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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Orangeburg County

Edgar W. Dickson, Circuit Court Judge

EZEKIEL HAYNES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000147

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
 : FIRST JUDICIAL CIRCUIT
 COUNTY OF ORANGEBURG) 05-GS-38-0036

STATE OF SOUTH CAROLINA,)
)
 Plaintiff,)
) TRANSCRIPT OF RECORD
 -vs-)
)
 EZEKIAL HAYNES,)
)
 Defendant.)
)

May 17, 2005
 Orangeburg, South Carolina

B E F O R E:

THE HONORABLE PERRY M. BUCKNER, JUDGE

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

David Pasco, Esquire
 Attorney for the STATE

Peggy Hinds, Esquire
 Attorney for the DEFENDANT

Hilda M. Jordan, CVR
 Official Court Reporter

1 THE COURT: Thank you. Please be seated.

2 Solicitor, is the State ready to proceed?

3 MR. PASCO: Yes, Your Honor.

4 THE COURT: Ms. Hinds, are you ready to proceed?

5 MS. HINDS: Yes, Your Honor.

6 THE COURT: Very well. Call your case, Solicitor.

7 MR. PASCO: May it please the Court.

8 THE COURT: Yes, sir.

9 MR. PASCO: We're here in the interest of Ezekial
10 Haynes, Your Honor. He's charged with one count of murder.
11 That's Indictment Number 05-GS-38-0036.

12 He is entering a negotiated plea today, Your Honor.
13 The Defendant is going to plead guilty to murder for a cap
14 of 40 years. He is with his attorney, Ms. Peggy Hinds.

15 I'll pass up the indictment and the sentencing sheet.

16 THE COURT: Very well.

17 Ms. Hinds, has the Solicitor accurately stated for the
18 record any and all recommendations or negotiations in
19 connection with this matter?

20 MS. HINDS: He has.

21 THE COURT: Very well.

22 Mr. Clerk, would you swear the Defendant, please.

23 THE CLERK: Would you raise your right hand as
24 best you can.

25 Do you solemnly swear or affirm that the testimony you

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1 are about to give will be the truth, the whole truth, and
2 nothing but the truth, so help you, God?

3 MR. HAYNES: Yes, sir.

4 THE COURT: All right, sir. I'm going to ask you
5 certain questions. I want you to speak up for my court
6 reporter so she can accurately take down what you say.
7 Please don't nod your head. Give me a yes or no verbal
8 answer so that she can accurately transcribe your answers.
9 Please do not say uh-huh or huh-uh, so I'll understand what
10 you're telling me and my court reporter will be able to
11 transcribe your responses.

12 Have you understood what I just told you?

13 MR. HAYNES: Yes, sir.

14 THE COURT: State your full name for the record?

15 MR. HAYNES: Ezekial Haynes.

16 THE COURT: Mr. Haynes, how old are you?

17 MR. HAYNES: I'm 19, sir.

18 THE COURT: How far did you go in school?

19 MR. HAYNES: Tenth grade, sir.

20 THE COURT: Why'd you quit school?

21 MR. HAYNES: Um -- because --

22 THE COURT: Because of this incident or other
23 matters?

24 MR. HAYNES: No, sir. Other matters.

25 THE COURT: Are you employed?

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1 MR. HAYNES: Yes, sir.

2 THE COURT: What kind of work do you do?

3 MR. HAYNES: Lumber -- do lumber -- work at a
4 lumber mill.

5 THE COURT: Are you married?

6 MR. HAYNES: No, sir.

7 THE COURT: Do you have any children?

8 MR. HAYNES: No, sir.

9 THE COURT: Have you ever been treated in the past
10 for drug abuse, alcohol abuse or mental illness?

11 MR. HAYNES: No, sir.

12 THE COURT: Have you taken any drugs, alcohol, or
13 anything else within the past 24 hours which would keep you
14 from understanding what you're doing in Court today?

15 MR. HAYNES: No, sir.

16 THE COURT: Ms. Hinds, I understand that you
17 represent Mr. Haynes. I ask you now as his attorney, have
18 you advised your client of the charge in this indictment,
19 which has been handed to me by the Solicitor, as well as,
20 the maximum possible penalty or punishment and his
21 constitutional right?

22 MS. HINDS: Yes. We have had vast discussions on
23 all of those. He understands all the ramifications of his
24 plea. He understands the possible sentencing guidelines.
25 He understands that this is a day-for-day sentence. He

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1 understands his right to a trial, and he chooses to be in
2 court today and pleading guilty.

3 THE COURT: So, in your opinion, then, Ms. Hinds,
4 he understands the charge against him, the maximum possible
5 penalty or punishment, and his constitutional rights?

6 MS. HINDS: In my opinion, he does.

7 THE COURT: And how does he indicate to you that
8 he desires to plead, guilty or not guilty?

9 MS. HINDS: Guilty, sir.

10 THE COURT: Mr. Haynes, you've heard your lawyer
11 tell me that she's advised you of the charge in this
12 indictment, this piece of paper I hold in my hand, as well
13 as the maximum penalty or punishment for the charge and
14 your constitutional right. And according to your lawyer,
15 you understand the charge against you, the maximum penalty
16 or punishment for that charge and your constitutional
17 rights; is that correct?

18 MR. HAYNES: Yes, sir.

19 THE COURT: I've been handed by the Solicitor,
20 Indictment 2005 at 36, here in Orangeburg County. The
21 State verses Ezekial Haynes, indictment for murder. This
22 indictment has been True Billed by the Grand Jury of
23 Orangeburg County.

24 This indictment allèges, Mr. Haynes, that you did in
25 Orangeburg County, on or about December 7, 2004, with

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1 malice aforethought, kill one Shanta Davis by means of
2 striking the victim with a blunt object and strangle her
3 with a mini blind cord, and that the victim ultimately died
4 as a proximate result of those injuries.

5 Do you understand that charge against you, sir?

6 MR. HAYNES: Yes, sir.

7 THE COURT: You understand if I accept your plea
8 to this offense, the offense of murder, that the maximum
9 penalty for that offense in South Carolina is a sentence of
10 not less than 30 years, up to life imprisonment?

11 MR. HAYNES: Yes, sir.

12 THE COURT: Do you understand for the offense of
13 murder that you would have to assume that you would have to
14 serve day-for-day of any sentence of imprisonment I might
15 impose, which cannot be less than 30 years.

16 MR. HAYNES: Yes, sir.

17 THE COURT: Do you understand that if you were to
18 be convicted at a later point in time that you could face
19 greater or more enhanced penalties, as a result of my
20 accepting your plea to this offense today?

21 MR. HAYNES: Yes, sir.

22 THE COURT: Do you understand that because this is
23 a most serious offense, as well as, a violent offense, do
24 you understand that if you were to be convicted at a later
25 point in time of a certain combination of offenses, most

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1 serious or serious in South Carolina that you could face
2 the possibility of a sentence in the future if you are
3 convicted of life imprisonment without any possibility of
4 parole.

5 Do you understand that?

6 MR. HAYNES: Yes, sir.

7 THE COURT: Any other consequences of the plea in
8 which counsel for the State is aware?

9 MR. PASCO: No, Your Honor.

10 THE COURT: Any other consequences of this plea in
11 which counsel for the Defendant is aware?

12 MS. HINDS: No, sir.

13 THE COURT: Understanding the charge against you,
14 Mr. Haynes, as well as the maximum possible penalty or
15 punishment for that charge, I ask you now, how do you wish
16 to plead, guilty or not guilty?

17 MR. HAYNES: Guilty, Your Honor.

18 THE COURT: Do you understand by pleading guilty
19 that you are giving up your constitutional right to remain
20 silent?

21 MR. HAYNES: Yes, sir.

22 THE COURT: Do you understand that by pleading
23 guilty that you are giving up your constitutional right to
24 a trial by jury?

25 MR. HAYNES: Yes, sir.

1 THE COURT: Do you understand that if you had a
2 jury trial you would have the right to confront any
3 witnesses or evidence which the State of South Carolina may
4 have against you, and if you had a jury trial the State
5 would be required to prove your guilt beyond a reasonable
6 doubt and if you had a jury trial you could put up any
7 witnesses or evidence in your defense if you so chose.

8 Do you understand that you have each of those rights
9 as to a jury trial?

10 MR. HAYNES: Yes, sir.

11 THE COURT: Understanding your right as to a jury
12 trial, do you now want a jury or do you wish to plead
13 guilty?

14 MR. HAYNES: Plead guilty, sir.

15 THE COURT: Now, you heard the Solicitor tell me
16 at the outset of this hearing and it was confirmed to me by
17 your attorney, Ms. Hinds, that there have been negotiations
18 in regards to your plea. Those negotiations were published
19 to me as a cap or a maximum sentence of 40 years. Not less
20 than 30 years. Not more than 40 years.

21 Is that your understanding of the negotiations, Mr.
22 Haynes?

23 MR. HAYNES: Yes, it is.

24 THE COURT: You understand that negotiations are a
25 contract between the Solicitor and your attorney. I can't

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1 change those negotiations, but I don't have to accept your
2 plea.

3 Do you understand that?

4 MR. HAYNES: Yes, sir, I do.

5 THE COURT: In that regard, I need to determine
6 whether or not you're pleading voluntarily and
7 intelligently.

8 I ask you now, Mr. Haynes, has anybody promised you
9 anything in order to try to get you to plead guilty?

10 MR. HAYNES: No, sir.

11 THE COURT: Has anybody threatened you in any
12 manner in order to try to get you to plead guilty?

13 MR. HAYNES: No, sir.

14 THE COURT: Are you fully satisfied with the
15 services of your attorney, Ms. Hinds, and her
16 representation of you on this charge?

17 MR. HAYNES: Yes, sir, I am.

18 THE COURT: Has she done everything in your behalf
19 that you feel like she should or could have done in
20 representing you?

21 MR. HAYNES: Yes, sir, I do.

22 THE COURT: Have you had sufficient time to talk
23 to your lawyer?

24 MR. HAYNES: Yes, sir.

25 THE COURT: Have you understood all of your talks

1 with your lawyer?

2 THE COURT: Are you completely satisfied with your
3 lawyer's services?

4 MR. HAYNES: Yes, sir.

5 THE COURT: Do you have any complaints against any
6 law enforcement officers, court officials or members of the
7 solicitors office in connection with this charge?

8 MR. HAYNES: No, sir.

9 THE COURT: Are you pleading guilty of your own
10 free will and accord?

11 MR. HAYNES: I don't understand that. Say again?

12 THE COURT: Are you pleading guilty to this
13 offense of your own free will and accord?

14 MR. HAYNES: Yes, sir.

15 THE COURT: Do you understand you have the right
16 to appeal my sentence and this guilty plea, but you must do
17 so within ten days of today by filing a notice of intention
18 to appeal.

19 Do you understand that?

20 MR. HAYNES: Yes, sir, I do.

21 THE COURT: Have your answers to my questions been
22 truthful answers?

23 MR. HAYNES: Yes, sir.

24 THE COURT: Have they been your own answers and
25 not suggested to you by anyone else?

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1 MR. HAYNES: Yes, sir.

2 THE COURT: After consideration of the questions I
3 just asked you about the nature of the charge and the
4 consequences, do you fully understand the nature of the
5 charge against you and the range of possible punishments?

6 MR. HAYNES: Yes, sir.

7 THE COURT: Have you understood each of my
8 questions?

9 MR. HAYNES: Yes, sir.

10 THE COURT: Is there anything you'd like to ask me
11 about what I've been over with you?

12 MR. HAYNES: No, sir.

13 THE COURT: Finally, with respect to each and
14 every answer you have given the Court, have you been
15 absolutely truthful and candid with the Court in your
16 responses to me?

17 MR. HAYNES: Yes, sir.

18 THE COURT: Are you, in fact, Mr. Haynes, guilty
19 of the offense of murder in Orangeburg County on or about
20 December 7, 2004, involving the victim Shanta Davis?

21 MR. HAYNES: Yes, sir.

22 THE COURT: Solicitor.

23 MR. PASCO: May it please the Court.

24 THE COURT: Yes, sir.

25 MR. PASCO: For the record, Your Honor, standing

1 with me in Court today is the lead investigator, Sergeant
2 Keith Bonet. Before I go into some of the facts. Also, a
3 number of the victim's family members, including Shanta's
4 mother, Catherine and her grandmother, Eartha. And a
5 number of cousins here in support of Shanta.

6 Your Honor, back on December 8, 2004, the body of
7 Shanta, who was just 14 years old at the time, was found in
8 a pond in Elloree, South Carolina, here in Orangeburg
9 County. An autopsy revealed the Shanta had some
10 lacerations to her head and face. She had a broken jaw,
11 but the cause of death was asphyxiation due to her being
12 strangled to death by a cord from a Venetian blind.

13 This case, Your Honor, and I really feel compelled to
14 say this, was solved within 24 hours, because of an
15 outstanding job by the Orangeburg Sheriff's Department.

16 I mean, they did such a good job I felt compelled to
17 point that out today during this plea. Within 24 hours,
18 they solved this case.

19 On that day, on December 8th, they interviewed a
20 number of neighbors of Shante's. She lived in Elloree, not
21 far -- probably about three or four miles from the pond.
22 The police were told that day on December 8th, that the
23 Defendant's vehicle was seen at Shante's home around 11:30
24 the night before on December 7th.

25 They then interviewed, on December the 8th, a number

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1 of Shante's friends to see who she had spoken with that day
2 before her death. They talked to one of her best friends
3 who told police that Shante had told her that at 11:00
4 o'clock that night on December 7th, that she was going to
5 go out with the Defendant that night before her death.

6 The police then, on December 8th, interviewed the
7 Defendant, and he denied being with the victim at all.

8 On the next day, December 9th, the Sheriff's Office
9 got a call to an abandoned trailer, which happened to be
10 right across the street from the Defendant's house in
11 Ellore.

12 Inside they found a lot of blood that would later be
13 matched to Shante, the victim. They found one of her ear-
14 rings that was missing. She had one ear-ring on when they
15 found her in the pond. The other ear-ring was in the
16 trailer across the street from the Defendant's. They found
17 shoe impressions inside the trailer that we believe we
18 could have proved were actually put in her blood that
19 matched the Defendant's boots or his shoes. And they found
20 a lot more evidence.

21 On that day, with that evidence, they arrested the
22 Defendant for the murder of Shante Davis.

23 The next day on December 10th, the Defendant gave a
24 statement to Sergeant Bonet and Captain Williams of the
25 Sheriff's Department admitting to causing the death of

1 Shante. He admitted to striking her in the face with a
2 tire jack which caused her jaw to break, and he admitted to
3 strangling her to death with that cord from the Venetian
4 blind.

5 The Defendant's prior record, because he is only 19
6 years old, Your Honor, is a 2002 grand larceny, and before
7 I forget I believe Probation may have a motion with regards
8 to him being on probation for that.

9 THE COURT: Is that correct?

10 PROBATION OFFICER: Yes, sir, Your Honor.

11 THE COURT: Very well, I'll take that up at the
12 appropriate time.

13 MR. PASCO: Thank, Your Honor.

14 And finally, I just point out, I've spoken with
15 Catherine Davis and Ms. Tillie at length. We met last
16 week, and we met again this week and again today.

17 They don't wish to be heard by the Court only because
18 you can see how emotional this is for them and how tough it
19 is. They did want me to relate for them --

20 THE COURT: They understand I'll be happy to hear
21 from them?

22 MR. PASCO: Yes, absolutely. Yes, sir. I told
23 them that. And, of course, they're 100 percent in
24 agreement with this plea.

25 THE COURT: And the victims are in agreement with

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15

1 the plea negotiation?

2 MR. PASCO: Yes, sir. Thank you.

3 THE COURT: Very well.

4 And the events that you outlined for me all occurred
5 in Orangeburg County?

6 MR. PASCO: Everything. Yes, sir.

7 THE COURT: Very well, Solicitor.

8 I find that there is a substantial factual basis for
9 this plea.

10 Mr. Haynes, I find that your decision to plead guilty
11 is freely, voluntarily, knowingly, and intelligently made.
12 That you've had the advice and counsel of a competent
13 attorney which whom you tell me you are completely
14 satisfied.

15 I'll accept your plea of guilty.

16 I understand that probation has a matter also that I
17 need to take up at this time, Ms. Hinds, in which case I
18 will hear from you in mitigation and on the probation
19 matter.

20 PROBATION OFFICER: Your Honor, Mr. Haynes was
21 given probation for the offense of grand larceny. He was
22 given a five year YOA sentence, suspended to three years
23 probation, 30 days of public service. Special condition of
24 that he must remain in school and finish. Probation would
25 then be terminated upon him completing school.

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1 THE COURT: And the violation of that is my
2 acceptance of this plea today?

3 PROBATION OFFICER: Yes, sir. That's right.

4 THE COURT: All right. And your recommendation?

5 PROBATION OFFICER: That his probation be
6 terminated due to the sentence he is now facing.

7 THE COURT: So you want to terminate his
8 probation; is that correct?

9 PROBATION OFFICER: That's correct. Yes, sir.

10 THE COURT: In light of the fact that I'm
11 accepting the plea?

12 PROBATION OFFICER: Yes, sir.

13 THE COURT: Very well.

14 All right, Ms. Hinds, I'm going to ask you, first of
15 all, does your client admit that this plea is a willful
16 violation of the conditions of his probation?

17 MS. HINDS: Yes, sir.

18 THE COURT: All right.

19 I'll be happy now to hear from you in mitigation as to
20 the plea as well as the probation recommendation.

21 Ms. Hinds: Yes, sir.

22 As Haynes has told you, he is 19 years old. He was 18
23 at the time of the incident. He stands before you taking
24 responsibility. Your Honor, as the Solicitor has stated,
25 Mr. Haynes did give a statement to the police.

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1 I can tell you that in my meetings with him, he has
2 been remorseful from day one, and candid with me.

3 As I believe Your Honor knows, this is a terrible
4 tragedy compounded by the fact that this is all family
5 members.

6 THE COURT: What relationship is there, Ms. Hinds?

7 MS. HINDS: Shante was his cousin.

8 THE COURT: Of the victim?

9 MS. HINDS: Yes, sir. So this has been a tragedy,
10 obviously, for Shante's mother and grandmother, her family
11 members, but as family members also for Mr. Haynes' mother,
12 father, and sisters.

13 I believe that Mr. Haynes would like to address the
14 Court, but I will tell you that this is -- this act was
15 very uncharacteristic of him.

16 In my investigation of this case, I didn't see any
17 inkling of violence in his background, nor could I find
18 anybody that would tell me that that was the case.

19 As I said, he is, I believe, truly remorseful for
20 this. He is so sorry for the pain he had inflicted on all
21 of these family members.

22 I believe he would like to address you, and then,
23 also, his mother.

24 THE COURT: Before I hear from him, Ms. Hinds,
25 what's your position on the probation matter?

1 MS. HINDS: We would ask that it be terminated.

2 THE COURT: Very well.

3 Anything further?

4 MS. HINDS: For Mr. Haynes, sir.

5 THE COURT: Mr. Haynes, I'll be happy to hear from
6 you before sentencing.

7 MR. HAYNES: Sir, I would like to say something to
8 the victim's mother. Granny, I love you. And I remember
9 you ever since I was little. You used to give me ice cream
10 and give me everything I wanted.

11 THE COURT: Mr. Haynes, you need to address the
12 Court and not someone in the courtroom. You address me.
13 They can hear you.

14 MR. HAYNES: Okay.

15 THE COURT: Talk to me, sir.

16 MR. HAYNES: Okay. And I love her, and I
17 remember her, you know. She used to take care of me. She
18 would give me -- she would give me ice cream, lollipop,
19 anything that I wanted. I love Granny. I never want to
20 hurt her in her life. And I am so sorry for what happened.

21 If I, Ezekial Haynes, could have controlled what
22 happened I would, because Shante is not only a cousin to
23 me, she is my second cousin, she was a close friend. She
24 was a close loved one, and I'm sorry for what happened to
25 her. And God knows I am.

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19

1 I never want to hurt anyone. I never want to hurt
2 anyone in my lifetime. And I pray every night. I done
3 weeped and I don't moaned. I weeping and moaning so much
4 until my body is so weak I can't hardly stand. I'm so
5 sorry for what happened, and I pray every night that God
6 give the Davis family and the Haynes family strength and
7 power to make it through this tragedy, and God is doing
8 just that. He is working, he's moving. And I just want to
9 ask God to continue watching over Shante's family and
10 protecting them in each and every way.

11 I also want to say to Ms. Hinds. I think you, Ms.
12 Hinds for everything you've done for me. You worked --
13 your heart is in this case, and I love you. Don't matter
14 how long I have here on this earth I will always remember
15 you, because you are a wonderful woman. I love you. And
16 I'll always pray for you and keep you in my prays.

17 And I want to also say to you, I don't know you. I
18 don't know a lot about you, but I don't have to because you
19 are a creation of God. God created you. You're my brother
20 and I love you. And I just ask that God use you today.
21 May God be with you, and if you don't remember anybody else
22 that you sentence, you remember Ezekial Haynes, because I'm
23 going to always remember you. I'm always going to keep you
24 in my prays. I'm always keeping you lift up in Jesus name
25 because you, the Judge, and you need prayer, too. You need

1 help, too, just like anybody else. Glory to the name of
2 God. I'm going to always pray for you. I'm going to
3 always keep you in my prayers. I am so sorry for what
4 happen.

5 It turned a loving family and pastor, a pastor that
6 grow up with me. I grew up knowing him. And he still
7 sticking beside me today. And my family, my loving family,
8 they're still sticking beside me today. I just want to
9 thank them and give them -- thank them for fighting for me
10 and encouraging me and keeping me strong and lifted up,
11 because through this tragedy I wanted to hurt myself for
12 what happen. Glory to the name of God.

13 But I look back over my life, God be too good for me.
14 He's -- I'm going up here to prison. I may be going off to
15 prison because there's somebody up there that need me.
16 There's somebody up there that need the word. There's
17 somebody up there that need God, and I'm going to be the
18 one that help them through it.

19 I'm going to come back on this earth again. I'm going
20 to come back home again. I'll be as strong in the word as
21 I've ever been before, Glory to the name of God. Jesus
22 with me. He standing with me. Always. And in Jesus
23 precious, holy name, as I stand in this courtroom today to
24 plead guilty of murder, which I never thought I would be
25 standing here for. God is still standing with me and

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21

1 keeping me strong. In Jesus precious name. Call the name
2 of God. And I ask you today, as you sentence me, you
3 remember me, because I'm always going to remember you and
4 keep you in my prayers.

5 See, I wanted to turn my back on God, but I look back
6 over my life, what God done for me. If he wanted me dead I
7 would be dead a long time ago. They wanted to put a bullet
8 proof vest on me. I said don't put no bullet proof vest on
9 me. I don't need no vest. If God want me to die he would
10 kill me now. He would let me drop dead. I look back over
11 my life, I remember I'm going 135, caught a (inaudible) ran
12 straight into a ditch, throwed me through the windshield.
13 Walk away without a scratch. Glory be the name of God. If
14 God wanted me dead he wouldn't have me here.

15 But I just want the Court to know, God don't make no
16 mistakes. Glory be the name of God. I weep and moan, but
17 God pick me up. He's said, listen here -- Shante Davis is
18 gone, but she's in a better place. She don't worry about
19 nothing going on on earth any more. She's walking where
20 there's golden streets. See, she's singing and praises
21 like every day is like Sunday. Glory to the name of God.
22 She's in a better place.

23 I just want to say to everybody in this courtroom to
24 the victims family, if you haven't got your life with God,
25 please do so. If you want to see Shante Davis again,

1 please get your life right so you can go to heaven you'll
2 be seeing her again. Because I'm going to see her again.
3 Glory to the name of God.

4 I just want to thank you for letting me have this time
5 to speak.

6 And I just was to ask everybody, and I tell everybody,
7 and I want to tell the investigation team and the
8 solicitor. I understand what y'all done. Y'all done -- I
9 mean, you just doing your job, and I'm not going to walk
10 away like a lot of people walk away hating y'all. No. I'm
11 not going to hate you. I'm going to still love you. I'm
12 going to prison. I'm going to still love you, because I'm
13 not going to walk away like a lot of people and hate you
14 for you doing your job, protecting. I'm not going to do
15 that, because I'm a child of God and I'm going to respect
16 you to the day that I die.

17 Thank you.

18 THE COURT: Would anyone else like to be heard,
19 Ms. Hinds?

20 MS. HINDS: I believe his mother, Betty Haynes,
21 would like to address the Court also.

22 THE COURT: Ms. Haynes, if you'll come up forward
23 for me, please ma'am. Give your name for the record, so I
24 can hear you and my court reporter can hear you.

25 MS. HAYNES: My name is Betty Jean Haynes.

State v. Ezekial Haynes 5/17/05

23

1 THE COURT: Yes, Ms. Haynes.

2 MS. HAYNES: And I just want to say I am so sorry
3 for everything that happened to our family on both sides.
4 And I'm so sorry that my son has to stand here today and
5 plead guilty for murder. This is not -- this is not --
6 this is not the Ezekial that we grow to love. This is not
7 his action. Ezekial is a loving and kind person. He never
8 hurt nobody but to stand here today for murder.

9 Your Honor, that is more than we will ever accept
10 because this young man -- I know people say things and they
11 going to say things, but this young man, Your Honor,
12 everybody, they love Ezekial. They talk about Ezekial
13 because if he can help you do anything he will help you.
14 All he wanted to do is just work and make things with his
15 hands. Build go-cars and stuff. This is his hobby.

16 Shante and Ezekial, you couldn't hardly separate the
17 two. Because Shante will always -- she have always been
18 there for Ezekial. She always encouraged Ezekial. Ezekial
19 doing the same thing for Shante.

20 But Your Honor, I don't know what happened that night
21 that Shante died. I don't know. But many times I say if I
22 could bring her back, God knows I would. If I could keep
23 this night from happening, I would. But it was out of our
24 control. I don't know what happened, but I want Catherine
25 and her family to know I will always love them. I will

1 always respect them. But don't hate us, because of what
2 happen, just pray that God will help all of us to go
3 through this thing. It's not just happened to Catherine
4 and her family, but it happened to the whole family. I
5 mean, all of us. All of us feel the same.

6 And Your Honor, I pray today that the Court will have
7 mercy on my son, and give him another chance. That he will
8 be able to enjoy his life. That he will be able to work
9 with his hands. Make things for the kids in the
10 neighborhood. Because that's what he would do. He would
11 make go-carts for the children to have go-carts to play
12 with. He would fix their bicycles and their three-wheelers
13 and all these things. He was around the kids in the
14 neighborhood.

15 Ezekial is not a violent person. I don't know what
16 happened, but he's not a violent person. He never was
17 raised to be violent. He was never like this. All I can
18 say, Your Honor, is please if you can find it anywhere in
19 your heart to have mercy on my son and give him another
20 chance.

21 Thank you very much.

22 THE COURT: Ms. Haynes, there's no doubt in my
23 mind that you love your son. I understand completely.

24 Ms. Hinds, anyone else like to address the Court on
25 behalf of the Defendant?

State v. Ezekial Haynes 5/17/05

25

1 MS. HINDS: I believe the pastor of the church
2 would like, just very briefly, to say something.

3 Come up here and identify yourself to the Court.

4 PASTOR HARMON: Your Honor, my name is Pastor
5 Harmon.

6 THE COURT: Reverend Harmon.

7 PASTOR HARMON: I pastor a church in Elloree,
8 South Carolina.

9 THE COURT: Yes, sir.

10 PASTOR HARMON: I've know the Haynes family and
11 the Davis family ever since I came to Elloree in 1979.
12 Ezekial is along with my youngest daughter. They grewed up
13 together, all of them, in the church. And it was hard for
14 me to believe when this incident happened, it was hard for
15 me to believe that Ezekial was involved in it in any kind
16 of way. It took me a long time to even accept the fact
17 that Ezekial had partake in this matter.

18 My children knew Shante real well. They didn't know
19 Shante as close as they know Ezekial, but they knew Shante
20 because of she being a part of the family that was raised
21 in Elloree, South Carolina.

22 Ezekial -- I've never known him to be violent in the
23 church or outside the church.

24 Now, as young kids grown up, now, children do things,
25 but so far as being in and out of jail and in and out of

1 trouble and stuff like this, I never known him to be like
2 that. And this is why it shocked me. It shocked me very
3 much.

4 So when I talked to Ezekial I see a sincere heart even
5 now, more so than ever before. I see a young man who has
6 now began to understand that life is very serious.

7 I don't understand what really happened, but I knew it
8 was a force beyond what Ezekial could control. I don't
9 understand it at all, but I do understand that Ezekial
10 being a young man has to take responsibility for his own
11 actions, and today he have made his statement and he made
12 his confession, and he's willing to take his
13 responsibility.

14 As you being the judge and who will determine the next
15 years of his life, I just ask you from my heart that
16 whatever decision that you make that it be a decision, Your
17 Honor, that would effect not only Ezekial, but it would
18 also rewarding to the Davis family. This tragedy has
19 effected both families very badly. The Davis have lost and
20 the Haynes have lost. They are still suffering because of
21 what their son did. The Davis family is suffering because
22 of their loss.

23 It's a hard decision, but I believe that God will give
24 you the wisdom to make the decision that you need to make.

25 I thank you so much for this opportunity, and I thank

State v. Ezekial Haynes 5/17/05

27

1 you, besides.

2 THE COURT: Thank you, sir.

3 MS. HINDS: Your Honor, just in closing, as I've
4 said, I've met with Ezekial numerous times over the last
5 months when I was appointed to this case. I truly believe
6 that he is remorseful. He stands before you taking
7 responsibility for his actions, and part of the reason he's
8 doing that was to give the family closure so that hopefully
9 everybody can get on with the healing process.

10 As the family has stated, we would just ask the Court
11 for whatever mercy it can afford.

12 THE COURT: Very well.

13 Anything further from the State?

14 MR. PASCO: No, Your Honor. Thank you.

15 THE COURT: I can't think of a greater tragedy to
16 come to a family, both to your's and to the Davis family
17 than the events which have been presented to me in this
18 Court.

19 The State and your attorney have negotiated a range of
20 sentence in this case. And although I understand that you
21 have admitted your guilt, which is the first step, Mr.
22 Haynes. I also understand that a human life at the age of
23 14 was lost as a result of that. I have to look at both
24 sides of this. I hope that in this sentence that will
25 bring closure to the families involved and that you can all

State v. Ezekial Haynes 5/17/05

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1 live in peace. However, you have to be responsible for
2 your actions.

3 Do you understand that?

4 MR. HAYNES: Yes, sir.

5 THE COURT: On Indictment 2005-GS-38-036, the
6 State verses Ezekial Haynes, sentence of this Court is that
7 Defendant is committed to the State Department of
8 Corrections of a term of 40 years.

9 I'd ask the Solicitor at this point that you have --
10 that everyone else please remain seated in the courtroom.
11 That you see that my law enforcement personnel escort the
12 victim's family from the courtroom. Everyone else please
13 remain seated until I authorize you to leave.

14 MR. PASCO: Yes, Your Honor. Thank you.

15 (Victim's family is escorted from courtroom.)

16 (This proceeding was concluded.)

17

18

May 17, 2005

State v. Ezekial Haynes
Plea

APPEARANCES:

For the State:
David Pasco, Esquire

For the Defendant:
Peggy Hinds, Esquire

EXHIBITS:

NO EXHIBITS WERE MARKED TO THIS PROCEEDING

RULING OF THE COURT: 28

Certificate of court reporter 30

CERTIFICATE

I, THE UNDERSIGNED, HILDA M. JORDAN, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY
THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE
TRANSCRIPT OF THE RECORD OF ALL THE PROCEEDINGS HAD AND
EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE,
RELATIVE TO APPEAL, IN THIS CIRCUIT COURT, FOR ORANGEBURG
COUNTY, SOUTH CAROLINA, ON THE 9TH DAY OF NOVEMBER, 2007.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

Hilda M. Jordan, CVR

Hilda M. Jordan, CVR
Official Court Reporter
November 9, 2007

STATE OF SOUTH CAROLINA

County of Orangeburg

In the Court of Common Pleas

2006-CP-38-462

Ezekial Haynes

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

vs.

State of South Carolina

Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEF**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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention Lee Correctional Institution
2. Name and location of Court which imposed sentence The Court of General Sessions
Orangeburg, S.C.
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
(a) 056S-36
(b) _____
(c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
(a) May 17, 2005
(b) _____
(c) _____

5. 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

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

Yes

7. If you answered "yes" to (6), list

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

i. S.C. Court of Appeals

ii.

iii.

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

i. I requested to have the appeal dismissed and

ii. seek post-conviction relief after being advised

iii. by Appellate Counsel to do so

(c) the date of each such result:

i. 4-12-06 request mailed

ii.

iii.

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

i.

ii.

iii.

N/A

8. If you answered "no" to (6), state your reasons for not so appealing:

(a)

(b)

(c)

N/A

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

(a) Ineffective Assistance of Trial Counsel

(b) Prosecutorial Misconduct

(c) Judicial Misconduct

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) My guilty plea was involuntary pursuant to the

(b) requirements of Boykin v. Alabama, 395 U.S. 238,

(c) 89 S.Ct. 1790 (1969)

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

- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No
- (d) any other petitions, motions or applications in this or any other Court? No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. Appeal Withdrawn
- ii. _____
- iii. _____
- iv. _____

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

- i. S.C. Court of Appeals, Columbia, S.C.
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. I withdrew my appeal
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. 4-12-06
- ii. _____
- iii. _____
- iv. _____

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

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

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) The grounds set forth in (9) can't be presented

(b) in the Court of Appeals

(c) _____

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

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. ~~Patricia Hanks~~ Margaret Hinds

ii. Orangeburg County Court House Rm #110

iii. P.O. Box 1112

Orangeburg, SC 29116

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

i. see #16

ii. _____

iii. _____

18. State clearly the relief you seek in filing this application.

Conviction and sentence vacated

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

No

STATE OF SOUTH CAROLINA

VERIFICATION

County of Orangeburg

I, Ezekial Haynes, 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.

