription medications only if prescribed by a physician. His NCIC record from California notes one cannabis conviction. Two substance-related arrests were dropped or dismissed.

PAST MEDICAL HISTORY: He indicated he had hypertension and high cholesterol.

MENTAL STATUS EXAM: March 8, 2010: Mr. Johnican was awake and alert. He was oriented to person, place, time and situation. His grooming and hygiene were good. He wore appropriate hospital attire. He watched television in the waiting room while he waited for the evaluation to begin. He appeared interested in the program and appeared in no acute distress. There were no movement disorders. When he entered the evaluation room, his facial expressions became dysphoric. His demeanor became somewhat irritable. He read information about the evaluation. He declined to sign his name but agreed to participate. He maintained fair eye contact during the interview.

His thought processes appeared linear, logical, and goal-directed on topics that interested him. For example, he often attempted to steer the conversation topic to his suicidal ideation and the basis for his hospitalization. He volunteered that he wrote and mailed suicide letters to his three children. He provided rich details to these anecdotes. However, he often asserted a lack of knowledge when asked about certain topics. He often proffered ignorance for court-related subjects. He commonly responded with sighs or interjections (e.g. "phew!" "jeez!" "Oh God!") before replying. Many replies lacked direct answers. He registered three objects immediately and claimed he could not recall any of them several minutes later. He named them after given category cues and again denied remembering any of the objects a few minutes later. He had an adequate level of concentration evidenced by spelling *world* forwards and backwards and a serial subtraction test. He was capable of thinking abstractly evidenced by his interpretations of

*Kim*

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proverbs and similarities. He named the current president and could sequentially list the presidents back to Gerald Ford. There were times when he appeared to provide intentionally insufficient information. For example, when queried who the first president was, he replied only: "George." Queried for the last name, he then replied "George Washington." He gave an appropriate solution to a dangerous hypothetical situation.

There was no psychomotor agitation or retardation. His outward emotional appeared more irritable rather than depressed. On a scale of 1 - 10, he rated his mood as a 1 (the worst). He often volunteered that he was suicidal. He evaded answering queries about suicide planning, intention, or the chances of him suicide completion over the following week. He denied homicidal ideas. There was no evidence of a thought content disorder. Queried about hallucinations, he initially replied "Yeah, they documented this the other day." He later described disturbing dream content rather than hallucinations. Before and after the evaluation, he was interested in his surroundings. As noted above, he watched a television program with interest before the evaluation. At the conclusion of the evaluation, he asked, "So what is the result of this?" While in the lobby awaiting transport to the inpatient unit after the evaluation, he flipped through magazines.

March 31, 2010: Mr. Johnican was seen again after his 03/08/10 evaluation and after a psychological testing (discussed below). He claimed his effort was genuine during the prior evaluation but he was nevertheless encouraged to give his best effort on the onset. Information of his court-related knowledge was reviewed. It appeared his general level of effort improved and he answered questions in a more direct manner.

**PSYCHOLOGICAL TESTING:** Given Mr. Johnican's presentation, a psychological consultation was requested. Sandra Stader, PhD gave serial interviews from 3/16/10 - 3/22/10. Testing indicated he put forth adequate effort and "performed satisfactorily on questions assessing immediate and delayed recall, concentration, and hypothetical judgment." A personality inventory indicated a response style suggesting a "cry for help" or an exaggerated negative impression of self. Dr. Stader explained this statement as a desire for support with his current circumstances and stressors rather than a reflection of an unrecognized mental illness. His memory scores indicated scoring results were "not indicative of an attempt to feign competency-related deficits."

*JS*

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## DIAGNOSTIC IMPRESSIONS:

Evidence suggests Mr. Johnican gave a variable level of effort across evaluations and what information he provides. For example, he displayed adequate short-term memory for the inpatient staff and a psychology consultation, but poor memory during his competency to stand trial evaluation. The *DSM-IV-TR* includes in its description of passive-aggressive personality features as "resistance expressed by procrastination, forgetfulness, stubbornness, and intentional insufficiency, especially in response to tasks assigned by authority figures... these individuals may waiver between expressing hostile defiance towards those that they view as causing their problems and attempting to mollify these persons by asking forgiveness or promising to perform better in the future." However, personality disorders are persistent patterns of behavior and inner experience as there is a lack of historical information to either support or refute this proposition, so it would be premature to offer a personality disorder diagnosis at this time.

Records note the severity of his reported depressive symptoms did not appear to match his outward clinical presentation. It is possible that he held some suicidal ideation in the past but records reflect suspicions that he exaggerated the degree of his depressive symptoms and suicidal ideation to obtain a hospital transfer and once hospitalized, to avoid returning to jail. A "Possible Malingering of Suicidal Ideation" diagnosis was noted in his discharge summary. The *DSM-IV-TR* describes Malingering as the intentional production of false or grossly exaggerated physical or psychological symptoms, motivated by external incentives. Malingered symptoms have novel, atypical, implausible, or convenient qualities. The evening before first forensic evaluations for competency to stand trial, he crafted a noose and there were indications he produced or exaggerated memory deficits during the evaluation. However, his level of cooperation improved during his second competency evaluation and with a consulting psychologist to the point where he no longer appeared malingering.

