

VOLUME II of II

RECEIVED

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County

D. Craig Brown, Circuit Court Judge

OBLIN BANEGAS-MALDONADO,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000198

APPENDIX

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ATTORNEYS FOR RESPONDENT

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ORDER OF DISMISSAL574

1 the Defendant Olbin Noel Banegas-Maldonado, as to the
2 charge of murder, guilty of voluntary manslaughter. As
3 to the charge of first degree burglary, we find the
4 Defendant guilty, and it is so signed by the foreperson.

5 Mr. Foreman, ladies and gentlemen of the jury,
6 if these are your verdicts, please indicate each of you
7 by raising your right hand.

8 (All jurors so indicate.)

9 CLERK: All hands are raised, Your Honor.

10 THE COURT: Thank you very much. Any
11 additional polling requested?

12 MS. FULLWOOD: We would request that the jury
13 be individually polled.

14 THE COURT: Madame Clerk, if you will poll the
15 jurors individually as to each individual charge.

16 CLERK: Yes, sir. As I call your name, if you
17 will hold up your hand, I will ask you as to the charge
18 of murder, the finding of voluntary manslaughter, was
19 this your verdict and is it still your verdict. Then I
20 will get a response from you, please. Then as to the
21 charge of burglary in the first, was that your verdict
22 and is it still your verdict and then a response,
23 please.

24 Larry Summers, as to the verdict on the murder
25 charge to voluntary manslaughter, was this your verdict

1 and is it still your verdict?

2 JUROR: Yes.

3 THE COURT: As to the charge of burglary
4 first, was this your verdict and is it still your
5 verdict?

6 JUROR: Yes.

7 CLERK: Thank you. Jennifer Lyles, as to the
8 verdict on murder to voluntary manslaughter, was this
9 your verdict and is still your verdict?

10 JUROR: Yes.

11 CLERK: As to the charge of burglary first, is
12 this your verdict and is it still your verdict?

13 JUROR: Yes.

14 CLERK: Julie Bremer, as to the charge of
15 murder to voluntary manslaughter, was this your verdict
16 and is it still your verdict?

17 JUROR: Yes.

18 CLERK: As to the charge of burglary first,
19 was this your verdict and is it still your verdict?

20 JUROR: Yes.

21 CLERK: Charity Epting, as to the charge of
22 murder, finding of voluntary manslaughter, was this your
23 verdict and is it still your verdict?

24 JUROR: Yes.

25 CLERK: As to the charge of burglary first,

1 was it your verdict and is it still your verdict?

2 JUROR: Yes.

3 CLERK: Michael Fields, as to the charge of
4 the murder, finding of voluntary manslaughter, was this
5 your verdict and is it still your verdict?

6 JUROR: Yes, ma'am.

7 CLERK: As to the charge of burglary first,
8 was this your verdict and is it still your verdict?

9 JUROR: Yes, ma'am.

10 CLERK: Cindy Thompson, as to the charge of
11 murder, finding of voluntary manslaughter, was this your
12 verdict and is it still your verdict?

13 JUROR: Yes.

14 CLERK: As to the charge of burglary first,
15 was this your verdict and is it still your verdict?

16 JUROR: Yes.

17 CLERK: Donald Beatty, as to the charge of
18 murder, finding of voluntary manslaughter, was this your
19 verdict and is it still your verdict?

20 JUROR: Yes, ma'am.

21 CLERK: As to the charge of burglary first, is
22 this your verdict and is it still your verdict?

23 JUROR: Yes, ma'am.

24 CLERK: Susan Boyer, as to the charge of
25 murder, finding of voluntary manslaughter, was this your

1 verdict and is it still your verdict?

2 JUROR: Yes.

3 CLERK: As to the charge of burglary first,
4 with this your verdict and is it still your verdict?

5 JUROR: Yes.

6 CLERK: Beverly McElroy, as to the charge of
7 murder, finding of voluntary manslaughter, was this your
8 verdict and is it still your verdict?

9 JUROR: Yes, ma'am.

10 CLERK: As to the charge of burglary first,
11 was this your verdict and is it still your verdict?

12 JUROR: Yes, ma'am.

13 CLERK: Diana Squirewell, as to the charge of
14 murder, finding of voluntary manslaughter, was this your
15 verdict and is it still your verdict?

16 JUROR: Yes.

17 CLERK: As to the charge of burglary first,
18 was this your verdict and is it still your verdict?

19 JUROR: Yes.

20 CLERK: Nancy Fogle, as to the charge of
21 murder, finding of voluntary manslaughter, was this your
22 verdict and is it still your verdict?

23 JUROR: Yes.

24 CLERK: As to the charge of burglary first,
25 was this your verdict and is it still your verdict?

1 JUROR: Yes.

2 CLERK: Diane Norris, as to the charge of
3 murder, finding of voluntary manslaughter, was this your
4 verdict and is it still your verdict?

5 JUROR: Yes.

6 CLERK: As to the charge of burglary first,
7 was this your verdict and is it still your verdict?

8 JUROR: Yes.

9 CLERK: All jurors have been polled, Your
10 Honor.

11 THE COURT: The jury has been polled. The
12 jurors have been polled individually. The verdict
13 appears to be a unanimous verdict of each and every
14 juror.

15 Ladies and gentlemen, I want to thank for your
16 jury service in this regard. I will address you a
17 little more in just a moment.

18 Are there any post-trial motions?

19 MS. FULLWOOD: There are, Your Honor.

20 THE COURT: I will entertain them now.

21 MS. FULLWOOD: At this time we would move for
22 a new trial. The basis for the motion is all the
23 objections made and exceptions taken during the course
24 of this trial, both individually as error and in the
25 aggregate as cumulative error.

1 THE COURT: I respectfully deny the post-trial
2 motions and find that the evidence in this case was
3 presented by the State as well as the defense. The
4 jurors were properly instructed as to the law to apply
5 to the facts as they find them to be. The jury has
6 determined that the Defendant is guilty of these two
7 charges. I find that the evidence supports the verdicts
8 and I deny your motions.

9 Ladies and gentlemen, your job is done. You
10 were called to serve and you have responded to that call
11 and have rendered your verdict. You deliberated long
12 and hard. I can tell from the length of your
13 deliberations that you considered the case very
14 seriously.

15 You consider each and every aspect of all of
16 the evidence presented and the system has worked. You
17 have fulfilled your duties and given the Defendant the
18 benefit of a fair and impartial trial and reached your
19 unanimous verdict. I want to thank you.

20 One the jury has found a person guilty, then
21 it becomes my duty to impose a sentence. You have no
22 role in the sentencing process. You are welcome to stay
23 as we move into that process now.

24 Is the State ready to proceed?

25 MR. GRAHAM: Yes, Your Honor.

1 THE COURT: You may proceed. The Defendant
2 will come around for sentencing.

3 (Pause.)

4 THE COURT: Mr. Foreman, we will have you sign
5 the original indictments representing the unanimous
6 verdict of the jury. We will do that before we proceed.

7 (Pause.)

8 CLERK: Thank you, Your Honor.

9 THE COURT: Anything further from the State?

10 MR. GRAHAM: Your Honor, I know that the
11 widowed of Humberto Caballero would like to address the
12 Court, and then there is a little background information
13 on the Defendant that I would like to submit as well.

14 THE COURT: I would be happy to hear all of
15 that now. Yes, ma'am.

16 THE INTERPRETER: Perhaps we never thought it
17 would get to this point. We never believed this would
18 happen, but what happened happened and we are accepting
19 that.

20 We came here with many dreams and plans, and
21 his mother is still there waiting on his return, but he
22 will never return. After he died things began falling
23 apart little by little. His mother is destroyed and my
24 life has been falling apart. I feel like it's destroyed
25 also.

1 I feel like everything is for nothing and it
2 doesn't have any meaning because the dream that we had
3 will never happen. I think that -- I have my one
4 daughter; actually I have two daughters, one
5 biologically and one not, but for both their father has
6 died and he is in heaven.

7 Well, it's difficult. What we have heard here
8 has been very difficult. But here the law is respected
9 and I feel like we saw justice, and I think God sees
10 justice.

11 Now I don't know what is going to happen. We
12 have had moments -- I'm not sure what's going to happen.
13 We have moments of fear for our family, but there is
14 nothing we can do. He committed an error. It was a
15 mistake but he killed him.

16 I think that although whatever happens, we
17 still have to go forward and face life. In our hearts
18 our brothers, parents, the daughters, everything is
19 broken for us. It's very difficult and it's hard to go
20 forward.

21 Only God can take into account what we feel
22 will happen to Olbin, but it was very criminal and it
23 was very horrible what he did to us. We never -- in our
24 family we never felt that fear before.

25 I don't know what is going to happen. It's

1 going to be defined, but he will never come back. I
2 hope God looks down on this justice and is happy about
3 it. That's all.