Ezekial Haynes

SWORN to and subscribed before me this 19
day of April, 2004

Debra Sines (L.S.)
Notary Public

My Commission Expires: 11-4-2015

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

I, Ezekial Haynes, 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 therefor.

Ezekial Haynes
Applicant

SWORN or affirmed to and subscribed before me this

19 day of April, 2004

Debra Sines
Notary Public

My Commission Expires 11-4-2015

State of South Carolina
County of Orangeburg

Ezekial Haynes

Applicant

v.

State of South Carolina
Respondent

In The Court of Common Pleas
Of The 1st Judicial Circuit

Proof Of Service For A/An

P.C.R.

Application

Docket # 2006-CP-38-963

I certify that I have served the P.C.R. Application on the Respondent by depositing a copy in the United States Mail, Postage Prepaid, on this 20th day of April, 2006, addressed to Henry D. McMaster; Attorney General, Dennis Building, Box 11549, Columbia, S.C. 29211.

4-20-06

Date

/s/

[Signature]

Applicant

Institution L.C.I.

Address 990 Wisacky Hwy.

City Bishopville, State SC, Zip 29010

State of South Carolina
County of Orangeburg

Ezekial Haynes

Applicant

v.

State of South Carolina
Respondent

In The Court of Common Pleas
Of The 1st Judicial Circuit

Verification

Docket # _____

I, Ezekial Haynes, being duly affirmed/sworn upon my oath, depose and say that I have subscribed to the foregoing P.C.R. Application; that it includes Federal/South Carolina case law, Federal/South Carolina Rules of Civil Procedure, United States/South Carolina Constitutions known to me for Vacating Conviction Sentence as stated in this P.C.R. Application and that the matters therein set forth are true.

/s/

[Signature]

Applicant

SWORN TO AND SUBSCRIBED before me
this 19 day of April, 2006

[Signature]

Notary Public for South Carolina

My Commission Expires: 11-4-2005

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

EZEKIEL HAYNES #309200,)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

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 WISACKY HIGHWAY, BISHOPVILLE, SC 29010
2. Name and location of Court which imposed sentence ORANGEBURG COUNTY COURT OF GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2005-GS-38-0036; MURDER
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence _____

ATTEST: TRUE COPY

CLERK OF COURT

ORANGEBURG COUNTY, SOUTH CAROLINA

(c) the disposition thereof:

i. THE APPEAL WAS WITHDRAWN

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. APRIL 12, 2006

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?

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

- (a) _____
 (b) _____
 (c) _____

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

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

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. MARGARET HINDS, POST OFFICE BOX 1112, ORANGEBURG, SC
 ii. GLENN WALTERS, POST OFFICE BOX 1346, ORANGEBURG, SC 29116
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. MRS. HINDS REPRESENTED MR. HAYNES AT THE ARRAIGNMENT,

PLEA AND SENTENCING.

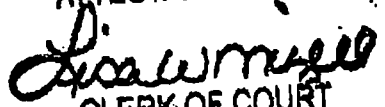
ii. MR. WALTERS IS CURRENTLY ASSISTING MR. HAYNES WITH THE
POST CONVICTION RELIEF.

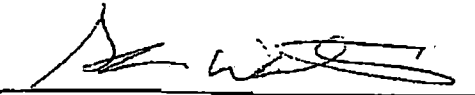
iii. _____

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

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

NO

ATTEST: TRUE COPY

 CLERK OF COURT
 ORANGEBURG COUNTY, SOUTH CAROLINA


 Attorney for A
 P.O. Box 1346
 Orangeburg, S.C. 29116
 5/19/08

Revised 3/2003

FILED
 MAY 19 2008
 CLERK OF COURT
 ORANGEBURG, SC

WALKER

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

COUNTY OF ORANGEBURG)

Case No.: 2006-CP-38-462

Ezekial Haynes, #309200,)

Applicant,)

v.)

RETURN

State of South Carolina,)

Respondent.)

Respondent, making its Return to the application for post conviction relief (PCR) filed April 20, 2006, and amendment to the application dated June 28, 2006, would respectfully show this Court:

1.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant was indicted at the March 2005 term of the Orangeburg County Grand Jury for Murder (2005-GS-38-36). Margaret E. Hinds, Esquire, represented him. On May 17, 2005, Applicant pled guilty to Murder. The Honorable Perry M. Buckner sentenced him to forty (40) years. A timely Notice of Appeal was filed on Applicant's behalf, but Applicant withdrew his appeal.

Attached herewith and incorporated herein by reference are the records of the Aiken County Clerk of Court regarding the subject convictions and Applicant's records from the South Carolina Department of Corrections. The guilty plea transcript will be forwarded upon receipt.

II.

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

1. Ineffective assistance of counsel,
 - a. "Counsel failed to investigate case to prepare a defense for Applicant,"
 - b. "Counsel was ineffective by the violations she committed in accordance of Professional Conduct Rules, Counsel showed more interest to intimidate Applicant to plea guilty to Murder charge,"
 - c. "Plea Counsel failed to file pre-trial motions to have standing issues of the Murder Indictment, Rule 5 motion and waivers to be evaluated by trial court."
 - d. "Plea Counsel failed to examine statements, police investigated reports and failed to receive reports of pending investigation reports of case,"
2. Prosecutorial and Judicial misconduct,
3. Involuntary guilty plea.

III.

Respondent interprets each of Applicant's allegations above to be claims that he received ineffective assistance of counsel. In a post-conviction relief action, Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined

the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, Id.

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, Id. 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, 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 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, 106 S.Ct. 366, 88 L.Ed. 2d 203 (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.

In his second (2nd) allegation, the Applicant has failed to specify any grounds upon which he seeks relief other than "Prosecutorial and Judicial Misconduct." The Uniform Post-Conviction Procedure Act (the Act) requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985).

In an application for PCR, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the State would submit that this allegation should be dismissed for failing to meet the requirements of the Act. In any event, the State submits because this allegation is so vague that it is impossible for the State to more specifically respond.

V.

In his third (3rd) allegation Applicant alleges that he did not plead guilty freely and voluntarily. The State submits this allegation has no merit. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The State submits the transcript reflects that the pleas were knowingly and

voluntarily entered with a full understanding of the charges and consequences of the plea.

Boykin, supra; Dover, supra. Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The State submits Applicant should not be allowed to depart from the truth of the statements he made during his guilty plea hearing.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Respondent submits that Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it should therefore, be treated as such.

VI.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. §17-27-70 on the basis that

there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

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

VIII.

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

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ASHLEY A. McMAHAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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9/21, 2006
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURGEzekial Haynes, #309200

Plaintiff(s)

VS.

State of SC

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2006 - CP - 38 - 462

(Please Print)

Submitted By: Ashley A. McMahanAddress: P.O. Box 11549
Columbia, SC 29211-1549SC Bar #: 31676Telephone #: 803-734-3737Fax #: 803-734-4113

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

☐ Contracts	☐ Torts - Professional Malpractice	☐ Torts - Personal Injury	☐ Real Property
☐ Construction (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	☐ Notice/ File Med Mal (230)	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	☐ Other (299)	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)		☐ Personal Injury (350)	☐ Possession (450)
		☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☐ Other (399)	☐ Other (499)
☒ Inmate Petitions	☐ Judgments/Settlements	☐ Administrative Law/Relief	☐ Appeals
☐ PCR (500)	☐ Death Settlement (700)	☐ Reinstatement Driver's License (800)	☐ Arbitration (900)
☐ Sexual Predator (510)	☐ Foreign Judgment (710)	☐ Judicial Review (810)	☐ Magistrate-Civil (910)
☐ Mandamus (520)	☐ Magistrate's Judgment (720)	☐ Relief (820)	☐ Magistrate-Criminal (920)
☐ Habeas Corpus (530)	☐ Minor Settlement (730)	☐ Permanent Injunction (830)	☐ Municipal (930)
☐ Other (599)	☐ Transcript Judgment (740)	☐ Forfeiture (840)	☐ Probate Court (940)
	☐ Lis Pendens (750)	☐ Other (899)	☐ SCDOT (950)
	☐ Other (799)		☐ Worker's Comp (960)
☐ Special/Complex /Other			☐ Zoning Board (970)
☐ Environmental (600)	☐ Pharmaceuticals (630)		☐ Administrative Law Judge (980)
☐ Automobile Arb. (610)	☐ Unfair Trade Practices (640)		☐ Public Service Commission (990)
☐ Medical (620)	☐ Out-of State Depositions (650)		☐ Employment Security Comm (991)
☐ Other (699)			☐ Other (999)

Submitting Party Signature: Ashley A. McMahanDate: 9/21/06

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG FIRST JUDICIAL CIRCUIT
EZEKIAL HAYNES,) CASE NO. 06-CP-38-00462
APPLICANT,) POST CONVICTION RELIEF
HEARING
versus) TRANSCRIPT OF RECORD
THE STATE) DATE:
MAY 19, 2008
BEFORE:

THE HONORABLE JAMES C. WILLIAMS, JR.,
PRESIDING JUDGE

APPEARANCES:

GLENN WALTERS, ESQUIRE
ATTORNEY AT LAW
FOR THE APPLICANT

LANCE S. BOOZER, ESQUIRE
ASSISTANT ATTORNEY GENERAL
FOR THE STATE

HARRY A. WALKER (MRS.)
COURT REPORTER, FIRST JUDICIAL CIRCUIT
POST OFFICE BOX 127
ROWESVILLE, SOUTH CAROLINA 29133

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>

EZEKIAL HAYNES

MR. WALTERS 5

MR. BOOZER 12

BETTY JEAN HAYNES

MR. WALTERS 17

MR. BOOZER 28

NATHANIEL HAYNES, JR.

MR. WALTERS 30

MARGARET E. HINDS

MR. BOOZER 36

MR. WALTERS 42

PAGE

ARGUMENT BY MR. WALTERS 42

ARGUMENT BY MR. BOOZER 47

REBUTTAL ARGUMENT BY MR. WALTERS 49

FINDING OF THE COURT (TAKEN UNDER ADVISEMENT)

E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
NONE			

1 DATE:

2 MAY 19, 2008

3 MR. BOOZER: YOUR HONOR, MAY I
4 APPROACH?

5 THE COURT: YES, SIR. THANK YOU,
6 SIR.

7 MR. BOOZER: YES, SIR.

8 MR. WALTERS: GOOD MORNING, YOUR
9 HONOR.

10 THE COURT: GOOD MORNING.

11 MR. WALTERS: HOW ARE YOU, SIR?

12 THE COURT: I'M FINE. MR. EZEKIAL
13 HAYNES. PRELIMINARIES, MR. BOOZER?

14 MR. BOOZER: NOTHING FROM THE
15 STATE, YOUR HONOR.

16 THE COURT: ALRIGHT, MR. WALTERS.

17 MR. WALTERS: MAY IT PLEASE THE
18 COURT, YOUR HONOR.

19 THE COURT: YES, SIR.

20 MR. WALTERS: YOUR HONOR, OF
21 COURSE, MY CLIENT FILED HIS PCR WITH REGARDS TO A
22 GUILTY PLEA AGAINST ATTORNEY HINDS. WE'RE PREPARED TO
23 PROCEED FORWARD AT THIS TIME AND WE'D LIKE TO CALL MR.
24 EZEKIAL HAYNES.

25 THE COURT: ALRIGHT. COME AROUND,

1 PLEASE, SIR, COME RIGHT AROUND THIS WAY. MR. HAYNES,
2 CAN YOU GET YOUR HAND UP HIGH ENOUGH TO PUT YOUR HAND
3 ON THAT BIBLE? THERE YOU GO. PUT YOUR LEFT HAND ON
4 THE BIBLE AND KIND OF RAISE YOUR RIGHT. DO YOU SWEAR
5 TO TELL THE TRUTH? ARE YOU OKAY? DO YOU UNDERSTAND
6 I'M ASKING YOU TO AFFIRM OR SWEAR THAT YOU WILL TELL
7 THE TRUTH?

8 WITNESS: YES, SIR.

9 (Whereupon, EZEKIAL Haynes
10 is duly sworn.)

11 THE COURT: ALRIGHT, JUST HAVE A
12 SEAT.

13 ALRIGHT, MR. WALTERS.

14 (NOTE: Blank lines on this page do not indicate any
15 part of record has been omitted. Headers on testimony
16 pages and hard page breaks between testimony are now
17 required by the Court. See next ensuing page for
18 sequential continuation of record.)

DIRECT - EZEKIAL HAYNES BY MR. WALTERS

5

DIRECT EXAMINATION OF EZEKIAL HAYNES

BY MR. WALTERS:

Q. MR. HAYNES, COULD YOU STATE YOUR FULL NAME FOR THE
RECORD, PLEASE?

A. EZEKIAL HAYNES.,

Q. ALRIGHT. AND MR. HAYNES, WE'VE HAD AN OPPORTUNITY
TO MEET TOGETHER I THINK ON THREE DIFFERENT
OCCASIONS WITH REGARD TO YOUR CASE, IS THAT
CORRECT?

A. YES.

Q. I THINK I VISITED YOU AT THE JAIL A COUPLE OF
TIMES, ABOUT TWO OR THREE TIMES, AND WE ALSO
TALKED THIS MORNING, IS THAT CORRECT?

A. YES, SIR.

Q. OKAY.

THE COURT: LET ME RAISE, I'M GOING
TO RAISE THIS MICROPHONE UP A LITTLE BIT FOR YOU, AND
YOU NEED TO SPEAK A LITTLE LOUDER BECAUSE THAT LADY HAS
TO HEAR EVERYTHING YOU SAY AND WRITE IT DOWN SO WE'LL
HAVE A RECORD. ALRIGHT, SIR?

ALRIGHT, GO AHEAD, MR. WALTERS.

Q. ALRIGHT, MR. HAYNES, WE HAD AN OPPORTUNITY TO GO
THROUGH YOUR TRANSCRIPT, AND I BELIEVE YOU WENT
THROUGH THE TRANSCRIPT ALSO, AND I'M GOING TO
DIRECT YOUR ATTENTION, BECAUSE WE'VE GONE THROUGH

DIRECT - EZEKIAL HAYNES BY MR. WALTERS

6

1 THIS OVER AND OVER AGAIN, PAGE FOUR OF THE
2 TRANSCRIPT, AND YOU WERE BEFORE THE HONORABLE
3 JUDGE BUCKNER, PERRY BUCKNER, AND THAT'S WHEN THE
4 GUILTY PLEA OCCURRED, DO YOU REMEMBER THAT?

5 A. YES, SIR.

6 Q. ALRIGHT. AND THERE WAS ONE QUESTION THAT THE
7 COURT ASKED OF YOU, HAVE YOU EVER BEEN TREATED IN
8 THE PAST FOR DRUG ABUSE, ALCOHOL ABUSE, OR MENTAL
9 ILLNESS, DO YOU REMEMBER THAT?

10 A. YES, SIR.

11 Q. ALRIGHT, NOW, I BELIEVE YOUR RESPONSE ON
12 NINE/ELEVEN OF EIGHTY-FOUR, WAS, NO, SIR, IS THAT
13 CORRECT?

14 A. YES.

15 Q. ALRIGHT. NOW, MR. HAYNES, ISN'T IT TRUE THAT YOU
16 WERE TREATED FOR MENTAL ILLNESS, AND YOU HAD A
17 MENTAL ILLNESS, IS THAT CORRECT?

18 A. YES.

19 Q. ALRIGHT. COULD YOU PLEASE TELL THE COURT HOW YOU
20 CAME ABOUT, HOW YOUR MENTAL ILLNESS CAME ABOUT,
21 TELL US HOW IT HAPPENED?

22 A. I WAS DRIVING DOWN THE ROAD IN A CAR AND RAN INTO
23 A DITCH AND WENT THROUGH THE WINDSHIELD OF THE
24 VEHICLE.

25 Q. ALRIGHT, HOW OLD WERE YOU WHEN THAT HAPPENED?

DIRECT - EZEKIAL HAYNES BY MR. WALTERS

7

1 A. SAY THAT AGAIN?

2 Q. HOW OLD WERE YOU WHEN THAT HAPPENED?

3 A. SIXTEEN.

4 Q. ALRIGHT. AND YOU WENT THROUGH THE WINDSHIELD OF
5 THE VEHICLE, IS THAT CORRECT?

6 A. YES.

7 Q. ALRIGHT. AND DID YOU GO HEAD FIRST OR TO THE
8 SIDE, HOW DID YOU GO THROUGH THE WINDSHIELD?

9 A. HEAD FIRST.

10 Q. ALRIGHT. NOW, AFTER YOU WENT THROUGH THE
11 WINDSHIELD AND YOU HAD THAT INJURY DID YOU HAVE
12 ANY PROBLEMS AFTER THAT?

13 A. YES.

14 Q. COULD YOU PLEASE TELL ME WHAT PROBLEMS YOU HAD?

15 A. LOSS OF MEMORY, HEADACHES, SEIZURES.

16 Q. ALRIGHT. AND DID YOU GO TO THE HOSPITAL AND DID
17 YOU -- WELL, FIRST OF ALL, DID YOU GO TO THE
18 HOSPITAL AND MENTAL HEALTH AS A RESULT OF THAT?

19 A. YES.

20 Q. ALRIGHT. AND DID YOU EVER GO TO THE HOSPITAL?

21 A. NOT THAT DAY.

22 Q. OKAY. DID YOU HAVE PROBLEMS WITH HEADACHES, DID
23 YOU HAVE PROBLEMS WITH YOUR MENTAL COMPREHENSION?

24 A. YEAH.

25 Q. ALRIGHT, COULD YOU PLEASE TELL THE JUDGE WHAT YOUR

DIRECT - EZEKIAL HAYNES BY MR. WALTERS

8

1 PROBLEMS WERE?

2 A. I COULDN'T DO THINGS THAT I USED TO COULD DO. I
3 COULDN'T READ, WRITE, SPELL, THINGS LIKE THAT.

4 Q. ALRIGHT. AT ANYTIME WERE YOU GIVEN A PHYSICAL
5 EXAMINATION?

6 A. I DON'T UNDERSTAND.

7 Q. AT ANYTIME WERE YOU GIVEN A PHYSICAL EXAMINATION,
8 DID SOMEONE EXAMINE YOUR HEAD?

9 A. NO.

10 Q. WAS THERE EVER A CAT SCAN OR AN MRI DONE?

11 A. NO.

12 Q. OKAY. AND DID YOU EVER TELL MS. HINDS ABOUT THIS
13 PROBLEM THAT YOU HAD?

14 A. YES.

15 Q. WHEN DID, HOW MANY TIMES, WELL, DID YOU TELL MS.
16 HINDS, FIRST OF ALL?

17 A. YES.

18 Q. HOW MANY TIMES DID YOU TELL HER?

19 A. ABOUT FOUR OR FIVE I THINK.

20 Q. DID YOU UNDERSTAND YOUR DISCUSSIONS WITH MS.
21 HINDS?

22 A. SOME.

23 Q. WHEN THE JUDGE ASKED YOU HAD YOU EVER BEEN TREATED
24 FOR MENTAL ILLNESS WHY WAS YOUR RESPONSE, NO, SIR?

25 A. BECAUSE THAT'S WHAT MS. HINDS TELL ME I NEED TO

DIRECT - EZEKIAL HAYNES BY MR. WALTERS

9

1 SAY, JUST GO WITH WHAT HE - - -

2 COURT REPORTER: I'M SORRY, I
3 DIDN'T UNDERSTAND WHAT YOU SAID.

4 A. THAT'S WHAT I WAS SUPPOSED TO SAY.

5 Q. ALRIGHT. WHEN YOU WERE EXAMINED BY THE DOCTORS
6 ISN'T IT TRUE THAT YOU WERE SUPPOSED TO HAVE
7 CERTAIN MEDICAL PROCEDURES PERFORMED ON YOU?

8 A. YES.

9 Q. WHY DID YOU REFUSE TO DO THAT?

10 A. BECAUSE I WAS SCARED OF THE OPERATION.

11 Q. ALRIGHT. SO, THE INFORMATION THAT YOU GAVE JUDGE
12 BUCKNER WAS INCORRECT?

13 A. YES, SIR.

14 Q. AND THIS WAS BROUGHT TO YOUR LAWYER'S ATTENTION?

15 A. YES.

16 Q. NOW, DID RAISED OTHER ISSUES IN YOUR PCR WITH
17 REGARDS TO SOME SEMEN, IS THAT CORRECT?

18 A. YES, SIR.

19 Q. AND I BELIEVE THE INFORMATION IS, THERE WAS NO
20 MATCH WITH REGARDS TO THE SEMEN, IS THAT RIGHT?

21 A. YES, SIR.

22 Q. ALRIGHT. AND I BELIEVE YOU ALSO RAISED AN ISSUE
23 ABOUT AN AUTOMOBILE, AND YOU STATE THAT THERE WAS
24 NO FORENSIC EVIDENCE FROM THE AUTOMOBILE THAT
25 LINKED YOU TO THE CRIME, IS THAT CORRECT?

1 A. YES, SIR.

2 Q. ALRIGHT. NOW, OTHER THAN THAT, LET'S GO BACK TO
3 YOUR ISSUE WHEN YOU WENT THROUGH THE FRONT OF THE
4 WINDSHIELD OF A CAR, DID YOU COMPLETE HIGH SCHOOL?

5 A. NO, SIR.

6 Q. ALRIGHT. WHY DIDN'T YOU COMPLETE HIGH SCHOOL?

7 A. BECAUSE I COULDN'T READ OR WRITE ANYMORE, AND
8 EVERYBODY MAKE FUN.

9 Q. WOULD YOU SPEAK UP, PLEASE, THE JUDGE HAS TO HEAR
10 YOU, AND THERE HAS TO BE A TAPE RECORDING OF WHAT
11 YOU'RE SAYING?

12 A. I SAID, I COULDN'T READ OR WRITE ANYMORE, AND
13 EVERYBODY JUST MAKE FUN OF ME.

14 Q. ALRIGHT. DID IT AFFECT YOUR ABILITY TO
15 COMPREHEND?

16 A. YES, SIR.

17 Q. WHEN I SAY, YOUR COGNITIVE ABILITY TO UNDERSTAND
18 THE WORLD AROUND YOU AND THE THINGS THAT YOU WERE
19 DOING?

20 A. RIGHT.

21 Q. WELL, YOU SAID, RIGHT, WOULD YOU EXPLAIN TO ME
22 WHAT YOU MEAN WHEN YOU SAY, RIGHT?

23 A. IT DOES, YEAH. SOME THINGS I JUST CAN'T
24 UNDERSTAND. I DON'T KNOW WHAT'S GOING ON.

25 MR. WALTERS: YOUR HONOR, I HAVE NO

1 FURTHER QUESTIONS.

2 THE COURT: CROSS-EXAMINATION.

3 MR. BOOZER: THANK YOU, YOUR HONOR,

4 MAY IT PLEASE THE COURT.

5 (NOTE: Blank lines on this page do not indicate any
6 part of record has been omitted. Headers on testimony
7 pages and hard page breaks between testimony are now
8 required by the Court. See next ensuing page for
9 sequential continuation of record.)

CROSS - EZEKIAL HAYNES BY MR. BOOZER

12

CROSS-EXAMINATION OF EZEKIAL HAYNES

BY MR. BOOZER:

Q. MR. HAYNES, DO YOU UNDERSTAND WHAT'S GOING ON HERE TODAY?

A. YEAH.

Q. NOW, ARE YOU TELLING THE COURT TODAY THAT YOU TOLD THE JUDGE THAT YOU DIDN'T HAVE ANY MENTAL PROBLEMS BACK WHEN YOU PLED. WERE YOU LYING TO THE JUDGE THEN?

A. I WAS JUST SAYING WHAT MS. HINDS TOLD ME TO SAY.

Q. YOU WERE JUST SAYING WHAT?

A. WHAT I WAS SUPPOSED TO SAY.

Q. DO YOU RECALL TELLING THE COURT THAT YOU UNDERSTOOD THE CHARGES THAT YOU WERE FACING AND THE RIGHTS THAT YOU WERE GIVING UP BY PLEADING GUILTY THAT DAY?

A. YES.

Q. DO YOU RECALL TELLING THE COURT THAT YOU UNDERSTOOD THE CHARGES AND THE POSSIBLE PENALTY THAT YOU WERE FACING FOR THOSE CHARGES?

A. NO.

Q. DO YOU RECALL TELLING THE COURT THAT YOU WANTED TO PLEAD GUILTY THAT DAY?

A. NO.

Q. YOU DON'T REMEMBER THAT?

CROSS - EZEKIAL HAYNES BY MR. BOOZER

13

1 A. NO.

2 Q. DO YOU HAVE A COPY OF THE TRANSCRIPT, MR. HAYNES?

3 A. I DON'T KNOW.

4 MR. BOOZER: YOUR HONOR, MAY I
5 APPROACH THE WITNESS?

6 THE COURT: YES, SIR.

7 Q. MR. HAYNES, THAT'S A COPY OF THE TRANSCRIPT OF
8 YOUR GUILTY PLEA. IF YOU WOULD, TURN FOR ME TO
9 PAGE SEVEN OF THE PLEA. IF YOU'LL BEGIN ON LINE
10 THIRTEEN ON PAGE SEVEN. THE COURT TELLS YOU THAT,
11 UNDERSTANDING THE CHARGES THAT ARE AGAINST YOU,
12 THAT YOU WISH TO PLEAD GUILTY? AND YOU TELL THE
13 COURT, YES, YOU WISH TO PLEAD GUILTY, IS THAT
14 CORRECT?

15 A. I DON'T KNOW.

16 Q. WELL, IF THAT'S WHAT IT SAYS YOU SAID, WOULD YOU
17 DISAGREE WITH IT?

18 A. YES.

19 Q. YOU DO DISAGREE WITH THAT? DO YOU RECALL TELLING
20 THE COURT - - -

21 COURT REPORTER: DID HE SAY, I
22 GUESS?

23 A. YES.

24 Q. DO YOU RECALL TELLING THE COURT THAT NO ONE FORCED
25 YOU TO PLEAD GUILTY AND THAT YOU WERE SATISFIED

1 WITH MS. HINDS'S REPRESENTATION?

2 A. SAY THAT AGAIN.

3 Q. DO YOU RECALL TELLING JUDGE BUCKNER, THE COURT
4 THAT DAY, THAT YOU WERE SATISFIED WITH MS. HINDS'S
5 REPRESENTATION AND THAT YOU WERE PLEADING GUILTY
6 FREELY AND VOLUNTARILY?

7 A. NO, SIR.

8 Q. YOU DON'T REMEMBER THAT? SO, IF IT SAYS THAT
9 THAT'S WHAT YOU TOLD THE COURT ON PAGE NINE,
10 YOU'RE DISPUTING THAT THAT'S WHAT YOU SAID THAT
11 DAY?

12 A. I DON'T REMEMBER SAYING IT.

13 Q. YOU DON'T REMEMBER SAYING IT. DO YOU RECALL
14 GIVING A LENGTHY APOLOGY TO THE COURT AND TO THE
15 VICTIM FOR WHAT YOU HAD DONE?

16 A. I DON'T KNOW WHAT THAT IS.

17 Q. YOU DON'T KNOW WHAT AN APOLOGY IS?

18 A. YOU SAID SOMETHING ELSE BEFORE THAT.

19 Q. I SAID, DO YOU RECALL GIVING THE COURT, AND IT'S
20 ON PAGE NINETEEN OF THE TRANSCRIPT, A LENGTHY
21 APOLOGY, DO YOU RECALL THAT, TO THE VICTIM AND TO
22 THE COURT?

23 A. WELL, I DON'T KNOW WHAT THAT IS.

24 Q. YOU DON'T UNDERSTAND WHAT AN APOLOGY IS?

25 A. I UNDERSTAND WHAT THAT IS, NOT THE OTHER THING YOU

CROSS - EZEKIAL HAYNES BY MR. BOOZER

15

1 SAID.

2 Q. WELL, WHAT PART DON'T YOU UNDERSTAND?

3 A. I DON'T KNOW HOW TO PRONOUNCE THE WORD YOU JUST
4 SAID.

5 Q. DO YOU UNDERSTAND TELLING THE COURT THAT YOU WERE
6 SORRY?

7 A. SORRY, YEAH.

8 Q. AND THAT YOU TOLD THE VICTIM, YOU WERE APOLOGIZING
9 TO THE VICTIM THAT YOU WERE SORRY?

10 A. YES.

11 MR. BOOZER: YOUR HONOR, I HAVE NO
12 FURTHER QUESTIONS.

13 THE COURT: ANY REDIRECT?

14 MR. WALTERS: I HAVE NO FURTHER
15 QUESTIONS, YOUR HONOR. AT THIS TIME WE'D CALL BETTY
16 JEAN HAYNES.

17 THE COURT: YOU CAN STEP DOWN, SIR.
18 YES, MA'AM, PLACE YOUR LEFT HAND ON
19 THE BIBLE AND RAISE YOUR RIGHT.

20 (Whereupon, Betty Jean Haynes
21 is duly sworn.)

22 THE COURT: THANK YOU, MA'AM.

23 COURT REPORTER: STATE YOUR FULL
24 NAME, PLEASE.

25 WITNESS: BETTY JEAN HAYNES.

1 COURT REPORTER: HAYNES?

2 WITNESS: YES, MA'AM.

3 THE COURT: THANK YOU, MA'AM.

4 (NOTE: Blank lines on this page do not indicate any
5 part of record has been omitted. Headers on testimony
6 pages and hard page breaks between testimony are now
7 required by the Court. See next ensuing page for
8 sequential continuation of record.)

DIRECT - BETTY JEAN HAYNES BY MR. WALTERS

17

DIRECT EXAMINATION OF BETTY JEAN HAYNES

BY MR. WALTERS:

Q. MS. HAYNES, WHERE DO YOU LIVE, MA'AM?

A. [REDACTED] ROAD IN ELLOREE, SOUTH
CAROLINA.

Q. OKAY. AND WHAT IS YOUR RELATIONSHIP WITH MR.
EZEKIAL HAYNES?

A. THAT'S MY SON.

Q. ALRIGHT. AND, MA'AM, DID YOU HAVE A RELATIONSHIP
WITH YOUR SON AT THE TIME HE WAS CHARGED WITH THE
MURDER CHARGE IN THIS PARTICULAR CASE?

A. YES, SIR.

Q. ALRIGHT. AND DID YOU KNOW MS. HINDS, HIS LAWYER,
IN THIS PARTICULAR CASE?

A. YES, SIR.

Q. ALRIGHT. FIRST OF ALL, YOUR SON WAS IN COURT AND
HE PLED GUILTY AND STATED THAT HE'D NEVER RECEIVED
ANY MENTAL ILLNESS TREATMENT. FIRST OF ALL, WHEN
YOU HEARD YOUR SON TALK ABOUT HOW HE WAS INJURED
IN THE CAR ACCIDENT WHEN HE WENT HEAD FIRST
THROUGH THE WINDSHIELD, AS HIS MOTHER WERE YOU
TAKING CARE OF HIM AT THAT TIME?

A. YES, SIR.

Q. ALRIGHT. COULD YOU PLEASE TELL THE COURT WHAT WAS
HIS STATUS AFTER THE ACCIDENT OCCURRED?

- 1 A. AFTER THE ACCIDENT EZEKIAL, HE HAD PROBLEMS WHEN
2 HE WENT BACK, EVEN BEFORE HE WENT BACK TO SCHOOL,
3 BUT AFTER HE HAD THE PROBLEM WITH THE RUNNING,
4 DRIVING A CAR A HUNDRED AND TWENTY, HE WENT
5 THROUGH THE WINDSHIELD HEAD FIRST AND AFTER HE
6 WENT THROUGH THE WINDSHIELD EZEKIAL, HE START
7 ACTING DIFFERENT. HE DID HAVE A BRUISE ON THE
8 FRONT OF HIS FOREHEAD BUT FROM THEN EZEKIAL, HE
9 HAD MENTAL PROBLEMS. IT WAS LIKE HIS WHOLE LIFE
10 CHANGED. HE START HAVING SEIZURES. HE COULDN'T
11 REMEMBER THINGS, AND EZEKIAL WAS AN A STUDENT, A,
12 B STUDENT IN SCHOOL, BUT HE WENT TO SCHOOL AND HE
13 COULDN'T COMPREHEND WHAT THE TEACHER WAS SAYING.
- 14 Q. SO, HE WENT FROM BEING AN A, B STUDENT MEANING HE
15 WAS COLLEGE PREPARATORY, TO BEING A STUDENT THAT
16 FLUNKED?
- 17 A. YES.
- 18 Q. ALRIGHT. AND DID YOU SEEK HELP FOR HIM?
- 19 A. YES, I DID. I TOOK HIM OUT TO, AT FIRST I TOOK HIM
20 TO THE REHABILITATION PLACE IN ORANGEBURG, AND I
21 TALKED TO THIS YOUNG MAN THAT WAS OVER THERE. AND
22 HE SUGGESTED THAT I TAKE HIM TO HOLY HILL TO THE
23 MENTAL INSTITUTE, THE MENTAL DOCTOR DOWN THERE IN
24 HOLLY HILL. AND I TAKE HIM DOWN THERE, I TAKE HIM
25 DOWN THERE FOUR TIMES. AND WHEN HE WAS DOWN THERE

DIRECT - BETTY JEAN HAYNES BY MR. WALTERS

19

1 SHE WAS SAYING THAT HE NEEDED TO BE ON MEDICATION.

2 MR. BOOZER: OBJECTION, YOUR HONOR,
3 TO HEARSAY AS TO WHAT THE PERSON AT HOLLY HILL TOLD
4 HER.

5 THE COURT: WHAT WAS THE QUESTION
6 AGAIN?

7 MR. WALTERS: THE QUESTION WAS,
8 WHAT WAS HIS STATUS AFTER HE RECEIVED, AFTER HE WENT
9 THROUGH THE WINDSHIELD OF THE CAR.