He was diagnosed with Adjustment Disorder with Depressed Mood during his inpatient hospitalization. There appears to be sufficient evidence to warrant this diagnosis.

**OPINION REGARDING COMPETENCY TO STAND TRIAL:** On 03/08/10, Mr. Johnican often gave hesitant and vague answers to questions about his court-related knowledge. He displayed sufficient knowledge of complicated topics but sometimes gave "I don't know" style responses to

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FORENSIC EVALUATION SERVICE

simpler concepts. He often refused to proffer a guess or estimate. He sometimes qualified his questions. For example, he named his charge is murder. He stated murder meant "killing someone by accident?" Queried if it meant with or without intent, he replied "with or without intent, it was never meant to happen." He emphatically denied knowing what the penalty for a murder conviction. After confronted, he replied "I really have no idea. There is first degree murder, second degree murder, manslaughter, I don't know. What could the penalty be?" When pressed to guess, he replied "I don't know, 10 years? I have no reason to lie to you." He was educated about possible life imprisonment. Guilty means "you did it" and not guilty means "you didn't do it." He named his lawyer: "Grant Gibbons." He correctly stated his defense lawyer's role is to "see I get a fair trial." He then added that he would have reservations because "he's working for the state." He emphatically denied knowing (or being able to guess) what a solicitor does, stating "I have no idea what the solicitor does. I don't know much about the law." After being notified that solicitors are in South Carolina what prosecutors or district attorneys are in other states, he stated "No, I don't ever remember" those terms either. He denied ever watching courtroom dramas on television, volunteering "I never watched Law and Order or those types of shows." Queried about judges, he replied "You ask a lot about the judicial system and I already told you I don't know much about the judicial system." Only with repeated questions would he ultimately describe a judge's role. He also gave vague responses when queried about a jury. He was confronted about a lack of effort, after which he replied "they hear the case and determine whether the person is guilty or not guilty." He denied knowing the number of jurors or the concept of unanimous verdicts and was educated. However, he replied there were "eight" or "ten" jurors and "seven" jurors were sufficient for a verdict. He could correctly describe terms like evidence and witnesses. His NCIC notes he was sentenced to probation in 1984 and in 1990 and when queried about probation, he denied knowing the term. Confronted about his past record, he stated "No, I never did probation before." Queried about plea bargaining, he replied "I may have heard of that before...plea to a lesser charge?" He again claimed he did not know what the plea was and instructed that it requires a guilty plea. The defendant was asked to immediately parrot the information back, to which he replied "not guilty." Queried why people take would accept a plea bargain, he replied: "Once again, you're asking me about the law. I don't know about no law questions." When asked about his desired outcome for his case, he replied "I really haven't thought about it. I'm thinking about suicide and my children all the time." While he

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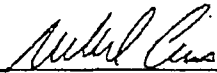
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claimed ignorance of legal matters, he volunteered the term "pro bono lawyer" when giving a personal anecdote.

On 03/31/10, his effort improved when answering questions about his court-related knowledge. He possessed sufficient court-related knowledge and did not appear to be simulating competency-related deficits at that time.

The available evidence does not suggest he lacks the mental capacity to rationally and factually understand the proceedings against him or to assist in his defense, if he so chooses.



Michael Cross, M.D.  
Psychiatric Service Director

MC/khr

D: 03/08/10  
RT/EM: 03/09/10  
F/EM: 04/29/10



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FILED FOR RECORD

STATE OF SOUTH CAROLINA  
COUNTY OF BARNWELL

JAN 22 AM 10:49

IN THE COURT OF GENERAL SESSIONS

Indictment No.(s):

A/Warrant No.(s): K-325067

The State of South Carolina

RHONDA D. McELVEEN  
CLERK OF COURT  
BARNWELL COUNTY, S.C.

Plaintiff

v.

Samual Bruce Jonican

Defendant.

ORDER FOR COMPETENCY TO STAND  
TRIAL EVALUATION PURSUANT TO  
STATE V. BLAIREVALUATION BY:  
(Select Only One)☒ Department of Mental Health (Mental Illness)

OR

☐ Department of Disabilities and Special Needs  
(Mental Retardation or Related Disability)

This matter is before me for an order requiring defendant Samual Bruce Jonican, charged with Murder, to submit to an evaluation for competency to stand trial pursuant to State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981) and S.C. Code Ann. § 44-23-410 (1976).

**BASIS FOR ORDER.** I have considered the showing made in support of the motion requesting this evaluation and have reason to believe defendant may lack the competency to understand the criminal proceedings or to assist with the defense as a result of a lack of mental competence.

This order is issued for the following reasons:

Concerned about competency due to alleged crime and ongoing suspicious behavior.

**THEREFORE, IT IS ORDERED:** Defendant shall be examined and observed at an appropriate facility by two examiners of the Department of Mental Health if suspected of having a mental illness or by two examiners designated by the Department of Disabilities and Special Needs if suspected of having mental retardation or a related disability, to render an opinion whether defendant is competent to stand trial.