4 THE COURT: Thank you.

5 MR. GRAHAM: Your Honor, also Humberto
6 Caballero's brother would like to address the Court,
7 Jose Caballero.

8 THE COURT: Yes, sir.

9 THE INTERPRETER: My name is Jose Angel
10 Caballero, Humberto's brother. I have been present
11 throughout the whole time this problem has been going
12 on, and I just thank God after a time after he killed
13 my brother, I go to a church. I have no hate for him
14 that killed my brother, but the law should be
15 respected.

16 God made the laws to punish people who make
17 mistakes and that's justice. I feel that we have
18 finally arrived at the end of all this, and I think they
19 will feel relieved when I call them and tell them what
20 has happened.

21 My mother has suffered very much over this
22 last two years. Since she had her two sons here, we
23 helped her a lot. Now, there is only one of us who can
24 help her.

25 I never thought we would get to this point.

1 Olbin knows that we used to live together and share
2 times and share the same house even. I just would like
3 to thank everyone who collaborated on this case, and you
4 people are the ones who decide and I thank you.

5 THE COURT: Thank you.

6 MR. GRAHAM: Your Honor, the only other thing
7 the State would add is that Mr. Maldonado was arrested
8 on several charges back in April of 2007. He was
9 ultimately convicted of a petty larceny. He was
10 deported from this country on August 13, 2007, and then
11 again came here illegally to this country on
12 November 21, 2007.

13 THE COURT: Deported in August?

14 MR. GRAHAM: He was deported in August of 2007
15 and returned approximately three and a half months
16 later.

17 THE COURT: Thank you. Ms. Fullwood.

18 MS. FULLWOOD: Thank you. Your Honor, Olbin
19 testified, so you have heard something about his
20 background. You have also had a chance to observe him
21 and listen to his speech and sort of take his measure.

22 He has always been sorry for his actions that
23 night. As these people have told you, these people
24 were all friends. They had a shared history and they
25 had an ongoing bond when they lived here in the United

1 States.

2 They were close and I think that Oliver, too,
3 never thought a situation would arise where it would
4 come down to this. It's a terrible, terrible tragedy.
5 Not only did he kill a man, but he killed a good
6 friend.

7 Mr. Graham asked him yesterday when he was
8 cross examining him, You knew you had done something
9 wrong, don't you? And I think it's to Olbin's credit
10 that rather than trying to skate around the issue,
11 rationalize his actions at that point, even though he
12 was in front of a jury who was going to judge his
13 actions, he answered it very simply, Yes, I did
14 wrong.

15 I think that is significant because it does
16 show that he has been willing, even in front of a jury
17 who is going to determine his fate for a long period of
18 time, that he would admit wrongdoing. He has
19 consistently expressed remorse throughout the two years
20 I have been representing him.

21 I would ask the Court to consider that after
22 he serves his sentence in this case, there is at least a
23 possibility that he could face federal prosecution for
24 reentry into the United States. I'm certainly no
25 immigration law expert.

1 His rap sheet, however, shows that he was
2 deported in 2007 after he was convicted in Aiken County
3 of trespassing and petty larceny. That petty larceny
4 was that he was raking up pine straw on lands he wasn't
5 supposed to be raking up as part of his job.

6 I bring that up because his rap sheet
7 indicates that he was deported or indicates to me --
8 again, I'm not an immigration lawyer -- he was deported
9 as a result of having been convicted of an aggravated
10 felony.

11 If that is the case and if my reading of the
12 applicable federal statute is correct, there would be
13 the possibility that he could face up to 20 years
14 additional imprisonment for the simple act of having
15 coming back into the United States.

16 He is a very young man. He understands that
17 he is not going to walk out of here with a slap on the
18 wrist. On the other hand, we would ask that you
19 consider the fact of his remorse, his admission of
20 wrongdoing, his age, and his deportation status or
21 possible deportation in deciding what sentence is
22 appropriate for him.

23 We would ask the Court to give him concurrent
24 sentences and we would ask the Court to temper justice
25 in his case with mercy to the extent that the Court sees

1 fit.

2 THE COURT: Thank you. Mr. Maldonado,
3 anything you would like to say?

4 THE INTERPRETER: I'd just would like to say
5 the same thing Suapa said. She said because of the loss
6 of her husband, she will not be able to live her life
7 well. She hasn't had just one husband but rather six
8 husbands or so, and that's not good.

9 (Pause.)

10 THE INTERPRETER: I feel bad about what
11 happened with Humberto and also for his parents because
12 it's sad to lose a son or brother. It's also sad for me
13 to lose part of my family. I understand what they say
14 about their father and there is nothing else I can do.
15 What happened happened and I had no intention of doing
16 it. That's all.

17 THE COURT: Is there anything further,
18 Ms. Fullwood?

19 MS. FULLWOOD: No, Your Honor.

20 THE COURT: Is there anything further,
21 Mr. Graham?

22 MR. GRAHAM: No, Your Honor.

23 THE COURT: The statute says that a person
24 convicted of manslaughter for the unlawful killing of
25 another without malice must be imprisoned not more than

1 30 years or less than two years. Of course, on the
2 original charge the original punishment would be no less
3 than 30 years or 30 years up to life if he had been
4 convicted of murder.

5 For burglary first degree the possible
6 punishment is 15 years to life imprisonment. The fact
7 that you can receive life imprisonment for burglary
8 first degree indicates the seriousness of that crime,
9 particularly where one breaks into someone's home at
10 1:00 a.m. in the morning, armed with a weapon seeking to
11 harm someone else.

12 I think the jury has been gracious in its
13 conclusion that the offense was voluntary manslaughter
14 and not murder, and I support the jury's verdict in that
15 regard. None of that lessens the fact that he killed an
16 innocent victim in this case who was in his home,
17 minding his own business and was victimized by
18 Mr. Maldonado. No apologies can undo that. No degree
19 of remorse on his part can undo any of that.

20 On the offense of voluntary manslaughter, the
21 sentence is that you be committed to the State
22 Department of Corrections for a period of 25 years. On
23 the offense of burglary first degree, the sentence of
24 the court is that you be committed to the State
25 Department of Corrections for a period of 15 years.

1 Those sentences will run consecutive to each other, with
2 credit for time served. That is the sentence of the
3 Court. Good luck to you, sir.

4 (The jury is excused.)

5 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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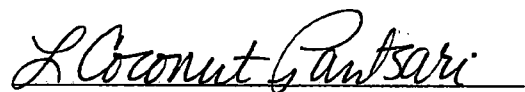
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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal, in the Criminal Court for Lexington County, South Carolina on the 1st through the 4th days of November, 2010.

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

January 25, 2011



Court Reporter

517

WITNESSES

Lexington County Sheriffs Department

Luis Rivera

Law Enforcement Case #: 08077439

DSG

ARREST WARRANT NUMBER

J847250

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: 4-13-09

VERDICT

Gulley / Venables / Manis / Shurt

[Signature]
Foreperson of Petit Jury
Date: 11/4/10

DOCKET NO. 2009GS3200820

The State of South Carolina
County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2009

THE STATE
vs.

Olbin Noel Banegas-Maldonado

CDR #: 0116

Indictment for

Murder

§ 16-03-0010

DONALD V. MYERS, SOLICITOR

*or 30 years
prob for 1000
Vol Manslaughter
concurrent
w/ Banegas
- Victim
- that
- to prob*

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Murder

§ 16-03-0010

At a Court of General Sessions, convened on April 2009, the Grand Jurors of Lexington County present upon their oath:

That **Olbin Noel Banegas-Maldonado** did in Lexington County on or about August 24, 2008, willfully, feloniously and with malice aforethought, kill one [REDACTED] [REDACTED] by stabbing him and the victim died as a proximate result thereof, in violation of § 16-3-10, Code of Laws of South Carolina, 1976, as amended.

A TRUE COPY
[Signature]
Lex. Co. C.C.C.P., G.S. & E.O.

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

David Shaun Graham
ASSISTANT SOLICITOR

519

WITNESSES

Lexington County Sheriffs Department

Luis Rivera

Law Enforcement Case #: 08077439

DSG

ARREST WARRANT NUMBER

J847251

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 4-13-09

VERDICT

Guilty

Foreperson of Petit Jury

Date: 11/4/10

DOCKET NO. 2009GS3200821

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2009

THE STATE

vs.

Olbin Noel Banegas-Maldonado

CDR #: 0079

Indictment for

Burglary 1st

§ 16-11-0311

DONALD V. MYERS, SOLICITOR

as charged
12-0
1000000
- most serious
- no parole
- 10 years

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Burglary 1st
§ 16-11-0311

At a Court of General Sessions, convened on April 2009, the Grand Jurors of Lexington County present upon their oath:

That **Olbin Noel Banegas-Maldonado** did in Lexington County, South Carolina on or about August 24, 2008, knowingly and willfully enter a dwelling, to wit: [REDACTED]

[REDACTED] being the dwelling of [REDACTED] and/or

[REDACTED], without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, he/she or another participant in the crime,

- a) was armed with a deadly weapon.
- a) caused physical injury to a person who is not a participant in the crime,
- b) used or threatened the use of a dangerous instrument,
- c) displayed what was or appeared to be a knife or firearm,

and/or the entering or remaining occurs in the nighttime, in violation of § 16-11-311 of the Code of Laws of South Carolina, 1976, as amended.