10 THE COURT: JUST TELL US WHAT YOU
11 OBSERVED, WHAT YOU NOTICED ABOUT HIM.

12 A. OKAY. I NOTICED EZEKIAL'S MOOD SWINGS. I NOTICED
13 HE START HAVING SEIZURES, AND EZEKIAL, HE USED TO
14 LOVE TO SIT BY HIMSELF, AND A LOT OF TIMES HE
15 WOULD BE LIKE HE WAS DRAWING OUT OR WHATEVER, HE
16 WOULD JUST SIT AND JUST STARE FOR HOURS. AND
17 SOMETIME I USED TO GO TO HIM AND I WOULD SAY,
18 EZEKIAL, I'D SAY, ARE YOU ALRIGHT? AND I'D HAVE
19 TO CALL HIM SOMETIMES ABOUT TWO OR THREE TIMES,
20 I'D SAY, EZEKIAL, ARE YOU ALRIGHT?

21 Q. WELL, TELL ME THIS, DID YOU EVER, DID HE HAVE A
22 PHYSICAL EXAMINATION DONE OF HIS HEAD?

23 A. YES, SIR, HE DID, AT THE HOSPITAL, BUT THE DOCTOR
24 TOLD HIM -- THE NURSE FIRST TOLD HIM THAT WHAT
25 THEY WOULD DO IS THAT THEY HAD WANTED TO CHECK AND

1 SEE IF HE HAD A TUMOR OR A HERNIA OR SOMETHING
2 THAT WAS GROWING ON HIS BRAIN, OR A BLOOD CLOT
3 THAT CAUSES HIM TO BLACK OUT, BECAUSE THAT'S WHAT
4 THEY CALLED IT, BLACK OUT, OR HAVING A SEIZURE.
5 AND SO, WHEN THE NURSE TOLD HIM THAT HE GOT AFRAID
6 BECAUSE SHE TOLD HIM THAT THEY WAS GOING TO TAKE A
7 LONG NEEDLE, YEA, SO LONG, AND THEY WAS GOING TO
8 FILL IT UP WITH DYE, AND THEN THEY WAS GOING TO
9 PUT IT IN HIS BRAIN. AND EZEKIAL, HE REALLY LOST
10 IT. THEY HAD TO COME IN, THEY HAD TO STRAP HIM
11 DOWN ON THE TABLE. AND THEY KEPT HIM STRAPPED
12 DOWN THAT WHOLE NIGHT FROM SEVEN O'CLOCK UNTIL
13 SIX:FIFTEEN THAT MORNING, THEY KEPT HIM STRAPPED
14 DOWN ON THE TABLE. AND THEY WERE GIVING HIM SOME
15 MEDICINE. AND SO, EACH TIME EZEKIAL WOULD COME
16 THROUGH HE, LIKE, WHERE I'M AT, WHERE I'M AT,
17 WHAT ARE Y'ALL DOING, WHERE I'M AT, WHAT ARE Y'ALL
18 DOING, WHAT ARE Y'ALL DOING, WHAT ARE Y'ALL DOING?
19 AND I'M, LIKE, EZEKIAL, CALM DOWN, BABY, I SAID,
20 WE AT THE HOSPITAL. HE SAID, I DON'T WANT TO BE
21 HERE, I WANT TO GO HOME, I WANT TO GO HOME. I
22 SAID, EZEKIAL, CALM DOWN. SO THE DOCTOR WOULD COME
23 IN, HE WOULD GIVE HIM SOME MORE MEDICINE AND
24 SOMETIME THEY WOULD GIVE HIM ANOTHER SHOT TO KNOCK
25 HIM OUT AGAIN. AND SO, THE DOCTOR, HE STAYED, HE

DIRECT - BETTY JEAN HAYNES BY MR. WALTERS

21

1 LET EZEKIAL STAY THERE, AND THEN THAT MORNING HE
2 CAME BACK IN, AND HE SAID, WE'RE GOING TO HAVE TO
3 KEEP HIM HERE BECAUSE HIS MENTAL STATE RIGHT NOW
4 IS NOT GOOD. AND SO, WHAT THEY DID IS, THEY PUT
5 HIM IN A ROOM AND THEY GIVE HIM SOME MEDICATION.
6 HE STAYED THERE FROM THAT FRIDAY NIGHT, AND I
7 STAYED THERE WITH HIM UNTIL THAT SUNDAY AFTERNOON
8 ABOUT FOUR O'CLOCK. AND THE DOCTOR CAME IN FOR
9 HIM TO SIGN THE PAPERS TO DO THE OPERATION BECAUSE
10 THEY SAID WHAT THEY NEED TO DO AFTER THEY DONE PUT
11 THE DYE IN AND SEE WHATEVER IT WAS THAT CAUSED HIM
12 TO HAVE THE SEIZURES, THE BLACK OUT, WHAT THEY WAS
13 GOING TO DO, THEY WAS GOING TO GO AHEAD AND DO
14 SURGERY THEN. BUT EZEKIAL GOT SCARED. AND SO, WE
15 COULDN'T HOLD HIM DOWN ON THAT TABLE AND WE
16 COULDN'T KEEP HIM IN THE BED. SO, THE DOCTOR
17 SAID, BECAUSE HE'S REFUSING TO HAVE TREATMENT THEY
18 TOLD ME TO GO AHEAD AND GET HIM TO A MENTAL
19 HEALTH. AND THAT'S WHAT I DID.

20 Q. WELL, COULD YOU OVERRIDE YOUR SON AND FORCE HIM TO
21 GO THROUGH THE OPERATION?

22 A. I TRIED TO DO THAT, BUT HE TOLD THE DOCTOR, HE
23 SAID, I DON'T CARE HOW MANY PAPERS MY MOM SIGNS,
24 HE SAID, I AIN'T DOING IT. HE SAID, Y'ALL WANT TO
25 MAKE ME CRAZY. AND SO, THE DOCTOR - - -

1 Q. HOW OLD WAS YOUR SON AT THAT TIME?

2 A. HE WAS FIFTEEN.

3 Q. ALRIGHT.

4 A. ALMOST SIXTEEN.

5 Q. OKAY. AND THIS INFORMATION THAT YOU'RE RELATING
6 WITH REGARDS TO HIS MENTAL HEALTH, HIS MENTAL
7 CARE, DID YOU TELL MS. HINDS ABOUT THIS?

8 A. YES, MOST EVERY DAY I WAS AT MS. HINDS'S OFFICE,
9 AND I WAS TELLING MS. HINDS, I TOLD MS. HINDS, I
10 SAID, MS. HINDS, I SAID, MY SON, SOMETHING IS
11 WRONG WITH HIM. I TOLD HER ABOUT HOW THE DOCTOR
12 SAID HE HAD NEED TO BE HOSPITALIZED BECAUSE HE HAD
13 TO HAVE SURGERY. I TOLD MS. HINDS THAT, I TOLD MS.
14 HINDS, I SAID, MS. HINDS, I SAID, THE HOLLY HILL
15 MENTAL HEALTH, I SAID, YOU CAN GET THE RECORD FROM
16 THERE. I SAID, YOU WILL SEE THAT I TAKE MY SON
17 DOWN THERE BECAUSE THEY SAY HE NEEDS MENTAL
18 HEALTH. I SAID, EZEKIAL WASN'T LIKE THIS ALL HIS
19 LIFE. I SAID, HE WAS A YOUNG MAN THAT LOVED TO DO
20 THINGS AND LOVED TO GO PLACES, I SAID, BUT HE
21 BECAME WITHDRAWN. EZEKIAL - - -

22 Q. WELL, LET ME ASK YOU THIS, I WANT TO ASK YOU ABOUT
23 THE FREQUENCY OF GIVING THE ATTORNEY NOTICE OF HIS
24 MENTAL CONDITION. HOW OFTEN DID YOU SEE MS. HINDS?

25 A. I SEE MS. HINDS AFTER MY SON WAS ARRESTED, I SEE

DIRECT - BETTY JEAN HAYNES BY MR. WALTERS

23

1 MS. HINDS MOST EVERY OTHER DAY, JUST ABOUT EVERY
2 DAY FROM THE TIME HE WAS IN JAIL UNTIL TIME TO GO
3 TO COURT, I BEEN AT MS. HINDS' OFFICE. I PLEAD
4 WITH MS. HINDS, I TRIED TO EXPLAIN MYSELF THE BEST
5 I COULD TO MS. HINDS, BUT MS. HINDS DID NOT ACCEPT
6 WHAT I WAS SAYING. SHE WOULD TELL ME WHAT SHE
7 ALREADY HAD, AND ALL THIS PROOF AND ALL OF THIS,
8 AND I'M TRYING TO EXPLAIN TO HER, MS. HINDS, IT
9 COULDN'T HAVE HAPPENED THAT WAY. BUT SHE TOLD ME
10 IT DID, AND THAT'S WHAT SHE HAD.

11 Q. ALRIGHT, NOW, YOU'RE SAYING THAT YOU SAW MS. HINDS
12 EVERY OTHER DAY, WAS THIS DURING THE COURSE OF HER
13 REPRESENTING YOUR SON?

14 A. YES, SIR.

15 Q. ALRIGHT. AND AT ANYTIME DID SHE SAY, I'VE
16 REVIEWED THOSE RECORDS, I WANT TO GET HIM A MENTAL
17 EVALUATION AND SEE WHAT'S GOING ON?

18 A. SHE TOLD ME, SHE SAID, I'M GETTING HIM ALL THE
19 HELP HE NEEDS. THAT'S WHAT SHE TOLD ME.

20 Q. ALRIGHT. AND WAS HE EVER EVALUATED?

21 A. NO.

22 Q. ALRIGHT. AND YOU STATED THAT YOUR SON REFUSED TO
23 HAVE THIS PARTICULAR PROCEDURE PERFORMED ON HIM,
24 AND YOU HAD TO GO TO MENTAL HEALTH WITH HIM. WHAT
25 WAS THE EXPERIENCE LIKE GOING TO MENTAL HEALTH

1 WITH HIM?

2 A. HE WOULD KIND OF SPACE OUT AT TIMES, AND MS.
3 HEATHER, SHE, SHE WOULD CALL HIM JUST LIKE I USED
4 TO DO, CALL HIM BACK AND JUST SAY, EZEKIAL,
5 EZEKIAL, DO YOU KNOW WHERE YOU'RE AT? SOMETIME HE
6 WOULD KNOW WHERE HE BEEN, SOMETIME HE DID NOT,
7 BECAUSE SOMETIME HE WOULD KIND OF, WHEN HE COME
8 BACK TO HIMSELF HE WOULD, LIKE, JUMP AROUND AND
9 SAY, WHERE I'M AT? THEN HE WOULD LOOK AT ME, AND
10 HE WOULD SAY, OH, MAMA. AND SO, HE WOULD JUST
11 KIND OF PLAY IT OFF.

12 Q. WELL, LET ME ASK YOU THIS, AS FAR AS GIVING THE
13 ATTORNEY NOTICE OF HIS MENTAL HEALTH, HIS MENTAL
14 STATUS, WHEN YOU TRIED TO CONTACT HIS ATTORNEY OR
15 GO BY AND SEE HIS ATTORNEY, IS IT SIMILAR TO THE
16 CONTACT THAT WE'VE HAD DURING THIS PCR?

17 A. NO, SIR.

18 Q. BECAUSE I THINK YOU'VE CONTACTED ME AT LEAST ONCE
19 EVERY EIGHT OR NINE DAYS.

20 A. YEAH.

21 Q. ONCE EVERY EIGHT OR NINE DAYS.

22 A. YES, SIR.

23 Q. HOW OFTEN DID YOU CONTACT MS. HINDS?

24 A. I BEEN TO MS. HINDS'S OFFICE EVERY DAY JUST ABOUT.
25 I DIDN'T CALL MS. HINDS AS MUCH, I WENT TO HER

DIRECT - BETTY JEAN HAYNES BY MR. WALTERS

25

1 OFFICE. I WAITED FOR MS. HINDS. SOMETIME I WOULD
2 SPEND FROM EIGHT O'CLOCK IN THE MORNING UNTIL
3 ABOUT TWELVE:THIRTY WAITING FOR MS. HINDS.

4 Q. ALRIGHT.

5 A. AND SOMETIME I WOULD SEE HER, SOMETIME I WOULDN'T,
6 BUT I WOULD STAY THERE AND I WOULD WAIT.

7 Q. SO, WHEN YOUR SON ANSWERED THIS QUESTION, HAD HE
8 EVER BEEN TREATED FOR MENTAL ILLNESS AND HE SAID,
9 NO, WHAT IS YOUR OWN PERSONAL OPINION OF HIS
10 RESPONSE?

11 A. THAT BECAUSE I BELIEVE THAT WHEN HE RESPOND LIKE
12 THAT, NO, BECAUSE TO HIM HE DIDN'T KNOW WHAT WAS
13 WRONG WITH HIM. AND BECAUSE I TOLD MS. HINDS
14 ABOUT THE MENTAL HEALTH, MS. HINDS, SHE NEVER DID
15 GET HIM THAT MENTAL HEALTH THAT I WAS ASKING HER
16 TO GIVE HIM. AND SO, THAT'S WHY I THINK HE
17 RESPONDED, NO, BECAUSE WE WAS SUPPOSED TO HAVE
18 BEEN TOLD, NO, THAT HE DID NOT. SHE TOLD HIM WHAT
19 TO SAY, AND WHEN WE WAS BACK THERE IN THAT LITTLE
20 ROOM SHE TOLD EZEKIAL, SHE SAY, NOW, WHEN YOU GET
21 UP THERE YOU JUST DON'T SAY NOTHING MUCH, JUST
22 TAKE THE PLEA. AND I DIDN'T KNOW ABOUT NO PLEA, I
23 DIDN'T HAVE NO IDEA WHAT A GUILTY PLEA WAS, BUT I
24 TOLD MS. HINDS, I SAID, MS. HINDS, I SAID, LOOK, I
25 SAID, I DON'T FULLY UNDERSTAND THIS, BUT WHAT, WHY

1 SHOULD MY SON PLEAD TO SOMETHING THAT HE DON'T
2 EVEN KNOW WHAT HE'S PLEADING TO? SHE SAID, IF HE
3 WOULD TAKE THIS HE WOULD -- OKAY, SHE SAID, WHAT
4 HE'S LOOKING AT IS TWENTY-FIVE TO LIFE. SHE SAID,
5 IF HE WILL TAKE THIS PLEA HE COULD BE OUT, OH,
6 TEN, FIFTEEN YEARS. I SAID, FOR SOMETHING HE
7 DIDN'T DO? AND SHE TOLD ME, SHE SAID, WELL, I'VE
8 GOT THE EVIDENCE, HE DID IT, I'VE GOT THE SHOE
9 PRINT, I'VE GOT THE BLOOD SAMPLE, AND ALL THIS
10 STUFF. I SAID, BUT THEY TOLD THE JUDGE THEY DIDN'T
11 HAVE NOTHING. AND SHE SAID, BUT I'VE GOT IT.

12 Q. ALRIGHT. AT THAT TIME DID YOU RAISE THE ISSUE
13 ABOUT HIS MENTAL COMPETENCE?

14 A. YES. I WENT TO MS. HINDS THAT MORNING JUST BEFORE
15 COURT, AND I TOLD MS. HINDS, I SAID, MS. HINDS, I
16 SAID, WE'VE GOT TO CHANGE THIS. I SAID, WE CAN'T
17 GO THROUGH WITH THIS. I SAID, I NEED TO TALK TO MY
18 SON, I SAID, BECAUSE WE CANNOT ACCEPT NO GUILTY
19 PLEA FOR SOMETHING THAT HE DIDN'T DO. I SAID, MS.
20 HINDS, I NEED TO TALK TO MY SON. AND MS. HINDS
21 TOLD ME, SHE SAID, WELL, NO, IT HAVE TO STAY LIKE
22 IT IS, IT HAVE TO STAY LIKE IT IS. I SAID, NO, IT
23 DON'T, I SAID, BECAUSE IT'S WRONG. BUT I DIDN'T
24 GET A CHANCE TO TALK TO EZEKIAL, BUT I TALK AT HIS
25 HEARING, BUT I DIDN'T GET A CHANCE TO TALK TO HIM

DIRECT - BETTY JEAN HAYNES BY MR. WALTERS

27

1 TO TELL HIM THAT WE WAS CHANGING OUR MIND, WE
2 WASN'T GOING TO GO THROUGH WITH THIS.

3 MR. WALTERS: YOUR HONOR, I HAVE NO
4 FURTHER QUESTIONS.

5 THE COURT: CROSS-EXAMINATION.

6 MR. BOOZER: THANK YOU, BRIEFLY,
7 YOUR HONOR.

8 (NOTE: Blank lines on this page do not indicate any
9 part of record has been omitted. Headers on testimony
10 pages and hard page breaks between testimony are now
11 required by the Court. See next ensuing page for
12 sequential continuation of record.)

CROSS - BETTY JEAN HAYNES BY MR. BOOZER

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CROSS-EXAMINATION OF BETTY JEAN HAYNES

BY MR. BOOZER:

Q. MS. HAYNES, WERE YOU PRESENT AT THE PLEA?

A. AT THE PLEA?

Q. YES, MA'AM.

A. YES, SIR.

Q. NOW, AT THE PLEA YOU HEARD THE JUDGE ASKING YOUR SON ALL THESE QUESTIONS, IS THAT CORRECT?

A. YES, SIR.

Q. AT ANYTIME DURING THAT PLEA YOU DIDN'T GO UP AND TELL MS. HINDS TO STOP THE PLEA BECAUSE YOUR SON WASN'T ANSWERING THE QUESTIONS CORRECTLY, IS THAT RIGHT?

A. I TOLD MS. HINDS BEFORE WE EVEN WENT UP THERE, THAT BEFORE COURT GOT STARTED, I TOLD MS. HINDS. ME AND MS. HINDS WENT BEHIND THERE AND WE WENT IN THAT LITTLE ROOM RIGHT THERE IN THE COURTHOUSE, AND I TOLD HER, I SAID, MS. HINDS, I SAID, WE'RE GOING TO CHANGE THIS. I SAID, NO, I SAID, I NEED TO TALK TO MY SON BECAUSE IT'S WRONG. I TOLD MS. HINDS THAT.

Q. BUT DURING THE PLEA YOU SAT THERE AND LISTENED TO YOUR SON ANSWER THESE QUESTIONS, AND AT NO TIME DID YOU COME UP AND ASK MS. HINDS TO STOP THE PLEA?

CROSS - BETTY JEAN HAYNES BY MR. BOOZER

29

1 A. I DIDN'T KNOW THAT I COULD DO THAT, BEING THAT
2 COURT DONE HAD GOT STARTED. I DIDN'T KNOW NOTHING
3 ABOUT NO COURT AND STUFF. THAT WAS MY FIRST TIME
4 EVER BEING IN COURT LIKE THAT.

5 MR. BOOZER: NO FURTHER QUESTIONS,
6 YOUR HONOR.

7 THE COURT: REDIRECT?

8 MR. WALTERS: I HAVE NO QUESTIONS,
9 YOUR HONOR.

10 THE COURT: THANK YOU, MA'AM, YOU
11 MAY STEP DOWN.

12 CALL YOUR NEXT WITNESS, PLEASE.

13 MR. WALTERS: YOUR HONOR, I'D CALL
14 NATHANIEL HAYNES, JR.

15 THE COURT: PLACE YOUR LEFT HAND ON
16 THE BIBLE AND RAISE YOUR RIGHT.

17 (Whereupon, Nathaniel Haynes, Jr.,
18 is duly sworn.)

19 THE COURT: ALRIGHT, SIR, HAVE A
20 SEAT THERE AND STATE YOUR FULL NAME, PLEASE, SIR, AND
21 SPEAK LOUDLY SO THIS LADY CAN HEAR YOU.

22 WITNESS: NATHANIEL HAYNES, JUNIOR.

23 THE COURT: ALRIGHT, SIR.

24 (NOTE: Blank lines on this page do not indicate any
25 part of record has been omitted.)

DIRECT - NATHANIEL HAYNES, JR., BY MR. WALTERS

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DIRECT EXAMINATION OF NATHANIEL HAYNES, JR.,

BY MR. WALTERS:

Q. MR. HAYNES, WHERE DO YOU LIVE, SIR?

A. IN GEORGIA, ATLANTA, GEORGIA.

Q. AND WHAT IS YOUR RELATIONSHIP WITH MR. EZEKIAL HAYNES?

A. HE'S MY BROTHER.

Q. AND WERE YOU A PART OF HIS LIFE AND RAISED IN THE HOUSEHOLD WITH YOUR MOTHER, IS THAT CORRECT?

A. YES, SIR.

Q. AND MS. HAYNES IS YOUR MOTHER?

A. YES, SIR.

Q. AND BEING RAISED IN THAT HOUSEHOLD, AFTER HE HAD THE CAR ACCIDENT, COULD YOU TELL THE COURT WHAT HAPPENED TO HIS MENTAL STATUS?

A. WELL, EZEKIAL, HE WAS JUST, YOU KNOW, I WOULD COME HOME FROM TIME TO TIME, I'M JUST A GENERAL SUBCONTRACTOR, AND I WOULD COME HOME FROM TIME TO TIME AND I'D HEAR LITTLE THINGS ABOUT EZEKIAL, YOU KNOW, EZEKIAL AND VIRGINIA ACTUALLY USED TO ALWAYS, YOU KNOW, MAKE GOOD GRADES IN SCHOOL. THEY WAS THE SMARTER ONES OF THE FAMILY. AND LATER ON I JUST START HEARING HE WAS, YOU KNOW, FAILING IN SCHOOL, AND THIS AND THAT. SO, I GOT TO TALKING TO MAMA ABOUT IT, AND MAMA TOLD ME

DIRECT - NATHANIEL HAYNES, JR., BY MR. WALTERS

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1 THAT, YEAH, HIS GRADES HAVE CHANGED, AND I GOES,
2 WHY? I GOES, IS HE NOT STUDYING? AND MAMA WAS,
3 LIKE, WELL, HIS GRADES JUST GOING DOWN. AND SHE
4 SAID THAT SINCE THAT ACCIDENT, YOU KNOW, BECAUSE
5 IT WAS MY CAR THAT HE WRECKED INTO THE TREE, HE
6 TOTALED IT, AND HE WENT THROUGH THE WINDSHIELD.
7 AND AFTER THAT EZEKIAL WAS NEVER EZEKIAL AGAIN.
8 AND I WOULD ASK MAMA, I WOULD SAY, WHY IS HE JUST
9 SITTING THERE, IN MARS, I MEAN, HE JUST SAT THERE
10 AND JUST STARING, YOU KNOW, NOT SAYING ANYTHING TO
11 ANYBODY.

12 Q. WHAT ABOUT HIS MOOD, FROM YOUR PERSONAL
13 INVOLVEMENT WITH HIM, WHAT HAPPENED TO HIS MOOD
14 AND HIS COMPREHENSION?

15 A. WELL, YOU KNOW, HE USED TO ALWAYS JOKE AROUND WITH
16 ME, AND ALL THAT STUFF JUST WENT AWAY. HE WOULD
17 JUST LOOK AT ME AND JUST STARE, BECAUSE I GUESS HE
18 FEEL THAT I WAS ANGRY, YOU KNOW, AT HIM, AND I WAS
19 STILL HOLDING IT ON HIS SIDE BECAUSE HE TOTALED MY
20 CAR. EZEKIAL WAS JUST A TOTALLY DIFFERENT PERSON,
21 AND ONE DAY HE JUST FLIPPED OUT, AND MY BROTHER-
22 IN-LAW AND MY DADDY AND MY OTHER BROTHER COULDN'T
23 HOLD THE BOY DOWN. THEY WAS TRYING TO HOLD HIM
24 DOWN AND HE OVERPOWERED ALL OF THEM. AND, OF
25 COURSE, ME, I SAID, SHOOT, I WAS THERE, I COULD

1 HOLD HIM. AND MY MOM TOLD ME, IT'S NO WAY I COULD
2 HOLD HIM, YOU KNOW, HE OVERPOWERED ALL THEM BOYS.
3 HE WAS JUST MAD, YOU KNOW, ANGRY.

4 Q. ALRIGHT. SO, THIS IS A STUDENT THAT'S GONE FROM
5 COLLEGE CALIBER, A-B COURSES, TO FLUNKING OUT OF
6 SCHOOL. AND HE NEVER GRADUATED FROM HIGH SCHOOL,
7 IS THAT CORRECT?

8 A. NO.

9 Q. ALRIGHT. AND AS FAR AS HIS INVOLVEMENT WITH
10 MENTAL HEALTH, WAS IT JUST BACK AND FORTH, OVER
11 AND OVER?

12 A. WELL, MAMA STARTED TAKING HIM TO THE, YOU KNOW, WE
13 WAS ALL SAYING, THE BOY NEEDS HELP, THE BOY NEEDS
14 HELP, BECAUSE HE WOULD JUST SIT AND STARE. OKAY?
15 AND TO US, YOU KNOW, THAT'S, THAT'S NOT NORMAL,
16 AND ESPECIALLY FOR EZEKIAL, YOU KNOW. NAD WE WAS
17 ALWAYS, YOU KNOW, MAMA, YOU NEED TO GET HIM SOME
18 HELP. AND MAMA STARTED, YOU KNOW, TAKING HIM TO
19 THE HOSPITAL, THE MENTAL HEALTH PLACE, AND SO I
20 LEFT IT ALONE. YOU KNOW, I WASN'T ON HER BACK NO
21 MORE BECAUSE SHE WAS DOING WHAT I KIND OF LIKE
22 ASKED HER TO DO, GET HIM SOME HELP. AND THEN,
23 LATER ON, YOU KNOW, THIS CASE CAME UP AND, YOU
24 KNOW, IT'S LIKE, THE BOY, HE DON'T KNOW. BUT TO
25 BE HONEST WITH YOU, WE WAS BROKE, WE HAD NO MONEY.

DIRECT - NATHANIEL HAYNES, JR., BY MR. WALTERS

33

1 YOU DO WHAT YOU CAN. YOU PAY THE LITTLE TEN
2 DOLLARS AND YOU GET A PUBLIC DEFENDER, AND YOU GO
3 ON. YEAH, WE'RE ALL IGNORANT OF THE LAW BECAUSE
4 WE'RE NOT JAIL BIRDS, WE'RE NOT ON PROBATION, WE
5 DON'T COME TO COURT, WE DON'T KNOW NOTHING, AND
6 NEITHER ARE MY PARENTS. WE ARE IGNORANT OF THE
7 LAW. YOU KNOW, WE DON'T KNOW, YOU KNOW, AND SO
8 THAT'S WHY WE WENT ALONG WITH THE PUBLIC DEFENDER.
9 AND WE WAS HOPING FOR THE BEST. BUT HERE I AM IN
10 GEORGIA AND COURT'S LIKE TOMORROW, SO I DRIVE DOWN
11 AND I GET WITH THEM THE NEXT MORNING JUST BEFORE
12 COURT, AND MAMA, YOU KNOW, SHE'S, YOU KNOW, CRYING
13 AND EVERYTHING. AND SO, I GOES, WHAT'S GOING ON?
14 AND THEY TOLD ME THAT IT WAS EITHER GOING TO BE
15 LIFE OR SOME AMOUNT OF YEARS, OR LIFE, AND THAT HE
16 WAS GOING TO PLEAD GUILTY. AND I WAS, LIKE, WHY
17 IS HE GOING TO PLEAD, BECAUSE WHAT EVIDENCE DO
18 THEY HAVE? OH, THEY SAY THEY'VE GOT ALL KIND OF
19 EVIDENCE, THEY SAY THEY'VE GOT STATE EVIDENCE.

20 Q. WHAT ABOUT HIS MENTAL STATUS AT THAT TIME, DID YOU
21 HAVE A CHANCE TO TALK TO HIM?

22 A. I SAW HIM THAT MORNING IN COURT.

23 Q. WAS HE THE SAME STARING INDIVIDUAL?

24 A. YES, STILL - - -

25 Q. WAS HE SIMILAR TO THE WAY HE IS TODAY?

1 A. TO BE HONEST, JUST UP THERE ON MARS OR JUPITER
2 SOMEWHERE. HE WASN'T -- BUT THE JUDGE DID ASK
3 HIM, YOU KNOW, SIR, DO YOU UNDERSTAND WHAT YOU'RE
4 DOING? DO YOU UNDERSTAND WHAT YOU'RE SAYING? HE
5 WAS LIKE THIS THE WHOLE TIME, YOU KNOW. IF I
6 COULD EXPLAIN THE WAY HE WAS THAT DAY, IT WAS
7 LIKE, YOU KNOW, WHATEVER THEY SAY, WHATEVER THEY
8 SAY HE BELIEVES IT'S GOING TO BE RIGHT, SO THAT'S
9 WHAT HE DONE. YOU KNOW. AND HE FELT THAT HE WAS
10 GOING TO GO HOME. OKAY? HE FELT THAT HE WAS GOING
11 TO GO HOME AT THAT POINT, BECAUSE HE DONE HAD
12 SPENT THAT LITTLE TIME IN THE COUNTY, AND LIKE I
13 SAY, YOU KNOW, JAIL TIME TO US, IF YOU LOCK US UP
14 FOR FORTY-FIVE MINUTES WE DONE BEEN IN THERE TEN
15 YEARS. OKAY? SO, HE FELT LIKE THE JUDGE WAS
16 PROBABLY JUST GOING TO LET HIM GO HOME. SO HE WENT
17 ALONG WITH EVERYTHING, PLEADING GUILTY AND
18 EVERYTHING, JUST THROWING EVERYTHING AWAY. BUT
19 NO, THE MEDICAL HISTORY AND ALL OF THAT STUFF,
20 AIN'T NONE OF THAT CAME UP IN COURT, IT WASN'T
21 EVER MENTIONED. WHY, I DON'T KNOW.

22 MR. WALTERS: I HAVE NO FURTHER
23 QUESTIONS, YOUR HONOR.

24 THE COURT: CROSS-EXAMINATION.

25 MR. BOOZER: NO QUESTIONS FROM THE

1 STATE, YOUR HONOR.

2 THE COURT: THANK YOU, SIR, YOU MAY
3 STEP DOWN.

4 MR. WALTERS.

5 MR. WALTERS: YOUR HONOR, I BELIEVE
6 THAT'S THE CASE FOR EZEKIAL HAYNES, WE'D ASK THAT THE
7 PLEADINGS BE ADMITTED TO CONFORM TO THE EVIDENCE AS HAS
8 BEEN PROFFERED HERE.

9 THE COURT: ALRIGHT. MR. BOOZER.

10 MR. BOOZER: YOUR HONOR, THE STATE
11 WOULD CALL MS. PEGGY HINDS TO THE STAND.

12 THE COURT: COME AROUND, PLEASE,
13 MA'AM. PLEASE PLACE YOUR LEFT HAND ON THE BIBLE AND
14 RAISE YOUR RIGHT.

15 (Whereupon, Margaret Elizabeth Hinds
16 is duly sworn.)

17 THE COURT: THANK YOU, MA'AM, HAVE
18 A SEAT RIGHT THERE AND STATE YOUR FULL NAME, PLEASE.

19 WITNESS: MARGARET ELIZABETH HINDS.

20 (NOTE: Blank lines on this page do not indicate any
21 part of record has been omitted. Headers on testimony
22 pages and hard page breaks between testimony are now
23 required by the Court. See next ensuing page for
24 sequential continuation of record.)

DIRECT - MARGARET E. HINDS BY MR. BOOZER

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DIRECT EXAMINATION OF MARGARET E. HINDS

BY MR. BOOZER:

Q. MS. HINDS, WERE YOU APPOINTED TO REPRESENT MR. HAYNES IN THIS CASE?

A. YES, I WAS, ON JANUARY THIRD, TWO THOUSAND AND FIVE.

Q. AND COULD YOU TELL THE COURT A LITTLE BIT ABOUT YOUR INVESTIGATION INTO THE CASE, AN ACCOUNT OF YOUR MEETINGS WITH THE APPLICANT PRIOR TO THE PLEA?

A. I CAN REFER TO MY NOTES AND I CAN TELL YOU PRETTY MUCH EXACTLY. I MET WITH MR. HAYNES APPROXIMATELY EIGHTEEN TIMES AND TO THE BEST OF MY NOTES I THINK ABOUT FIVE OF THOSE TIMES WAS WITH HIS MOTHER. HIS MOTHER IS CORRECT, SHE ADDITIONALLY WOULD SPEAK TO ME IN THE HALLWAY OR SHE WOULD STOP BY THE OFFICE, BUT SHE WAS DIRECTLY INVOLVED AT LEAST FIVE TIMES WITH MY MEETINGS WITH EZEKIAL.

Q. NOW, DURING THOSE MEETINGS DID YOU DISCUSS ANY POSSIBLE MENTAL ILLNESSES OR ANY OF HIS PHYSICAL CONDITIONS WITH THE APPLICANT OR WITH HIS MOTHER?

A. YES.

Q. AND WHAT WAS THE BASIS OF THOSE DISCUSSIONS?

A. I SPECIFICALLY, ON MY INITIAL MEETING THAT'S VERY, THAT'S A QUESTION I ALWAYS ASK, HAVE YOU EVER BEEN

DIRECT - MARGARET E. HINDS BY MR. BOOZER

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1 TREATED BY ANY KIND OF MENTAL HEALTH PROFESSIONAL?
2 THE ANSWER WAS, NO. NOW, I WILL SAY, BOTH MR.
3 HAYNES AND HIS MOM DID MENTION THE FACT THAT HE
4 HAD BEEN IN THAT AUTO ACCIDENT AND THAT HE DID
5 AFTER THAT HAD, I DON'T RECALL THAT SHE TOLD ME
6 HOW MANY SEIZURES, BUT THAT HE HAD HAD AT LEAST
7 ONE SEIZURE AFTER THAT. SO, I WAS AWARE OF THAT,
8 BUT I WAS NOT AWARE OF ANY TREATMENT THROUGH
9 MENTAL HEALTH.

10 Q. SO, THERE WERE NO, NO INDICATIONS EITHER BY THE
11 APPLICANT, FAMILY MEMBERS OR MOTHER OF ANY SIGNS
12 OR ISSUES OF TREATMENT FOR MENTAL HEALTH, IS THAT
13 WHAT YOU SAID?