**COMPLIANCE DEADLINE/TRANSPORT FOR EVALUATION.** The examining facility shall schedule the ordered examination no later than thirty (30) days from the examining agency's receipt of this order. If defendant is currently free on bond or personal recognizance, defendant is responsible for making transportation arrangements to attend the examination. In the

event defendant does not appear at the scheduled examination, upon written notice of such failure by the examining agency to the Sheriff of the county in which this case arose, defendant shall be taken into custody by the Sheriff and held until an examination can be scheduled and completed, and thereafter shall be released. Defendant's bond or bail is hereby revoked to the extent necessary to carry out the provisions of this order, and upon completion of the examination and release of defendant, any previous bail or bond issued by the Court shall remain in effect. If defendant is in custody at the time of the scheduled examination, the Sheriff is hereby authorized and required to transport defendant to and from the examination, arriving at the examining facility at the time established by confirmed appointment with the staff of the examining facility. In the event defendant is in custody of a law enforcement agency other than a Sheriff's department, nothing herein prevents such agency from carrying out the provisions of this order.

**TRANSFER TO ALTERNATE AGENCY.** If the initial examination is performed by the Department of Mental Health, and examiners find indications of mental retardation or a related disability but not mental illness, the Department of Mental Health shall not render an opinion on mental competency, but shall inform the Court, prosecutor, and defense counsel that defendant is "not mentally ill" and shall provide a copy of such notification and a copy of this order to the Department of Disabilities and Special Needs. Likewise, if the initial examination is performed by the Department of Disabilities and Special Needs, and examiners find indications of mental illness but not mental retardation or a related disability, the Department of Disabilities and Special Needs shall not render an opinion on mental competency, but shall inform the Court, prosecutor, and defense counsel that defendant does "not have mental retardation or a related disability" and shall provide a copy of such notification and this order to the Department of Mental Health.

In either case, the examining agency shall make copies of any records gathered or created in connection with its examination available to examiners designated by the alternate agency, and the alternate agency shall thereafter designate examiners to evaluate defendant as to competency to stand trial within thirty (30) days of receipt of the notification from the initial examining agency.

**FINDING OF DUAL DIAGNOSIS.** If examiners of either the Department of Mental Health or the Department of Disabilities and Special Needs find an indication of a dual diagnosis of mental illness and mental retardation or a related disability, no opinion on defendant's mental competency shall be rendered, and the dual diagnosis must be reported to the Court, prosecutor, and

defense counsel. The examining agency shall also provide notification of the finding and a copy of this order to the other agency. Thereafter, the Department of Mental Health and the Department of Disabilities and Special Needs shall arrange for an examiner from each agency to further evaluate defendant to render a final report on defendant's mental competency. Both agencies are authorized and required to make copies of all relevant records within their possession or control available to examiners for purposes of completing the dual evaluation.

**AUTHORIZATION FOR INPATIENT EVALUATION.** In the event examiners from either agency determine defendant requires an inpatient examination, upon written notice to this Court from the director of the examining agency or his designee, defendant shall be committed to an appropriate facility of the requesting agency for no more than fifteen (15) days for examination and observation related to defendant's mental competency to stand trial.

**REQUEST FOR EXTENSION.** Before the expiration of the examination period or the examination and observation period, the Department of Mental Health or the Department of Disabilities and Special Needs, as appropriate, may apply to a judge designated by the Chief Justice of the South Carolina Supreme Court for an extension of time up to fifteen (15) days to complete the examination or the examination and observation.

**DETENTION BEYOND EVALUATION PERIOD.** If, in the judgment of the designated examiners, defendant is in need of immediate hospitalization or inpatient treatment, upon written request to this Court from the director of the examining facility or his designee, defendant may be detained by the requesting agency in a suitable facility for so long as deemed clinically necessary or until a hearing required and provided by S.C. Code Ann. § 44-23-430 (1976) may be conducted by this Court. An additional Court order **shall** be necessary for ongoing pre-trial inpatient detention of defendant as discussed in this paragraph.

**ISSUANCE AND ADMISSIBILITY OF WRITTEN REPORT.** Within ten (10) days of all examinations or the conclusion of the observation period, a written report shall be made to the Court pursuant to S.C. Code Ann. § 44-23-420 (1976). A copy of the report shall also be forwarded to the prosecutor and defense counsel. This evaluation report shall be admissible as evidence in subsequent hearings pursuant to S.C. Code Ann. § 44-23-420(c) (1976); thus, the report is a statutory exception to the rule against hearsay and shall be admissible without need for foundational testimony. However, the report shall be inadmissible in any other proceedings except as expressly

permitted by South Carolina law.

**OWNERSHIP AND DISCOVERABILITY OF EXAMINING AGENCY FILES.** The examining agency is an independent entity, conducting this evaluation pursuant to Court order, and is not aligned with any party before the Court. To promote full disclosure and to assure the cooperation of defendant during the evaluation process, ownership of the examining agency's files shall be vested with the examining agency, including clinician's notes, staff reports, evaluation documents, memoranda, test results, etc. Neither these files nor any of their contents shall be provided to any party except upon presentation of a Court order authorizing such or a release authorization signed by defendant. In the event the examining agency's evaluation opinion is contested, an examiner may be appropriately and fully questioned as to the basis for the examiner's opinion at any hearing pursuant to S.C. Code Ann. § 44-23-430 (1976). However, examiners and agency staff may not be compelled to testify regarding statements made during the competency examination for any purpose other than to establish competency. Also, statements made during the examination may not be used to impeach defendant at trial. Hudgins v. Moore, 337 S.C. 333, 524 S.E.2d 105 (1999).