A TRUE COPY
[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

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

[Signature]
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
)
 State of South Carolina)
)
)
 vs.)
)
 Olbin Noel Banegas-Maldonado,)
)
)
 Defendant.)
 _____)

IN THE COURT OF GENERAL SESSIONS

Indictment Numbers: 2009-GS-32-00820
 2009-GS- 32-00821

VERDICT FORM

We, the jury, by unanimous consent find the Defendant Olbin Noel Banegas- Maldonado:

1. As to the charge of Murder:

- Not Guilty
- Guilty of Voluntary Manslaughter
- Guilty

2. As to the charge of First Degree Burglary:

- Not Guilty
- Guilty

Lexington, South Carolina
 November 4, 2010

Donald R. Beck

 Foreperson

A TRUE COPY

 Lex. Co. C.C.P., G.S. & F.C.

522

STATE OF SOUTH CAROLINA
COUNTY OF Lexington
STATE

VS.

Olbin Noel Banegas-Maldonado

AKA: _____
Race: 3 Sex: M Age: _____
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS3200820

AW#: J847250
Date of Offense: 8/24/2008
S.C. Code §: 16-03-0010; 16-03-0020
CDR Code #: 0116

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was
TO: Manslaughter / Voluntary manslaughter

CONVICTED OF or PLEADS

In violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS \$17-25-45

The charge is: As indicted, Lesser included Offense, Defendant Waives Presentation to Grand Jury, (def.'s initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

David S. Mack 11650
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for

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

CONCURRENT or CONSECUTIVE to sentence on: 2009GS3200821

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-115

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

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

Payment Terms: _____

Set by SCDPPPS _____

Recipient: _____

*Fine:		\$	_____
§14-1-206 (Assessments 107.5%)		\$	_____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$	<u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$	_____
§56-5-2995 (DUI Assessment)	\$12	\$	_____
§56-1-286 (DUI Breath Test)	\$25	\$	_____
Proviso 47.9 (Public Def/Prob)	\$500	\$	_____
§14-1-212 (Law Enforce. Funding)	\$25	\$	<u>25</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$	_____
§50-21-114 (BUI Breath Test Fee)	\$50	\$	_____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	_____
Proviso 90.5 (SCCJA Surcharge)	\$5	\$	<u>5</u>
§44-53-450(C) (Conditional Discharge)	\$350	\$	_____
3% to County (if paid in installments)		\$	_____
TOTAL		\$	<u>130</u>

Clerk of Court/Deputy Clerk Beth Carrigan

Court Reporter: C. Pastorek
SCCA/217 (08/2010)

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Conditional Discharge, §44-53-450(C) requires

\$350 be paid to the Clerk prior to case disposition

Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge C. A. Neward

Judge Code: 2129

Sentence Date 11/4/10

STATE OF SOUTH CAROLINA)
 COUNTY OF Lexington)
 STATE)
 VS.)
Olbin Noel Banegas-Maldonado)
 AKA:)
 Race: 3 Sex: M Age:)
 DOB: [REDACTED] SS#:)
 Address: [REDACTED])
 City, State, Zip:)
 DL# * SID#)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS3200821
 AAN#: J847251
 Date of Offense: 8/24/2008
 S.C. Code §: 16-11-0311
 CDR Code #: 0079

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was
 TO: Burglary / Burglary (After June 20, 1985) - First degree

CONVICTED OF or PLEADS

In violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
 (CSC w/minor 1st or Lewd Act)

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

ATTEST:

Daryl S. Anderson 11650 Defendant Attorney for Defendant SC Bar #
 Solicitor SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
 for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
 incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 2009GS3200821
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
 Department of Corrections.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:
 RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP Lex. Co. C.C.P., G.S. & F.C.

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

Payment Terms: _____ Obtain GED
 Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. _____

Recipient:		
*Fine:		\$ _____
§14-1-206 (Assessments 107.5%)		\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§56-1-286 (DUI Breath Test)	\$25	\$ _____
Proviso 47.9 (Public Def/Prob)	\$500	\$ _____
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
§44-53-450(C) (Conditional Discharge)	\$350	\$ _____
3% to County (if paid in installments)		\$ _____
TOTAL		\$ <u>130.00</u>

May serve WE beginning _____
 Substance Abuse Counseling:
 Random Drug/Alcohol Testing:
 Fine may be pd. in equal consecutive weekly/monthly
 prnts. of \$ _____ Beginning _____
 \$ _____ Paid to Public Defender Fund
 Other: _____

Conditional Discharge, §44-53-450(C) requires
 \$350 be paid to the Clerk prior to case disposition
 Appointed PD or appointed other counsel,
 §47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/Deputy Clerk [Signature]
 Court Reporter: [Signature]
 SCCA/217 (06/2010)

Presiding Judge [Signature]
 Judge Code: 2129
 Sentence Date: 11/4/10

FORM 5

STATE OF SOUTH CAROLINA

County of LEXINGTON FILED IN THE COURT OF COMMON PLEAS

Orin Abel Banegas-Maldonado 2012 OCT 12 2:32 PM

Full name and prison number (if any) of Applicant

#343494 H.A. CARRIGG

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

2012CP3204132

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 Lee Correctional Institution, 990 W. Sackley Highway, Bishopville, South Carolina 29010
2. Name and location of Court which imposed sentence Lexington County Court of General Sessions, Lexington, South Carolina
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-95-32-20820; Voluntary Manslaughter
 - (b) 2009-95-32-20821; Burglary First Degree

A TRUE COPY

[Signature]
Lex. Co. C.C.C.P., G.S. & E.C.

2012CP3204132

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

- (a) November 4, 2010; Twenty-five (25) years
- (b) November 4, 2010; Fifteen (15) years

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
- (b) after a plea of not guilty
- (c) after a plea of nolo contendere _____

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

Yes, I did.

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

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

i. South Carolina Court of Appeals

ii. _____

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

i. Dismissed

ii. _____

(c) the date of each such result:

i. June 20, 2012

ii. _____

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

i. 2012-UP-00373

ii. _____

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

(a) N/A

(b) _____

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PETHA SARGO

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

- (a) Denial of Effective Assistance of Counsel
- (b) Denial of Effective Assistance of Appellate Counsel
- (c) _____

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

- (a) Counsel labored under conflicting interests;
- (b) Counsel did not properly raise claims that were
- (c) preserved for Appellate Review.

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

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

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

(a) the specific nature thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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 SOUTH CAROLINA
 DEPT. OF CORRECTIONS

(c) the disposition thereof:
 i. N/A
 ii. _____
 iii. _____
 iv. _____

(d) the date of each such disposition:
 i. N/A
 ii. _____
 iii. _____
 iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 i. N/A
 ii. _____
 iii. _____
 iv. _____

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

No, they have not.

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

(a) which grounds have been presented:
 i. N/A
 ii. _____
 iii. _____

(b) the proceedings in which each ground was raised:
 i. N/A
 ii. _____
 iii. _____

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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) Ineffective Assistance, First Collateral Attack
- (b) On both (10)(a) and (10)(b).
- (c) _____
- (d) _____

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Elizabeth C. Willard,
 - ii. Wanda H. Carter, Post Office Box 11589,
Columbia, South Carolina 29211
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Trial and Sentencing
 - ii. South Carolina Court of Appeals
 - iii. _____

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

Based on the above, Convictions and Sentences
be Reversed and Remanded for a New
Trial.

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

No, I am not.

2012 OCT 12 104132

STATE OF SOUTH CAROLINA)

County of LEXINGTON)

VERIFICATION

I, Odlin Noel Baneegas-Maldonado, #313494, 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.

Odlin Baneegas

SWORN to and subscribed before me this 11 day of OCT. 2012.

Maverick Walter (L.S.)
Notary Public

My Commission Expires: 3/8/2016

2012 OCT 12 2 3:20

FILED

2012CP3204132

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

I, Dylin Abel Baneegas-Maldonado #343434, 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.