14 A. YES, SIR.

15 Q. AND DID YOU SEE ANY REASON TO HAVE HIM EVALUATED
16 PRIOR TO THE PLEA?

17 A. I DID NOT. IF I HAD THOUGHT THAT IT NEEDED TO BE
18 DONE, I HAVE BEEN DOING THIS FOR A LONG TIME,
19 EVERY TIME I MET WITH MR. HAYNES HE WAS ABLE TO
20 TALK TO ME ABOUT THE CASE, HE WAS ABLE TO
21 ARTICULATE, HE WAS ABLE TO ASK ME QUESTIONS ABOUT
22 WHAT WAS GOING ON. I HAD NO REASON TO THINK THAT
23 HE DID NOT KNOW WHAT WAS GOING ON. AS I SAID, HIS
24 MOTHER WAS INVOLVED IN SEVERAL OF THOSE VISITS OR
25 THOSE INTERVIEWS. AGAIN, SHE WAS, OF COURSE,

1 CONCERNED BECAUSE OF THE SERIOUSNESS OF THE
2 CHARGES, BUT AT NO POINT WOULD I SAY THAT HE
3 DIDN'T, I WAS NOT AWARE, IF THAT'S THE TRUTH, THAT
4 HE WAS NOT UNDERSTANDING WHAT I WAS SAYING. HE
5 APPEARED TO UNDERSTAND, HE ANSWERED MY QUESTIONS,
6 HE ASKED QUESTIONS OF ME.

7 Q. SINCE YOU WERE PRESENT WITH HIM IN THE PLEA DID HE
8 APPEAR TO UNDERSTAND WHAT WAS GOING ON THE DAY OF
9 THE PLEA?

10 A. YES, HE DID.

11 Q. AND AT ANYTIME DURING THE PLEA OR PRIOR TO THE
12 PLEA DID THE APPLICANT OR HIS MOTHER SAY THAT HE
13 DIDN'T WANT TO GO FORWARD WITH THIS PLEA?

14 A. NO, SIR.

15 Q. NOW, DO YOU RECALL, OR IF YOU DID, DID YOU EVER
16 TELL THE APPLICANT OR HIS MOTHER THAT HE'D BE OUT
17 FOR TEN TO FIFTEEN YEARS IF HE TOOK THE PLEA?

18 A. ABSOLUTELY NOT.

19 Q. AND BASED ON YOUR CONVERSATIONS WITH THE APPLICANT
20 AND HIS MOTHER AND YOUR PERCEPTION OF THIS CASE,
21 DID YOU BELIEVE THAT THE APPLICANT THOUGHT HE WAS
22 GOING TO GET TO GO HOME THAT DAY?

23 A. NO, HE KNEW EXACTLY WHAT THE SENTENCE WAS --
24 ACTUALLY, WE HAD GONE IN WITH A CAP, SO HE KNEW
25 THAT HE WOULD GET SOMEWHERE BETWEEN THIRTY AND

DIRECT - MARGARET E. HINDS BY MR. BOOZER

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1 FORTY, FORTY BEING THE WORST, AND HE KNEW HE WAS
2 NOT GOING TO GO HOME. HE ABSOLUTELY KNEW THAT.

3 Q. NOW, DURING THESE EIGHTEEN OR SO MEETINGS THAT YOU
4 HAD WITH THE APPLICANT, INCLUDING THE FIVE OTHERS,
5 OR THE FIVE WITH HIS MOTHER, WERE YOU ABLE TO
6 DISCUSS THE ACTUAL FACTS OF THE CASE, WHAT THE
7 STATE WOULD BE REQUIRED TO PROVE IF HE WENT TO
8 TRIAL?

9 A. YES.

10 Q. AND DID YOU DISCUSS ANY POSSIBLE DEFENSES HE MAY
11 HAVE HAD?

12 A. YES.

13 Q. DID HE HAVE ANY DEFENSES TO THIS CASE?

14 A. NOT REALLY. HE, THERE WAS, PART OF IT INVOLVED
15 SOME OTHER YOUNG MEN EARLIER THAT EVENING,
16 ALTHOUGH HE NEVER SAID THAT THEY WERE INVOLVED IN
17 THE DEATH, BUT HE COULDN'T GIVE ME THEIR NAMES, HE
18 COULDN'T GIVE ME ANY KIND OF IDENTIFYING
19 INFORMATION AS TO WHO THESE YOUNG MEN WERE. HE
20 DID GIVE A FOUR PAGE STATEMENT TO THE POLICE
21 STATING HIS INVOLVEMENT. YOUR HONOR, MAY I ASK A
22 QUESTION? FOR THE PURPOSES OF THESE PROCEEDINGS
23 CAN I WAIVE PRIVILEGE?

24 THE COURT: YES, MA'AM.

25 A. IN ADDITION TO THAT I HAD HIM POLYGRAPHED NOT ONCE

DIRECT - MARGARET E. HINDS BY MR. BOOZER

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1 BUT TWICE, AND BOTH CAME BACK DECEPTIVE BASICALLY
2 WHEN HE WAS NOT ANSWERING THE QUESTIONS ABOUT HER
3 MURDER, OR HER DEATH.

4 Q. NOW, WERE YOU PROVIDED WITH AND GIVEN ACCESS TO
5 THE STATE'S EVIDENCE?

6 A. I WAS.

7 Q. AND DID YOU REVIEW THIS WITH THE APPLICANT?

8 A. I DID.

9 Q. AT ANY POINT DID THE APPLICANT TELL YOU THAT HE
10 DID NOT UNDERSTAND WHAT HE WAS DOING OR WHAT YOU
11 WERE DOING WORKING WITH HIM?

12 A. NO, HE DID NOT.

13 Q. DID YOU GO OVER I THINK WHAT WAS TALKED ABOUT
14 EARLIER BY MR. WALTERS, THE SEMEN THAT WAS EITHER
15 FOUND OR NOT FOUND, AS WELL AS THE AUTOMOBILE?

16 A. TO MY RECOLLECTION THERE WAS NO SEMEN, SO THAT WAS
17 NOT AN ISSUE. BUT HE WASN'T CHARGED WITH RAPING
18 HER.

19 Q. WHO'S DECISION WAS IT FOR MR. HAYNES TO PLEAD
20 GUILTY?

21 A. IT WAS MR. HAYNES' DECISION.

22 MR. BOOZER: YOUR HONOR, I HAVE NO
23 FURTHER QUESTIONS.

24 THE COURT: YES, SIR, CROSS-
25 EXAMINATION.

1 MR. WALTERS: MAY IT PLEASE THE
2 COURT, YOUR HONOR.

3 THE COURT: YES, SIR.

4 (NOTE: Blank lines on this page do not indicate any
5 part of record has been omitted. Headers on testimony
6 pages and hard page breaks between testimony are now
7 required by the Court. See next ensuing page for
8 sequential continuation of record.)

CROSS - MARGARET E. HINDS BY MR. WALTERS

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CROSS-EXAMINATION OF MARGARET E. HINDS

BY MR. WALTERS:

Q. MS. HINDS, WAS MR. HAYNES' BEHAVIOR SIMILAR TO THE
BEHAVIOR THAT WE'VE SEEN TODAY, THAT'S HOW YOU
COMMUNICATED WITH HIM?

A. QUITE HONESTLY, NO. HE'S MUCH SLOWER TODAY THAN
MY RECOLLECTION OF MY MEETINGS WITH HIM.

Q. OKAY.

MR. WALTERS: YOUR HONOR, I HAVE NO
FURTHER QUESTIONS.

THE COURT: ANY REDIRECT?

MR. BOOZER: NO, YOUR HONOR.

THE COURT: THANK YOU, MA'AM, YOU
MAY STEP DOWN.

ANY OTHER WITNESSES, MR. BOOZER?

MR. BOOZER: NOTHING FURTHER FROM
THE STATE, YOUR HONOR.

THE COURT: I'LL BE GLAD TO HEAR
YOUR ARGUMENTS. YES, SIR.

MR. WALTERS: MAY IT PLEASE THE
COURT.

ARGUMENT BY MR. WALTERS

YOUR HONOR, UNDER STRICKLAND V.
WASHINGTON, OF COURSE, YOU'RE CERTAINLY WELL AWARE OF THE
STANDARD THAT IS REQUIRED TO BE MET.

1 IN THIS PARTICULAR CASE ONE OF THE
2 FUNDAMENTALS OF CRIMINAL DEFENSE, OF A DEFENDANT
3 ESPECIALLY, IS THAT WHEN THERE'S THE SLIGHTEST INKLING
4 THAT THERE IS AN INFERENCE THAT SOMEONE HAS A MENTAL
5 IMPAIRMENT, OF COURSE, THAT ISSUE MUST BE ADDRESSED. AND
6 IN THIS PARTICULAR CASE I CAN ONLY REFER TO MY
7 RELATIONSHIP WITH MR. HAYNES. I BELIEVE MRS. HAYNES
8 CONTACTED MY OFFICE ONCE EVERY SIX OR SEVEN DAYS ON A
9 CONTINUOUS BASIS IN REGARDS TO THE STATUS OF HER SON.
10 AND I IMAGINE DURING THE TIME THAT HE WAS CHARGED WITH
11 MURDER IT WAS A MORE DILIGENT PROCEDURE WITH HER WITH
12 REGARDS TO THE STATUS OF HER SON. I THINK ONCE THOSE
13 ISSUES ARE BROUGHT TO YOUR ATTENTION THAT THERE WAS
14 IMPAIRMENT AT THE AGE OF FIFTEEN, AND OF COURSE, THIS
15 HAPPENED DURING THE TIME HE WAS A TEENAGER, AND AS A
16 CHILD GOES FROM BEING AN A-B STUDENT TO ALL OF A SUDDEN
17 HE FLUNKS OUT OF HIGH SCHOOL, THERE'S DYE THAT'S BEEN PUT
18 IN HIS HEAD TO DETERMINE IF THERE WAS A BRAIN TUMOR OR A
19 BLOOD CLOT, AND OF COURSE, THERE'S A PROCEDURE TO
20 DETERMINE IF IT'S A SERIOUS IMPAIRMENT OR WHAT EXACTLY IS
21 CAUSING THE SEIZURES, AND THE ANGER WITH HIS BEHAVIOR AND
22 THERE ARE EMOTIONAL ISSUES, AND OF COURSE, IT APPEARS HE
23 WAS OUT OF CONTROL. AND BEING IN THE POSITION THAT THE
24 HAYNES WERE IN, AS THEY STATED, THEY DON'T HAVE MONEY, SO
25 THEY RELY ON RESOURCES THAT ARE AVAILABLE IN THE

1 COMMUNITY, WHICH IS SAD, BECAUSE YOU END UP GOING TO
2 MENTAL HEALTH AND IF YOU DON'T GO TO MENTAL HEALTH THEN,
3 OF COURSE, YOU GO TO THE HOSPITAL, AND OF COURSE, AT THAT
4 TIME THIS CHILD WAS INCOMPETENT. AND OF COURSE, WITH
5 THAT BEING BROUGHT TO THE ATTENTION OF THE ATTORNEY, MRS.
6 HAYNES, AS I STATED, WAS VERY CONSISTENT IN CALLING AND
7 VERY CONSISTENT IN APPEARING AT YOUR OFFICE. AND THAT
8 HAS BEEN MY EXPERIENCE FROM THE BEGINNING. ONCE THIS
9 INFORMATION IS BROUGHT TO YOUR ATTENTION IT IS INCUMBENT
10 ON AN ATTORNEY TO TURN AROUND AND SAY, LOOK, I NEED TO DO
11 SOME KIND OF EVALUATION. HIS APPEARANCE, HIS VERY
12 APPEARANCE IN THIS COURTROOM PUZZLED THE COURT. THE FIRST
13 REACTION WAS, RAISE YOUR RIGHT, PUT YOUR HAND ON THE
14 BIBLE, I WANT YOU TO RESPOND, I WANT YOU TO COMMUNICATE.
15 AND IT'S CLEAR OBVIOUSLY FROM HIS TESTIMONY, AND I AGREE
16 WITH ATTORNEY HINDS IT MAY BE SLOWER THAN MAYBE THE
17 COMPENSATING EVEN FURTHER, BUT THE POINT IS THAT HE IS
18 NOT RESPONSIVE TO QUESTIONS THAT'S GIVEN IF HE
19 COMPREHENDS WHAT YOU'RE SAYING. AND UNDER THE
20 CIRCUMSTANCES WHERE WE'VE GOT A MOTHER THAT'S OUT THERE
21 TRYING TO HELP HER KID AND BROUGHT TO THE ATTENTION OF
22 THE ATTORNEY, I THINK IT'S VERY IMPORTANT THAT THERE BE
23 A MENTAL EVALUATION TO DETERMINE IF HE HAD THE COGNIZANT
24 ABILITY UNDER M'NAUGHTEN TO, LIKE I SAY, UNDERSTAND WHAT
25 WAS GOING ON. AND I BELIEVE THAT UNDER THESE

1 CIRCUMSTANCES IT IS A EGREGIOUS ERROR ON THE PART OF
2 COUNSEL WHEN WE KNOW THAT THIS KID GOES FROM AN A-B
3 STATUS TO AN F STATUS AND NOT COMPLETING HIGH SCHOOL, AND
4 THE TRIGGERING EVENT WAS A CAR ACCIDENT. AND THEN, OF
5 COURSE, YOU'VE GOT GROWN MEN THAT HAD TO MUZZLE THIS
6 CHILD DOWN WITHIN THE HOME TO CONTAIN HIM TO TRY TO BRING
7 SOME CIVILITY AND ORDER WITHIN THAT HOME. AND WE'VE GOT
8 A MOTHER THAT SIMPLY STATED, THIS IS NOT MY KID, AND
9 THESE ARE THE PROBLEMS THAT HE HAS. AND WOULD HE GO
10 ALONG WITH ANYTHING THINKING THAT HE WAS SIMPLY GOING
11 HOME? NINE TIMES OUT OF TEN HE PROBABLY WOULD. AS HIS
12 BROTHER STATED, THEY HAD NO INVOLVEMENT WITH THE JUDICIAL
13 SYSTEM, THEY'VE NEVER BEEN IN TROUBLE BEFORE, OR AS HE
14 PUT IT, HE SAID, WE'RE NOT JAIL BIRDS. SO, WE FOLLOW THE
15 RULES, WE DON'T TALK OUT OF LINE, WE'RE NOT AWARE THAT WE
16 CAN WALK UP AND STOP THE PROCEEDING. THE ONLY THING WE
17 CAN DO IS BRING IT TO THE ATTENTION OF THE PROPER
18 OFFICIALS, AND WE HOPE THAT THEY WILL ACT IN A DILIGENT
19 AND VIGILANT MANNER IN ADDRESSING THESE ISSUES.

20 NOW, COUNSEL HAS BROUGHT OUT THE
21 ISSUE OF, WELL, I GAVE HIM A LIE DETECTOR TEST. WELL,
22 WE'RE BOTH WELL AWARE OF THE FACT THAT IF YOU'RE NOT
23 COMPETENT TO STAND TRIAL, AND UNDER M'NAUGHTEN IF YOU
24 CAN'T PASS THAT TEST, NINE TIMES OUT OF TEN YOU CAN'T
25 PASS A LIE DETECTOR TEST. A LIE DETECTOR TEST, OUR

1 COURTS HAVE SIMPLY STATED, IS NOT AS RELIABLE AS A WEEGIE
2 BOARD, AND THAT'S WHY WE DON'T ALLOW THEM TO BE
3 ADMISSIBLE, ADMISSIBLE IN COURT. BUT THE BOTTOM LINE IS,
4 IS THAT THIS SIMPLE INFORMATION, THE OBTAINING OF THE
5 RECORDS, THE REVIEW OF THE RECORDS WITH REGARDS TO HIS
6 COMPETENCY, AND THE PROPER QUESTIONS, I THINK THAT WE
7 SHOULD ERR ON THE SIDE OF CAUTION. I WANT YOU TO KNOW
8 THAT THIS KID HAS GONE FROM THE STATUS OF BEING A COLLEGE
9 STUDENT TO FALLING TO THE LEVEL WHERE YOU CANNOT PERFORM
10 PROPERLY WITHIN THE SCHOOL SYSTEM. AND OF COURSE, MY
11 FIRST QUESTION WAS, WHY DID YOU FLUNK OUT IN SCHOOL, WHY
12 DIDN'T YOU FINISH HIGH SCHOOL? HE SAID, I HAD SOME
13 MENTAL PROBLEMS. I SAID, WHAT MENTAL PROBLEMS? I SAID,
14 IN THE TRANSCRIPT IT SAYS THAT THERE'S NOTHING WRONG WITH
15 YOU, YOU SAID YOU HAD NEVER BEEN TREATED FOR MENTAL
16 ILLNESS. HE SAID, WELL, YEAH, I HAD A CAR ACCIDENT AND
17 I HAD TO GO TO MENTAL HEALTH. A SIMPLE QUESTION. IF THIS
18 COULD BE DISCOVERED AND THE ISSUE RAISED WITHIN A PCR,
19 CERTAINLY, IT SHOULD HAVE BEEN RAISED WITHIN THE PROCESS
20 OF REPRESENTING SOMEONE. THE VOLUNTARINESS OF THE
21 STATEMENT COULD HAVE BEEN ATTACKED, THE VOLUNTARINESS OF
22 COOPERATING WITH THE POLICE COULD HAVE BEEN ATTACKED. AND
23 YOUR HONOR HAS CERTAINLY GONE THROUGH, NOT GUILTY BUT
24 MENTALLY ILL ON THOSE ISSUES BEFORE. BUT WE HAVE AN
25 ENTIRE FAMILY HERE WHO WILL ATTEST TO THE FACT THAT THIS

1 IS NOT THE SAME KID. AND AS FAR AS HIM BRINGING IT TO
2 COUNSEL'S ATTENTION, I CANNOT REPEAT TO YOU HOW MANY
3 TIMES MRS. HAYNES HAS JUST SIMPLY CALLED ME AND SAID, I
4 WANT TO KNOW WHAT YOU'RE DOING AND WHAT'S GOING ON, AND
5 IF I NEED TO BRING SOMETHING TO YOUR ATTENTION I WANT TO
6 KNOW THAT YOU'RE DOING IT. AND WHEN ARE YOU GOING TO SEE
7 EZEKIAL, BECAUSE EZEKIAL CALLED ME AND YOU HAVEN'T COME
8 AND YOU SAID YOU WOULD BE THERE. THIS IS A MOTHER THAT'S
9 BEEN MORE THAN DILIGENT IN PROTECTING HER SON UNDER THE
10 CIRCUMSTANCES.

11 THE COURT: MR. BOOZER.

12 MR. BOOZER: THANK YOU, YOUR HONOR,
13 IF IT PLEASE THE COURT.

14 ARGUMENT BY MR. BOOZER

15 YOUR HONOR, THE STATE WOULD SIMPLY
16 SUBMIT THAT THE APPLICANT'S FAILED TO HIS BURDEN OF PROOF
17 AS HE HAS IN THESE PROCEEDINGS TO SHOW THAT MS. HINDS
18 WAS, NUMBER ONE, INEFFECTIVE; OR TWO, ANY PREJUDICE
19 RESULTING FROM ANY ALLEGED INEFFECTIVENESS. BASED ON MS.
20 HINDS' TESTIMONY TODAY IT'S CLEAR THAT SHE THOROUGHLY
21 INVESTIGATED THIS CASE, REVIEWED THE EVIDENCE WITH THE
22 APPLICANT. SHE HAD NO REASON TO BELIEVE THAT HE WAS
23 MENTALLY INCOMPETENT. SHE TESTIFIED THAT SHE MET NEARLY
24 EIGHTEEN TIMES WITH THE APPLICANT, FIVE OF THOSE WITH HIS
25 MOTHER. SHE WAS AWARE OF THE CAR WRECK. THERE WAS AN

1 ISSUE THAT SHE SAYS SHE DID NOTE THAT HE HAD, HE SUFFERED
2 SOME SEIZURES BUT THERE WAS NO REAL EVIDENCE OF ANY
3 MENTAL ILLNESS AND SHE HAD NO REASON TO SUSPECT THAT
4 THERE WAS ANY MENTAL ILLNESS. SHE HAD A VERY EASY TIME
5 IT SEEMED COMMUNICATING WITH HIM, BASED ON HER TESTIMONY.
6 SHE STATED THAT HE WAS RESPONSIVE TO THE COURT'S
7 QUESTIONS, THAT HE APPEARED MUCH DIFFERENT THEN THAN HE
8 DOES TODAY. HE SEEMS TO BE MUCH SLOWER TODAY IN HER
9 PERCEPTION OF IT.

10 YOUR HONOR, FURTHER, THE APPLICANT
11 HAS FAILED TO SHOW ANY REAL EVIDENCE OF ANY INCOMPETENCY
12 OR ANY FORM OF MENTAL ILLNESS TODAY. REALLY, HIS, THE
13 ONLY EVIDENCE OF ANY MENTAL ILLNESS IS BASED ON SELF-
14 SERVING STATEMENTS FROM EITHER THE APPLICANT OR FROM THE
15 APPLICANT'S FAMILY MEMBERS. WE'VE SEEN NO HOSPITAL
16 RECORDS, WE'VE SEEN NO EVIDENCE OF GRADES FROM HIS HIGH
17 SCHOOL, HOW HIS HIGH SCHOOL PERFORMANCE DECLINED. WE'VE
18 SEEN NO MENTAL EVALUATION RECORDS FROM HOLLY HILL AS THEY
19 STATED HE MAY HAVE GONE TO. THE STATE WOULD SUBMIT HE
20 SIMPLY FAILED TO SHOW ANY EVIDENCE TO SHOW THAT HE WAS
21 MENTALLY INCOMPETENT AT THAT TIME.

22 ACCORDINGLY, THE STATE WOULD
23 RESPECTFULLY ASK THAT THIS COURT DENY THE APPLICANT'S
24 APPLICATION FOR POST CONVICTION RELIEF.

25 THE COURT: ANYTHING ELSE, MR.

1 WALTERS?

2 REBUTTAL ARGUMENT BY MR. WALTERS

3 SIMPLY A REBUTTAL. AS FAR AS THE
4 RECORDS, THE RECORDS ARE NOT RELEVANT TO THIS PROCEEDING.
5 WHAT IS RELEVANT TO THIS PROCEEDING IS WHETHER COUNSEL
6 WAS GIVEN NOTICE OF THIS PARTICULAR ISSUE. UNDER
7 STRICKLAND V. WASHINGTON, AS COUNSEL STATED THERE ARE TWO
8 STANDARDS, AND THE TWO STANDARDS ARE, NUMBER ONE, IN THIS
9 PARTICULAR CASE, DID SHE HAVE NOTICE OF THE CONDITION.
10 TO BRING IN THE RECORDS AT THIS TIME, IN A SUBSEQUENT
11 PROCEEDING, WE'RE NOT GOING TO TRY A CASE OVER WHERE THE
12 RECORDS ARE BEFORE THE COURT.

13 I THINK THE ONLY ISSUE BEFORE THE
14 COURT IS, WAS COUNSEL GIVEN NOTICE OF THIS CONDITION AND
15 EXACTLY WHAT WAS GOING ON WITH THIS YOUNG MAN, AND DID
16 COUNSEL ACT RESPONSIBLY AFTER BEING GIVEN NOTICE? AND
17 THE TESTIMONY BEFORE THE COURT UNDER OATH IS, IS THAT
18 MRS. HAYNES MADE IT CLEAR THAT EVERY OTHER DAY SHE WAS
19 OVER THERE AT THE PUBLIC DEFENDERS OFFICE. THERE'S A
20 RECORD OF FIVE DIFFERENT OCCASIONS WHERE SHE'S MET WITH
21 COUNSEL. SO, THE QUESTION IS, ONCE YOU'RE GIVEN NOTICE
22 HAVE YOU FOLLOWED UP WITH THE PROPER PROCEDURES TO
23 ADDRESS THAT ISSUE? DID THEY CONTACT MENTAL HEALTH? DID
24 THEY GET A COPY OF THE RECORDS? WERE THEY AWARE OF THE
25 FACT THAT HE WAS FLUNKING OUT OF SCHOOL? IT'S TOO LATE

1 NOW TO BRING THOSE RECORDS BEFORE THE COURT. THE ONLY
2 ISSUE BEFORE THE COURT AT THIS TIME IS, ONE, DID YOU HAVE
3 NOTICE; AND DID YOU ACT RESPONSIBLY AFTER RECEIVING
4 NOTICE? AND WE WOULD SUBMIT IN THIS PARTICULAR CASE
5 THERE WAS A FAILURE TO DO SO.

6 SO, THE SECOND PRONG OF STRICKLAND V.
7 WASHINGTON SIMPLY IS, BUT FOR THE FAILURE OF COUNSEL TO
8 DO THESE THINGS, WOULD HE BE INCARCERATED AT THIS TIME?

9 THE COURT: WELL, SEE, THAT'S THE
10 SECOND PRONG OF THE QUESTION, WHICH, EVEN IF THE COURT
11 AGREED THAT SHE SHOULD HAVE HAD HIM EVALUATED, WHERE IS
12 THE EVIDENCE THAT IT WOULD HAVE MADE ANY DIFFERENCE?
13 THAT WAS THE POINT THAT MR. BOOZER WAS MAKING, IT'S A TWO
14 PRONG TEST. THE ATTORNEY'S PERFORMANCE HAS TO FALL BELOW
15 STANDARD BUT IT MUST HAVE PREJUDICED HIM SO THAT THERE'S
16 A REASONABLE POSSIBILITY THAT THINGS WOULD HAVE BEEN
17 DIFFERENT. I'M NOT SURE WE HAVE ANYTHING TO INDICATE
18 THAT IT WOULD HAVE BEEN ANY DIFFERENT HAD SHE HAD HIM
19 EVALUATED.

20 MR. WALTERS: MAY IT PLEASE THE
21 COURT?

22 THE COURT: YES, SIR.

23 MR. WALTERS: YOUR HONOR, AND THAT'S
24 EXACTLY WHY UNDER STRICKLAND V. WASHINGTON, ON THE ISSUE
25 OF MENTAL COMPETENCY AT THE TIME OF THE PLEA ITSELF, IF

1 AN EVALUATION HAD BEEN PERFORMED IN THIS PARTICULAR CASE,
2 IT PREJUDICES THE ENTIRE PROCESS. THERE'S NOT A BODY OF
3 KNOWLEDGE OUT THERE THAT WE CAN GRAB AT THIS TIME AND SAY
4 WE COULD DRAW CERTAIN CONCLUSIONS AS A RESULT OF THAT
5 INFORMATION. IF YOU WERE SITTING HERE WITH THE RECORDS
6 FROM MENTAL HEALTH, IF YOU HAD THE RECORDS FROM THE
7 SCHOOL SYSTEM, YOU SIMPLY COULD NOT ENGAGE IN SPECULATION
8 OR CONJECTURE BASED ON THAT INFORMATION AND SAY, I THINK
9 THAT HE PROBABLY WOULDN'T HAVE PLED GUILTY. I THINK THAT
10 BASED ON THAT INFORMATION THE ONLY CONCLUSION THE COURT
11 CAN REACH IS, IS THERE SHOULD HAVE BEEN AN INQUIRY AS A
12 RESULT OF RECEIVING NOTICE OF THIS INFORMATION. AND
13 CERTAINLY, THIS COURT IS NOT IN A POSITION TO EVALUATE
14 MENTAL HEALTH RECORDS AND GRADES OF A SCHOOL AND MAKE A
15 DETERMINATION AS TO WHETHER, I THINK THAT HE WOULDN'T
16 HAVE PLED GUILTY. I THINK THIS IS OF SUCH A MONUMENTAL
17 ISSUE, IT'S A GOTHIC ISSUE, IT'S OF GREAT PROPORTIONS,
18 WHEN AT THAT TIME WE WERE TRYING TO DETERMINE, ERR ON THE
19 SIDE OF JUSTICE, HE DISPENSATION OF JUSTICE IS WHAT WE'RE
20 TALKING ABOUT HERE. IN THIS PARTICULAR CASE ONCE THAT'S
21 BROUGHT TO YOUR ATTENTION, IMMEDIATELY COUNSEL SHOULD
22 ENGAGE IN THAT BEHAVIOR, AND THAT WOULD BE THE TENANTS OF
23 STRICKLAND V. WASHINGTON.

24 THE COURT: ANYTHING ELSE, MR.
25 BOOZER?

1 MR. BOOZER: NOTHING FURTHER FROM THE
2 STATE, YOUR HONOR.

3 THE COURT: ALRIGHT, THANK YOU VERY
4 MUCH. I'LL TAKE THE MATTER UNDER ADVISEMENT AND I'LL
5 ISSUE AN ORDER AS SOON AS APPROPRIATE.

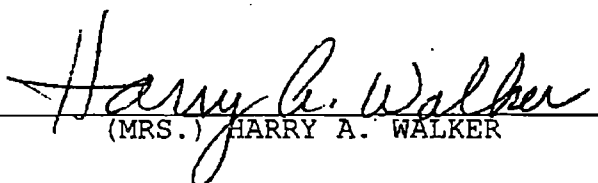
6 THANK YOU, SIR.

CERTIFICATE

I, THE UNDERSIGNED, MRS. HARRY A. WALKER, OF ROWESVILLE, SOUTH CAROLINA, OFFICIAL COURT REPORTER FOR THE FIRST 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 EVIDENCE INTRODUCED IN THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF COMMON PLEAS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE NINETEENTH DAY OF MAY, 2008.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

DATE: JANUARY 22, 2009


(MRS.) HARRY A. WALKER

State of South Carolina
County of Orangeburg

Ezekiel Haynes #309200,
Applicant,

vs.

The State, S.C.,
Respondence.

In the Court of Common Pleas
First Judicial Circuit

Case No.: 2006-CP-38-462

Motion to Alter/Amend,
per se Rule 59(c), S.C.R.P.

Motion to Reconsider, per se
applicable S.C. Court Rules.

Comenow: Ezekiel Haynes, #309200. PCA matters above stated, there to this matter was heard in this honorable PCA Court by way of an Evidentiary hearing before the Hon. J. Williams, Jr. on May 19, 2008. First Judicial Circuit Court of Common Pleas. The State was represented by the S.C. Office of Attorney General, Counsels, the Applicant was represented by Esquire Calenn Walters of Orangeburg Co. Local Bar.

Applicant Ezekiel Haynes motion to this Court by way of respectful request for this Court make a ruling according to well settled laws upon all issues placed,

to it by the application in its fully
 Filed in the Court, by means, Applicant's
 original pro se Filed PCh application was
 correctly Filed and it was correctly pro se
 amended before Counsel was appointed,
 therefore all the issues amended must be
 ruled upon before this Court, see the
 attached exhibits; also Clerk of Court records;

Applicant E. Haynes also explicitly
 states that he does not express in no
 way whatsoever waive his rights to have
 PCh issues ruled upon and he gives a
 legal warnings to the Respondents that he
 protect it if the matters are interpreted
 that way, Counsel Walters are found
 neglectful when he failed to do what
 was practical, in protection of Applicant
 Constitutional rights, having all issues for
 ineffective assistance of Counsel evaluated
 by the PCh Court, per se 517-27-40 thru 90,
 1. Appeal rights violated.

2. Due Process, Mental Evaluation deprived,
3. No Investigations, No procuring SLED Records,
4. No Pre-trial Motion Filed Suppression of Evidence.

inconclusive reports, results, see Shoe impress:

5. See Extrinsic Fraud upon the Court by the Procedures of Law Violated by the Solicitor in Case matters, State v. Haynes.

Conclusions.

Therefore, for the within State facts of the PCR issues not ruled upon, the foregoing reasons does warrants this Court to grant Applicant motions for Reconsideration and Rule 59 (e), SCRCP, motion to alter/amend, as so requested; Applicant forewent pay for the Court to grant his motions.

As so requested on this 27th day of May 08:

on his on:

RECEIVED

MAY 27 2008

LEECI MAIL ROOM

Ezekiel Haynes

Ezekiel Haynes
990 Wilsack Hwy.
Bishopville, C.C. 29010
pro se

Enclosures:

1. See Evidence of Due Process Violated:-
2. Failures of PCR Counsel, not raising all Issues:-
3. Counsel Created a Conflict by refusing to assist Applicant:-
4. PCR IS NOT ADJUDICATED upon Completely.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	
	)	
Ezekial Haynes, #309200,	)	2006-CP-38-0462
	)	
Applicant,	)	
	)	
vs.	)	RETURN TO APPLICANT'S PRO SE
	)	59(e) MOTION
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The State, by and through undersigned counsel, making Return to Applicant's *pro se* Rule 59(e) Motion, would respectfully show:

1. The Applicant, Ezekial Haynes, pled guilty to murder (2005-GS-38-0036) On May 17, 2005, the Honorable Perry M. Buckner sentenced him to forty (40) years. A timely notice of appeal was filed on Applicant's behalf, but Applicant withdrew his appeal.

2. Applicant thereafter filed an application for post-conviction relief on April 20, 2006. An evidentiary hearing was held before the Honorable James C. Williams, Jr., on May 19, 2008. Judge Williams denied and dismissed the application by written order dated and filed October 29, 2008.¹ The formal order had not yet been issued when the Applicant filed his Motions to Reconsider.²

3. Respondent submits that the *pro se* Rule 59(e) Motion must be denied. Applicant is represented in the post-conviction relief proceedings by Glenn Walters, Esquire. Pursuant to Rule 11, SCRCP, and authority of our supreme court, every motion of a party represented by an attorney

¹ The Clerk of Court's stamp on the Order of Dismissal improperly reflects that the order was filed in 1998. The correct year of filing is 2008.