**MEDICAL PROVIDERS/SCHOOLS MUST RELEASE NECESSARY RECORDS.** State agency examiners conducting the evaluation may need clinical and school records concerning defendant to assist in forming an opinion. It is therefore ordered, upon presentation by the examining agency of this order with a written request for specific records attached thereto, that any physician or clinician, licensed health care facility, licensed health care provider, or any school district is hereby authorized and required to furnish copies of all records concerning defendant to the Department of Mental Health or the Department of Disabilities and Special Needs, or both.

**COUNSEL REQUIRED TO FURNISH NECESSARY RECORDS.** Upon written request from the examining agency, counsel for the prosecution and defense shall furnish to the agency such records and information in counsel's possession as the agency requests, including but not limited to copies of law enforcement reports, investigations, witness statements, statements by defendant (both written and electronic), defendant's medical records, and prior psychiatric or psychological evaluations of defendant. Nothing herein shall be construed to require counsel to divulge any information, documents, notes, or memoranda that are protected by attorney-client privilege or work-product doctrine.

**DUTIES OF DEFENSE COUNSEL.** Unless the prosecution is the party moving for this

evaluation, defense counsel has the responsibility to file, serve, and transmit this order as outlined in the final paragraph below. Defense counsel does not have the right to attend any clinical interview scheduled pursuant to this Order, nor does defendant have a constitutional right to compel counsel's attendance. State v. Hardy, 283 S.C. 590, 325 S.E.2d 320 (1985). The Court recognizes, however, that circumstances may arise through which the examining agency may request counsel's attendance to facilitate the examination. In the event that such a determination is made, the examining agency may request counsel's attendance in writing, and counsel's level of participation shall be prescribed by the examining agency's written evaluation protocol. In this event, because of the substantial number of individuals awaiting examination, such interviews cannot be rescheduled, postponed, or canceled to accommodate counsel except upon presentation to the examining agency of a written statement from a circuit court judge that counsel's attendance is required in Court at the time the examination is scheduled. Whether or not defense counsel is requested to attend the clinical interview, defense counsel must meet with defendant prior to the interview to discuss this Court order, the evaluation process, the clinical interview, defendant's rights with regard to the clinical interview, and penalties associated with non-appearance and non-cooperation. Failure to comply with these requirements may result in sanctions for defense counsel. Defendant's refusal to participate at the interview because of the absence of counsel will be deemed non-cooperation. Failure of defendant to cooperate or participate in the interview may result in cancellation of the interview, examiners being unable to offer an opinion on competency to stand trial, and the case being called for trial without completion of the evaluation.

**FILING, SERVICE, AND TRANSMITTAL OF ORDER.** It is the responsibility of counsel for the party requesting the evaluation to file and serve this order as outlined herein. In the event the evaluation has been requested by consent, or the moving party cannot be determined, defense counsel shall be responsible. After being signed by the Court, the original order without attachments shall be immediately filed with the Clerk of Court and a certified copy served upon the opposing party. Further, within five (5) business days, a certified copy of this order, together with the attachments listed at the end of this order, must be served upon the examining agency at the address listed below. To expedite commencement of the evaluation process and scheduling of the clinical interview, counsel is instructed to immediately contact the examining agency to advise of the issuance of this order and forthcoming service upon the agency:

### Evaluation Order Service Information

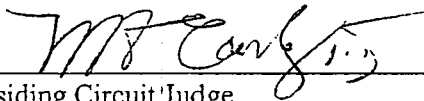
#### Department of Mental Health

Forensic Evaluation Service Paralegal  
S. C. Department of Mental Health  
CBHS Forensic Center  
7901 Farrow Road  
Columbia, S.C. 29203-3220  
(803) 935-5540 (Phone)  
(803) 935-5544 (Fax)  
Email: FES-PARALEGAL@SCDMH.ORG

#### Department of Disabilities and Special Needs

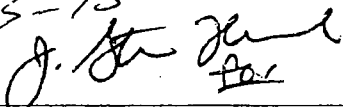
Office of Clinical Services  
Department of Disabilities and Special Needs  
Post Office Box 4706  
Columbia, S.C. 29240  
(803) 898-9694 (Phone)  
(803) 898-9660 (Fax)  
Email: OBSForensics@ddsn.sc.gov

**AND IT IS SO ORDERED.**

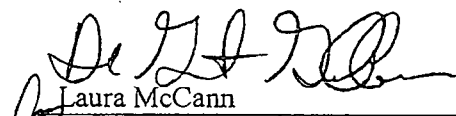
  
\_\_\_\_\_  
Presiding Circuit Judge

The Honorable Doyet A. Early, III  
Printed Name of Presiding Circuit Judge

Barnwell, South Carolina

Dated: 1-13-10  
  
\_\_\_\_\_  
Lauren Maurice

Prosecutor  
Post Office Box 845  
Address  
Barnwell, South Carolina 29812  
City, State, Zip  
803-541-5091  
Telephone  
solmaurl@aikencountysc.gov  
Email

  
\_\_\_\_\_  
Laura McCann  
Defense Counsel  
Post Office Box 267

Address  
Barnwell, South Carolina 29812  
City, State, Zip  
803541-1129  
Telephone  
lmccann@aikenpd.com  
Email

FILED FOR RECORD  
2010 JAN 22 AM 10:50  
RHONDA D. McELYKEE  
CLERK OF COURT  
BARNWELL COUNTY, S.C.