Dylin Baneegas
Applicant

SWORN or affirmed to and subscribed before me this
11 day of Oct 2012

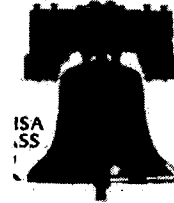
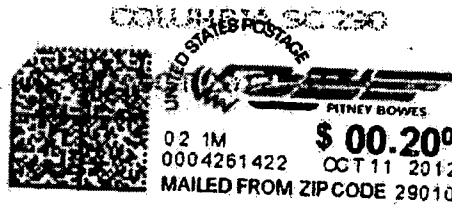
Marcus White
Notary Public

My Commission Expires: 3/8/2022

FILED
2012 OCT 12 3:20

Oblin Maldonado Bonegas #343494
bar. S Rm 2251
Lee C.I.
990 Wisacky Hwy.
Bishopville, SC 29010

Lexington,
Clerk of Court
139 E. Main Street, Rm 107
Lexington, SC 29072 - 3456



FILED

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ST. JULY 2012

2012CP3204132

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	
)	Case No. 2012-CP-32-4132
Oblin Banegas-Maldonado,)	
S.C.D.C. No. 343494,)	
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	

Respondent, making its Return to the application for post-conviction relief filed October 12, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the April 2009 term of the Lexington County Grand Jury for burglary, first-degree (2009-GS-32-0821) and murder, (2009-GS-32-0820). Applicant was represented by Elizabeth C. Fullwood, Esq., and Salley J. Henry, Esq. On November 1, 2010 the State called its case. Applicant proceeded to a jury trial before the Honorable Clifton Newman and was convicted of burglary first-degree, and the lesser-included offense of voluntary manslaughter. Applicant was sentenced to fifteen (15) years imprisonment for burglary, first-degree, and twenty-five (25) years imprisonment for voluntary manslaughter. The sentences were to be served consecutively.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Tristan Shaffer, Esq., of the Office of Appellate Defense pursuant to Anders v. California.¹ The South Carolina Court of Appeals affirmed Applicant's conviction and sentence on June 1,

¹ Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967).

2012. State v. Oblin Bangeegas-Maldonado, No. 2012-UP-373 (S.C. Ct. App. May 15, 2013). The Remittitur was issued on June 20, 2012.

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject convictions, Applicant's trial transcript, the Applicant's records from the South Carolina Department of Corrections, and Applicant's appellate records. 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:
 - a. "Counsel labored under conflicting interests."
2. Ineffective Assistance of Appellate Counsel:
 - a. "Did not properly pursue claims that were preserved for appellate review."

Any claims not specifically enumerated in the PCR application or amendments **not made ten (10) days prior to the evidentiary hearing** will be opposed by the State, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process

that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (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, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent submits that 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, 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.

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

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. WALT WHITMIRE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

Dec 17th, 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
)
)
 OBLIN BANEGAS-MALDONADO)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent)
)

IN THE COURT OF COMMON PLEAS
 IN THE ELEVENTH CIRCUIT

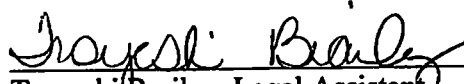
2012-CP-32-4132

AFFIDAVIT OF SERVICE BY MAIL

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

Anna R. Good, Esq.
1720 Main St. Ste. 303
Columbia, SC 29201

DATED this 17th day of December, 2013


 Troyeshi Brailey, Legal Assistant
 For Respondent

- (f) Ineffective assistance of trial counsel--Applicant was unfairly sentenced based upon the judge's feelings and not on the jury's verdict, and trial counsel failed to object to the sentence.

LAW OFFICE OF ANNA GOOD, LLC

A handwritten signature in black ink, appearing to read "Anna R. Good", is written over a horizontal line.

Anna Good, Esquire
Attorney for Applicant
1720 Main Street, Suite 303
Columbia, SC 29201
803-429-9107
803-799-4059 (fax)
anna@annagoodlaw.com

Columbia, South Carolina

This 16th of May, 2014

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
 2013-CP-40-4132

Oblin Banegas-Maldonado,)
 SCDC #343494,)
 Applicant,)

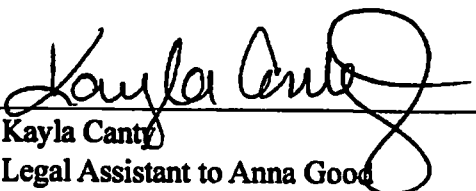
-vs-

CERTIFICATE OF SERVICE

State of South Carolina,)
 Respondant.)

Kayla Canty, certifies that on the 16th day of May 2014, she served the Amended Application for Post Conviction Relief on Walt Whitmire, Attorney for the Respondant, by placing a copy of the same in the U.S. Mail with due and proper postage attached thereto, addressed as follows:

Walt Whitmire, Assistant Attorney General
 Rembert C. Dennis Building
 P.O. Box 11549
 Columbia, SC 29211

By: 
 Kayla Canty
 Legal Assistant to Anna Good

LAW OFFICE OF ANNA GOOD, LLC
 1720 Main Street, Suite 303
 Columbia, SC 29201
 (803) 429-9107

Columbia, South Carolina
 This 16th day of May, 2014.

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State of South Carolina
County of Lexington

Court of Common Pleas

Oblin Banegas-Baldonado,)
)
 Applicant,)
 vs.)
)
 The State of South Carolina,)

Transcript of Record
2012-CP-32-4132

December 8, 2015
Lexington, South Carolina

B E F O R E:

The Honorable D. Craig Brown, Judge

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

Patrick Schmeckpeper, Assistant Attorney General
Attorney for the State

Anna R. Good, Esquire
Attorney for Defendant

Stacy S. Johnson, RPR
Circuit Court Reporter

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4	Redirect by Ms. Good	12
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E X H I B I T S

NO.

DESCRIPTION

ID.

EVD.

NO EXHIBITS MARKED

P R O C E E D I N G S

1
2 (The following proceedings were held on December 8,
3 2015.)

4 **THE COURT:** Madam Clerk, if you would swear the
5 interpreter.

6 **THE CLERK:** Raise your right hand.

7 (Whereupon, the interpreter was duly sworn by the
8 Clerk of Court.)

9 **THE COURT:** All right. Call your case.

10 **MR. SCHMECKPEPER:** Your Honor, this is Oblin
11 Banegas-Baldonado versus the State of South Carolina,
12 2012-CP-32-4132. Mr. Banegas-Baldonado was convicted of
13 voluntary manslaughter and burglary in the first degree.
14 He was sentenced to fifteen years imprisonment for
15 burglary, twenty-five years imprisonment for voluntary
16 manslaughter, sentenced by the Honorable Clifton Newman
17 to -- he was sentenced consecutively by Judge Newman.
18 Timely notice of appeal was file. Pursuant to Andrews v.
19 California, the South Carolina Court of Appeals dismissed
20 that on June 1, 2012.

21 **THE INTERPRETER:** Pardon me. Slow down a little,
22 please.

23 **MR. SCHMECKPEPER:** I apologize. It appears there's
24 allegations currently -- I mean, there's been an amended
25 application -- there's been an amended application, and at

1 this time I'll turn it over to Ms. Good.

2 **MS. GOOD:** Thank you, Your Honor. We're ready to
3 proceed. And for purposes of -- Your Honor, on the
4 amended application, we're not going forward with the
5 first, 11 A, but the rest we will be going forward on.

6 **THE COURT:** All right.

7 **MS. GOOD:** At this time I call Oblin Banegas-Baldonado
8 to the stand.

9 **THE CLERK:** Raise your right hand.

10 OBLIN NOEL BANEGAS-BALDONADO,
11 having been duly sworn, testified as follows:

12 **THE COURT:** You can be seated. Thank you.

13 DIRECT EXAMINATION

14 BY MS. GOOD:

15 Q. Can you state your name for the record?

16 A. Oblin Noel Banegas-Baldonado.

17 Q. And, Mr. Baldonado, you just heard that you were
18 convicted at a trial for murder and burglary in the first
19 degree, correct?

20 A. Yeah.

21 Q. And who was your attorney for that trial?

22 A. My attorney was Elizabeth.

23 Q. Was it Elizabeth Fullwood?

24 A. Yeah.

25 Q. And do you remember how many meetings you had with her

1 before your trial?

2 A. Like three times. Like three times.

3 Q. Okay. And do you remember about how long each of
4 those meetings were?

5 A. Thirty minutes, like that. Thirty minutes.

6 Q. Okay. And, Mr. Baldonado, what is your education
7 level?

8 A. I almost don't have any education.

9 Q. How far did you -- how far did you go in school?

10 A. I only got to second grade.

11 Q. And when did you come to the United States?

12 A. 2000 and -- 2000 and -- 2002.

13 Q. And do you understand English very well?

14 A. I don't understand everything, but it's more than
15 half.

16 Q. And when Ms. Fullwood met with you, did she speak to
17 you in English or did she use a translator?

18 A. She used an interpreter.

19 Q. Okay. And were you able to convey to her what you
20 wanted or needed regarding this case through the
21 interpreter?

22 A. Yes.

23 Q. Okay. And do you remember that particular
24 translator's name?

25 A. No, I don't -- don't really remember.

1 Q. Was it the same translator that was used at your
2 trial?

3 A. It was the same.

4 Q. In fact, there were two used at your trial, correct?

5 A. Yeah, two.

6 Q. And prior to your trial, was there any plea offer in
7 your case?

8 A. I remember that there was an offer of twenty to
9 thirty.

10 Q. Okay. Do you remember if you were ever given an offer
11 of fifteen to thirty?

12 A. Yeah. Yes.

13 Q. And what did you tell Ms. Fullwood about that offer?

14 A. That if they would give me the fifteen years, that I
15 would say that I was guilty.

16 Q. And what did she say to that?

17 A. No, she -- well, no, she said that -- that she would
18 see if she could, but that, no, she couldn't, it was too
19 late.