² Respondent is in receipt of two documents from Applicant. Applicant's first filing, styled "Motion to Alter/Amend per se Rule 59(e), SCRCP. Motion to Reconsider, per se applicable S.C. Court Rules" is dated May 27, 2008. A second document, a letter addressed to Assistant Attorney General Ashley McMahan, is dated October 21, 2008. Respondent has not received clocked copies from the Clerk of Court, but on information and belief, the first document was filed with the Clerk. Copies of both documents are attached hereto and incorporated herein.

shall be signed and submitted by counsel. See Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002)(stating there is no hybrid representation at trial or on appeal in South Carolina); Koon v. Clare, 338 S.C. 423, 527 S.E.2d 357 (2000)(Same); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998)(Same); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989)(Same); State v. Sanders, 269 S.C. 215, 237 S.E.2d 53 (1977). Respondent submits that this Court should not consider the *pro se* substantive filings submitted by the applicant because he is represented by counsel.

4. The motion should also be denied because it is premature. Pursuant to Rule 59(b), SCRC, a motion to alter or amend the judgment must be made within ten (10) days after receipt of written notice of filing of the order disposing of the action. The order had not yet been issued, rendering the motion premature.

WHEREFORE, having made Return to the *pro se* Motion, the State requests that the motion be denied.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: Mary S. Williams
ATTORNEYS FOR RESPONDENT

[Signature block continued on next page]

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
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November 3, 2008

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

Ezekial Haynes, #309200,)

2006-CP-38-0462

Applicant,)

vs.)

**ORDER DISMISSING
 RULE 59(e), SCRCF MOTION**

State of South Carolina,)

Respondent.)

The records before this court show that the Applicant, Ezekial Haynes, pled guilty to murder (2005-GS-38-0036). On May 17, 2005, the Honorable Perry M. Buckner sentenced him to forty (40) years. A timely notice of appeal was filed on Applicant's behalf, but Applicant withdrew his appeal.

Applicant thereafter filed an application for post-conviction relief on April 20, 2006. An evidentiary hearing was held before the Honorable James C. Williams, Jr., on May 19, 2008. Judge Williams denied and dismissed the application by written order dated and filed October 29, 2008.¹ The formal order had not yet been issued when the Applicant filed his Motions to Reconsider.²

The State made its Return to Applicant's *pro se* motion on November 3, 2008, asking that the motion be dismissed because Applicant is represented by counsel and because the motion was premature.

¹ The Clerk of Court's stamp on the Order of Dismissal improperly reflects that the order was filed in 1998. The correct year of filing is 2008.

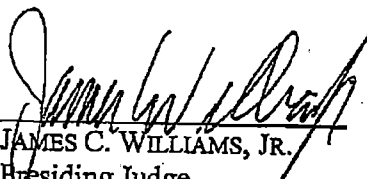
² Respondent is in receipt of two documents from Applicant. Applicant's first filing, styled "Motion to Alter/Amend per se Rule 59(e), SCRCF. Motion to Reconsider, per se applicable S.C. Court Rules" is dated May 27, 2008. A second document, a letter addressed to Assistant Attorney General Ashley McMahan, is dated October 21, 2008. Respondent has not received clocked copies from the Clerk of Court, but on information and belief, the first document was filed with the Clerk. Copies of both documents are attached hereto and incorporated herein.

pi [signature]

Respondent is in receipt of a pro se document captioned "Responses to Respondent Motion to Dismiss the Applicant's Rule 59(e), Motion for Corrections." (hereinafter "Response.") The Response is dated November 12, 2008.³

On December 5, 2008, a Notice of Appeal was filed. Therefore, this court is without jurisdiction to consider the motion, and the motion is deemed abandoned.

AND IT IS SO ORDERED this 4 day of March, 2009.


JAMES C. WILLIAMS, JR.
Presiding Judge
First Judicial Circuit

Orangeburg, South Carolina

³ This document is not time stamped by the Clerk of Court, and Respondent has not been able to verify whether the document was filed with the Clerk of Court.



STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

EZEKIEL HAYNES #309200)

PLAINTIFF,)

V.)

STATE OF SOUTH CAROLINA)

DEFENDANT.)

IN THE COURT OF COMMON PLEAS
FOR THE
FIRST JUDICIAL CIRCUIT

DOCKET NO.: 2006-DR-38-0462

CERTIFICATE OF SERVICE

I, Gwenetta C. Davis, employee of the Law Office of Glenn Walters do hereby attest that I have this 20th day of March 2009 mailed the **Order Dismissing Rule 59(e), SCRPC Motion** to the South Carolina Commission on Indigent Defense, Division of Appellate Defense, by mailing a copy of same through United States Mail with proper postage affixed thereto to the following address:

South Carolina Commission on Indigent Defense
Division of Appellate Defense
Attn: Elizabeth Franklin-Best, Esquire
Post Office Box 11589
Columbia, SC 29211-1589

II. APPLICABLE LAW

a. Involuntary Guilty Plea

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A PCR applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A PCR applicant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S.Ct. 366, 369 (1985).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the accused had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived. Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999). A

criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea must be established by a complete record, and may be accomplished by colloquy between the court and the accused, between the court and the accused's counsel, or both. Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000). A guilty plea is a solemn, judicial admission of the truth of the charges against the applicant. Statements made during the plea should be considered conclusive unless the applicant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the PCR hearing. Anderson v. State, 342 S.C. 54, 535 S.E.2d 649 (2000).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The 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 conviction, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. § 17-27-80 (1985), this Court makes the following findings of fact based upon all of the probative evidence presented.

Allegation of involuntary guilty plea as a result of ineffective assistance of counsel

The allegation that the Applicant's guilty plea was rendered involuntary as the result of ineffective assistance of counsel is without merit. This Court finds that every aspect of the Applicant's testimony regarding the deficiencies of his plea counsel's representation was not

credible. Specifically, Applicant testified he suffers from a mental illness that impaired his ability to understand the guilty plea proceedings. Applicant indicated he was involved in an accident as a teenager that caused memory problems, headaches and seizures. Applicant also testified he told his plea attorney about his mental and physical problems prior to the plea. Applicant also testified his DNA did not match the semen found in automobile connecting Applicant to crime.

On cross-examination, Applicant admitted telling the plea court his lawyer explained the charges and his constitutional rights. Upon further questioning, Applicant indicated he could not remember anything else about the plea.

Applicant's mother (Ms. Haynes) testified at the PCR hearing that she was the Applicant's primary caregiver. She further indicated that after the Applicant's accident, he began experiencing mental problems and seizures. She further indicated she told Applicant's counsel about these issues.

On cross-examination, Ms. Haynes indicated she was present at the plea and didn't think she could tell counsel or the Applicant to stop the plea.

Applicant's brother also testified that after the accident Applicant began performing poorly in school and acted differently.

Counsel indicated she met with the Applicant on approximately eighteen (18) occasions prior to the plea. Counsel further indicated the Applicant's mother was present for five (5) of the meetings. Counsel testified she discussed the facts of the case, what the State was required to prove and the State's evidence with the Applicant. Counsel indicated there was no issue involving any semen found in an automobile with regards to this case. Counsel also stated she discussed with the Applicant the fact that there was no viable defense to the charges as the Applicant gave an extensive confession to the police. Counsel also indicated she knew about the Applicant's previous accident

but Applicant did not exhibit any signs of mental illness. Counsel also indicated Ms. Haynes never said Applicant suffered from any mental illness. Counsel further testified Applicant appeared to fully understand their meetings. Counsel also stated she saw no reason to have the Applicant evaluated. Counsel further testified she never told the Applicant he would be released from prison after serving ten (10) to fifteen (15) years and never told the Applicant he would go home the day of the plea.

This Court finds Applicant's testimony and the Applicant's family members' testimony not credible. Further, this Court finds that plea counsel's testimony was credible and this Court affords it great weight. This Court finds that the transcript and plea counsel's testimony shows that Applicant understood the consequences of a guilty plea, his Constitutional rights, and the possible sentences. This Court finds that plea counsel was not deficient in any aspect of her representation and performed well within reasonable professional norms for a criminal defense attorney. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984); Hill v. Lockhart. This Court further finds the Applicant also failed to carry his burden of proof to show that but for counsel's alleged deficient representation he would have not pled guilty but would have insisted on going to trial. Roscoe v. State. Furthermore, this Court finds the Applicant's guilty plea was knowingly and voluntarily made. Boykin v. Alabama; Pittman v. State.

A criminal defendant is competent to enter his guilty plea if "the accused [has] sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and [has] a rational as well as a factual understanding of the proceeding against him." Jeter v. State, 308 S.C. 230, 417 S.E.2d 594, 596 (1992). An Applicant challenging his competency to plead must prove this allegation by a preponderance of the evidence. Id.

p 5 JML

An Applicant claiming that trial counsel was ineffective in failing to pursue this defense "must produce some evidence of insanity or showing that with the exercise of due diligence, an insanity defense could have been developed." Jeter v. State, 308 S.C. 230, 233-34, 417 S.E.2d 594 (1992). The Applicant must show that he was "unable to distinguish moral or legal right from wrong and to recognize the particular act charged as morally or legally wrong."

The Applicant presented no testimony or evidence regarding the elements of the defense. This Court finds counsel had no reason to request a mental evaluation as Applicant exhibited no signs of mental illness and understood their meetings. Applicant failed to prove at the PCR hearing that he suffered from a mental illness at the PCR hearing. Applicant did not offer any evidence in the form of hospital or psychiatric records to show any mental illness. The only evidence Applicant presented were the self-serving statements of the Applicant and his family members. Accordingly, the allegation is denied.

CONCLUSION

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

Applicant's Right to Appeal

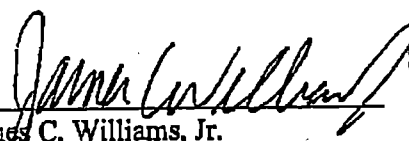
Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Appellate counsel is required to brief arguable issues in order to safeguard the right to appeal. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must file a Notice of Appeal on the Applicant's behalf. The Court advises the Applicant and his attorney of record that any Notice of

pb [signature]

Appeal must be filed within thirty (30) days of service of the signed copy. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures on appeal.

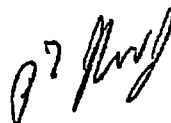
IT IS THEREFORE ORDERED THAT:

1. The post-conviction relief application is **DENIED**.
2. The Court advises the Applicant and his attorney of record that any Notice of Appeal must be filed within thirty (30) days of service of the signed copy. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures on appeal.
3. The Applicant is remanded to the custody of the Respondent for the completion of his sentence.


James C. Williams, Jr.
Presiding Judge
First Judicial Circuit

Orangeburg, South Carolina,

Oct 29, 2008.



STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Orangeburg County

James C. Williams, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EZEKIAL HAYNES,

APPELLANT

PETITION FOR WRIT OF CERTIORARI

ELIZABETH A. FRANKLIN-BEST
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER.

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ISSUE PRESENTED

Did defense counsel render ineffective assistance of counsel by allowing her client to plead guilty to murder when she knew that he experienced a significant head injury, and did not have her client mentally evaluated prior to the plea?

STATEMENT

Ezekiel Haynes was indicted for Murder by the Orangeburg grand jury during its March 14, 2005 term. On May 17, 2005, he pleaded to the charge before the Honorable Perry M. Buckner. He was represented by Peggy Hinds, Esquire. He was sentenced to 40 years incarceration, pursuant to a negotiated range of 30-40 years.

Haynes withdrew his appeal. On April 20, 2006, Haynes filed an application for post-conviction relief. An amended application was filed on May 19, 2008. An evidentiary hearing was held on May 19, 2008 before the Honorable James C. Williams Jr. Haynes was represented by Glenn Walters, Esquire.

Haynes filed a "Motion to Alter/ Amend per se Rule 59(e), SCRCP/ Motion to Reconsider." The State filed a Return, and an Order Dismissing Rule 59(e) motion was signed on March 4, 2009.

¹ The Order of Dismissal was filed October 29, 2009.

This Petition for Writ of Certiorari timely follows.

¹ According to the Order dismissing the 59(e) motion, the initial motion was filed on May 27, 2008 before the order of dismissal had been filed. A second document was a letter addressed to Ashley McMahan, and was dated October 21, 2008. It appears that the 59(e) motion was filed with the Clerk of Court's office.

ARGUMENT

Defense counsel rendered ineffective assistance of counsel by allowing her client to plead guilty to murder when she knew that he experienced a significant head injury, and did not have her client mentally evaluated prior to the plea.

Haynes testified at the PCR hearing that he suffered a significant head injury when he was young. (App. p. 52, line 19 to page 53, line 9). He suffered loss of memory, headaches, and seizures afterwards. (App. p. 53, lines 14-15). He testified that he informed his attorney of this injury "four or five times." (App. p. 54, lines 15-19). After his injury, he dropped out of high school. He believes that the accident affected his cognitive abilities. (App. p. 56, lines 2-24). Haynes's mother also testified at the hearing to her son's problems after the accident. (App. p. 63, line 16 to page 70, line 11). She stated that she asked defense counsel to explore the mental health issue. (App. page 71, lines 13-16). She testified that on the day of the plea, she spoke to defense counsel about the mental health issue. (App. p. 72, line 14 to page 73, line 2).

Haynes's brother also testified to petitioner's cognitive limitations. (App. p. 76, line 13 to page 78, line 22):

"Well, you know, he used to always joke around with me, and all that stuff just went away. He would just look at me and just stare . . . Ezekial was just a totally different person, and one day he just flipped out, and my brother-in-law and my daddy and my other brother couldn't hold the boy down."

(App. p. 77, lines 15-24).

Defense counsel admitted that she knew about the head injury. (App. p. 82, line 19 to page 83, line 14). She was also aware that he had experienced at least one seizure. (App. p. 83, lines 5-9). At the time of the plea, she had represented him for only 5 months. (App. p. 82, lines 3-5). She

stated that she did not see any reason to have him evaluated. (App. p. 83, line 15 to page 84, line 10).

Haynes had a right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). And Haynes's counsel had a duty to conduct an independent investigation of his case. Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007). Counsel's performance was substandard because she should have requested a mental evaluation for her client when she knew that he suffered from a significant head injury. Family members and friends testified at the plea hearing that Haynes's behavior was completely out of character. (App. page 24, lines 15-17; App. p. 25, lines 22-23). Additionally, lacking was any indication that Haynes's had engaged in any violent behavior prior to this incident. (App. p. 17, lines 16-18). Under the circumstances, defense counsel should have had her client mentally evaluated for both competency and mental responsibility. Failing to do so constituted ineffective assistance of counsel. Respectfully, Haynes asks this Court to grant his Petition for Writ of Certiorari and ultimately allow him to withdraw his guilty plea.

CONCLUSION

For the preceding reason, Haynes respectfully asks this Court to grant his Petition for Writ of Certiorari and ultimately reverse his convictions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Elizabeth A. Franklin-Best", written over a horizontal line.

Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of August, 2009.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Orangeburg County

James C. Williams, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

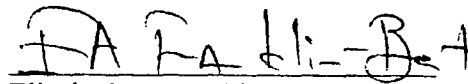
V.

EZEKIAL HAYNES,

APPELLANT

CERTIFICATE OF SERVICE

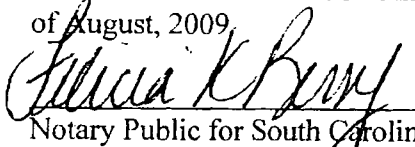
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Mary S. Williams, Esquire this 17th day of August, 2009.



Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 17th day
of August, 2009.



(L.S.)
Notary Public for South Carolina

My Commission Expires: August 15, 2010.

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO ORANGEBURG COUNTY
Court of Common Pleas

The Honorable James C. Williams, Jr., Circuit Court Judge
Case No. 2006-CP-38-0462

EZEKIAL HAYNES, ... PETITIONER,

v.

STATE OF SOUTH CAROLINA, ... RESPONDENT.

RETURN TO PETITION FOR WRIT OF CERTIORARI

HENRY DARGAN MCMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

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ATTORNEYS FOR RESPONDENT

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QUESTION PRESENTED

Does evidence support the PCR court's finding that Counsel's failure to procure a mental evaluation does not constitute ineffective assistance of counsel?

STATEMENT OF THE CASE

Ezekial Haynes ("Petitioner") was indicted for murder (2005-GS-38-0036). (App. pp. 116-117.) Petitioner was represented by Margaret Hinds, Esquire ("Counsel"). On May 17, 2005, Petitioner entered a guilty plea before the Honorable Perry Buckner. (App. pp. 1-30.) The negotiated cap for sentence was forty (40) years. (App. p. 2, lines 12-20.) Judge Buckner sentenced Petitioner to forty (40) years imprisonment.¹ (App. p. 28, lines 5-8.) Petitioner did not appeal his conviction and sentence.

Petitioner filed his application for post-conviction relief ("PCR") on April 20, 2006 (2006-CP-38-0462). (App. pp. 31-39.) Respondent made its Return on September 21, 2006. (App. pp. 40-45.) An evidentiary hearing was convened on May 19, 2008, before the Honorable James C. Williams, Jr. (App. pp. 47-99.) In an order dated and filed October 29, 2008, Judge Williams denied and dismissed the application with prejudice.² (App. pp. 109-115.)

Petitioner, through counsel, filed his notice of appeal dated December 5, 2008.

¹ Petitioner's plea also constituted a violation of a probationary YOA sentence. (App. p. 15, line 16 – p. 16, line 16.; p. 17, line 24 – p. 18, line 1.)

² Following the PCR hearing but before a written order was entered, Petitioner filed a *pro se* document captioned "Motion to Alter/Amend per se Rule 59 (e), SCRCP Motion to Reconsider per se Applicable S.C. Court Rules" and dated May 27, 2008. A letter was later sent to the Respondent on October 21, 2008. While no filed copy was received, Respondent stated in its Return that "on information and belief the first document was filed with the Clerk." (App. p. 103.) Though styled as a Rule 59 motion, Petitioner made a "request for this court to make a ruling ...upon all issues plead... ." (App. p. 100.) Judge Williams denied the motion pursuant to Rule 11, SCRCP, and because the appeal had already been filed. (App. pp. 106-107.)

STANDARD OF REVIEW

The proper standard of review of a post-conviction relief evidentiary hearing is whether "any evidence" of probative value exists to sustain the PCR judge's findings. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989).

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

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, Id. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, *but for*

counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial.

[Emphasis supplied.] Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

ARGUMENT

The PCR court correctly found that Counsel was not ineffective where she did not seek a mental evaluation prior to Petitioner's plea.

Petitioner argues that Counsel's failure to procure a mental evaluation prior to his plea constitutes ineffective assistance of counsel. The PCR court considered the testimony of Petitioner, his mother, his brother, and Counsel. The PCR court found Counsel's testimony to be credible and correctly found that Petitioner had failed to carry his burden of demonstrating deficient performance and prejudice.

The present case is remarkably analogous to the case of Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992). In Jeter, counsel's decision not to request a mental evaluation in order to pursue an insanity defense or a finding of incompetence was found reasonable based on the attorney's own perceptions following numerous meetings with the defendant. In Jeter, family members had not expressed any concerns about the defendant's mental ability prior to the plea. Finally, in Jeter, it was determined the applicant failed to demonstrate that there is a "reasonable probability he would have been determined to be incompetent."¹ Id. at 234, 417 S.E.2d 596.

In the present case, Counsel met with Petitioner "approximately eighteen times," and five of those meetings occurred with Petitioner's mother present. (App. p. 82, lines 11-18.) When Counsel inquired as to any past mental health counseling, Petitioner replied that he had not seen any mental health professional in the past. (App. 82, line 24 – p. 83, line 2.) Counsel was aware that Petitioner had been in an accident and suffered seizures in the past. (App. p. 83, lines 2-8.) Counsel stated that in their numerous meetings, Petitioner had always been able to ask about the case and communicate with her. (App. p. 83, line 10 – p. 84, line 6.) Counsel further noted that

¹ In contrast to the reasonable probability standard employed in evaluating a claim of ineffective assistance of counsel, a claim of incompetence in fact would have to be proven by a preponderance of the evidence. Id. at 232-234, 417 S.E.2d 595-596.

no family members had conveyed mental health concerns. (App. p. 82, lines 15-18; p. 83, lines 2-9.) p. 83, line 23- p. 84, line 6.) As part of her preparation, Counsel had discussed the facts of the case with Petitioner and even had him take a polygraph test twice. (App. p. 85, line 3 – p. 86, line 12.)

According to Counsel, Petitioner also appeared to understand the plea proceedings. (App. p. 84, lines 7-10.) Counsel noted that neither Petitioner nor his mother indicated that Petitioner did not want to proceed with the plea. (App. p. 84, lines 11-14.) Petitioner understood the sentence he would receive. (App. p. 84, line 23 – p. 85, line 2). Petitioner's responses at the plea appear to be appropriate. Petitioner also specifically denied any treatment for mental health issues at the plea. (App. p. 4, lines 9-11.) Petitioner's mother spoke during the plea proceeding but did not mention any mental deficiency. (App. p. 22, line 22 – p. 24, line 20.)

Counsel opined at PCR hearing, "He's [Petitioner] much slower today than my recollection of my meetings with him [Petitioner]." (App. p. 88, lines 3-7.) At PCR hearing, Petitioner testified that he had mental health issues following a car accident. (App. p. 52, line 15 – p. 55, line 15.) Petitioner stated that he understood what was going on during his PCR hearing. (App. p. 58, lines 3-5.) Petitioner's mother testified about her observations of Petitioner's behavior following the accident. (App. p. 63, line 16 – p. 70, line 11.) Petitioner's mother stated that she didn't get a chance to talk to him about changing his mind about the plea. (App. p. 72, line 24 – p. 73, line 2; p. 74, line 22 – p. 75, line 4.) Petitioner's brother also testified about his observations. (App. p. 76, line 16 – p. 80, line 21.) No expert testimony was offered.

The PCR court's finding is supported by Counsel's testimony and the plea transcript. The PCR court determined that Counsel was credible. Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993) (Appellate court gives great deference to judge's findings of credibility because appellate court lacks opportunity to directly observe witnesses). Based on this evidence, the PCR court

correctly determined that Counsel reasonably relied on her own perceptions after numerous meetings with Petitioner and his mother, and based on those numerous meetings Counsel had no reason to seek an evaluation. The PCR court also correctly determined that Petitioner had failed to demonstrate a reasonable probability that he would have been found incompetent had Counsel requested an evaluation. Jeter v. State, supra. See also Dempsey v. State, 363 S.C. 365 (2005) (prejudice from failure to procure expert testimony not established where expert testimony not presented at PCR hearing).

CONCLUSION

For the reasons stated above, this Court should affirm the PCR Court's Order and deny the Petition for Writ of Certiorari. However, if this Court grants certiorari, the Respondent requests permission under the rules to brief the issues discussed above fully.

Respectfully submitted,

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By:


ATTORNEYS FOR PETITIONER

P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

Nov. 17, 2009

STATE OF SOUTH CAROLINA

SUPREME COURT

Certiorari to Orangeburg County
The James C. Williams, Jr., Circuit Court Judge
Case No. 2006-CP-38-0462

EZEKIAL HAYNES,

PETITIONER,

vs.

THE STATE,

RESPONDENT.

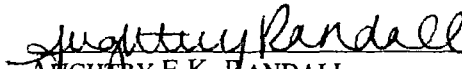
PROOF OF SERVICE

I, Aughtry E.K. Randall, certify that I have served the within Return to Petition for Writ of Certiorari on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

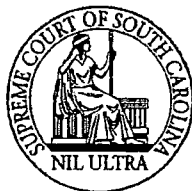
Elizabeth A. Franklin-Best, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

I further certify that all parties required by Rule to be served have been served.

This 19th day of NOV., 2009.


AUGHTRY E.K. RANDALL
Legal Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

June 10, 2010

Appellate Defender Elizabeth A. Franklin-Best
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: Haynes, Ezekial v. The State

Dear Counsel:

The Court has issued the following Order on your Petition for a Writ of Certiorari in the above entitled matter:

"Petition for Writ of Certiorari Denied.

s/ Jean H. Toal C.J.

For the Court

Justice Costa M. Pleicones, not participating

June 10, 2010."

The remittitur will be sent to the lower court as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

CLERK

DES/jj

cc: Assistant Attorney General Mary S. Williams

FORM 5

STATE OF SOUTH CAROLINA)

County of)

IN THE COURT OF COMMON PLEAS

EZERIAL HAGUES #309200 AND)

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

LAWRENCE CRAUFORD #300339 ETAL)

v.)

State of South Carolina)

ET AL)

Amended / Supplemented
2010-CP-38-01000

APPLICATION FOR

POST-CONVICTION RELIEF

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
Wesley Hwy Bishopville, SC 29010
2. Name and location of Court which imposed sentence Orangeburg
SUMNER County Court
of GENERAL SESSIONS ETAL
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) _____

(b) OS-GS-36

CLERK IN THE CANCELLED

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) May 17, 2025
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SC Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. I REQUESTED to HAVE THE appeal dismissed
- ii. AND seek PCR after being advised by
- iii. Appellate Counsel to do so
- (c) the date of each such result:
- i. 4/12/06 Request made
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) N/A

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) THE SC. SUPREME COURT IN THE CERT FOR PERMANENT NO
- (b) 2000-CP-38-462 ENGAGED IN ACTS OF JUDICIAL FRAUD AND ABUSE
- (c) ABUSE OF DISCRETION FAILED TO STAY THE CERT PENDING REVIEW
11. State concisely and in the same order the facts which support each of the grounds set out in (10): 5th, 6th, 14th Amendment violations, DUE PROCESS, SMTJ, JUDICIAL
- (a) THE CASE, INCLUDING THIS CASE, IS PETITIONED TO BE REMOVED
- (b) TO THE CALIFORNIA DISTRICT COURT UNDER 3:03 CU-10 1105 MMC. A
- (c) WRIT OF HABEAS CORPUS FOR THIS IS PENDING IN THE 9TH CIRCUIT UNDER
12. Prior to this application have you filed with respect to this conviction: 10-71855
- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? YES
- (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? YES
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. SEE 10 and 11
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. CALIFORNIA DISTRICT COURT
- ii. 9TH CIRCUIT COURT OF APPEALS
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Still pending
- ii. 11
- iii. 11
- iv. 11

(d) the date of each such disposition:

- i. N/A
- ii. 11
- iii. 11
- iv. 11

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

- i. N/A
- ii. 11
- iii. 11
- iv. 11

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?

YES

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

(a) which grounds have been presented:

- i. A copy of those documents were even
- ii. Filed with this Sumter Court of Common
- iii. Pleas under case No.

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

- i. PCR / writ of Cert / Habeas Corpus
- ii. Class Action, a diversity jurisdiction
- iii. case

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

(a) THE S.C. SUPREME COURT CONSPIRED
 (b) UNDER COLOR OF STATE LAW IN HELD
 (c) OF JUDICIAL FRAUD

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

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

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

(a) the name and address of each attorney who represented you:

i. Margaret Hinkle
Orangeburg County Court House Rm #110
PO Box 1112
Orangeburg SC 29116
 ii. _____
 iii. _____

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

i. PLEA
 ii. _____
 iii. _____

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

SENTENCE AND CONVICTION VACATED, NUCLEAR DNA
REMOVED FROM ANY DEPORTATION FILES, ORDER ISSUED
EXPUNGING RECORD, ALL FEE PAID OUT RETURNED

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

NO

STATE OF SOUTH CAROLINA)

County of ORANGEBURG)
SUMMITER)

VERIFICATION

1. EZEBRIAL HAYNES AND LAURENCE CRAWFORD, 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.

John Ray Lawrence

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

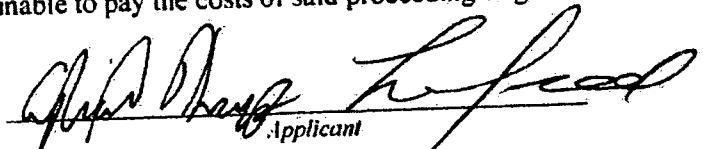
Robert L. Smith (L.S.)
Robert L. Smith

My Commission Expires: 5-6-11

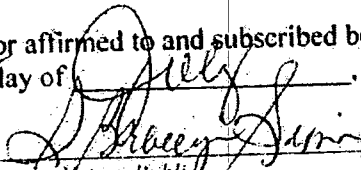
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Everal Haynes and Laurence Crawford, 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.


Applicant

SWORN or affirmed to and subscribed before me this
day of July, 2010.


Notary Public

My Commission Expires: 5-16-15

LAURENCE L. Crawford
 #300834 Sum-N-1255
 EZEKIEL HAYNES
 #309200 Sum-N-2250
 LEE CJ 990 W. S. Hwy
 Bishopville SC 29010

RE: Initiating a class action in
 the Court of Common Pleas

DEAR Clerk of Court

These documents ARE being submitted
 pursuant to initiating class action certifications
 in 2010-CR-38-01000. Please file and return to
 me a clocked stamped copy of all submitted
 documents. Thank you in advance.

August 31, 2010

Respectfully
 Laurence L. Crawford
 Ezekiel Haynes

(CM)

2010 AUG 30 P 1:53

State of California
 U.S. District Court
 State of South Carolina
 County of Orangeburg

Northern District
 San Francisco
 Court of Common Pleas
 th. Judicial Circuit

Ezekiel Haynes # 309200
 Lawrence L. Crawford aka
 Jonathan Gabriel Tishjah
 T. Tishbite # 300839 Et. Al.,
 PETITIONERS)

CASE No 2010-CP-38-01000
 CIA No. 3:08-CV-10-1105-mmC

Proof of Service

VS.

The Kingdom *** Et. Al.,
 defendants)

To: The Orangeburg County Court of Common
 Pleas Et. Al.,

I, Ezekiel Haynes, Lawrence Crawford Et. Al.,
 do certify that we have mailed and served a copy of a
 motion to Amend *** ON the Orangeburg Court of Common
 Pleas, SC Attorney General and the California District
 Court, by U.S. mail postage prepaid on _____

September 1, 2010

Respectfully,
 Ezekiel Haynes

1099

State of California
U.S. District Court
State of South Carolina
County of Orangeburg

Northern District
San Francisco
Court of Common Pleas
th. Judicial Circuit

Ezekiel HAYNES # 309200
Lawrence L Crawford AKA
Jonah Gabriel Jahjah T.
Tishbite # 300839 Et. AL
petitioners)

CASE No. 2010 CP-38-01000
C/A No. 3:08-cv-10-1105-mmC

Motion To Amend The
Applicants; Petition
For Removal; Motion
For Class Action
Certification and Motion
To Motion Therefor
Pursuant To 42 U.S.C. §§
1985(2), 1985(3) And 1986;
Also 28 U.S.C. §§ 1443(1)
And Or 1443(2) And 28
U.S.C. § 1602-1612 et seq.;
Rule 23 And 19 S.R.C.P.

vs.

The Kingdom *** Et. AL
defendants)

To: The Orangeburg County Court of
Common Pleas,
The District Court of California
Et. AL,

HERE COMES the petitioners in the
2089

about captioned matter, and do humbly submit the following:

I, Ezekiel Haynes, do officially notify again, the Orangeburg County Court of Common Pleas under 2010 CP-38-01000 of my seeking inclusion in the pending diversity jurisdiction writ of Habeas Corpus Class Action, filed in the Northern District, U.S. District Court of the State of California held under CASE No. 3:08 CU-10-1105-MMC(PR); under 09-16414 in the 9th Circuit Court of Appeals; under CASE No. 3:08 CU-0-5291-MMC RE-opened; under 09-4310 in the 6th Circuit Court of Appeals, and under 09-1500 in the 3rd Circuit Court of Appeals. The petitioners also give notice to all parties that there is a pending proceeding for a writ of Mandamus requiring the courts to transfer the relevant cases to the District Court under Review by the 3rd Circuit under CASE No. 09-1500. The petitioners give the Orangeburg County Court of Common Pleas notice that the legal issues attached in this case that were unjustly circumvented in Acts of Judicial Fraud by members of the S.C. Supreme Court related to CASE No. 2006 CP-38-462 ARE at the heart of the controversy and ARE being

HEARD UNDER CASE No. 3:08-cv-10-1105-mme. You will also see these matters asserted in the DAWON REED CASE in Florence County CASE No. 2010-CP-21-2289, the DONALD OWENBY CASE in Spartanburg County CASE No. 2009-CP-42-4121, the JEROME SIMUEL CASE in Richland County under CASE No. 2010-CP-400-5232, the TIMOTHY GREEN CASE in Richland County under CASE No. 2009-CP-400-2144, the RIKAM DOZIER CASE in Lexington County under CASE No. 2010-CP-320-1122, the JASON DREW CASE in Lexington County under CASE No. 2005-CP-32-4182, the CRAWFORD CASES in Richland County under 2006-CP-400-3567, 3568, 3569 and other petitioners around the state. The petitioners object to the court's assertion that a PCR can't be filed by 2 people. The other pending cases show they can if they are being argued as a class action. We motion not only to amend the applicants, but we also motion for class action certification. Pursuant to SC Rules of Civil Procedure, Rule 23 Class Actions as Provide:

"ONE OR MORE MEMBERS OF A CLASS MAY SUE OR BE SUED AS REPRESENTATIVE MEMBERS AND OR PARTIES ON BEHALF OF ALL ONLY IF THE COURTS FIND (1) THE CLASS IS SO NUMEROUS THAT

joinder of all members is impracticable, (2) there are questions of law and fact common to the class, (3) the claims or defenses of the representative parties are typical to the claims and defenses of the class, (4) the representative members or parties will fairly and adequately protect the interest of the class, and (5) in cases in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds (\$100) one hundred dollars for each member of the class. The issues affect all inmates in 33 states that make use of an indictment under state captivity. It affects inmates in all 50 states held under federal captivity that make use of an indictment. The class is exceedingly numerous. There are questions of law and/or facts that are common. The claims and defenses of the representative members are typical to the class. The representatives will protect the interest of all. The D.M.A. and Restitution fees paid out and exacted upon each inmate exceed \$100. Just like a writ of Habeas Corpus can be reviewed as a class action being both criminal and civil, so can a PCR being both criminal and civil. The primary relief

is equitable", Zahn v. International Paper Co.,
 414 U.S. 291, 94 S.Ct. 505, 38 L.Ed.2d 511 (1973);
Miller v. Borg-Warner Acceptance Corp., 279 S.E.
 90, 302 S.E.2d 340 (1983); Bisby Neal Journal By
KANTER v. CASEY, 43 Fed 48 (3rd Cir 1994); Mead v.
PARKER SUPRA, 464 Fed 1108; Strawberry v. Curtiss,
 7 U.S [3 Cranch] 267, 2 L.Ed 435 (1806); United
States Ex Rel Sero v. PREISER CA.2 (N.Y.) 1974, 506
 Fed 115 cert. denied 95 S.Ct. 1587, 421 U.S. 921,
 43 L.Ed.2d 789.