The following documents must be attached to this order upon submission to the Department of Mental Health or to the Department of Disabilities and Special Needs whichever is applicable:

1. Completed DMH/DDSN Outpatient Information Appointment Sheet
2. Copy of the indictment(s) (if issued)
3. Copy of the arresting agency's incident report
4. Copy of the warrant(s)
5. Law enforcement investigative reports
6. Defendant's statements to law enforcement, written or electronically recorded
7. Witness statements to law enforcement
8. Defendant's school psychological records (if available)
9. Autopsy reports (if applicable)

|                           |   |                                 |
|---------------------------|---|---------------------------------|
| STATE OF SOUTH CAROLINA   | ) | IN THE COURT OF COMMON PLEAS    |
| COUNTY OF BARNWELL        | ) | FOR THE SECOND JUDICIAL CIRCUIT |
|                           | ) |                                 |
| Samual Johnican, #340693, | ) | 2010-CP-06-0179                 |
|                           | ) |                                 |
| Applicant,                | ) |                                 |
|                           | ) |                                 |
| v.                        | ) |                                 |
|                           | ) | <b>ORDER OF DISMISSAL</b>       |
|                           | ) |                                 |
| State of South Carolina,  | ) |                                 |
|                           | ) |                                 |
| Respondent.               | ) |                                 |

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This matter comes before the Court by way of a post-conviction relief (PCR) application filed on August 2, 2010. An evidentiary hearing into the matter was convened on January 20, 2015, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

### PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Barnwell County Clerk of Court. The Applicant was indicted for Murder (2010-GS-06-0105). He was represented by DeGrant Gibbons, Esquire. On May 11, 2010, the Applicant pled guilty to before the Honorable Doyet A. Early, III. He was sentenced to life imprisonment. The Applicant did not appeal his guilty plea or sentence.

### ALLEGATIONS

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

1. Ineffective Assistance of Counsel.

2. Involuntary Guilty Plea
3. Due Process violation, equal protection of law.

Applicant filed various amendments dated January 13, 2014, February 10, 2014, February 21, 2014, November 11, 2014, November 25, 2014, and April 29, 2015,

#### **SUMMARY OF TESTIMONY PRESENTED**

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

Applicant stated that he filed a PCR application raising various allegations of ineffective assistance of counsel. Applicant informed this Court that he was requesting an opportunity to vacate his guilty plea and proceed to trial. Applicant stated that he pled guilty and received life without parole for murder. Applicant stated Plea Counsel was appointed to represent him. Applicant stated that he met with Plea Counsel approximately 3-4 times prior to his guilty plea. Applicant could not recall the context of the meetings. Applicant stated that he was very emotional and overwhelmed by the circumstances. Applicant stated that he did not recall what was going on during the plea. Applicant recalled the plea judge asking a number of questions. Applicant stated that although he told the plea judge that he was not on medication during the plea, he was actually taking three or four medications. Applicant claimed that his guilty plea was not intelligently entered into because he was nervous and emotional. Applicant recalled waiving his constitutional rights during his plea. Applicant further recalled telling the plea judge that he was satisfied with Plea Counsel's services. Applicant recalled telling the plea judge that there was nothing else he wished Plea Counsel to do on his behalf.

Applicant stated that Plea Counsel filed a motion for reconsideration, but never filed an appeal. Applicant stated that Plea Counsel never reviewed his rights to file an appeal. Applicant alleged Plea Counsel was ineffective for failing to negotiate or secure a plea deal on his behalf. Applicant claimed Plea Counsel was ineffective for failing to conduct an investigation. Applicant stated Plea Counsel's investigator met with him on May 7<sup>th</sup> and asked if Applicant wanted a trial or plea. Applicant stated Plea Counsel met with him four days later. During that meeting, Applicant told Plea Counsel that he used a wrench to murder his wife. Applicant stated eleven days later, Plea Counsel sent him a sheet showing the sentencing range was thirty years to life. Applicant stated Plea Counsel advised him that the Solicitor would notice him for life without parole based on his prior convictions if he did not plead guilty. Applicant stated that he pled guilty because a potential thirty year sentence was better than a mandatory life without parole sentence. Applicant stated that he was convicted in 1989 for trafficking in marijuana and received one year of probation. Applicant further stated he was convicted of burglary in 1998. Applicant stated that Plea Counsel was ineffective for failing to advise him that the Solicitor was required to serve a life without parole notice on him. Applicant stated he was never served with a notice to seek life without parole.

Applicant stated that Plea Counsel was ineffective for failing to request an independent mental evaluation. Applicant stated that he was suicidal and remorseful. Applicant stated that he never meant to murder his wife. Applicant stated that he had a court ordered mental evaluation. Applicant claimed that he was not aware of the mental evaluation was going to occur. Applicant stated that Plea Counsel never discussed the findings of the mental evaluation. Applicant acknowledged that the report revealed that Applicant was malingering. Applicant claimed that Plea Counsel should have requested a Blair hearing. Applicant stated Plea Counsel

was ineffective for failing to investigate into the possibility of an insanity defense. Applicant noted that he was banging his head against the wall.