20 Q. Okay. You ended up going to trial. At the beginning
21 of trial, did Ms. Fullwood actually have a translator lined
22 up for you or did it come from somewhere else?

23 A. No, she had it prepared.

24 Q. Do you remember her asking the judge if one of the
25 State's translators for their witnesses could serve as your

1 translator?

2 A. It could be, but I don't really remember.

3 Q. And do you remember if this was an experienced Spanish
4 interpreter for the court case? Had he done it before?

5 A. It seems that -- I don't think he had experience.

6 Q. And, in fact, didn't he say it was his first time
7 doing a trial?

8 A. I don't remember that he said that, that it was the
9 first time.

10 Q. Do you know if during the trial he translated
11 everything correctly or not?

12 A. He did it well. He spoke Spanish well.

13 Q. Towards the end of the trial, during the closing
14 arguments, there were some statements made by the
15 prosecutor that you believed were improper, correct?

16 A. It was like there were -- there were two or -- no,
17 there were two, right? One -- one spoke very clearly and
18 the other did not.

19 Q. I'm talking about the prosecutor for the State who was
20 trying to convict you. When they were talking to the jury
21 at the end, do you remember of any statements that you
22 believed that they should not have said to the jury?

23 A. I don't really remember.

24 Q. Do you remember during the jury -- when the prosecutor
25 was talking to the jury saying that he knows somebody who

1 was lying, and it was him, talking about you?

2 A. I don't remember that -- that he said everything
3 correctly, but I --

4 Q. Once you were convicted of the voluntary manslaughter
5 and burglary first degree, you were ultimately sentenced
6 to twenty-five years and then fifteen years to run
7 consecutively for a total of forty years, correct?

8 A. Yes.

9 Q. Okay. And during the sentencing, do you remember the
10 judge making any comments about his feelings about what he
11 thought the verdict should have been?

12 A. Just the time that they gave me -- to me it seemed
13 like a lot, but I defended myself and --

14 Q. Do you remember the judge saying that he thought
15 the jury was being gracious in giving you voluntary
16 manslaughter?

17 A. That wasn't voluntary manslaughter.

18 Q. But do you remember the judge saying that?

19 A. Yeah.

20 Q. And did your attorney do anything about that?

21 A. No, I don't think she did anything.

22 Q. Is there anything else you would like to tell the
23 Court that we may have missed or skipped over?

24 A. What? Like -- like what?

25 Q. Is there just anything else you'd like to tell the

1 judge?

2 A. No, just that -- that -- that I would like help. That
3 obviously I made an error and I'd like -- I'd like help
4 with getting the time reduced.

5 **MS. GOOD:** Okay. No further questions. Please answer
6 any questions he has for you.

7 **MR. SCHMECKPEPER:** May it please the Court?

8 **THE COURT:** Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. SCHMECKPEPER:

11 Q. Good morning.

12 A. Morning.

13 Q. Is it Mr. Banegas or Mr. Banegas-Baldonado?

14 A. Banegas-Baldonado.

15 Q. Mr. Banegas-Baldonado, do you remember being charged
16 with the -- with these offenses?

17 A. Yes.

18 Q. And do you remember meeting with your attorney?

19 A. Yes.

20 Q. Now you testified earlier that when you met with your
21 attorney you spoke with her through a translator or an
22 interpreter; is that correct?

23 A. Yes.

24 Q. But you also testified that you understand a good deal
25 of English; is that correct?

1 A. Well, yeah, but when I came into here I didn't speak
2 English. I've been learning it as I go.

3 Q. But did you have any trouble communicating with
4 Ms. Fullwood?

5 A. No, I didn't have a problem.

6 Q. And you also testified that you remember Ms. Fullwood
7 offering you a plea deal or presenting you a plea deal; is
8 that correct?

9 A. Yeah.

10 Q. And you said that was fifteen years to thirty years,
11 correct?

12 A. If it was twenty or thirty, like that. Fifteen.

13 Q. But your testimony is that you said no, you wanted
14 just a fifteen-year sentence; is that correct?

15 A. Well, it's that when she came to visit me --

16 **THE INTERPRETER:** Apparently -- Your Honor, could the
17 Court instruct the Plaintiff to please speak up and not
18 mumble?

19 **THE COURT:** Sir, you need to speak clearly so that
20 everyone, especially the interpreter, can understand you
21 and accurately tell the Court your response. Do you
22 understand?

23 **THE WITNESS:** Yes.

24 **THE COURT:** Thank you.

25 A. Yeah, when she came back, I asked her if she had

1 another offer for fifteen years because -- and she came
2 back and said that no, that she couldn't, and everything --

3 Q. Do you remember your trial?

4 A. Yeah.

5 Q. And your testimony, if I'm correct, was that your
6 translator -- your translator spoke Spanish well?

7 A. Yeah. He was Columbian, yeah.

8 **MR. SCHMECKPEPER:** I beg the Court's indulgence.

9 **THE COURT:** Yes.

10 **MR. SCHMECKPEPER:** I have no further questions. Thank
11 you, Mr. Banegas.

12 **THE COURT:** Any redirect?

13 **MS. GOOD:** Yes, sir. Very quickly.

14 REDIRECT EXAMINATION

15 BY MS. GOOD:

16 Q. At the trial there was more than one translator,
17 correct?

18 A. Yeah. Yes, there were two.

19 Q. And one of them, it was one of their first times doing
20 a trial, correct?

21 A. Yes.

22 Q. And did you have the same interpreter the whole time
23 or did they switch off?

24 A. No. Well, they -- they changed them.

25 Q. And just a second ago, just to clarify, I didn't quite

1 understand, you said one of them spoke Columbian Spanish?

2 A. I couldn't really say that it was Spanish from
3 Columbia. It's when they're born here they speak Spanish
4 that's like --

5 Q. Is -- where you're from is there a different type of
6 Spanish versus another area?

7 A. Yeah. Well, it's kind of the same, but -- almost the
8 same, but not.

9 Q. And where are you from?

10 A. Honduras.

11 **MS. GOOD:** No further questions, Your Honor.

12 **THE COURT:** Anything further?

13 **MR. SCHMECKPEPER:** Briefly, Your Honor.

14 **RECCROSS EXAMINATION**

15 **BY MR. SCHMECKPEPER:**

16 Q. Mr. Banegas-Baldonado, is it your testimony that you
17 have trouble understanding people from Columbia?

18 A. No.

19 **MR. SCHMECKPEPER:** I have no further questions.

20 **THE COURT:** Sir, you may step down.

21 (Witness excused.)

22 **THE COURT:** Any further witnesses?

23 **MS. GOOD:** No, Your Honor.

24 **THE COURT:** Ms. Good --

25 **MS. GOOD:** No, sir.

1 go over your background in criminal law?

2 A. Well, I graduated from the University of South
3 Carolina in law in 1979. I worked for a state agency for
4 a couple of months, then I went to work for the Sumter
5 County Public Defender's Office for a couple of years.
6 From there I went and worked for eight years at the Office
7 of Appellate Defense, as it was then called. I was in
8 private practice a couple of years and then in 1991 I
9 became Public Defender for Lexington County.

10 Q. So your practice has almost entirely been devoted to
11 criminal law; is that right?

12 A. That's correct.

13 Q. Now do you remember vaguely when you met -- when you
14 first met this client in relation to when his trial was?

15 A. Oh, it would have been -- excuse me. It would have
16 been shortly after my office was appointed to represent
17 him.

18 Q. And this might seem like an odd question, but
19 Ms. Fullwood, what is your first language?

20 A. English.

21 Q. Do you speak any other languages?

22 A. It is my only language.

23 Q. And what is Mr. Banegas-Baldonado's first language?

24 A. Spanish.

25 Q. And does he speak -- did he speak English when you

1 represented him?

2 A. Like he said, he could say some words, but, no, he was
3 primarily a Spanish language speaker.

4 Q. And how did you communicate with Mr. Banegas?

5 A. Through a translator.

6 Q. Were there any times where you were communicating with
7 him where a translator was not present?

8 A. No.

9 Q. Now did you conduct an independent investigation in
10 this case?

11 A. I did. I do not recall whether or not we used a
12 private investigator. We may have, we may not have. I
13 do personally recall going out to the workplace of the
14 female witness, Ana, on two occasions and talking to her
15 about the facts of the case using an interpreter. I
16 specifically recall going to the scene of the incident and
17 looking at the layout. While I was there, I talked to the
18 young male Honduran, who was a witness in the trial. I
19 had a translator with me, so I spoke with him through the
20 translator and also I spoke to him in English since he had
21 fairly good English language skills.

22 Q. And did you --

23 **THE COURT:** Hold on just a second. Both of you please
24 slow down just a little bit.

25 **THE WITNESS:** Yes, sir.

1 **THE COURT:** Remembering that we have an interpreter
2 and as you all are questioning -- Mr. Schmeckpeper as
3 you're questioning Ms. Fullwood and Ms. Fullwood you are
4 answering, my interpreter is over there talking as fast
5 as she can, okay? I know it's not -- it's out of the
6 ordinary, but please slow down for her.