S.C. Rules of Civil Procedure, Rule 19(A)(1)
 Provides:

" A person who is subject to service
 of process and whose joinder will not
 deprive the court of jurisdiction over the
 subject matter of the action shall be joined
 as a party in the action if (1) in his absence
 complete relief cannot be accorded among
 those already parties, or (2) he claims an
 interest relating to the subject of the action
 and is so situated that the disposition of the
 action in his absence may (i) as a practical
 matter impair or impede his ability to
 protect that interest or (ii) leave any of the
 persons already parties subject to a substantial

risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined as a plaintiff / applicant, the court shall order that he be made a party". We motion to amend the applicants and motion for class action certification. This is a diversity jurisdiction class action proceeding possessing Article III dynamics requiring removal to the Federal Court in California, because they have original jurisdiction over these matters. We again petition for such also pursuant to the Ku Klux Klan Act and or civil rights litigation Act and the Foreign Sovereign Immunity Act of 28 U.S.C § 1602-1612 et. seq. A Prima facie showing is made in the California District Court. The legal issues presented were created by the lead petitioner Lawrence L. Crawford aka Joshua Gabriel Jahjah T. Tishbite warranting removal to the Federal District Court; we motion to consolidate all proceedings involved, Braden v. 30th Judicial Circuit of Kentucky, 410 U.S. 484, 93 S.Ct. 1123, 35 L.Ed.2d 443 (1973) Murphy v. Papie, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961); Civil Rights Act of 1964 § 201, 42 U.S.C.A. §§ 2000a; City of Greenville v. Peacock, 384 U.S. 814-824, 86 S.Ct. pp 1805-1811,

16 LEd2d 949-955; Article III of the U.S. Consti-
 tution; CONCESSIONS Consultants Inc. v. Mirisch,
 CA.2 (N.Y.) 1966, 355 F2d 369; Charter Medical
CORP. v. FRISSE, N.D. GA. 1989, 732 F.Supp. 1160;
 SC Rules of Civil Procedure, Rule 82(c); 28 U.S.C.
 § 1446(c); 28 U.S.C. § 1446(e); EIE Guam v. Long
Term Credit Bank, Japan, 322 F3d 635 (9th Cir. 2003);
SEI v. GEN. Motors Corp., 588 F2d 655, 658-59
 (9th Cir. 1978); Coronado-Durazo v. I.N.S., 123
 F3d 1322, 1324 (9th Cir. 1997); 28 U.S.C. § 1441(d);
Resolution Trust Corp. v. Bayside Developers,
 43 F3d 1230, 1240 (9th Cir. 1994); Guang Shan Liao
v. United States Dept. of Justice, 293 F3d 61, 67
 (2nd Cir. 2002); Wang v. Ashcroft, 320 F3d 130
 (2nd Cir. 2003); Diallo v. I.N.S., 232 F3d 279,
 288 (2nd Cir. 2000); Liu v. Republic of China, 892
 F2d 1419, 1424 (9th Cir. 1989) cert dismissed - U.S. -
 111 S.Ct. 27, 111 LEd2d 840 (1990); Giersten v. de
la Madrid Hurtado, 819 F2d 1511, 1513 (9th Cir. 1987);
 28 U.S.C. § 1332(a)(3); L'EUROPEENNE DE BANQUE
v. la Republica de Venezuela, 700 F.Supp. 114,
 121 (S.D. N.Y. 1988) (extending Rule to foreign
 plaintiffs/applicants); Chuidian v. Philippine
Natl Bank, 912 F2d 1095, 1105 (9th Cir. 1990);
United States v. Dizdare, CA.2 (N.Y.) 1978, 581
 F2d 1031; 18 U.S.C. § 1116(a)(b)(2)(B)(A); 18 U.S.C.
 § 1116(a)(b)(4); Philippines v. Westinghouse

Elco Corp, 43 Fed 65 (3rd Cir 1994); Jortis v. SUAREZ-MASON, 676 F. Supp. 1531, 1541 (N.D. Cal. 1987); In RE: GREEN, 980 F2d 590 (9th Cir. 1992); English v. Thorne, 676 F. Supp. 761 (S.D. Miss. 1987).

Wherefore, Remand is automatic pursuant to the aforementioned citings of law. Therefore the petitioners pray for the relief sought in all filed documents in the various relevant and connected cases, to include any and all other relief the court would deem just, fair and proper. SEE additional application attached AND CASE 2006-CP-38-462. Prima facie showing is made in Richmond court also.

Respectfully Submitted

EZEKIAL THAYNES

Ezekial Thayne

August 28, 2010

LAWRENCE L. CRAWFORD aka
Jonah Gabriel Jahjah T. Tishbitz

Lawrence L. Crawford

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS

2010-CP-38-1000

Ezekial Haynes, 309200,

Applicant,

V.

RETURN AND MOTION TO DISMISS

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed July 13, 2010, and received by Respondent on December 3, 2010, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. The Applicant was indicted at the March 2005 term of the Orangeburg County Grand Jury for Murder (2005-GS-38-0036). Margaret E. Hinds, Esquire, represented him. On May 17, 2005, the Applicant pled guilty to Murder. The Honorable Perry M. Buckner sentenced him to forty (40) years imprisonment.

Applicant filed an appeal, but elected to withdraw his appeal on April 25, 2006. An Order of Dismissal and Remittitur were issued on May 23, 2006.

Applicant filed a PCR application on April 20, 2006 (2006-CP-38-00462). In his application, Applicant set forth the following grounds for relief:

1. Ineffective assistance of counsel.
 - a. "Counsel failed to investigate case to prepare a defense for Applicant."

- b. "Counsel was ineffective by the violations she committed in accordance of Professional Conduct Rules, Counsel showed more interest to intimidated Applicant to pled guilty to Murder charge."
- c. "Plea Counsel failed to file pre-trial motions to have standing issues of the Murder Indictment, Rule 5 motion and waivers to be evaluated by trial court."
- d. "Plea Counsel failed to examine statements, police investigated reports and failed to receive reports of pending investigation reports of case."
- 2. Prosecutorial and Judicial Misconduct.
- 3. Involuntary guilty plea.

The State filed its Return on September 21, 2006. An evidentiary hearing was convened on May 19, 2008, at which Applicant was present and represented by counsel. In a written order dated and filed October 29, 2008, the Honorable James C. Williams, Jr., denied and dismissed the application.¹ The Applicant submitted a "Motion to Alter/Amend per se Rule 59(e) SCRPC. Motion to Reconsider, per se applicable S.C. Court Rules." on May 27, 2008. The State filed a Return to Applicant's Pro Se 59(e) Motion on November 4, 2008. In a written order dated March 4, 2009, Judge Williams dismissed the motion. The Applicant appealed the denial of his first PCR application. Applicant's petition was denied by Order of the South Carolina Supreme Court on June 10, 2010. The Remittitur was sent on June 29, 2010.

II.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

- 1. Judicial Misconduct.
 - a. "The S.C. Supreme Court in the cert for PCR case No. 2006-CP-38-462 engaged in acts of judicial fraud and an abuse of discretion failed to stay the cert pending removing the case, including this case, is petitioned to be removed to the California District Court under 3:08-CU-10-1105-MMC. A Writ of Mandamus for this is pending in the 9th Circuit under 10-71855."
- 2. "Fifth, Sixth, and Fourteenth Amendment Violation."
- 3. "Due Process."
- 4. "Subject Matter Jurisdiction."
- 5. "Ineffective Counsel."

¹ The Clerk of Court's stamp on the Order of Dismissal improperly reflects that the order was filed in 1998. The correct year of filing is 2008.

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections' records, the appellate records and the prior PCR records by reference. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Court should summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of

showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

IV.

The Respondent submits that this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on May 17, 2005. Applicant's appeal was resolved in 2006. This Application was filed on July 13, 2010, well beyond the time the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the

pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

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

VI.

WHEREFORE, Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired.

Respectfully submitted,

ALAN WILSON
Attorney General

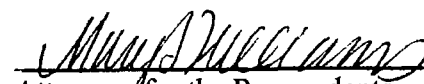
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Assistant Deputy Attorney General

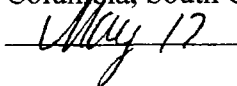
MARY S. WILLIAMS
Assistant Attorney General

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

By:


Attorneys for the Respondents

Columbia, South Carolina

, 20 11

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

2010-CP-38-1000

EZEKIAL HAYNES, 309200,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

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

**Ezekial Haynes, #309200
 Lee Correctional Institution
 990 Wisacky Highway
 Bishopville, SC 29010**

DATED this 17th day of May, 2011.

Lauren Meara

Lauren Meara, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Ezekial Haynes, 309200

☐ Plaintiff

v.

State Of South Carolina

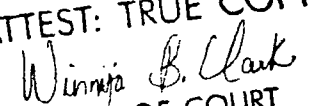
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2010-CP-38-1000

MOTION AND ORDER FOR INFORMATION
FORM AND ORDER SHEET

FILED FOR RECORD
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC
JUN 16 PM 1:51

Plaintiff's Attorney: Ezekial Haynes, Bar No. Address: LCI 990 Wisacky Highway Bishopville SC 29010 phone: fax: e-mail: other:		Defendant's Attorney: Mary S. Williams, Bar No. Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO			
SECTION II: Motion/Order Type			
☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
 Signature of Attorney for ☐ Plaintiff / ☒ Defendant		May 17, 2011 Date submitted	
SECTION III: Motion Fee			
☐ PAID - AMOUNT: ☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: Date:	
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____		ATTEST: TRUE COPY  CLERK OF COURT ORANGEBURG COUNTY, SC	

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS

Ezekial Haynes, 309200,

2010-CP-38-1000

Applicant,

v.

State of South Carolina,

Respondent.

CONDITIONAL
OF DISMISSAL

2011 JUN 16 P 1:51
FILED FOR RECORD
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC

This matter comes before this Court by way of an application for post-conviction relief filed July 13, 2010. In its Return, Respondent requests that the action be summarily dismissed.

Before this Court are the records of the Orangeburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, appellate records and records from Applicant's previous application for post-conviction relief. The records before this Court reflect that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. The Applicant was indicted at the March 2005 term of the Orangeburg County Grand Jury for Murder (2005-GS-38-0036). Margaret E. Hinds, Esquire, represented him. On May 17, 2005, the Applicant pled guilty to Murder. The Honorable Perry M. Buckner sentenced him to forty (40) years imprisonment.

Applicant filed an appeal, but elected to withdraw his appeal on April 25, 2006. An Order of Dismissal and Remittitur were issued on May 23, 2006.

Applicant filed a PCR application on April 20, 2006 (2006-CP-38-1000). In his application, Applicant set forth the following grounds for relief:

ATTEST: TRUE COPY
Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

1. Ineffective assistance of counsel.
 - a. "Counsel failed to investigate case to prepare a defense for Applicant."
 - b. "Counsel was ineffective by the violations she committed in accordance of Professional Conduct Rules, Counsel showed more interest to intimidated Applicant to pled guilty to Murder charge."
 - c. "Plea Counsel failed to file pre-trial motions to have standing issues of the Murder Indictment, Rule 5 motion and waivers to be evaluated by trial court."
 - d. "Plea Counsel failed to examine statements, police investigated reports and failed to receive reports of pending investigation reports of case."
2. Prosecutorial and Judicial Misconduct.
3. Involuntary guilty plea.

The State filed its Return on September 21, 2006. An evidentiary hearing was convened on May 19, 2008, at which Applicant was present and represented by counsel. In a written order dated and filed October 29, 2008, the Honorable James C. Williams, Jr., denied and dismissed the application.¹ The Applicant submitted a "Motion to Alter/Amend per se Rule 59(e) SCRCP. Motion to Reconsider, per se applicable S.C. Court Rules." on May 27, 2008. The State filed a Return to Applicant's Pro Se 59(e) Motion on November 4, 2008. In a written order dated March 4, 2009, Judge Williams dismissed the motion. The Applicant appealed the denial of his first PCR application. Applicant's petition was denied by Order of the South Carolina Supreme Court on June 10, 2010. The Remittitur was sent on June 29, 2010.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Judicial Misconduct.
 - a. "The S.C. Supreme Court in the cert for PCR case No. 2006-CP-38-462 engaged in acts of judicial fraud and an abuse of discretion failed to stay the cert pending removing the case, including this case, is petitioned to be removed to the California District Court under 3:08-CU-10-1105-MMC. A Writ of Mandamus for this is pending in the 9th Circuit under 10-71855."
2. "Fifth, Sixth, and Fourteenth Amendment Violation."
3. "Due Process."
4. "Subject Matter Jurisdiction."
5. "Ineffective Counsel."

¹ The Clerk of Court's stamp on the Order of Dismissal improperly reflects that the order was filed in 1998. The correct year of filing is 2008.

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous applications for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

This Court finds, further, that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-

Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 (2007). S.C. Code Ann. §17-27-

45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was convicted of the offense(s) he challenges in this Application on May 17, 2005. Applicant's appeal was resolved in 2006. This Application was filed on July 13, 2010, more than three (3) years after the one year statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and for being successive.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Orangeburg County Clerk of Court

and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Mary S. Williams, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 6th day of June, 20 11.



EDGAR W. DICKSON
Chief Judge for Administrative Purposes
First Judicial Circuit

Orangeburg, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Ezekial Haynes, 309200,
☐ Plaintiff

v.

State Of South Carolina

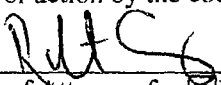
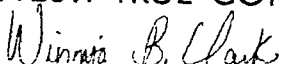
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2010-CP-38-1000

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

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Plaintiff's Attorney: Ezekial Haynes, Bar No. Address: LCI 990 Wisacky Highway Bishopville SC 29010 phone: fax: e-mail: other:	Defendant's Attorney: Robert Corney, Bar No. Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☐ NO	
SECTION II: Motion/Order Type	
☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 _____ Signature of Attorney for ☐ Plaintiff / ☒ Defendant	December 14, 2011 _____ Date submitted
SECTION III: Motion Fee	
☐ PAID – AMOUNT: _____ ☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	_____ JUDGE CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED – AMOUNT DUE: _____	
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STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Ezekial Haynes, #309200,

2010-CP-38-1000

Applicant,

v.

FINAL ORDER

State of South Carolina,

Respondent.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed December 3, 2010. Respondent made its Return and Motion to Dismiss on May 17, 2011, requesting this Court summarily dismiss the application as barred by the one-year statute of limitations and successive in nature. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal dated June 6, 2011, and filed June 16, 2011 provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated September 13, 2011, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

The Applicant made no response to the Conditional Order of Dismissal within the twenty (20) day response period. This Court has reviewed the original pleadings and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

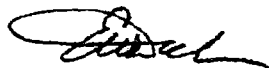
IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

1 of 2



ATTEST: TRUE COPY
Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

AND IT IS SO ORDERED this 20th day of December, 20 11.



EDGAR W. DICKSON
Chief Administrative Judge
First Judicial Circuit

Orangeburg, South Carolina.



STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG). IN THE COURT OF COMMON PLEAS

EZEKIAL HAYNES, 309200)
Applicant,)
)
v.)
)
THE STATE OF SOUTH CAROLINA,)
Respondent.)
)

2010-CP-38-1000

REPLY TO CONDITIONAL
ORDER OF DISMISSAL

This matter came before the Court by way of an Application for Post-Conviction Relief filed July 13, 2010. The Respondent filed its Return and Motion to Dismiss on May 17, 2011, after receiving this Application on December 3, 2010. A Conditional Order of Dismissal on this Application was filed on June 16, 2011 by the Honorable Edgar Warren Dickson; then Chief Administrative Judge for the First Judicial Circuit. The Applicant, for all the reasons set forth below, requests that the Conditional Order of Dismissal not be made final and that he be permitted to go forward on his current Post-Conviction Relief Application. In the alternative he would ask that, at minimum, he be afforded a hearing on the issue of whether his current application should be dismissed as procedurally barred. The Applicant now responds to the Conditional Order of Dismissal filed in this matter on June 16, 2011. *See, Attachment A*, attached hereto for the convenient reference of the Court.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant in orders of commitment of the Clerk of Court for Orangeburg County. The Applicant was indicted at the March 2005 term of the Orangeburg County Grand Jury for Murder (2005-GS-38-0036). Margaret E. Hinds, Esquire, represented him in the trial court. On May 17, 2005, the Applicant pleaded guilty to Murder. The Honorable Perry M. Buckner sentenced the Applicant to forty (40) years imprisonment.

Applicant filed an appeal, but elected to withdraw his appeal on April 25, 2006. An Order of Dismissal and Remittitur were issued on May 23, 2006.

Applicant filed his initial PCR application on April 20, 2006 (2006-CP-38-0462). In that application, Applicant set forth the following grounds for relief:

1. Ineffective assistance of counsel.
 - a. "Counsel failed to investigate case to prepare a defense for Applicant."

- b. "Counsel was ineffective by the violations she committed in accordance of Professional Conduct Rules, Counsel showed more interest in intimidated Applicant to pled guilty to Murder charge."
- c. "Plea Counsel failed to file pre-trial motions to have standing issues of the Murder Indictment, Rule 5 motion and waivers to be evaluated by trial court."
- d. "Plea Counsel failed to examine statements, police investigated reports and failed to receive reports of pending investigation reports of case."
- 2. Prosecutorial and Judicial Misconduct.
- 3. Involuntary guilty plea.

The State filed its Return on September 21, 2006. An evidentiary hearing was convened on May 19, 2008, at which Applicant was present and represented by court-appointed counsel, Glenn Walters, Esquire. In a written order dated and filed October 29, 2008, the Honorable James C. Williams, Jr., denied and dismissed the application.¹ The Applicant submitted a "Motion to Alter/Amend *pro se* rule 59(e) SCRPC and Motion to Reconsider, *pro se* applicable S.C. Court Rules" on May 27, 2008. The State submitted a Return to Applicant's *pro se* 59(e) Motion on November 4, 2008. In a written order dated March 4, 2009, Judge Williams dismissed the motion.² The Applicant appealed the denial of his first PCR application. Applicant's Petition for Writ of Certiorari was denied by Order of the Supreme Court of South Carolina on June 10, 2010. The Remittitur was returned to circuit court on June 29, 2010.

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

- 1. Judicial Misconduct.
 - a. "The S. C. Supreme Court in the cert for PCR case No. 2006-CP-38-462 engaged in acts of judicial fraud and an abuse of discretion failed to stay the cert pending removing the case, including this case, is petitioned to be removed to the California District Court under 3:08-CU-10-1105-MMC. A Writ of Mandamus for this is pending in the 9th Circuit under 10-71855."
- 2. "Fifth, Sixth, and Fourteenth Amendment Violation."
- 3. "Due Process."
- 4. "Subject Matter Jurisdiction."
- 5. "Ineffective Counsel."

DISCUSSION

¹ The Clerk of Court's stamp on this Order of Dismissal improperly reflects that the order was filed in 1998. The correct year of filing is 2008.

² As will be discussed in detail *infra*, there is no evidence that either the State's Return to the Applicant's *pro se* motion or the Order of the Court denying it was ever filed with the Clerk of Court. *See, Attachment I.*

As noted above, the Applicant filed a motion captioned "Motion to Alter/Amend/Motion to Reconsider" *pro se* Rule 59(e) SCRCR on May 27, 2008, which was *after* the evidentiary hearing held on May 19, 2008 but *before* the Order of Dismissal was issued on March 4, 2009. *See, Attachment B*. In said motion, the Applicant asked for reconsideration based upon court-appointed counsel's failure to amend his Post-Conviction Relief Application to include additional claims asserted by him, and Post-Conviction Relief Counsel's failure to introduce evidence provided to PCR Counsel by the Applicant and his mother. While the motion was captioned as a Motion pursuant to Rule 59(e) SCRCR, the motion was clearly an effort to have additional claims and evidence neglected by PCR Counsel heard by the Court *before* a final ruling was issued. In its Return to this motion, the State argued that since the Applicant was represented by counsel, Rule 11, SCRCR, would prohibit consideration of his *pro se* motion. *See, Attachment C*. The Order issued by Judge Williams on March 4, 2009, denying the Applicant's *pro se* motion, found that the motion could not be heard at that time because a Notice of Appeal had been filed from the Order of Dismissal, and further found that the Applicant had abandoned his motion. *See, Attachment D*.

In his 59(e) Motion the Applicant states that PCR Counsel refused to raise additional issues asserted by the Applicant, that PCR Counsel neglected to amend the Applicant's PCR Application, and refused to introduce evidence crucial to this PCR case. Some of the evidence in question was appended to his 59(e) Motion. *See, Attachment B*.

The Applicant's second PCR Application, currently before this Court, represents his effort to be heard on issues and evidence he was deprived of the opportunity to present in his first PCR action. He now, acting through undersigned counsel, acknowledges that his post-hearing motion should not have been captioned as a Motion to Alter/Amend/Motion to Reconsider pursuant to 59(e), SCRCR. He would respectfully submit, however, that the language contained in the body of that motion made clear the purpose of that pleading and the remedy sought. The Applicant acknowledges that claims of ineffective assistance of PCR counsel will generally not justify a successive application. *Aice v. State*, 305 S. C. 448, 409 S.E.2d 392(1991). He asserts, however, that on the narrow facts of this case, he should be allowed to go forward on the issues and evidence set forth in his *pro se* motion filed *before* his first PCR was formally dismissed. Our Supreme Court has consistently expressed the view that every PCR Applicant should get one full bite at the apple on collateral review. Rule 71.1, SCRCR, places the burden on court-appointed PCR Counsel to amend *pro se* PCR pleadings as necessary to reflect all of an Applicant's meritorious claims. The Applicant clearly made an effort to bring to the Court's attention the fact that appointed Counsel in his PCR action had failed to honor that duty.

In this case, the Applicant, admittedly acting *pro se*, attempted to bring PCR Counsel's failures to the attention of the Court, and thereby to avoid having to file a second PCR requesting to be heard on these claims. In its Return to the Applicant's motion, the State asserted Rule 11, SCRCR, as a bar to the Court hearing the Applicant's *pro se* claims. While the orderly conduct of the Court is generally well served by the

prohibition set forth in Rule 11, SCRCP, on the facts of this case the best interests of justice would not have been served by its application. As the record will demonstrate, the motion was not ultimately dismissed under Rule 11.

In support of his prayer that the Conditional Order of Dismissal not become final, the Applicant would argue that equity demands that he be allowed to proceed on the merits of the issues addressed in his Post-Hearing Motion filed before the Order of Dismissal was entered in his first PCR. As a threshold matter, the Applicant would *expressly withdraw Allegation 1* in 2010-CP-38-1000. As previously noted, he seeks leave to present the issues and evidence he attempted to present in his post-hearing motion. In support of that request he would show unto this Honorable Court the following:

- His *pro se* motion was submitted eight (8) days after his PCR hearing by which time it was clear his appointed PCR lawyer was not going to make any effort to supplement the offer of proof made at that proceeding.
- Although inaccurately captioned, the Applicant's post-hearing motion clearly set forth his complaints concerning PCR counsel's performance.
- In his first PCR the Applicant raised defense counsel's failure to have her client evaluated prior to advising him to plead guilty.
- Defense Counsel admitted in her PCR testimony that she knew about the Applicant's childhood head injury prior to the guilty plea, and was aware that he had experienced at least one seizure.
- Defense Counsel's testimony on this issue during the PCR hearing held on 2006-CP-38-0462 reflects a general lack of knowledge concerning general claims of mental illness versus claims relating to neurological disorders resulting from head trauma and brain damage.
- The Applicant, his mother, and his brother all presented PCR testimony regarding his significant head injury when he was young, and the mental health problems he experienced thereafter.
- In her PCR testimony, the Applicant's mother testified that she had asked defense counsel to explore her son's mental health issues in defense of his charges, and that she had renewed that request as recently as the day of the Applicant's plea proceeding.
- PCR Counsel did not introduce documentation provided to him by the Applicant's mother which would have corroborated the head injury and seizure activity as well as some of the medications prescribed.
- Absent presentation of the Applicant's medical records, the Applicant's

allegation pertaining to defense counsel's failure to properly explore his mental health issues, rested solely on his own testimony, and that of his family members, all of which could have been viewed with skepticism by the PCR judge as self-serving and unsupported by independent evidence.

- The Applicant presented a copy of some of his medical records as an attachment to his post-hearing motion.
- In his post-hearing motion, the Applicant additionally alleged that PCR Counsel mislead him into believing that relevant evidence, "SLED documents/ DNA reports, and forensic reports about tennis shoes results", would not be reviewed by the PCR Court. He attached those documents to his Post-Hearing Motion in support of his claim that the evidence was available to defense counsel, and therefore should have been introduced by PCR Counsel in support of a Sixth Amendment claim that defense counsel was ineffective for failing to fully investigate this evidence before the Applicant was forced to make a decision about a guilty plea.
- The Applicant additionally argued that documents readily made available to him through the Freedom of Information Act by SLED, and attached to his post-trial motion, demonstrated a Rule 5 violation which PCR Counsel failed to raise on his behalf.

Undersigned Counsel was hired by the Applicant's family in the fall of 2011. Through informal communication with this Court, on which Counsel herein *was properly given notice*, the Respondent submits that the Applicant's Reply to the Conditional Order of Dismissal should not be considered by this Court because it comes after the time period provided for a Reply by that Order. The Applicant urges this Court to rule on the merits the arguments set forth in this Reply, and not to adopt the hypertechnical procedural defense asserted by the State. The Applicant, who had already experienced great difficulty with one court-appointed PCR lawyer, was not able to hire a lawyer to respond to the Conditional Order until September 29, 2011.³ A Final Order of Dismissal has not been filed, and therefore this matter is still properly before this Court.

The Applicant's first PCR, docketed at 2006-CP-38-0462, was filed on *April 25, 2006*. The State's Return was not filed until *September 26, 2006*; approximately five (5) months later. His current PCR action, docketed at 2010-CP-38-1000, was filed on *July 13, 2010*. The Respondent asserts that the State did not receive this application until *December 3, 2010*. Their Return and Motion to Dismiss was not served on the Applicant until *May 17, 2011*. Thus, even utilizing the date the State says it *received* this application, the State did not serve the Return and Motion to Dismiss until approximately five and a half (5.5) months afterward. S.C. Code Ann. § 17-27-70 (A) requires the State to respond to an application for PCR within thirty (30) days after filing or "within any

³ By the time Counsel herein was hired, the 20 day time period for filing a Reply to the Conditional Order of Dismissal had run. Counsel herein has been somewhat delayed in preparing this Reply by both her hectic Court schedule and the intervening holidays.

further time the Court may fix." Pursuant to Rule 12 (a), SCRCP, "the State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial." Thus, in neither his first or second PCR cases has the State filed its own responsive pleadings in the time period prescribed by law. That being the case, it would be a travesty of justice to allow the State to block consideration of this Reply to the Conditional Order of Dismissal on the ground that it is not timely. Were this Court inclined to deny the Applicant a ruling on the merits of the arguments set forth herein, the Applicant would argue that he is entitled to a default ruling in his favor on the State's Return and Motion to Dismiss based upon their failure to file their Return and Motion to Dismiss in compliance with State law and the rules of Court.

Regrettably, this case presents yet another problem which should be resolved in favor of the Applicant being heard on the merits of the issues set forth in his Post-Hearing Motion. The Applicant was represented by court-appointed counsel in his first PCR action. *See Order of Appointment, Attachment E*. The Applicant subsequently discovered that PCR Counsel charged his family a fee to insure that his application was fully investigated and supporting evidence was procured. Undersigned Counsel has been provided a copy of a canceled check documenting that PCR Counsel was paid \$4,200.00 by the Applicant's mother on January 7, 2008.⁴ *See, copy of canceled check, Attachment F*. The Applicant respectfully submits that the failure of PCR Counsel to present the allegations and evidence addressed in the Applicant's Post-Hearing Motion was particularly egregious in light of this factor. Counsel is advised that despite having paid his court-appointed PCR lawyer for a full investigation of his collateral claims, all the evidence in question was ultimately secured by him and/or his family; not by PCR Counsel. Our Supreme Court has consistently disapproved of efforts by court-appointed lawyers to obtain additional compensation for their services from third parties. *In the Matter of Rogol*, 355 S.C. 627, 586 S.E.2d 593 (2003); *In the Matter of Hamilton*, 366 S.C. 171, 621 S.E.2d 355 (2005). Requesting and accepting such a fee violates the Rules of Professional Conduct, Rule 407, SCARA: Rule 1.8(f)(1-2) where the client was not aware of the fee paid by a third party. Attachments G and H, which will be discussed in detail *infra*, establish that PCR Counsel was aware of the Applicant's post-hearing motion, in which he pointed out shortcomings in PCR Counsel's representation. PCR Counsel clearly knew this motion was pending at the time the Order of Dismissal was filed, and yet, he neither filed a Rule 59(e) Motion or notified Appellate Defense that there was a motion pending that would require a Motion to Remand.

It is well established in South Carolina that on appeal from the denial of a PCR Application the Supreme Court of South Carolina will only consider issues and evidence raised in the lower court. *Marlar v. State*, 375 S.C. 407, 653 S.E.2d 266 (2007); *Pruitt v. State*, 310 S.C. 254, 423 S.E.2d 147 (1992). While the general purpose of Rule 11, SCRCP, is a sound one, on the facts of this case, it has been applied in a manner which violated the Appellant's rights to due process of law. The Applicant's appointed lawyer

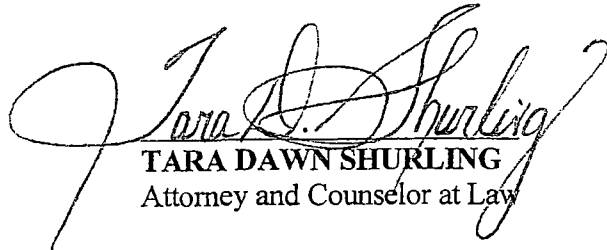
⁴ The memo line of the canceled check documents that the \$4,200.00 was paid for the Applicant. Counsel herein is aware of no other representation provided by PCR Counsel beyond the scope of this court-appointment.

did not insure that all his issues were properly raised, and that crucial evidence was introduced. By Order dated March 4, 2009, the Applicant's effort to correct these omissions was dismissed without hearing based upon a finding that the Applicant's Notice of Appeal from the Order of Dismissal had already been filed and that his post-hearing motion was deemed abandoned. In footnote 3 of the order it is noted that the State's Response to the Applicant's motion is not time stamped by the Clerk of Court, and Respondent has not been able to verify the document was filed with the Clerk of Court. The Applicant has received a copy of the March 4, 2009 Order of Dismissal from the Office of the Attorney General. That copy includes a copy of a filing form, SCCA/233, signed by counsel for the State and dated February 29, 2009. There is however, no clocked copy of this Order, and the records of the Orangeburg Clerk of Court *do not* reflect that this Order was ever filed. The State's Response to the Applicant's post-hearing motion included a certificate of service on both the Applicant and his court-appointed PCR counsel. There is however, no record of the Applicant having been served with that Order. Correspondence to the Applicant from PCR counsel dated November 20, 2008, indicates that the Applicant was sent a copy of the State's Return to his motion, and a copy of the Order of Dismissal on that date. *See, Attachment G.* A second letter from PCR counsel dated and filed December 5, 2008, indicates that PCR counsel filed a PCR appeal on the Applicant's behalf on that date. *See, Attachment H.* Interestingly, that letter states that PCR counsel was *retained* and submits that as an indigent he may qualify for representation on appeal by Appellate Defense. That letter was also copied to Joseph L Savitz, III, the Chief Attorney for that State Agency. There is no record of Appellate Defense being made aware of a pending motion at the time of the Notice of Appeal was filed. In summary, the Applicant does not appear to have been served with the order denying his post-trial motion. The Order in question essentially places fault on the Applicant for abandoning his motion that had been pending before the Court for nearly ten (10) months when his lawyer filed the Notice of Appeal.

For all the reasons set forth herein, the Applicant respectfully asks that the Conditional Order of Dismissal not be finalized. He asserts that his *current* PCR should be allowed to go forward on the issues and evidence he attempted to raise in his Post-Hearing Motion. Alternatively, he would argue that his original PCR docketed at 2006-CP-38-0462 should be reopened for further proceeding where the lower court issued its Order of Dismissal without first ruling on a pending post-hearing motion. The State argues that the Applicant's current application should be dismissed both as successive and untimely pursuant to §17-27-45 (A). The Applicant has already addressed the reasons why the unique facts in his case warrant the rare approval of a successive PCR action. The Applicant's appeal from the Order of Dismissal issued in his first PCR action ended when certiorari was denied June 10, 2010. The Remittitur was returned to the Circuit Court by Order dated June 29, 2010. The *Applicant's current PCR action was filed a mere two weeks later on July 13, 2010.* The Certiorari Petition filed on the Applicant's behalf argued Counsel's ineffectiveness for allowing her client to plead guilty without having him mentally evaluated prior to the plea. That petition does not reference any independent evidence supporting the assertions made in PCR testimony by the Applicant, his mother, and his brother. Had the medical evidence referenced in the Applicant's Post-Hearing Motion been introduced in the lower court the outcome of his

initial PCR action might very well have been different. Even if the 2006 application had been denied in the face of corroborating medical evidence, the Applicant would have had a much stronger case on appeal. The Applicant has thus demonstrated that his second PCR action is necessary and justified. In addition, he has shown that this new PCR action was filed expeditiously after his PCR appeal was denied. In the alternative, the Applicant would ask that he be granted a hearing on the question of whether his current application should be procedurally barred.