Applicant acknowledged that he told the plea judge that he was pleading freely and voluntarily. Applicant stated that Plea Counsel was ineffective for failing to review discovery or pictures with him prior to his guilty plea. Applicant claimed Plea Counsel was ineffective for failing to get the blood found on his face analyzed. Applicant stated Plea Counsel was ineffective for failing to investigate or secure witnesses. Applicant stated Plea Counsel never interviewed his family or children. Applicant stated Plea Counsel was ineffective for failing to discuss the differences between murder and manslaughter. Applicant stated that Plea Counsel failed to explain the elements of each crime. Applicant stated that he did not murder his wife with malice or aforethought. Applicant claimed that Plea Counsel was ineffective for showing him the indictment for the first time on May 11, 2010. Applicant stated Plea Counsel was ineffective for advising the plea judge that the crime was a "horrendous crime and there [was] no justification." (Pl. p. 27 lines 8-10). Applicant claimed Plea Counsel was ineffective for failing to have him subjected to the Minnesota Multiphasic Inventory Psychological test.

Following Applicant's testimony, Plea Counsel was called to testify. Plea Counsel stated that he met with Applicant at least four times. Plea Counsel stated that he hired an investigator who also met with Applicant. Plea Counsel stated that he reviewed all discovery material with Applicant. Plea Counsel stated that they reviewed the video confession, elements of murder, and the sentencing range. Plea Counsel stated that Applicant had no defenses to the charges.

Plea Counsel stated Applicant may have named one of his relatives for him to investigate. Plea Counsel recalled that Applicant was mostly embarrassed by the situation. Plea Counsel

recalled that Applicant did not want to involve his relatives in the proceedings. Plea Counsel stated Applicant was most concerned about his children.

Plea Counsel stated that he did not file an appeal on Applicant's behalf. Plea Counsel stated that he did file a motion for reconsideration. Plea Counsel stated that he met with the solicitor's office on multiple occasions. Plea Counsel stated that the solicitor refused to make an offer. Plea Counsel stated that the solicitor informed him that they were prepared to try the case on the August 2010 term of court. Plea Counsel stated that the solicitor believed that they could "strike out" Applicant and seek life without parole based on his prior convictions. Plea Counsel stated that the solicitor's office had not noticed Applicant for life without parole. Regardless, Plea Counsel stated that this was not a case that could be tried. Plea Counsel stated the evidence against Applicant was overwhelming. Plea Counsel stated that forensically speaking, there were no defenses. Plea Counsel stated that Applicant was concerned about putting his family through a trial. Plea Counsel further stated that he had concerns on how Applicant would perform on the witness stand.

Plea Counsel stated that he reviewed the evidence with Applicant. Plea Counsel stated that he did not provide Applicant a copy of the discovery for fear of other inmates viewing it. Plea Counsel stated Applicant did not want to review the pictures. Plea Counsel stated that they reviewed the video confession. Plea Counsel stated that there were no other witnesses to the crime. Plea Counsel stated Applicant did not want to involve his in laws or family members because he was embarrassed by the situation. Plea Counsel stated Applicant could never provide a reason for why he murdered his wife.

Plea Counsel stated that he felt Applicant understood their discussions. Plea Counsel stated Applicant was suffering from depression and anxiety. Plea Counsel stated that the plea

judge ordered Applicant to be evaluated. Plea Counsel stated that he did not get Applicant re-evaluated after the initial evaluation showed that he was malingering. Plea Counsel stated that he has represented countless individuals who are mentally ill. Plea Counsel stated that he did not feel Applicant was mentally ill and did not feel it was necessary to have him reevaluated.

Plea Counsel stated that he did not have the blood found on Applicant's face analyzed because it was not in dispute that Applicant killed his wife. Plea Counsel stated there was no beneficial reason to have the blood analyzed. Plea Counsel stated that he reviewed the elements of murder with Applicant. Plea Counsel stated that he explained malice aforethought and what that meant. Plea Counsel stated that he also explained why he did not feel the facts met the elements of manslaughter. Plea Counsel noted that there was no provocation, no huge argument, or heat of passion.

Plea Counsel stated that he first saw the indictment on the day of the plea. Plea Counsel further explained that his mitigation strategy was to acknowledge that Applicant's actions were inexcusable. Plea Counsel stated that characterizing the crime as "horrendous" was an attempt to acknowledge the depravity of the crime itself. Plea Counsel stated Applicant never requested a trial. Plea Counsel stated that did not anticipate Applicant receiving a life sentence after electing to plead guilty. Plea Counsel stated that he felt Applicant would receive around thirty five years. However, Plea Counsel stated that he never told Applicant to expect a certain number. Plea Counsel stated that he advised Applicant that murder carried thirty years up to life in prison. Plea Counsel opined that if he elected to proceed to trial he would receive a life sentence given the facts and circumstances involved in the case.