7 Madam Interpreter, if they get too fast, just raise
8 your right hand and I'll interject on your behalf, okay?

9 **THE INTERPRETER:** Thank you.

10 **MR. SCHMECKPEPER:** And I apologize. I'm somewhat of a
11 fast-talker anyway.

12 **THE COURT:** That's okay. Slow down. Go ahead.

13 BY MR. SCHMECKPEPER:

14 Q. And, Ms. Fullwood, did you -- if I'm correct, you
15 testified that you did receive discovery in this case; is
16 that correct?

17 A. Yes.

18 Q. And did you go over that discovery with the Applicant?

19 A. Yes, in detail.

20 Q. And that was with a translator?

21 A. Of course.

22 Q. Now do you remember the trial of this case?

23 A. Yes.

24 Q. Do you remember whether or not there were translators
25 present at trial?

1 A. There were. There were two translators there.
2 They have a business called Comunicar. That's spelled
3 C-O-M-U-N-I-R -- A-R. They are Britt, I believe his last
4 name is Hunt, and Alejandro Garcia. It is my understanding
5 that both of those men have masters degrees in courtroom
6 interpretation. It was my opinion then, and it is still
7 my opinion, that they are sort of state of the art
8 translators. Both of them are fully court -- fully
9 certified to act as translators.

10 Q. And, in fact, they were certified during that trial;
11 is that correct?

12 A. Yes, at that time they were. If I could add, the
13 State had contacted a different person to translate. I do
14 not believe that that person was completely court-certified
15 to do the job. I insisted that they use the people who
16 worked at Comunicar because I did not want any problems to
17 arise in communicating with my client and having my client
18 being able to understand what people were saying in the
19 courtroom.

20 Q. Let's talk about the plea offer for one moment. Do
21 you remember a plea offer in this case?

22 A. I don't have any independent recollection of that.
23 This morning I was shown an e-mail chain. I now know that
24 Mr. Baldonado was made a plea offer. The offer was for him
25 to plead guilty to voluntary manslaughter and first degree

1 burglary. The sentencing range on the offer was between
2 fifteen and thirty years.

3 Q. When you receive a plea offer from the State, what is
4 your normal practice?

5 A. To discuss it with my client.

6 Q. And do you remember whether you discussed it with your
7 client in this case?

8 A. Oh, yes. I did.

9 Q. And just to -- I'm sorry, I hate to beat a dead horse,
10 you would have done that with a translator present; is that
11 correct?

12 A. Absolutely.

13 Q. Do you remember what Mr. Banegas' response was?

14 A. Now this is from my memory. Mr. Banegas always
15 believed that he had acted in self-defense. He also did
16 not like the large number of years that were contained in
17 that plea offer.

18 Q. So --

19 **MR. SCHMECKPEPER:** I beg the Court's indulgence.

20 **THE COURT:** Yes.

21 BY MR. SCHMECKPEPER:

22 Q. And did he -- so he -- did he accept or reject the
23 plea offer?

24 A. He rejected it.

25 Q. And were there any other plea offers -- were there any

1 other plea offers in this case that you can remember?

2 A. Not that I can remember, but I think the e-mail chain
3 I looked at this morning is sort of the culmination of
4 several months of negotiating with the prosecutor.

5 Q. And there were extensive negotiations; is that
6 correct?

7 A. That is right.

8 **MR. SCHMECKPEPER:** I have no further questions. Thank
9 you, Ms. Fullwood.

10 **THE COURT:** \ Cross-examination.

11 **MS. GOOD:** Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. GOOD:

14 Q. Prior to the trial, did you set up the translator for
15 the trial?

16 A. I do not remember if I personally set it up or I
17 recommended these translators and then the Clerk of Court's
18 office set it up.

19 Q. Okay. Have you checked or read a copy of the
20 transcript from the trial?

21 A. No.

22 Q. Okay. Do you recall at the beginning of the trial
23 that the interpreters were there for the witnesses for the
24 State and at that time you asked if they could interpret
25 for your client also?

1 A. Yes, but we had always intended to do it that way.

2 Q. Okay. And can you explain that a little bit more?

3 A. Well, that makes me think the Clerk of Court's office
4 had arranged to have them in there, but that had been at
5 my insistence and I'd always planned to use them to also
6 translate because there were always two in the courtrooms
7 so one could be translating for the witnesses and one could
8 be translating for the Defendant because many of the
9 witnesses were only Spanish speakers. And so I think I
10 said that so that if any payment issues arose that we
11 would -- you know, we could make sure that they were
12 completely compensated for the work they did there.

13 Q. And you said they were Britt Hunt and Alejandro
14 Garcia?

15 A. That's right.

16 Q. Okay. And do you recall what their qualifications
17 were at the trial?

18 A. I believe they were both court-certified translators
19 and I believe they both have masters degrees in that area.

20 Q. And do you remember -- and, Your Honor, for your
21 purposes, Page 11 -- Interpreter Garcia saying he had been
22 qualified about ten times as an interpreter for mostly
23 hearings, but this is the first time that he was gonna do a
24 whole trial?

25 A. That could very well be the case.

1 Q. Okay. And you don't speak Spanish, correct?

2 A. Not a word hardly.

3 Q. Me neither. So you don't know if he translated
4 everything right or how it was done, do you?

5 A. I -- I have confidence in his work.

6 Q. And do you remember did they switch off speaking with
7 Mr. Banegas-Baldonado or did one person do the entire trial
8 with him?

9 A. They would switch off.

10 Q. And do you know the reason for that?

11 A. Because of the fatigue, as I understand it, of trying
12 to do simultaneous translations of witness testimony it is
13 my understanding that it's hard to do that for an extended
14 period of time.

15 Q. Okay. And in your experience, do you believe it
16 would be hard if this was your first trial to do that, the
17 fatigue would be a little bit more than if you're used to
18 it?

19 **MR. SCHMECKPEPER:** Objection, calls for speculation.

20 **THE COURT:** I'll allow it. Go ahead.

21 A. It's hard to answer that because I've never had to do
22 that kind of work. I -- I would guess so.

23 Q. Do you recall the closing arguments in this case?

24 A. No, ma'am.

25 Q. Okay. I want to read to you one section of the

1 closing argument -- or I can hand it to you. Page 455.

2 Do you recall the prosecutor stating that he knew
3 somebody was lying in this case as a witness and that it
4 was the Defendant?

5 A. If you'd give me a minute to sort of skim. Okay. So
6 you're talking about what's in Lines 13 through 15?

7 Q. I just know Page 455 that's down about right in the
8 middle of the page.

9 A. And you -- looking at it, I know somebody who was
10 lying in the courtroom and that was him?

11 Q. Yes.

12 A. Okay.

13 Q. Did you object to that statement by the prosecutor?

14 A. No.

15 Q. And why not?

16 A. I didn't think that there was anything improper about
17 that.

18 Q. You didn't think that he was vouching for witnesses or
19 putting his belief as to who was lying and who was telling
20 the truth?

21 A. No.

22 Q. Okay. And, finally, at the end of the trial -- Judge
23 Newman was the judge, correct?

24 A. That's right.

25 Q. Okay. And do you remember him commenting about what

1 he believed the verdict should have been?

2 A. I do not remember that.

3 Q. Okay.

4 A. If you want to tell me what page, I can --

5 Q. I don't have the page written down on that one. It's
6 toward end where he's sentencing. Do you remember him
7 saying that he thought the jury was being gracious in
8 giving the voluntary manslaughter charge?

9 A. Let's see. I don't think I have the complete
10 transcript. I'm sorry, Judge.

11 **THE COURT:** What page is it, Ms. Good?

12 **MS. GOOD:** I don't have the page number written down,
13 Your Honor. It's where he was sentencing.

14 **THE COURT:** Hold on a minute then.

15 **MR. SCHMECKPEPER:** It's at 515.

16 **MS. GOOD:** 515, Your Honor.

17 **THE COURT:** Line 12.

18 **THE WITNESS:** I see it. Thank you, Judge.

19 BY MS. GOOD:

20 Q. And he ultimately sentenced him to consecutive time
21 instead of concurrent, correct?

22 A. That's right.

23 Q. Did you object to him making that statement regarding
24 his personal beliefs as to what he thought the verdict
25 should have been?

1 A. I did not object to that remark.

2 Q. Is there a reason you didn't object to that?

3 A. I didn't see a legal basis to make an objection to
4 that.

5 **MS. GOOD:** I beg the Court's indulgence. No further
6 questions, Your Honor.

7 **THE COURT:** All right.

8 **MR. SCHMECKPEPER:** Just one question, Your Honor. Two
9 questions.

10 REDIRECT EXAMINATION

11 BY MR. SCHMECKPEPER:

12 Q. Ms. Fullwood, if you could turn your attention to
13 Page 397 of the transcript.

14 A. Yes.

15 **THE COURT:** What page again was that?

16 **MR. SCHMECKPEPER:** 397, Your Honor.