Respectfully submitted,



TARA DAWN SHURLING
Attorney and Counselor at Law

3614 Landmark Drive
Suite A
Columbia, S.C. 29204
(803) 738-8622 Phone
(803) 738-1600 FAX
tdslaw@shurlinglaw.com

ATTORNEY FOR APPLICANT

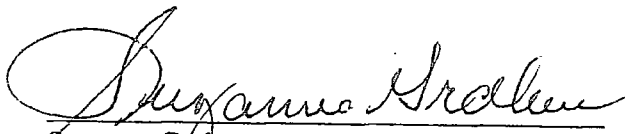
This 31st day of January, 2012.

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF ORANGEBURG	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
EZEKIAL HAYNES, # 309200,	)	CASE NO.: 2010-CP-38-1000
Applicant,	)	
v.	)	CERTIFICATE OF SERVICE --
	)	
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	
_____	)	

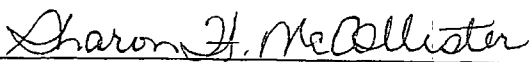
The undersigned hereby certifies that a true copy of the Reply to the Conditional Order of Dismissal in the above matter has been served on opposing counsel this the 31st day of January, 2012, by mailing one (1) copy in a stamped envelope properly addressed to:

Mary S. Williams
 Assistant Attorney General
 Office of the Attorney General
 P. O. Box 11549
 Columbia, SC 29211

The original having been sent to the Orangeburg County Clerk of Court for filing.


 Suzanne Graham
 Paralegal to Tara Dawn Shurling

SWORN TO BEFORE ME this 31st day of
 January, 2012.

 (L.S.)
 Notary Public for South Carolina

My Commission Expires: Jan. 16, 2017

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

EZEKIAL HAYNES, 309200

☒ Applicant,

v.

The State Of South Carolina

☐ Respondent.

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-38-1000

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Tara Dawn Shurling, Bar No. 5099
Address:
3614 Landmark Drive Suite D
Columbia, South Carolina 29204
phone: 803-738-8622 fax: 803-738-1600
e-mail: other:

Defendant's Attorney:
Mary S. Williams, Bar No.
Address:
P.O. Box 11549 Columbia, South Carolina
phone: 803-734-3737 fax:
e-mail: other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

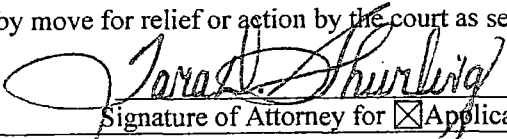
SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO**SECTION II: Motion/Order Type**

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for ☒ Applicant / ☐ Respondent
2/12/2012
Date submitted**SECTION III: Motion Fee**☐ PAID - AMOUNT:

- ☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
 (check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:**JUDGE'S SECTION**☐ Motion Fee to be paid upon filing of the attached order.☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

EZEKIAL HAYNES, 309200)
 Applicant,)

2010-CP-38-1000

v.)

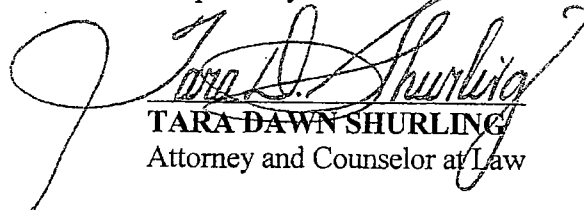
MOTION TO RECONSIDER/
 ALTER/ AMEND FINAL ORDER
 PURSUANT TO RULE 59(E) SCRPC

THE STATE OF SOUTH CAROLINA,)
 Respondent.)

Now comes the Applicant in the above captioned Post-Conviction Relief action, acting by and through his undersigned counsel, asking that this Honorable Court Reconsider and Alter/Amend the Order of Dismissal filed in this case on January 9, 2012. On January 31, 2012 Counsel served and filed a Reply to Conditional Order of Dismissal on behalf of the Applicant. Prior to that filing, Counsel had been in communication with the Court and Counsel for the Respondent concerning her intent to file a Reply on the Applicant's behalf. On February 1, 2012 Counsel was advised by the Respondent that a Final Order of Dismissal had been filed on January 9, 2012. Counsel had no previous notice of this Order. The Applicant and Counsel were served by mail with said Order on February 1, 2012.

The Applicant now asks that the arguments and authorities set forth in the Reply previously filed, a copy of which is attached, be incorporated as part of this Motion for Reconsideration. The Applicant asks, for all the reasons set forth therein, that the Order of Dismissal be set aside, and a new order be issued granting the Applicant leave to go forward on the merits of his current application. In the alternative, he asks for the Court's Order reopening his previous Post-Conviction Relief action docketed at 2006-CP-38-0462.

Respectfully submitted,


 TARA DAWN SHURLING
 Attorney and Counselor at Law

3614 Landmark Drive
 Suite A
 Columbia, S.C. 29204
 (803) 738-8622 Phone
 (803) 738-1600 FAX
 tdslaw@shurlinglaw.com

ATTORNEY FOR APPLICANT

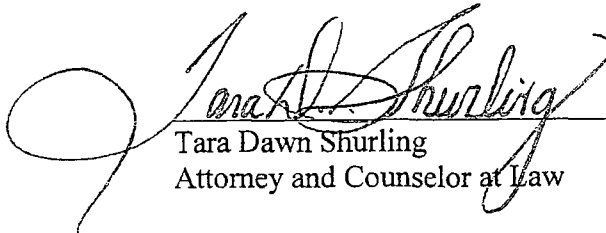
This 2nd day of February, 2012.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	FIRST JUDICIAL CIRCUIT
EZEKIAL HAYNES, # 309200,	)	CASE NO.: 2010-CP-38-1000
Applicant,	)	
v.	)	CERTIFICATE OF SERVICE
	)	
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	
_____	)	

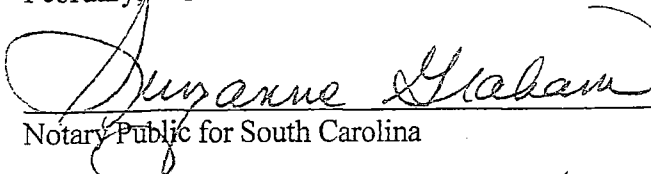
The undersigned attorney hereby certifies that a true copy of the Motion to Reconsider/Alter/Amend Final Order Pursuant to Rule 59(e) SCRCF in the above matter has been served on opposing counsel this the 2nd day of February, 2012, by mailing one (1) copy in a stamped envelope properly addressed to:

The Honorable Edgar Warren Dickson
Circuit Court Judge for the First Circuit
151 Docket Street, Ste 207
Orangeburg, SC 29115

The original having been sent to the Orangeburg County Clerk of Court for filing.


Tara Dawn Shurling
Attorney and Counselor at Law

SWORN TO BEFORE ME this 2nd day of
February, 2012.

 (L.S.)
Notary Public for South Carolina

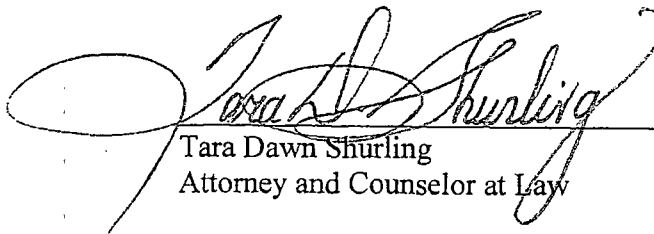
My Commission Expires: 3/12/2013

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF ORANGEBURG	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
EZEKIAL HAYNES, # 309200,	)	CASE NO.: 2010-CP-38-1000
Applicant,	)	
v.	)	CERTIFICATE OF SERVICE
	)	
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	
_____	)	

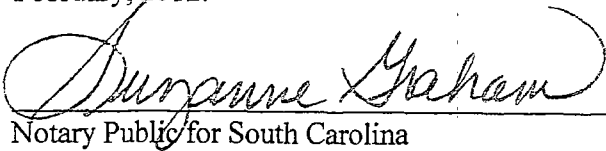
The undersigned attorney hereby certifies that a true copy of the Motion to Reconsider/Alter/Amend Final Order Pursuant to Rule 59(e) SCRCP in the above matter has been served on opposing counsel this the 2nd day of February, 2012, by mailing one (1) copy in a stamped envelope properly addressed to:

Mary S. Williams
 Assistant Attorney General
 Office of the Attorney General
 P. O. Box 11549
 Columbia, SC 29211

The original having been sent to the Orangeburg County Clerk of Court for filing.


 Tara Dawn Shurling
 Attorney and Counselor at Law

SWORN TO BEFORE ME this 2nd day of
 February, 2012.

 (L.S.)
 Notary Public for South Carolina

My Commission Expires: 3/12/2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	FOR THE FIRST JUDICIAL CIRCUIT
Ezekial Haynes, #309200	)	Case No. 2010-CP-38-1000
	)	
Applicant,	)	
	)	RETURN TO MOTION TO RECONSIDER/
	)	ALTER/ AMEND FINAL ORDER
v.	)	PURSUANT TO RULE 59(e) SCRCP
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, by and through undersigned counsel, making Return to Applicant's "Motion to Reconsider/Alter/Amend Final Order Pursuant to Rule 59(e) SCRCP," filed February 2, 2012, would respectfully show unto this Court:

I.

Applicant was indicted during the March 2005 term of the Orangeburg County Grand Jury for Murder (2005-GS-38-0036). Applicant was represented by Margaret E. Hinds, Esquire. On May 17, 2005, the Applicant pled guilty to Murder and was sentenced by the Honorable Perry M. Buckner to forty years imprisonment, pursuant to a negotiated cap of forty years incarceration. Applicant filed a direct appeal, but elected to withdraw it on April 25, 2006. An Order of Dismissal and Remittitur were issued on May 23, 2006.

II.

Applicant filed his first post-conviction relief application on April 20, 2006 (2006-CP-38-00462), setting forth the following grounds for relief:

1. Ineffective assistance of counsel;
 - a. "Counsel failed to investigate case to prepare a defense for Applicant."

- b. "Counsel was ineffective by the violations she committed in accordance of Professional Conduct Rules, Counsel showed more interest to intimidated Applicant to pled guilty to Murder charge."
- c. "Plea Counsel failed to file pre-trial motions to have standing issues of the Murder Indictment, Rule 5 motion and waivers to be evaluated by trial court."
- d. "Plea Counsel failed to examine statements, police investigated reports and failed to receive reports of pending investigation reports of case."
- 2. Prosecutorial and Judicial Misconduct; and
- 3. Involuntary guilty plea.

The State filed its Return on September 21, 2006. An evidentiary hearing was convened on May 19, 2008, at which Applicant was present and represented by counsel, Glenn Walters, Esquire. Prior to the entry of a written Order of Dismissal, Applicant submitted a "Motion to Alter/Amend *pro se* Rule 59(e) SCRCR and Motion to Reconsider, *pro se* applicable S.C. Court Rules" on May 27, 2008. In a written order dated and filed October 29, 2008, the Honorable James C. Williams, Jr., denied and dismissed the application.¹ The State filed a Return to Applicant's *pro se* 59(e) Motion on November 4, 2008. In a written order dated March 4, 2009, Judge Williams dismissed the motion.

On November 5, 2008, Applicant appealed the denial of his first post-conviction relief application. Applicant's Petition for Writ of Certiorari was filed on August 17, 2009. The South Carolina Supreme Court denied the Petition on June 10, 2010. The Remittitur was sent on June 29, 2010.

III.

Applicant filed his current application for post-conviction relief on July 13, 2010, alleging that he is being held in custody unlawfully for the following reasons:

¹ The Clerk of Court's stamp on the Order of Dismissal improperly reflects that the order was filed in 1998. The correct year of filing is 2008.

1. Judicial Misconduct;
 - a. "The S.C. Supreme Court in the cert for PCR case No. 2006-CP-38-462 engaged in acts of judicial fraud and an abuse of discretion failed to stay the cert pending removing the case, including this case, is petitioned to be removed to the California District Court under 3:08-CU-10-1105-MMC. A Writ of Mandamus for this is pending in the 9th Circuit under 10-71855."
2. "Fifth, Sixth, and Fourteenth Amendment Violation."
3. "Due Process."
4. "Subject Matter Jurisdiction."
5. "Ineffective Counsel."

The application was not forwarded to the State by the Orangeburg County Clerk of Court until December 3, 2010. On May 17, 2011, the State made its Return and asked that the Application be summarily dismissed as successive and beyond the statute of limitations. On June 6, 2011, this Court signed a Conditional Order of Dismissal, giving the Applicant twenty days from the date of service to object to the application's dismissal. This Conditional Order of Dismissal was filed on June 16, 2011 and Applicant was personally served on September 13, 2011.

On December 14, 2011, the State submitted a proposed Final Order of Dismissal to this Court; at this time, the State had no notice that Applicant was represented by Counsel and had received no response to the Conditional Order of Dismissal. On December 20, 2011, this Court signed the Final Order of Dismissal. On December 21, 2011, Tara Shurling, Esquire (herein "Applicant's Counsel"), sent an email to this Court and carbon copied the State, indicating she had been "hired by [Applicant's] family to review his case and determine what if any assistance I might be able to provide him at this point"; the email further states that this email serves as advisement to the State of her involvement in this case and requests additional time to respond to the Conditional Order of Dismissal. *See Attachment 1*. In an email later on the same day, the State opposed Applicant's Counsel's request for additional time, noting that the Final Order was submitted on December 14, well beyond Applicant's twenty days to reply. *See Attachment 2*.

On January 9, 2012, the signed Final Order of Dismissal was filed with Clerk of Court. On January 25, 2012, Applicant's Counsel sent an email to Judge Goodstein, notifying that a Reply to the Conditional Order of Dismissal would not be able to be submitted that week. *See Attachment 3*. On January 30, 2012, the State emailed Applicant's Counsel, informing her that the Final Order of Dismissal had been signed and filed. *See Attachment 4*. On January 31, 2012, Applicant's Counsel sent an email to Judge Goodstein advising that her Reply to the Conditional Order of Dismissal would be forthcoming shortly. *See Attachment 5*. In an email later on the same day, Applicant's Counsel submitted her Reply to the Conditional Order of Dismissal to Judge Goodstein. *See Attachment 6*. On February 1, 2012, the Final Order of Dismissal was served on the Applicant and Applicant's Counsel. *See Attachments 7 and 8*. On February 2, 2012, Applicant filed a "Motion to Reconsider/Alter/Amend Final Order Pursuant to Rule 59(e) SCRPC." This Return follows.

IV.

Applicant moves this Court to alter or amend the final order of dismissal, stating that Applicant's pro se 59(e) Motion to Reconsider the Order of Dismissal of his initial application for post-conviction relief was timely submitted and clearly set forth his complaints regarding his post-conviction relief counsel's performance, and that the prior post-conviction relief court erred in denying this motion and finding that Applicant had abandoned this motion by perfecting an appeal.

Applicant moves this Court to alter or amend the final order of dismissal, stating that prior post-conviction relief counsel failed to introduce Applicant's medical records regarding

mental health, which would have substantiated Applicant's and Applicant's family members' testimony regarding the issue.

Applicant moves this Court to alter or amend the final order of dismissal, stating that prior post-conviction relief counsel misled Applicant into believing relevant evidence, such as South Carolina Law Enforcement Division ("SLED") documents, DNA reports, and forensic reports, would not be reviewed by the post-conviction relief court.

Applicant moves this Court to alter or amend the final order of dismissal, stating that prior post-conviction relief counsel failed to raise a Rule 5, SCRCrimP violation at the post-conviction relief hearing based on documents Applicant received from the SLED through the Freedom of Information Act.

Applicant has requested this Court set aside the Final Order of Dismissal and issue a new order granting the Applicant leave to go forward on the merits of his current application, or in the alternative, for this Court to order the re-opening of Applicant's previous post-conviction relief action (2006-CP-38-0462).

V.

The Final Order of Dismissal of this Court was appropriate and should be upheld. Applicant's current application for post-conviction relief is both successive to his previous application and barred by the statute of limitations. Successive applications are generally disfavored by the court, and granted only if the Applicant can establish "sufficient reason" that new grounds raised in a subsequent application could not have been raised in a prior application. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). In his current application, the Applicant does not claim that prior post-conviction relief counsel failed to present the grounds for his

claim. Instead, he takes issue with the method in which the grounds were presented. "Inadequate" performance by a post-conviction relief counsel is generally not sufficient reason to permit successive applications. Id., see also Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). Despite Applicant's claims to the contrary, it appears he had "one fair bite at the apple." Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999). He was granted an evidentiary hearing on his first post-conviction relief application and perfected an appeal on the same.

Additionally, the Final Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRPC. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Respondent submits that this Court properly ruled on all issues and Applicant's "Motion to Reconsider/Alter/Amend Final Order Pursuant to Rule 59(e) SCRPC" should be denied. Applicant is not requesting an alteration or amendment to the Order. Rather, Applicant is asking the Court to reconsider its ruling and grant Applicant an evidentiary hearing. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve issues raised to but not ruled upon by the trial court). Applicant has failed to raise an allegation that was properly raised but not ruled upon by this Court.

IV.

WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that said Motion be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

BY: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

August 17, 2012

Mary Williams - Ezekiel Haynes v. State of South Carolina 2010-CP-38-1000

From: "Law Offices of Tara D. Shurling" <tdslaw@shurlinglaw.com>
To: <edicksonj@sccourts.org>
Date: 12/21/2011 11:52 AM
Subject: Ezekiel Haynes v. State of South Carolina 2010-CP-38-1000
CC: "Robert Corney" <RCorney@scag.gov>, "Mary Williams" <MSWilliams@scag.gov>, <edicksonlc@sccourts.org>

Judge Dickson:

On December 14, 2011 Robert Corney sent you a proposed Final Order of Dismissal in the above captioned action. I have been hired by Mr. Haynes' family to review his case and determine what if any assistance I might be able to provide to him at this point. I have a copy of the proposed order as well as numerous other documents provided to me by the family. I am contacting the PCR division of the Attorney General's Office by copy of this email and advising them of my involvement in this case. I plan to review all the documentation in this matter over the holidays, and will advise the family the first week in January whether I believe there is any reason for me to file a letter of appearance as counsel of record in this matter. For now, I would appreciate it if Your Honor might delay signing the Final Order of Dismissal until after I have an opportunity to finish reviewing this file and the proposed Final Order of Dismissal. I also need to go see the client. My office is closed the week after Christmas, however I will schedule a visit with Mr. Haynes as quickly as I can after we reopen on January 3rd. Thank you Your Honor for your time. I hope you and your family have a lovely Christmas and blessed 2012.

Tara Dawn Shurling

Law Office of Tara Dawn Shurling, PA
3614 Landmark Drive
Suite A
Columbia, South Carolina 29204

(803)738-8622 Phone
(803)738-1600 Fax
(803)446-3614 Business Cell
tdslaw@shurlinglaw.com

CONFIDENTIALITY NOTICE

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Mary Williams - Re: Ezekiel Haynes v. State of South Carolina 2010-CP-38-1000

From: Mary Williams
To: edicksonj@sccourts.org; Law Offices of Tara D. Shurling
Date: 12/22/2011 8:53 AM
Subject: Re: Ezekiel Haynes v. State of South Carolina 2010-CP-38-1000
CC: edicksonlc@sccourts.org; Robert Corney

Judge Dickson:

The Conditional Order of Dismissal in this matter was served on the applicant on September 13, 2011, providing him 20 days to respond. The proposed Final Order was not submitted until December 14, providing the applicant a large window of time in which to respond. However, the applicant made no response in that time and only upon submission of the proposed Final Order has he attempted to retain counsel and formulate his response. His efforts come over a year after filing of his application. The State therefore opposes the Applicant's request. Please let me know if you would like for me to draft a formal pleading on this matter.
Best regards,

Mary Shannon Williams
Assistant Attorney General
Post-Conviction Relief Section (1st, 2nd and 3rd Judicial Circuits)
South Carolina Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211
Phone: (803) 734-3752 or (803) 734-3737
Fax: (803) 734-4113
E-mail MSWilliams@sca.gov

>>> "Law Offices of Tara D. Shurling" <tdslaw@shurlinglaw.com> 12/21/2011 11:53 AM >>>
Judge Dickson:

On December 14, 2011 Robert Corney sent you a proposed Final Order of Dismissal in the above captioned action. I have been hired by Mr. Haynes' family to review his case and determine what if any assistance I might be able to provide to him at this point. I have a copy of the proposed order as well as numerous other documents provided to me by the family. I am contacting the PCR division of the Attorney General's Office by copy of this email and advising them of my involvement in this case. I plan to review all the documentation in this matter over the holidays, and will advise the family the first week in January whether I believe there is any reason for me to file a letter of appearance as counsel of record in this matter. For now, I would appreciate it if Your Honor might delay signing the Final Order of Dismissal until after I have an opportunity to finish reviewing this file and the proposed Final Order of Dismissal. I also need to go see the client. My office is closed the week after Christmas, however I will schedule a visit with Mr. Haynes as quickly as I can after we reopen on January 3rd. Thank you Your Honor for your time. I hope you and your family have a lovely Christmas and blessed 2012.

Tara Dawn Shurling

Law Office of Tara Dawn Shurling, PA
3614 Landmark Drive
Suite A
Columbia, South Carolina 29204

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Mary Williams - Re: Ezekiel Haynes v. State of South Carolina 2010-CP-38-1000

From: "Law Offices of Tara D. Shurling" <tdslaw@shurlinglaw.com>
To: <dgoodsteinj@sccourts.org>
Date: 1/25/2012 5:52 PM
Subject: Re: Ezekiel Haynes v. State of South Carolina 2010-CP-38-1000
CC: "Mary Williams" <MSWilliams@scag.gov>, <dgoodsteinlc@sccourts.org>

Judge Goodstein:

I am just now about to get on the road to Georgetown for a hearing there tomorrow. I have been trying all week to get my written response to the Conditional Order of Dismissal finalized. I had hoped to set up a conference call with Your Honor and Mary Williams this week concerning this matter. I will not be back from Georgetown until Friday. As a practical matter it is my understanding that Mary Williams is in Court in the Second Circuit this week so I doubt she would have been available anyway. I will get my response finished up the first of next week and will talk to Ms. Williams and see if we can arrange a time with your law clerk for a conference call with Your Honor. I am so sorry I was not able to get the Reply done this week. I appreciate Your Honor's patience in this matter and look forward to discussing the somewhat unusual facts of this case with you. I am of course courtesy coping opposing counsel on this email.

Tara Dawn Shurling

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Mary Williams - Haynes

From: Mary Williams
To: tds1aw@bellsouth.net
Date: 1/30/2012 2:49 PM
Subject: Haynes
Attachments: Filed_ COD.PDF; Filed_ Final Order.PDF

Tara-

Here is the COD you requested. And when I went to attach this, I noticed - monkey wrench - that Judge Dickson had actually signed and filed the FOD, so I am attaching that. It must have come in last week or in the big batch of stuff from Orangeburg I got this morning (and haven't even looked at yet).

Mary Williams - Re: Ezekiel Haynes v. State of South Carolina 2010-CP-38-1000

From: "Law Offices of Tara D. Shurling" <tdslaw@shurlinglaw.com>
To: <dgoodsteinj@sccourts.org>
Date: 1/31/2012 9:01 AM
Subject: Re: Ezekiel Haynes v. State of South Carolina 2010-CP-38-1000
CC: "Goodstein, Diane S. Law Clerk (Anna R. Welch)" <DGoodsteinLC@sccourts.org>, "Mary Williams" <MSWilliams@scag.gov>

Judge Goodstein:

My Reply to the Conditional Order of Dismissal in the above referenced matter is complete except for one attachment. I will be forwarding you the Reply as soon as I can get that attachment from the Attorney General's Office. Late yesterday when I got ready to email the Reply to you I discovered that I did not have a clocked copy of Order denying the 59(e) from the previous PCR. I should be able to get that from the AG this morning. Thank you.

Tara Dawn Shurling

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

EZEKIAL HAYNES, 309200.

Applicant.

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Final Order** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Ezekial Haynes, #309200
Lee Correctional Institution
900 Wisacky Highway
Bishopville, SC 29010

This 1st day of February, 2012.

Lauren Meara
Lauren Meara
Legal Assistant for Respondent

SWORN to before me this 1st day of February, 2012.

Amie R. Harts
Notary Public for South Carolina.
My Commission Expires: 7/15/2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	
	)	
	)	2010-CP-38-1000
	)	
EZEKIAL HAYNES, 309200,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return to Motion to Reconsider/Alter/Amend Final Order Pursuant to Rule 59(e) SCRPC** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tara Dawn Shurling, Esquire
Law Office of Tara Dawn Shurling, PA
3614 Landmark Drive, Ste. A
Columbia, SC 29204
(Via fax: (803) 738-1600)

DATED this 17th day of August, 2012.

Lauren Meara
 Lauren Meara, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF ORANGEBURG) COURT OF COMMON PLEAS
3) 2006 CP 38 0462
) 2010 CP 38 1000

4 EZEKIEL HAYNES)

5 Applicant)

6 versus) TRANSCRIPT OF RECORD
7)
8)

8 STATE OF SOUTH CAROLINA)
9)

10 Orangeburg, South Carolina

11 August 20, 2012

12 B E F O R E :

13 HONORABLE EDGAR W. DICKSON, Judge

14
15 A P P E A R A N C E S :

16 For Applicant: TARA SHURLING, Esq.

17 For the State: MEGAN HARRIGAN, Esq.
18 Assistant Attorney General

19 Reporter Present: HARRY A. WALKER

20

21

22 HARRIET P. BENNETT
23 Reporter, S. C. Court Administration
 46 Regency Oaks Drive
 Summerville, S.C. 29485

24

25

1 NO WITNESSES TESTIFIED

2 NO EXHIBITS MARKED

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1 (The within matter came before the Court for hear-
2 ing on August 20, 2012)

3 THE COURT: All right.

4 MS. HARRIGAN: Good morning, Your Honor. This is
5 Case Number 2010 CP 38 1000, to my understanding.

6 THE COURT: Okay, Ms. Shurling.

7 MS. SHURLING: Thank you, Your Honor. For the re-
8 cord, I am Tara Shurling, and I represent Ezekiel
9 Haynes.

10 Your Honor, this case has a very tortured proced-
11 ural history. The procedural history is set forth accur-
12 ately in significant pleadings which were filed by me
13 in this case in the form of a Reply to the potential
14 Order of Dismissal which was filed on February first of
15 2012, the 59E which was filed two days later, and it was
16 captioned Motion to Reconsider or Amend Final Order.

17 There was a Return which was filed by the Respond-
18 ent this past Friday, and I will go over the highlights
19 for Your Honor to sort of set the stage for this hear-
20 ing today.

21 My client was indicted during the March 2005 Term
22 of the Orangeburg County Grand Jury for murder.

23 THE COURT: You don't need to go over too much of
24 that. Just hit the high points.

25 It seems to me you indicated -- correct me if I'm

1 wrong, please, but it seems to indicate that he filed
2 some corrections to his first PCR motion.

3 MS. SHURLING: Yes, sir, Your Honor.

4 THE COURT: And that seems to be the crux of your
5 argument, is it not?

6 MS. SHURLING: Yes, sir.

7 THE COURT: I'll be happy to hear you.

8 MS. SHURLING: Thank you, Your Honor. My client
9 has had two PCR filings. His initial post-conviction
10 relief action was filed in 2006; to be specific April
11 20th, 2006, and he was represented in that action, Your
12 Honor, by Court-appointed counsel.

13 Following the hearing in that matter, my client
14 filed a pro se motion which he regrettably captioned a
15 Rule 59 E Motion to Alter or Amend.

16 It appears that it was actually filed before the
17 written Order issued by the Honorable James Williams
18 on October 29, 2008.

19 The State filed a Return apparently or rather sub-
20 mitted a Return to the pro se 59 E motion on November
21 4, 2008, and a written Order was signed by Judge
22 Williams on March 4, 2009.

23 What appears to have happened in this matter is
24 that prior to the post-conviction relief hearing in
25 this case the Applicant asked his Court-appointed

1 lawyer to submit additional issues for consideration by
2 the Court, and also asked that his Court-appointed coun-
3 sel, Glenn Walters, submit certain documentation which
4 would support the amendments which he desired Court-ap-
5 pointed counsel to raise; to submit certain available
6 documentation.

7 As the Court is aware, Rule 71.1 of our Rules of
8 Civil Procedure requires the Court-appointed counsel in
9 post-conviction relief matters to amend a pro se appli-
10 cation to include any meritorious issues available in
11 the case, and this client made every effort to ensure
12 that his attorney amended his application to not only
13 raise those issues but for counsel to submit, along with
14 the allegations, the readily-available documentation that
15 would support those claims.

16 When the documentation supporting those claims was
17 not submitted during the hearing, my client submitted a
18 pro se 59 E motion.

19 Your Honor, the record is somewhat unclear with re-
20 gard to how those -- the motion was handled. I say that
21 because while there is a dated State's Return to the
22 Applicant's pro se motion and there is an Order of the
23 Court denying that, there is no record at all of those
24 documents were actually ever filed with the Court or
25 the Clerk's Office as there are no copies of those

1 -- there are no clocked copies of those documents avail-
2 able through the Clerk of Court, and the Attorney Gen-
3 eral's Office, it is my understanding, has likewise not
4 been able to discover any copies of those documents or
5 any indication that they were properly filed with the
6 Court.

7 THE COURT: Ms. Shurling, you mean the Order of
8 Judge Williams back in 2009?

9 MS. SHURLING: Denying the 59 E motion.

10 THE COURT: That was never filed?

11 MS. SHURLING: Or at least according to the Clerk's
12 Office it is not available to the Clerk of Court and
13 neither is the State's Return, and . . .

14 MS. HARRIGAN: I have taken over the matter, and in
15 the file is a notation that everything was very prop-
16 erly filed.

17 THE COURT: The note said very properly filed?

18 MS. HARRIGAN: Yes, Your Honor. That is the nota-
19 tion in the file, and I think the A.G. at the time,
20 Ronald Hampton, said it had been filed based on the no-
21 tation from the Judge's Chambers. (Portion inaudible)

22 THE COURT: That was four years later?

23 MS. HARRIGAN: Yes, Your Honor.

24 THE COURT: I just wanted to make sure. Okay, go
25 on, Ms. Shurling.

1 MS. SHURLING: The Applicant's Court-appointed
2 counsel proceeded to file a notice of appeal with the
3 Supreme Court, and that appeal was heard, of course,
4 based on the record that was developed and the appeal
5 was denied.

6 Your Honor, several issues have come into play.
7 First off, it has been noted that my client proceeded to
8 file a second application for post-conviction relief,
9 and that is the one before the Court technically today,
10 the 2010 CP 38 1000.

11 In the application, my client attempted to raise
12 additional issues. He has subsequently withdrawn issue
13 number one which addresses judicial misconduct . .

14 THE COURT: That was the most entertaining one, Ms.
15 Shurling.

16 MS. SHURLING: Pardon?

17 THE COURT: That was the most entertaining one.

18 MS. SHURLING: Indeed, Your Honor, but it has been
19 withdrawn, and the Applicant's pro se motion appeared to
20 be an effort to bring to the Court's attention several
21 matters; primarily the fact that he had attempted to
22 get his Court-appointed attorney to raise appropriate
23 evidence in support of additional allegations that had
24 been raised in summary fashion at the instruction of the
25 Applicant; that he had filed a 59 E motion which the

1 Court denied on the basis of Rule 11.

2 Your Honor, this case presents an opportunity to
3 argue an issue that is dear to my heart, and I will try
4 to be as brief as I can on what I think is something of a
5 conundrum in our law.

6 In our system, we require virtually all available
7 lawyers that identify themselves as criminal lawyers to
8 handle conflict cases during the General Sessions Court
9 that cannot be handled by a Public Defender.

10 As a procedural necessity, post-conviction relief
11 cases are routinely assigned to lawyers who are in fact
12 on the civil law list that as a necessary evil we are
13 all familiar with.

14 Rule Seventy-one point one puts the burden on those
15 lawyers to amend the application to include any and all
16 potentially meritorious claims in addition to those
17 raised by the pro se applicant.

18 Once a lawyer is appointed for a pro se applicant,
19 he becomes hamstrung, if you will, by Rule Eleven which
20 very clearly says that if you were represented by coun-
21 sel filings or submissions must be by counsel.

22 Now, Rule 11 obviously is intended -- intended to
23 and does for the most part contribute to the orderly
24 running of our Common Pleas with specific reference to
25 post-conviction relief matters.

1 You don't want somebody who is not a lawyer submit-
2 ting pro se pleadings as a general rule when represented
3 by counsel.

4 However, we have this built-in problem where our
5 Court has consistently said that the issues would only
6 be considered on appeal and evidence be considered only
7 in support of an argument that the lower Court erred in
8 denying the Sixth Amendment claim that was properly
9 raised and introduced in the Court below.

10 Yet, in a situation like this one which is a table-
11 leg example where the individual tries to get Court-ap-
12 pointed counsel to introduce appropriate documentation
13 in support of issues, the lawyer doesn't do it, and the
14 client attempts to pro se following the hearing bring
15 to the Court's attention that available evidence which
16 would have supported his claims was not properly intro-
17 duced by his Court-appointed lawyer, his attempt to
18 bring that error and omission to the attention of the
19 Court is thwarted by the operation of the law.

20 Somewhere in the due process the rights of the ap-
21 plicant are not being well served.

22 What happened in this case, Your Honor, is that he
23 filed a second application for post-conviction relief,
24 and subsequently and predictably a conditional dismissal
25 was given. The family hired me, Your Honor, to review

1 the matter and at some point I contacted the Attorney
2 General's Office and notified then-counsel, Mary Williams,
3 that I was looking into this matter and that I have been
4 retained to be responding to the conditional dismissal.

5 I freely admit that I cannot find a record of my
6 earlier oral notification to the Attorney General's Of-
7 fice of my involvement in this case.

8 However, I did send an Email both to the Court and
9 to the Attorney General's Office on 12 21 2011, advising
10 the Court of my intent to file a Reply to the conditional
11 Order of Dismissal, and asking for some consideration
12 or some additional time to prepare that documentation
13 for the Court.