Plea Counsel stated that he did discuss the possibility of the Solicitor noticing Applicant for a mandatory life without parole sentence based on his prior convictions. Plea Counsel stated

that this was first brought to his attention on the day of the plea. Plea Counsel stated that he never mentioned the possibility of being noticed for life without a parole sentence prior to Applicant deciding to enter his guilty plea.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

### **INEFFECTIVE ASSISTANCE OF COUNSEL**

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

### ALLEGATIONS

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

This Court finds Applicant's allegation that he received ineffective assistance of counsel when counsel failed to file an appeal is meritless. "[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036, 145 L. Ed. 2d 985 (2000). This Court notes Applicant complains that Plea Counsel never advised him of the right to appeal. However, the plea court properly advised Applicant of his right to appeal. (Pl. p. 12 lines 18-21). This Court finds Applicant failed to present any credible evidence or arguments that he affirmatively requested Plea Counsel to file an appeal following the denial of

his motion for reconsideration. Based off of the foregoing, this Court finds Applicant's allegation must be denied and dismissed with prejudice.

**2. Ineffective assistance of counsel for failing to negotiate or secure a plea offer.**

This Court finds Applicant's allegation that he received ineffective assistance of counsel for failing to negotiate or secure a plea offer lacks merit. Initially, this Court notes the South Carolina Supreme Court has held "[t]he decision whether to offer a plea bargain is within the *solicitor's* discretion." State v. Whipple, 324 S.C. 43, 49, 476 S.E.2d 683, 686 (1996) (emphasis added), citing State v. Chisolm, 312 S.C. 235, 439 S.E.2d 850 (1994). A criminal defendant has "no right to be offered a plea . . . nor a federal right that the judge accept it." Lafler v. Cooper, 132 S. Ct. 1376, 1387, 182 L. Ed. 2d 398 (2012). This Court finds credible Plea Counsel's testimony that he met with the solicitor's office a number of times and the solicitor refused to offer a plea deal. As a result, Applicant ultimately pled guilty straight up with no recommendation or negotiation in place. Plea Counsel was not deficient in any regard as he made attempts to work with the prosecuting solicitors. Applicant has failed to show any resulting prejudice because there has been no evidence submitted to show that the State had any intention of offering Applicant a deal. This Court denies and dismisses this allegation with prejudice.

**3. Ineffective assistance of counsel for failing to investigate.**

Applicant further alleges that Plea Counsel was ineffective for failing to investigate the case. This allegation rests entirely on speculation because witnesses were not produced at the hearing to allow the Court to judge the relevance of their testimony. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result."). Applicant failed to present any credible evidence to this Court as

to what additional investigation could have uncovered. Based off of the foregoing, this Court finds Applicant's allegation must be denied and dismissed with prejudice.

**4. Ineffective assistance of counsel for advising Applicant he could face mandatory life without parole based off of his prior convictions.**

Applicant further alleges Plea Counsel was ineffective for advising him that he could potentially receive a mandatory life without parole notice based upon his prior convictions. Applicant claims that his prior convictions would not amount to a strike in South Carolina. However, this allegation rests solely on speculation as Applicant failed to provide this Court with any evidence as to why his prior convictions were not appropriate strikes. See *Palacio v. State*, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense). Furthermore, Plea Counsel credibly testified that the possibility of facing a mandatory life without parole sentence was only mentioned to Applicant the day of his plea and was not a factor in Applicant deciding to plead guilty. To the contrary, Plea Counsel stated that Applicant did not want to put his family through the additional turmoil that a trial would cause, the evidence against Applicant was overwhelming, Applicant had previously confessed to the crime, and Applicant was ready to accept responsibility for his actions. Notably, Applicant was never noticed for a life without parole sentence. Based off of the foregoing, this Court finds Applicant's allegation must be denied and dismissed with prejudice.

**5. Ineffective assistance of plea counsel for failing to advise him that the solicitor was required to serve LWOP notice on him.**

Applicant further alleges that Plea Counsel was ineffective for failing to advise him that the solicitor was required to provide notice to him if they intended to seek life without parole.

Initially, this Court notes Applicant failed to show that if he proceeded to trial, the solicitor would have actually sought a mandatory life without parole. Furthermore, this Court finds credible Plea Counsel's testimony that the possibility of facing a mandatory life without parole sentence was only mentioned to Applicant the day of his plea and was not a factor in Applicant decision to plead guilty. To the contrary, Plea Counsel stated that Applicant did not want to put his family through the additional turmoil that a trial would cause, the evidence against Applicant was overwhelming, Applicant had previously confessed to the crime, and Applicant was ready to accept responsibility for his actions. Based off of the foregoing, this Court finds Applicant's allegation must be denied and dismissed with prejudice.

**6. Ineffective assistance for failing to request an independent examination of mental state.**

Applicant further alleges Plea Counsel was ineffective for failing to have Applicant independently evaluated. Initially, this Court notes a defendant must be mentally competent to stand trial to assist counsel in his defense. Drope v. Missouri, 420 U.S. 62 (1975). In determining if counsel is ineffective for failing to request a competency hearing, an applicant must show that a reasonable probability exists that he would be found incompetent at the time of this trial or plea. Jeter v. State, 308 S.C.230, 417 S.E.2d 594 (1992). Counsel may reasonably rely on his own perceptions in deciding if a client is competent to stand trial. Id.