17 BY MR. SCHMECKPEPER:

18 Q. And just focussing in on Lines 1 through 4, would you
19 mind reading that for the Court?

20 A. Question: So when you testified that you got it from
21 the bathroom, that was a lie, wasn't it? Answer: Yes, it
22 was a lie. I can't remember if I got it from the bathroom
23 or from the living room.

24 Q. And that was Mr. Banegas-Baldonado testifying; is that
25 correct?

1 A. Correct.

2 **MR. SCHMECKPEPER:** I have no further questions. Thank
3 you, Ms. Fullwood.

4 **THE COURT:** Anything Ms. Good?

5 **MS. GOOD:** No, sir.

6 **THE COURT:** Ms. Fullwood, you may step down.

7 **THE WITNESS:** Thank you, Your Honor.

8 (Witness excused.)

9 **THE COURT:** Anything further from the State?

10 **MR. SCHMECKPEPER:** No, Your Honor.

11 **THE COURT:** Ms. Good, anything by way of argument?

12 **MS. GOOD:** Your Honor, I would just argue that it's
13 unclear as to whether the translator with him -- with that
14 being his first trial, whether he would have translated
15 everything correctly to Mr. Banegas-Baldonado or whether he
16 understood everything correctly.

17 In addition, Your Honor, I believe the improper
18 closing statement by the prosecutor vouching for witnesses
19 in the trial, basically saying that he knows, it's my
20 understanding from case law that prosecutors are not able
21 to put their belief as to who's lying or who is telling the
22 truth into closing arguments, Your Honor. And I do believe
23 that there should have been an objection to Judge Newman's
24 belief as to what his personal feelings as to the verdict
25 should have been should have been objected to.

1 **THE COURT:** Yes, sir.

2 **MR. SCHMECKPEPER:** Thank you, Your Honor. May it
3 please Court? Concerning whether or not the translator
4 was qualified, I've got the statute right there, and if I
5 could pass that to Your Honor, as well as Ms. Good. If I
6 can approach, Your Honor?

7 Your Honor, if I could read from the statute, whenever
8 a party --

9 **THE COURT:** Cite the statute, please.

10 **MR. SCHMECKPEPER:** Your Honor, the statute is South
11 Carolina Code Section 17-1-50, and this is Subsection
12 (B) (1). Notwithstanding any other provision of law,
13 whenever a party, witness or victim in a criminal legal
14 proceeding does not sufficiently understand or speak the
15 English language to comprehend proceedings or testify, the
16 court must appoint a certified or otherwise qualified
17 interpreter to interpret the proceedings to the party or
18 victim or to interpret the testimony of the witnesses.

19 Judge, that's the statute. Testimony here was
20 elicited that the interpreters here were certified. They
21 were also certified on the record by the trial court judge.
22 As there's -- I would submit that this -- that allegation
23 has no merit.

24 As far as the next allegation goes concerning the
25 improper closing arguments, you know, as was in the record

1 there was testimony by the Applicant during trial that he
2 lied about specific -- he lied at certain points about
3 specific instances. As a result, you know, my -- my
4 position is that the solicitor's closing argument was not
5 improper vouching, but was supported by facts in the
6 record.

7 As far as Judge Newman's belief that this was -- that
8 a voluntary manslaughter verdict was gracious, you know, as
9 Ms. Fullwood testified there's nothing objectionable, and
10 we would rest on the record. Thank you, Your Honor.

11 **THE COURT:** Well, based upon what I've heard here
12 today, Applicant is required -- who bears the burden of
13 proving that counsel's performance was deficient and that
14 the deficient performance prejudiced the Defendant. Prior
15 to the beginning --

16 **THE INTERPRETER:** Pardon me, Your Honor. Please
17 repeat.

18 **THE COURT:** All right. The Defendant bears the
19 burden of proving that counsel's performance was deficient,
20 deficient, and that the deficient performance prejudiced
21 the Defendant. Prior to the commencement of this
22 proceeding, attorney for the Applicant conveyed to the
23 Court, and, Ms. Good, you correct me if I'm wrong here,
24 that they were not going forward on Subsection 11 A,
25 Subsection A, Paragraph 11, in the amended application

1 for post-conviction relief, which left Subsections B
2 through F. Is that correct, Ms. Good?

3 **MS. GOOD:** Yes, sir.

4 **THE COURT:** All right. In addressing each of these
5 specific allegations, being B through F, the Defendant of
6 his own testimony testified that Ms. Fullwood retained an
7 interpreter and communicated with him by virtue of an
8 interpreter or translator in all of her meetings with him,
9 that such interpreters were utilized for the purposes of
10 trial, which are specifically addressed on Page 10 and
11 Page 11 of the trial transcript, which specifically
12 addressed the qualifications of each of these interpreters,
13 and based upon their qualifications the Court qualified
14 them to translate during the course of the Applicant's
15 trial. That being reflected -- or in response to the
16 allegations of Paragraph 11 B and C.

17 As it relates to Paragraph D, ineffective assistance
18 of trial counsel in failing to inform Applicant of a plea
19 offer, the Defendant by his own testimony recalled a plea
20 offer being conveyed to him. His recollection may not
21 have been specifically clear, but did state that he recalls
22 fifteen to thirty or maybe twenty to thirty. Such was
23 confirmed by the testimony of Ms. Fullwood.

24 As it relates to Subparagraph E, this Court does not
25 believe or find that counsel's failure to object to

1 improper closing or the allegation of improper closing
2 arguments was ineffective. Attorneys in closing arguments
3 are allowed to argue facts which are in the record and the
4 logical conclusions to be drawn from those facts. The
5 Defendant by his own testimony during trial on Page 397,
6 Lines 1 through 4, admitted to lying. This Court does not
7 believe that the solicitor's closing argument was improper,
8 nor was it improper for defense counsel in failing to
9 object.

10 As it relates to Subsection F of Paragraph 11 and
11 Applicant's allegation that defense counsel was ineffective
12 for failing to object to the judge's comments as to his
13 beliefs and that the jury had been gracious, this Court
14 does not believe that such comments were improper. It
15 was not an improper comment on the facts of the case by
16 a judge. In fact, any comments, or this comment
17 specifically, that Judge Newman made was post-verdict and
18 not improper.

19 Furthermore, as it relates to Subparagraph F in
20 failing to object to the sentence, the Defendant was
21 convicted of burglary first, which carries fifteen to
22 life, and voluntary manslaughter, which carries up to
23 thirty years. The Defendant received the minimum sentence
24 on his conviction for burglary first wherein the Court
25 could have, under the law, sentenced him specifically on

1 that charge to life imprisonment.

2 Furthermore, the sentence of twenty-five years on
3 the voluntary manslaughter conviction is also within the
4 statutory -- or within the discretion of the court as
5 provided by statute and it's furthermore within the
6 judge's discretion as to run such sentences concurrent or
7 consecutive. Judge Newman chose to run the sentences
8 consecutive, which is certainly within his discretion as
9 well.

10 Based upon those findings of fact as to each
11 allegation, this Court does not find that counsel's
12 performance is deficient, nor that counsel's performance
13 in any way prejudiced the Defendant.

14 All right. Anything further from the State?

15 **MR. SCHMECKPEPER:** No, Your Honor.

16 **THE COURT:** Ms. Good?

17 **MS. GOOD:** No, sir.

18 **THE COURT:** If the State would get me an order on
19 that, I'll get it signed. Thank you very much.

20 (Recess taken.)

21 **THE COURT:** There's one other thing I wanted to put on
22 the record and ask a question. Ms. Good, did you retain
23 the services of the interpreter today?

24 **MS. GOOD:** No, sir. It was done through the Clerk of
25 Court's office.

1 **THE COURT:** All right. It was brought to my attention
2 yesterday by the Clerk that the interpreter may know the
3 Defendant or there's some knowledge there and the Clerk
4 asked me what to do about it and I simply told her -- at
5 that time I said simply knowing them is not a problem and
6 told the Clerk yesterday morning that we would go forward
7 without -- unless there was something else that was brought
8 to my attention. I wanted to further put that on the
9 record.

10 And also the interpreter told me today after the
11 Defendant had exited the courtroom when she came up to me
12 to sign off on fees she had incurred for being here today
13 that she did not, did not, know the Defendant and that --
14 but she did not want to be involved in the case any
15 further.

16 Is there anything, Ms. Good, that you would like to
17 put on the record concerning this issue or any objections
18 as to her interpreting? And the only reason I bring that
19 up is because there were some issues pertaining to the
20 interpreters in your client's case and I just wanted to
21 make you aware of that, as well in the presence of your
22 client, and that's why I had him brought back in this
23 courtroom.

24 **MS. GOOD:** Yes, sir. I don't believe there's any
25 issue. We specifically at the status conferences worked

1 with the Clerk's office so that we would not have the same
2 translators here, and she does not know him, so I don't
3 believe that there's any problem.

4 **THE COURT:** And there's no objection by either party
5 as to this interpreter's qualifications? Ms. Good?

6 **MS. GOOD:** No, sir.

7 **MR. SCHMECKPEPER:** No, sir.

8 **THE COURT:** All right. Anything else that needs to be
9 placed on the record concerning this case from the State?