This Court finds Applicant failed to present any credible evidence that he would have been found incompetent at the time of his plea had he been re-evaluated. Notably, Applicant's initial evaluation revealed Applicant was malingering. This Court further finds credible Plea Counsel's testimony that he did not see any additional reasons to have Applicant evaluated a second time. Plea Counsel opined that Applicant did not suffer any mental deficiencies. Plea Counsel stated that he reviewed the report with Applicant. Plea Counsel opined that Applicant

was able to understand and comprehend their discussion and the ramifications of pleading guilty. Based on the foregoing, this Court finds Applicant has failed to carry his burden of proving counsel was ineffective for failing to have the Applicant evaluated.

**7. Ineffective assistance of counsel for failing to review discovery or pictures prior to his plea.**

Applicant further alleges Plea Counsel was ineffective for failing to review discovery and pictures of the murder scene prior to his guilty plea. This Court finds credible Plea Counsel's testimony that he reviewed all discovery material with Applicant prior to his plea. This Court further finds Plea Counsel's testimony credible that Applicant did not want to view the pictures. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel's performance.

**8. Ineffective assistance of counsel for failing to have the blood found on his face analyzed.**

Applicant further alleges that Plea Counsel was ineffective for failing to have the blood recovered from his face analyzed. This Court notes Applicant was arrested shortly after murdering his wife. There is little question that the blood on his face would have matched his deceased wife. This Court agrees with Plea Counsel's assessment that it would not have been beneficial to have the blood analyzed. Furthermore, Applicant is not disputing that he killed his wife. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and

compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel’s performance.

**9. Ineffective assistance of counsel for failing to investigate and secure witnesses.**

Applicant further alleges Plea Counsel was ineffective for failing to investigate and secure various witnesses. This Court notes that a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). Furthermore, this Court notes the applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice.” Glover v. State, *supra*, 318 S.C. at 498-99, 458 S.E.2d at 540. In the instant case, Applicant failed to present testimony from any of the alleged witnesses that Plea Counsel failed to investigate or secure. As a result, Applicant has fallen well short of his burden of proof. Therefore, this allegation must be denied and dismissed.

**10. Ineffective assistance of counsel for failing to advise him of different elements of murder versus manslaughter.**

Applicant further alleges Plea Counsel was ineffective for failing to advise him of the various elements of murder and voluntary manslaughter. Initially, this Court notes that the plea transcript reveals Applicant acknowledging “that here in Barnwell County on or about December 8 of 2009 that with malice aforethought [Applicant] did kill Denise Michelle Johnican by beating her to death.” (Pl. p. 11 lines 6-11). Additionally, this Court finds credible Plea Counsel’s testimony that he reviewed all elements of murder, including the definition of malice aforethought. Plea Counsel further testified that he discussed the possibility of seeking a manslaughter charge with Applicant. Plea Counsel opined that the evidence did not fit a

manslaughter case. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel’s performance.

**11. Ineffective assistance of counsel for showing him the indictment for the first time on May 11, 2010.**

This Court finds Applicant’s allegation that Plea Counsel was ineffective for failing to show Applicant the indictment until the day of his plea is meritless. Plea Counsel stated that he may not have received the indictment until the day of the plea, but there was never any question that Applicant was charged with the murder of his wife. Plea Counsel stated that they had reviewed discovery, discussed Applicant’s version of events, and reviewed the elements of murder. Based off of the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel’s performance.

**12. Ineffective assistance of counsel for advising the plea judge that the crime was horrendous and that there was no justification for the crime.**

This Court finds Applicant’s allegation that Plea Counsel was ineffective for telling the judge that the murder committed by Applicant was horrendous is meritless. Plea Counsel further stated that the calling the crime “horrendous” was an accurate characterization of the murder. Plea Counsel stated that it was his mitigation strategy to show that Applicant recognized the

seriousness of the charges and was prepared to take full responsibility of his actions. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel's performance.

**13. Ineffective assistance of counsel for failing to have Applicant subjected to the Minnesota Multiphasic Inventory Psychological test.**

This Court finds Applicant's allegation that Plea Counsel was ineffective for failing to have him tested under the Minnesota Multiphasic Inventory Psychological test is without merit. This Court notes Applicant was found competent prior to his guilty plea. Furthermore, Applicant failed to produce any credible evidence to show how the Minnesota Multiphasic Inventory Psychological examination would have resulted in a different outcome. Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and

compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel’s performance.

#### **ALL OTHER ALLEGATIONS**

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

*[signature to follow]*

### CONCLUSION

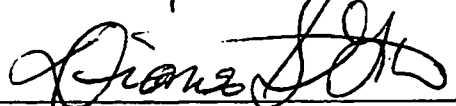
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

#### IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 7 day of March, 2016.

  
 DIANE S. GOODSTEIN  
 Presiding Judge  
 Second Judicial Circuit

, South Carolina

STATE OF SOUTH CAROLINA     )  
                                          )  
COUNTY OF BARNWELL         )  
                                          )

INDICTMENT FOR  
MURDER

§ 16-03-0010

At a Court of General Sessions, convened on February 2010, the Grand Jurors of Barnwell County present upon their oath:

That **SAMUAL BRUCE JOHNICAN** did in Barnwell County on or about December 8, 2009, with malice aforethought, kill one Denise Michelle Johnican by means of beating the victim in the head and said victim died as a result thereof, all in violation of Section 16-3-10, South Carolina 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.

  
J. STROM THURMOND, SOLICITOR