10 **MR. SCHMECKPEPER:** Nothing further, Your Honor.

11 **THE COURT:** Ms. Good?

12 **MS. GOOD:** No, sir.

13 **THE COURT:** Very well. That will conclude this
14 matter.

15 (Proceedings were concluded at 11:05 AM.)
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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 8th day of December, 2015.

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

April 8, 2016

Stacy S. Johnson

Stacy S. Johnson, RPR
Circuit Court Reporter

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
FOR THE ELEVENTH JUDICIAL CIRCUIT

Oblin Banegas-Maldonado,
S.C.D.C. No. 343494,

C.A. No. 2012-CP-32-4132

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

2016 JAN 22 AM 11:30
CLERK OF COURT
LEXINGTON SC

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed October 12, 2012. Respondent made its Return on or about December 17, 2013. An evidentiary hearing into the matter was convened on December 8, 2015, at the Lexington County Courthouse. Applicant was present and was represented by Anna Good, Esquire. Respondent was represented by Patrick Schmeckpeper, Esquire, of the South Carolina Attorney General's Office.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Elizabeth Fullwood, Esquire, also testified. This Court had before it a copy of Record on Appeal from Applicant's direct appeal,¹ the records of the Lexington County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, appellate records, and the pleadings. The Court finds as follows:

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the April 2009 term of the Lexington County Grand Jury for burglary, 1st degree (2009-GS-32-

¹ Applicant's trial transcript was included in the Record on Appeal.

0821); and murder (2009-GS-32-0820). He was represented by Elizabeth Fullwood, Esquire. From November 1-4, 2010, Applicant proceeded to trial by jury before the Honorable Clifton Newman, after which he was convicted of the lesser included offense of voluntary manslaughter, and as indicted for burglary, 1st degree. Judge Newman sentenced him to confinement for consecutive terms of twenty-five (25) years for voluntary manslaughter, and fifteen (15) years for burglary.

A timely Notice of Appeal was filed and perfected on Applicant's behalf pursuant to Anders v. California.² The South Carolina Court of Appeals affirmed Applicant's convictions and sentences on June 1, 2012. State v. Oblin Banegas-Maldonado, No. 2012-UP-373 (S.C. Ct. App. filed May 15, 2013). The Remittitur was issued on June 20, 2012.

Allegations

In his application for post-conviction relief, Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Counsel labored under conflicting interests;
2. Ineffective assistance of appellate counsel:
 - a. Counsel did not properly raise claims that were preserved for Appellate review.

Applicant was subsequently appointed attorney Anna Good as counsel, who filed an amended application on October 1, 2012, raising the following issues:

1. Ineffective assistance of counsel:
 - a. Counsel failed to properly investigate the matter;³
 - b. Counsel failed to properly communicate with applicant, specifically as to not utilizing a translator to speak with him;
 - c. Counsel failed to properly obtain a translator for Applicant at trial;
 - d. Counsel failed to inform Applicant of a plea offer;
 - e. Counsel failed to properly object to improper closing arguments; and
 - f. Applicant was unfairly sentenced based upon the judge's feelings and not on the jury's verdict, and trial counsel failed to object to the sentence.

² Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967).

³ Applicant withdrew his failure to investigate claim at the hearing through counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, appellate records, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, the post-conviction relief transcript, and the legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2015), this Court makes the following findings of fact based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler, 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.

Failure to Properly Communicate with Applicant through Translator

This allegation is directly refuted by the record, as well as Applicant's own testimony. Specifically, both counsel and Applicant testified at the evidentiary hearing there was always an interpreter present when they met, and there was never any difficulty communicating with one another. Because there is no factual basis for this allegation, it is denied and dismissed.

Failure to Obtain Translator for Applicant at trial

This allegation is also directly refuted by the record and by Applicant's testimony. The record reflects there were two interpreters present throughout the entire trial, one of whom was translating for Applicant. (Tr. p. 10-11). The trial court specifically addressed the qualifications of each interpreter, and qualified them to translate during the course of Applicant's trial. Id. Applicant testified that he did not have trouble understanding the interpreter speaking to him. In addition, counsel's credible testimony reflects that she insisted on interpreters from the specific organization used because she knew the quality of their work. As a result, this Court finds Applicant has failed to meet his burden to show counsel ineffective in failing to obtain a translator for trial. This allegation is therefore denied and dismissed.

Failure to Inform Applicant of Plea Offer

This Court further finds Applicant's allegation that counsel failed to convey a plea offer is directly refuted by his own testimony. Applicant testified that he remembered the plea offer being conveyed to him, and that the deal was either between fifteen and thirty or between twenty and thirty years imprisonment. Counsel corroborated this testimony, saying that she discussed the plea offer with Applicant through an interpreter. Counsel explained that Applicant did not take the offer because he felt he acted in self-defense, and because he did not like the large number of years. This is consistent with Applicant's testimony, that when he was offered the deal he told counsel he wanted fifteen years. While it is true that an attorney's failure to convey a plea offer can provide the basis for a claim of ineffective assistance of counsel,⁴ Applicant has failed to present any evidence that such a failure occurred in his case. This allegation is therefore denied and dismissed.

Failure to Object to Improper Closing Arguments

Applicant's allegation that counsel was ineffective for failing to object to the State's closing argument in which the Solicitor stated he knew the Applicant lied is similarly without merit. Applicant has failed to show any legal basis for mounting a sustainable objection. The State's closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence. State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996); see also State v. Caldwell, 300 S.C. 494, 388 S.E.2d 816 (1990) (“[A] solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony.”). In the present case, the Solicitor stated that he “[knew] somebody who was lying in the courtroom, and that was [the Applicant].” (Tr. p. 455, l. 13-15). This comment was not inappropriate in light of Applicant's trial testimony, on cross-examination, in which he

⁴ See Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009).

admitted to lying about whether or not he had gone into the bathroom at the victim's house during the attack. (T. Tr., p. 397, l. 1-4). Accordingly, Applicant has failed to meet his burden to show counsel ineffective in failing to object to the Solicitor's closing arguments. As a result, this allegation is denied and dismissed.

Failure to Object to Unfair Sentence

Applicant alleges counsel was ineffective in failing to object to his sentence. Applicant seemed particularly concerned with the trial judge's comment that the jury was "gracious" in their verdict of voluntary manslaughter rather than murder. This Court finds such comments were not improper. While it is true that it is inappropriate for judge to comment on the facts,⁵ these comments were post-verdict. As a result, there was no possibility that these statements would have impacted the jury's deliberations.

Further, Applicant has not presented this Court with any meritorious objection counsel could have made. A trial judge generally has wide discretion in determining what sentence to impose. State v. Franklin, 267 S.C. 240, 246 226 S.E.2d 896, 898 (1976). It is also true that before making that determination, a judge may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider or the source from which it may come. Id. As the sentences were within the lawful range,⁶ and there is no indication that the trial judge abused his discretion in running the sentences consecutively to one another,⁷ this Court finds Applicant has failed to meet his burden to prove counsel was ineffective in failing to make an objection. This allegation is therefore denied and dismissed.

⁵ See Sosebee v. Leeke, 293 S.C. 531, 362 S.E.2d 22 (1987) ("A trial judge must refrain from any comment which tends to indicate his opinion as to the weight or sufficiency of the evidence, the credibility of witnesses, the guilt of an accused, or *any fact in controversy*." (emphasis added));

⁶ Reviewing courts have no jurisdiction to review a sentence, provided it is within the limits provided by statute for the discretion of the trial court, and is not the result of prejudice, oppression or corrupt motive. Franklin, 267 S.C. at 246, 226 S.E.2d at 898.

⁷ Whether multiple sentences should run consecutively or concurrently is a matter left to the sound discretion of the trial judge. State v. Barton, 325 S.C. 522, 531, 481 S.E.2d 439, 444 (Ct. App. 1997).

ALL OTHER ALLEGATIONS

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

FILED
2016 JAN 22 11:00
REBEKAH O'BRIEN
CLERK OF COURT
LEXINGTON, SC

CONCLUSION

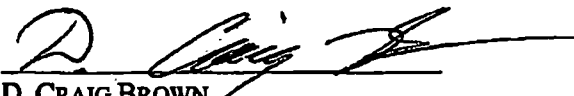
Based on the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED

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

AND IT IS SO ORDERED this 15 day of Jan., 2016.


 D. CRAIG BROWN
 Presiding Judge
 Eleventh Judicial Circuit

F. Lorence, South Carolina

FILED
 2016 JAN 22 A 11:00
 DEBRA G. GANNON
 CLERK OF COURT
 LEXINGTON, SC

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2012CP3204132

Oblin Noel Banegas
 Maldonado #343494

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

Judge Code

1/26/2016

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on January 26, 2016, to attorneys of record or to parties (when appearing pro se) as follows:

Anna Rawl Good PO Box 7284 Columbia, SC 29202

Patrick Lowell Schmeckpeper PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/kpk

Court Reporter

Beth A. Carrigg - Clerk of Court

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

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