14 Apparently, the Order of Dismissal had in fact been
15 signed the previous day or 12 20 2011. Despite my Email
16 on 12 21 2011, I wasn't notified at that time that an
17 Order of Dismissal had actually been signed the previous
18 day.

19 On 12 21 2011, Your Honor, the -- pardon me, Your
20 Honor. The final Order was actually not filed until
21 January 9th of 2012, and even then, Your Honor, I did
22 not become aware that it had been filed until it was
23 served on me on February first of 2012.

24 Your Honor, I filed on February first of 2012 -- I
25 served and filed a Reply to the Conditional Order of

1 Dismissal which was sent to the Attorney General's Of-
2 fice, I believe, by Email, in addition to my hard copy,
3 and that is when I was notified that the final Order had
4 in fact been entered on One 9 12, and I was served with
5 it the same day that the Conditional Order of Dismissal
6 was served on February first, 2012.

7 I then, Your Honor, on February third, two days
8 later, filed a motion to reconsider and/or amend under
9 Rule 59 E, essentially asking to convert argument set
10 forth in the Reply to the Order of Dismissal to a motion
11 -- pardon me -- that the arguments presented in the Re-
12 ply to the Order of Dismissal be converted to a motion
13 to reconsider or amend pursuant to Rule 59 E.

14 That is where we are today. There are a number
15 of problems in this case; one which I very reluctantly
16 address is the fact that not only did PCR counsel not
17 introduce evidence that had been supplied to him by Mr.
18 Haynes and his family, but the record appears to indi-
19 cate that Court-appointed counsel was actually paid -- I
20 believe it was Forty-two Hundred Dollars at the request
21 of Court-appointed counsel to ensure that the matter
22 was adamantly investigated and prepared for the evidenti-
23 ary hearing, I believe.

24 Along with my Reply to the Conditional Order of
25 Dismissal, I have provided the Court with a copy of a

1 cancelled check provided by my client's mother, and I
2 will, of course, present testimony from her with leave
3 of the Court at this proceeding concerning that.

4 It is particularly egregious that this pro se De-
5 fendant was unable to get the documentation in question
6 properly before the Court when his Court-appointed law-
7 yer failed to present the evidence in question, but, as
8 well, that the Court-appointed lawyer apparently charged
9 this family Forty-two Hundred Dollars to ensure that the
10 case was adequately investigated and prepared for the
11 hearing.

12 Your Honor, I would recognize the long-standing de-
13 cision in Ace v. State which addresses this and its prog-
14 eny, and the long-standing principle that you do not get
15 a second PCR based on a claim of ineffective assistance
16 of post-conviction relief counsel.

17 I had the misfortune of having been appellate coun-
18 sel in the Ace case so I am as familiar with it as cer-
19 tainly any lawyer you will run into. I have dealt with
20 it for all the years since that Court's decision.

21 I recall it vividly for one reason, that it was the
22 first ^{PCR} case that I had ever had the Supreme Court request
23 oral argument on. When it was argued, we then waited
24 two weeks short of a year for the long-awaited decision
25 in Ace v. State which is now, of course, commonly cited

1 by the State for the proposition that successive applica-
2 tions may not be rooted in a claim of ineffective assist-
3 ance of counsel.

4 However, that principle has recently been shaken by
5 the United States Supreme Court case of Martinez v. Ryan,
6 132 Supreme Court 1309, rendered in May of this year.

7 In that case for the first time the Court has held
8 that on federal habeas review an issue will not automa-
9 tically be considered fraud for procedure for default,
10 not having been adequately presented in State Court re-
11 view, where the federal habeas petitioner is able to
12 demonstrate that the claim was not fully raised through
13 the errors or omissions of collateral review counsel,
14 post-conviction relief counsel.

15 The Martiniz case has raised many questions as to
16 how Courts across the land, including South Carolina,
17 are now going to deal with the question of ineffective
18 assistance of PCR counsel.

19 This case ironically comes along at the perfect time
20 to address that matter. We have a PCR applicant, Your
21 Honor, who provided his Court-appointed lawyer with the
22 issues he wanted raised and also provided him with at
23 least evidence that was a starting place for supporting
24 those claims.

25 His family is very supportive and loving but have

1 limited financial means, but they paid Forty-two Hun-
2 dred Dollars to ensure that the PCR case was adequately
3 investigated so as to be presented fully in his first
4 bite of the apple, only to have Court-appointed coun-
5 sel neglect to raise the evidence that had actually been
6 handed to him by the family.

7 This is not even evidence that had been dug up
8 through the use of that Forty-two Hundred Dollars, and
9 I will present testimony here today, with leave of the
10 Court, to demonstrate that the evidence in question was
11 in fact given to the Court-appointed lawyer, some by
12 Mr. Ezekiel Haynes himself, some by his mother.

13 THE COURT: Ms. Shurling?

14 MS. SHURLING: Yes, sir.

15 THE COURT: Which evidence -- is that the medical . .

16 MS. SHURLING: The medical evidence, Your Honor,
17 and my client has asserted that his post-conviction re-
18 lief lawyer did not introduce the forensics report and
19 evidence from SLED relevant to the forensic findings in
20 this case.

21 My client alleged that he was forced into entering
22 pleas where he would not have done so had he been fully
23 aware of the strengths and weaknesses of the State's
24 case against him; that there was certain forensic evi-
25 dence that he did not become aware of until after his

1 his plea; that he presented that evidence, Your Honor,
2 which is submitted as an attachment to the Reply to his
3 Court-appointed lawyer and asked that it be submitted
4 with his claims in his post-conviction relief case, only
5 to be told by his PCR lawyer that the Court on PCR was
6 not going to consider such evidence, when we know, Your
7 Honor, that a plethora of South Carolina Supreme Court
8 cases that you can't allege simply that your plea of
9 guilty was not knowingly, voluntarily, intelligently
10 entered due to the fact that you were not fully aware
11 of evidence which would alter your decision to enter a
12 plea without demonstrating that that evidence in fact
13 existed.

14 It was that evidence, the SLED reports, various of
15 the other documents that are appended to the Reply to
16 the Conditional Order of Dismissal that my client has
17 submitted he attempted to have his PCR lawyer introduce;
18 that the PCR counsel not only refused to do so, but he
19 misled him by saying that the Presiding Judge in PCR
20 proceedings would not consider such a proffer toward the
21 issue of whether or not his plea was knowingly, volun-
22 tarily and intelligently entered.

23 THE COURT: Ms. Shurling, I've got your Return.
24 What specifically in the SLED reports was it that you
25 referred to?

1 MS. SHURLING: Your Honor, it is . . .

2 THE COURT: Show it to me.

3 MS. SHURLING: I will, but I confess that I thought
4 that we would be here today procedurally on the question
5 of whether we would be allowed at a later date to ad-
6 dress the merits of those claims, but it is my under-
7 standing that the SLED reports in question address the
8 conclusiveness and strength of certain footprint evidence
9 that my client -- that it was conclusive and tied my
10 client to the scene, where the SLED reports and lab re-
11 ports and other documents submitted to the Court make
12 clear that that particular footprint was far from con-
13 clusive.

14 Your Honor, beyond that, I confess I was not pre-
15 pared to go into . . .

16 THE COURT: All right.

17 MS. SHURLING: . . . that issue.

18 THE COURT: Okay. I mean, I have the -- the only
19 reason I was asking is just for my -- from your view
20 was there something in the SLED reports for the Court
21 to . . .

22 MS. SHURLING: Yes, Your Honor.

23 THE COURT: Okay.

24 MS. SHURLING: Additionally, the medical reports
25 that I have appended to the Reply, Your Honor, those

1 that had been provided to Court-appointed counsel prior
2 to the proceeding.

3 My position, Your Honor, is that should have been
4 a starting place; that having been provided those docu-
5 ments that his Court-appointed counsel should have re-
6 quested funding from the Court to have Mr. Haynes exam-
7 ined, to have a neurological workup done to determine
8 what, if any, long term neurological deficits he had as
9 a result of his severe head trauma, and, further, to de-
10 termine what, if any, impact the neurological deficits
11 the client has suffered had on both his competency to
12 make a decision and enter pleas of guilty, and poten-
13 tially on the question of whether he was legally compe-
14 tent with regard to criminal liability under the M'Naghten
15 standard at the time of the act for which he was on
16 trial.

17 Not only was none of that done, but the bare bones
18 medical records that established that there was in fact
19 a history of head injury and neurological problems stem-
20 ming from them, that was not introduced by his Court-
21 appointed counsel.

22 I would also note that we started or I started
23 into my Reply to the Conditional Order of Dismissal with
24 citing two cases where our Court has dealt with the
25 questions of Court-appointed attorneys accepting or

1 soliciting and accepting funds when they have been Court-
2 appointed.

3 I believe we cited the Hamilton matter and the
4 Roland matter, 2003 and 2005 decisions.

5 For the Court's information, on June 13th of this
6 year our Supreme Court handed down another disciplinary
7 Opinion in the matter of Paul Archer which additionally
8 addresses the matter of some area where the Court-ap-
9 pointed lawyers received funds from either the Court-
10 appointed client or the family.

11 Your Honor, that is Opinion Number 27132. I apol-
12 ogize that I don't have an extra copy, but I will be
13 happy to hand up the copy that I have to the Court.

14 THE COURT: Okay.

15 (Brief pause in the proceeding)

16 THE COURT: We'll take a brief recess.

17 (Brief recess taken after which the matter was re-
18 sumed)

19 THE COURT: Ms. Shurling.

20 MS. SHURLING: One additional procedural point, and
21 then I will proceed briefly.

22 That is the fact that I was certainly aware that
23 the twenty day time for filing a response to the Condi-
24 tional Order of Dismissal had lapsed. In fact, it had
25 lapsed before I was hired in this matter.

1 However, as Your Honor knows, in these post-convic-
2 tion relief matters, while we now routinely fight the
3 actual statute of limitations, 17-27-45 A, as an every-
4 day proposition the Court doesn't even seriously enter-
5 tain motions when they fail to file returns within the
6 time period provided by law to PCR applications.

7 I make that observation not to be critical of the
8 Attorney General's Office, but simply to say as a mat-
9 ter of equity that we should not be so strict with re-
10 gard to this pro se litigant with regard to his response
11 to a Conditional Order of Dismissal.

12 The record will demonstrate that the State's own
13 Return in the 2006 PCR and the 2010 PCR were not within
14 the guidelines prescribed by law.

15 Your Honor, at this time I would call Ms. Betty
16 Haynes to the stand.

17 THE COURT: What is she going to testify about?

18 MS. SHURLING: She will testify to having provided
19 PCR counsel with the records in question prior to the
20 PCR hearing and the circumstances under which the Forty-
21 two Hundred Dollars was paid to him.

22 THE COURT: Okay. I'm not . . .

23 MS. HARRIGAN: We would object to that, Your Honor.
24 We don't have PCR counsel here present in Court to be
25 called.

1 THE COURT: Thank you, ma'am. Ms. Shurling, the
2 only thing I need you to do right now is to proffer to
3 the Court the fact that it was presented before-hand.

4 Do you happen to have the date it was presented?
5 You can just proffer that. She doesn't have to testify.

6 MS. SHURLING: Your Honor, I don't have the exact
7 date, but she would testify that it was provided in ad-
8 vance of the PCR hearing.

9 THE COURT: Okay, and that medical is just this re-
10 port -- that medical evidence is just the report from
11 the Regional Medical Center that you have submitted?

12 MS. SHURLING: Yes, Your Honor.

13 THE COURT: That's it?

14 MS. SHURLING: That's it. Two pages.

15 THE COURT: Okay.

16 MS. SHURLING: Your Honor, actually it is my under-
17 standing there were a few more things or materials that
18 were provided by Mrs. Haynes.

19 THE COURT: Okay.

20 MS. SHURLING: However, my client did not have cop-
21 ies of those, and we are unable exactly to ascertain
22 what was given to PCR counsel in that regard.

23 Of course, part of my allegation is that -- pardon
24 me -- documentation of the fact of the head injury that
25 in fact had been sustained, and that there were neurological

1 problems and neurological deficits being addressed, and
2 for this particular inmate should have been a starting
3 place, which provided counsel with the opportunity to
4 fully investigate other readily-available evidence.

5 Of course, we are asking for the opportunity, Your
6 Honor, to either re-open the 2006 or 2010 PCR and have a
7 hearing at which, I assume, the Respondent and I will be
8 fully prepared to address all the available medical evi-
9 dence and other evidence and circumstances under which
10 it was not presented in the first proceeding.

11 Secondly, Your Honor, that actual cancelled check

12 . . .

13 THE COURT: I've got that. I've seen it.

14 What I am concerned about more than anything else
15 is just whether or not, Ms. Shurling, these issues were
16 addressed in the first PCR hearing.

17 And was there additional stuff that should have
18 been . . .

19 MS. SHURLING: Yes, sir.

20 THE COURT: My question is to you have you been
21 given or have I been given the original PCR transcript
22 and the subsequent one, the earlier plea transcript?
23 Do I have those?

24 MS. HARRIGAN: I believe the earlier PCR trans-
25 cript is in your packet. We have a copy today if it

1 is not. We can certainly make a copy.

2 THE COURT: Thank you. Thank you, Ms. Shurling.

3 MS. SHURLING: Is Respondent verifying that you do
4 have a copy of the plea transcript?

5 MS. HARRIGAN: I do not believe I could find one
6 here but we can get an additional copy.

7 THE COURT: It may be in the original file.

8 MS. SHURLING: If I may approach, Your Honor? Here
9 is a copy of the plea transcript.

10 THE COURT: Is that the only copy you have?

11 MS. SHURLING: We have another copy.

12 THE COURT: Do you have a copy?

13 MS. HARRIGAN: I'm sure we do, Your Honor.

14 THE COURT: I just wanted to make sure you both
15 have it.

16 Okay.

17 (Brief pause)

18 MS. SHURLING: I do not believe I do actually. I
19 have a copy of various documents and records from the
20 Respondent, Your Honor.

21 Your Honor, I would simply urge you as a matter of
22 equity that this is not someone who had a PCR hearing
23 and is disgruntled with the way it went and now wants
24 to raise additional issues.

25 21

1 This is somebody that clearly made every good
2 faith effort, and we submit he has made at least a prima
3 facie showing. His family has even gone to the extreme
4 of paying a Court-appointed lawyer to fully investigate
5 the case and the issues were not supported by readily-
6 available evidence.

7 The issues were presented at best in summary fash-
8 ion, and when Applicant's 59 E motion was rejected under
9 Rule 11 he was denied the only opportunity he had to
10 bring the errors of his PCR counsel to the attention of
11 the Court before an Order was issued denying his appli-
12 cation for post-conviction relief.

13 We ask the Court for whatever equitable remedy the
14 Court might find, citing Martinez and, of course, the
15 Archer case and others, as to Court-appointed counsel
16 accepting money.

17 Also citing the fact that our Court, despite trying
18 to avoid our dockets being corroded with unnecessary ap-
19 plications, has also repeatedly expressed the desire for
20 every PCR applicant to have a full and fair bite of the
21 apple.

22 Rule 71.1 clearly puts the burden on Court-appointed
23 counsel to fully explore all potentially meritorious is-
24 sues, and the case law of this State makes it clear
25 that simply giving lip service to those issues without

1 investigating and presenting evidence in support of those
2 issues does the client no good.

3 We have the Dawkins Opinion, for example, a PCR
4 case where the client's pro se application was that the
5 trial counsel had neglected to present readily available
6 evidence that he was at work as a firefighter at the
7 time of the alleged incident.

8 I was PCR counsel in that case, Your Honor, and I
9 subpoenaed the chief of the fire department and made him
10 sit in Court with the employment records on his lap and
11 testify and present evidence for the PCR Court.

12 Had I not done so, it would be one of the hundreds
13 of PCR cases that have been decided in the last decade
14 where the Court has said, the applicant alleges; however,
15 there is no evidence of that claim; the Opinion of the
16 lower Court is affirmed.

17 This is someone who made every effort. He did his
18 part, and we are asking for the Court to rectify the pro-
19 cedural problems that exist in this case and afford him
20 the opportunity for a new hearing either on the 2006
21 case or the 2010 case, at which he would have an oppor-
22 tunity to present a full showing of evidence available
23 in support of those claims.

24 With regard to which one we re-open, that is a bit
25 of a sticky wicket. The 2006 case was obviously affirmed

1 on appeal. A Certiorari Petition was filed and Cert
2 was denied on the record as it existed below.

3 However, there is every indication that a Rule 59 E
4 motion was filed and that neither the State's Reply to
5 that 59 E or Judge Williams' Order was ever duly filed
6 with this Court.

7 So I would note that only to suggest that it might
8 provide a procedural opportunity for the matter to be
9 reopened on that 59 E motion as a procedural vehicle to
10 get these matters back to Court or before the Court.

11 One last thing, Your Honor. Judge Williams' Order,
12 I would note, not only relied on Rule 11 but the subse-
13 quent rulings of the Court indicate that the client
14 waived his rights on the 59 E somehow by filing a notice
15 of appeal, when the 59 E had not yet been disposed of.

16 Well, that is once again a sort of back-handed slap
17 at the pro se Defendant. He's got a Court-appointed PCR
18 lawyer who hasn't done his job. He tries to bring it to
19 the attention of the Court. The Court slaps him down
20 on Rule 11, and in the meantime the same PCR lawyer who
21 hasn't introduced appropriate evidence that has been pro-
22 vided to him by the Applicant and his family, files a
23 notice of appeal from the PCR as perfected by him, and
24 the suggestion is that the lawyer should be able to
25 somehow estop any grumbling on his claims against the

1 same PCR lawyer by the filing of the notice of appeal,
2 Your Honor.

3 Now, once again, with that ruling and the ruling
4 on Rule 11 on these facts do not operate in the inter-
5 ests of that appeal.

6 Thank you.

7 THE COURT: Thank you, Ms. Shurling. Ms. Harrigan?

8 MS. HARRIGAN: May it please the Court?

9 THE COURT: Yes, maam.

10 MS. HARRIGAN: The Final Order of Dismissal by the
11 Court was appropriate, and it should be upheld.

12 The issues that were raised in the second applica-
13 tion are the very issues that were addressed by the
14 Court at the time of the evidentiary hearing on the is-
15 sues.

16 This was the very issue that was appealed and that
17 Certiorari was denied on.

18 Successive applications have a long-standing his-
19 tory in this State that the successive applications may
20 not bring ineffective assistance of counsel on PCR.

21 Counsel in Martinez v State has not created an
22 opportunity to raise the issue. The Court was very clear
23 about that, and the Court was clear that at this time
24 it was not controlling here on federal habeas issues or
25 on State's PCR issues.

1 There are no new grounds raised in the application.
2 This whole history was discussed in the prior evidenti-
3 ary hearing. It was the very issue on which appellate
4 counsel requested Cert when Cert was denied.

5 Ineffective assistance of PCR counsel is not a
6 ground for a successive application or another bite at
7 the apple. He has had one fair bite at the apple,
8 and his contentions should allow re-opening of the 2006
9 PCR or the 2010 PCR case should not be granted. It
10 would open the flood-gates in the State for numerous
11 successive PCR applications. Martinez is not control-
12 ling here.

13 It is the State's position that the prior Order
14 should be upheld. (Portion not audible)

15 THE COURT: Ms. Shurling, the only thing I would
16 ask is -- you were kind enough to provide me with a copy
17 of the original plea. If you could provide me with a
18 copy of the PCR hearing . .

19 MS. HARRIGAN: Yes, Your Honor. We have a copy here
20 and I can make a copy for you or Email it if you prefer.

21 THE COURT: If you don't mind. I'd like to have a
22 hard copy. That would be easier for me. I'm old fash-
23 ioned.

24 Make sure she gets a copy as well.

25 MS. HARRIGAN: I will make sure that you both get

1 that, Your Honor.

2 THE COURT: Thank you. All right.

3 MS. SHURLING: Your Honor, I would simply note that
4 those issues are not as I have argued. By way of illus-
5 tration, using the Dawkins case, someone raising an issue
6 and not providing the Court with evidence in support of
7 the allegations is useless.

8 Anyone who does any of these sorts of post convic-
9 tion relief cases in South Carolina knows that.

10 Secondly, the Martinez case, Your Honor, provides
11 an opportunity for the State Courts to clear up their
12 own acts. It also makes it clear that Federal Courts
13 may remand for a hearing to show why certain procedural
14 defaults happened and whether they were the result of
15 ineffective assistance of counsel on federal review.

16 I would submit that this is that rare case where,
17 although perhaps inartfully, the issue has been raised
18 while the matter is still below for purposes of State
19 Court review. We have a chance to do the right thing
20 and straighten this out before it hits the federal
21 court system. I take pride in the chance that we have a
22 chance to do so.

23 I would ask Your Honor to be granted the opportun-
24 ity to have an evidentiary hearing at some point in the
25 future.

1 I would ask for an evidentiary hearing on my client's
2 59 E motion, the original one in the 2006 action, or in
3 the current action, and to have an opportunity to fully
4 present for the Court's benefit all of the evidence that
5 should have been presented by Court-appointed counsel.

6 With regard to the allegations concerning the money
7 that was allegedly taken, Your Honor, I will at an appro-
8 priate time present testimony only insofar as that is rel-
9 evant to my client's situation, and, of course, that is
10 a matter that my client's family is free to take up with
11 the good offices of the State Bar and the Supreme Court.

12 Insofar as those matters are not relevant to the
13 PCR hearing, we are not inviting or encouraging the Court
14 to delve into that area.

15 Thank you.

16 THE COURT: Thank you, Ms. Shurling.

17 All right, Ms. Harrigan, if you can give me that
18 PCR hearing transcript, I will appreciate it.

19 I will read all of the material and get back to
20 you all regarding what I want to do in this case. Okay?

21 MS. HARRIGAN: Yes, sir.

22 MS. SHURLING: Yes, sir.

23 THE COURT: Thank you all very much.

24 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

25

1
2 CERTIFICATE

3 I, HARRIET P. BENNETT, Court Reporter for South
4 Carolina Court Administration, hereby certify that the
5 foregoing Transcript was prepared by me to the best of
6 my ability from records of Harry A. Walker, having been
7 heard in the Court of Common Pleas for Orangeburg County
8 on August 20, 2012.

9 FURTHER, I certify that I am neither of kin nor
10 counsel to any party to this matter, nor do I have any
11 interest in the same.

12 This 17th day of August 2015.

13 *Harriet P. Bennett*
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STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

EZEKIAL HAYES, 309200)
Applicant,)

2010-CP-38-1000

v.)

**ORDER RE-OPENING
PCR ACTION DOCKETED AT
2006-CP-38-0462**

THE STATE OF SOUTH CAROLINA,)
Respondent.)

This matter came before the Court by way of an Application for Post-Conviction Relief filed July 13, 2010. The Orangeburg County Clerk of Court forwarded this application to Respondent on December 3, 2010, and Respondent filed its Return and Motion to Dismiss on May 17, 2011, alleging that the application should be summarily dismissed as successive and barred by the statute of limitations. On June 6, 2011, the Court signed a Conditional Order of Dismissal, giving Applicant twenty days from the date of service to object to the application's dismissal. This Conditional Order of Dismissal was filed on June 16, 2011 and was personally served on Applicant on September 13, 2011.

On December 14, 2011, Respondent submitted a proposed Final Order of Dismissal to the Court; at this time, Respondent had no notice that Applicant was represented by counsel and had received no response from the applicant to the Conditional Order of Dismissal. The Court signed the Final Order of Dismissal on December 20, 2011, which was filed on January 9, 2012.

On December 21, 2011, Tara Dawn Shurling, Esquire, (herein "PCR Counsel") informed this Court and Respondent that she had been retained by Applicant and requested additional time to respond to the Court's Conditional Order of Dismissal; Respondent objected to this request, citing that the proposed Final Order had already been submitted to the Court. On January 30, 2012,

Respondent notified Applicant's Counsel that the Final Order of Dismissal had been ~~h~~ signed and filed. On January 31, 2012, PCR Counsel served and filed a Reply to Conditional Order of Dismissal on behalf of the Applicant. PCR Counsel advised this Court that on February 1, 2012 she was told by the Respondent that a Final Order of Dismissal had been filed on January 9, 2012. PCR Counsel submits that she had no previous notice of this Order. The Applicant and PCR Counsel were served by mail with said Order on February 1, 2012. A Reply to the Conditional Order of Dismissal was filed on February 1, 2012. On February 3, 2012, PCR Counsel filed a Motion to Reconsider/Alter/Amend Final Order Pursuant to Rule 59(e), SCRCP. In said motion the Applicant asked that the arguments and authorities set forth in the Reply previously filed be incorporated as part of his Motion for Reconsideration. The Applicant asked, for all the reasons set forth therein, that the Order of Dismissal be set aside, and that a new order be issued granting the Applicant leave to go forward on the merits of his current application. In the alternative, he asked for the Court's Order reopening his previous Post-Conviction Relief action docketed at 2006-CP-38-0462.

A hearing was held in this matter on August 20, 2012. The Applicant was present at this proceeding and was represented by Tara Dawn Shurling, Esquire. Respondent was represented by Megan E. Harrigan, Assistant Attorney General.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant in orders of commitment of the Clerk of Court for Orangeburg County. The Applicant was indicted at the March 2005 term of the Orangeburg County Grand Jury for Murder (2005-GS-38-0036). Margaret E. Hinds, Esquire, represented him in the trial court. On May 17, 2005, the

Applicant pleaded guilty to Murder and was sentenced forty (40) years imprisonment on that judgment by the Honorable Perry M. Buckner, presiding circuit judge. A timely Notice of Appeal was filed on the Applicant's behalf. The Applicant subsequently elected to withdraw his direct appeal on April 25, 2006. An Order of Dismissal and the Remittitur were issued on May 23, 2006.

Applicant filed his initial PCR application on April 20, 2006 (2006-CP-38-0462). In that *pro se* application Applicant set forth the following grounds for relief:

1. Ineffective assistance of counsel.
 - a. "Counsel failed to investigate case to prepare a defense for Applicant."
 - b. "Counsel was ineffective by the violations she committed in accordance of Professional Conduct Rules, Counsel showed more interest in intimidated Applicant to pled guilty to Murder charge."
 - c. "Plea Counsel failed to file pre-trial motions to have standing issues of the Murder Indictment, Rule 5 motion and waivers to be evaluated by trial court."
 - d. "Plea Counsel failed to examine statements, police investigated reports and failed to receive reports of pending investigation reports of case."
2. Prosecutorial and Judicial Misconduct.
3. Involuntary guilty plea.

The State filed its Return to that Application on September 21, 2006. An evidentiary hearing was convened on May 19, 2008, at which Applicant was present and represented by court-appointed counsel, Glenn Walters, Esquire. In a written order dated and filed October 29, 2008, the Honorable James C. Williams, Jr., denied and dismissed the application.¹ The Applicant submitted a "Motion to Alter/Amend *pro se* rule 59(e) SCRCP and Motion to Reconsider, *pro se* applicable S.C. Court Rules" on May 27, 2008. Respondent filed a Return to Applicant's *pro se* 59(e) Motion on November 4, 2008. In a written order dated March 4, 2009, Judge Williams dismissed the motion. The Applicant appealed the denial of his first PCR application. Applicant's Petition for Writ of

¹ The Clerk of Court's stamp on this Order of Dismissal improperly reflects that the order was filed in 1998. The correct year of filing is 2008.

Certiorari was denied by Order of the Supreme Court of South Carolina on June 10, 2010. The Remittitur was returned to circuit court on June 29, 2010.

In his current *pro se* application for post-conviction relief the Applicant alleged that he is being held in custody unlawfully for the following reasons:

1. Judicial Misconduct.
 - a. "The S. C. Supreme Court in the cert for PCR case No. 2006-CP-38-462 engaged in acts of judicial fraud and an abuse of discretion failed to stay the cert pending removing the case, including this case, is petitioned to be removed to the California District Court under 3:08-CU-10-1105-MMC. A Writ of Mandamus for this is pending in the 9th Circuit under 10-71855."
2. "Fifth, Sixth, and Fourteenth Amendment Violation."
3. "Due Process."
4. "Subject Matter Jurisdiction."
5. "Ineffective Counsel."

DISCUSSION

As noted above, the Applicant filed a motion captioned "Motion to Alter/Amend *pro se* rule 59(e) SCRCP and Motion to Reconsider, *pro se* applicable S.C. Court Rules" on May 27, 2008, which was *after* the evidentiary hearing held on May 19, 2008 but *before* the Order of Dismissal was issued on March 4, 2009. In said motion, the Applicant asked for reconsideration based upon court-appointed counsel's failure to amend his Post-Conviction Relief Application to include additional claims asserted by him, and Post-Conviction Relief Counsel's failure to introduce evidence provided to PCR Counsel by the Applicant and his mother. While the motion was captioned as a Motion pursuant to Rule 59(e) SCRCP, the motion was Applicant's effort to have additional claims and evidence neglected by PCR Counsel heard by the Court *before* a final ruling was issued. In its Return to this motion, Respondent argued that since the Applicant was

represented by counsel, Rule 11, SCRCP, would prohibit consideration of his *pro se* motion. That position was adopted by Judge Williams in his March 4, 2009, Order denying the Applicant's *pro se* motion.

In his 2008 Rule 59(e) Motion the Applicant asserted that his appointed PCR Counsel refused to raise additional issues asserted by the Applicant, that appointed PCR Counsel neglected to amend the Applicant's PCR Application, and refused to introduce evidence crucial to this PCR case. Some of the evidence in question was appended to his 2008 59(e) Motion.

The Applicant's second *pro se* PCR Application, currently before this Court, represented his effort to be heard on issues and evidence he was deprived of the opportunity to present in his first PCR action. Subsequently, the Applicant hired his current PCR Counsel, Tara Dawn Shurling, Esquire, to represent him on that application. PCR Counsel has acknowledged that the Applicant's 2008 *pro se* post-hearing motion, following the Order of Dismissal on his original application, perhaps should not have been captioned as a Motion to Alter/Amend/Motion to Reconsider pursuant to 59(e), SCRCP. The Applicant submitted, however, that the language contained in the body of that motion made clear the purpose of that pleading and the remedy sought. While the Applicant acknowledged that claims of ineffective assistance of PCR counsel will generally not justify a successive application, Aice v. State, 305 S. C. 448, 409 S.E.2d 392(1991), he argued that on the narrow facts of this case, he should be allowed to go forward on the issues and evidence set forth in his *pro se* motion filed before his first PCR was formally dismissed.

Our Supreme Court has consistently expressed the view that the PCR rules "contemplate adjudication on the merits of the original petition, one bite at the apple as it were." Gamble v. State, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1989). Rule 71.1, SCRCP, places the burden on

court-appointed PCR Counsel to amend *pro se* PCR pleadings as necessary to reflect all of an Applicant's meritorious claims. This Court now finds that the Applicant made a reasonable effort to bring to the Court's attention the fact that appointed Counsel in his original PCR action had failed to honor that duty. The record below establishes that the Applicant, admittedly acting *pro se*, attempted to bring PCR Counsel's failures to the attention of the Court, and thereby to avoid having to file a second PCR requesting to be heard on these claims. This Court recognizes that the orderly conduct of the Court is generally well served by the prohibition set forth in Rule 11, SORCP. This Court agrees however, that on the narrow facts of this case, the best interests of justice would be better served by allowing the Applicant to go forward on the additional claims ordered herein.

In support of his prayer that the Conditional Order of Dismissal not become final, the Applicant argued that equity demanded that he be allowed to proceed on the merits of the issues addressed in his Post-Hearing Motion filed before the Order of Dismissal was entered in his first PCR. As a threshold matter, the record below verifies that the Applicant *expressly withdrew Allegation 1* in 2010-CP-38-1000. In his Reply to the Conditional Order of Dismissal issued on his second PCR application, the Applicant sought leave to present the issues and evidence he attempted to present in his post-hearing motion on 2006-CP-38-0462

Current PCR Counsel was hired by the Applicant's family in the fall of 2011. Respondent submits that the Applicant's Reply to the Conditional Order of Dismissal should not be considered by this Court because it comes after the time period provided for a Reply by that Order. The Applicant urges this Court to rule on the merits the arguments set forth in his Reply, and not to adopt the hyper technical procedural defense asserted by the State. The Applicant was

not able to hire a lawyer to respond to the Conditional Order until September 29, 2011.² A Final Order of Dismissal had not been filed at that time, and therefore, this matter was still properly before this Court.

The record below documents that the Applicant's first PCR, docketed at 2006-CP-38-0462, was filed on *April 25, 2006*. Respondent's Return was not filed until *September 26, 2006*; approximately five (5) months later. His current PCR action, docketed at 2010-CP-38-1000, was filed on *July 13, 2010*. Respondent did not receive this application until *December 3, 2010*. Respondent's Return and Motion to Dismiss was not served on the Applicant until *May 17, 2011*. Thus argues the Applicant, Respondent did not serve the Return and Motion to Dismiss until approximately five and a half (5.5) months afterward. S.C. Code Ann. § 17-27-70 (A) requires the State to respond to an application for PCR within thirty (30) days after filing or "within any further time the Court may fix." Pursuant to Rule 12 (a), SCRCP, "the State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial." In neither Applicant's first or second PCR cases has Respondent filed its own responsive pleadings in the time period prescribed by law. That being the case, this Court finds that it would be inequitable to allow Respondent to block consideration of this Reply to the Conditional Order of Dismissal on the ground that it is not timely. Further, this Court recognizes that the Applicant filed a Rule 59(e) Motion to Alter/Amend/or Reconsider the Final Order of Dismissal in a timely manner following his service with the Final Order of Dismissal. That motion incorporated by reference all the arguments set forth in the Reply.

² Current PCR Counsel has established that by the time she was hired, the 20 day time period for filing a Reply to the Conditional Order of Dismissal had run. As noted previously in this Order, the Court and Respondent were not made aware of Ms. Shurling's involvement in this matter until December 21, 2011.

It is well established in South Carolina that on appeal from the denial of a PCR Application the Supreme Court of South Carolina will only consider issues and evidence raised in the lower court. Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007); Pruitt v. State, 310 S. C. 254. 423 S.E.2d 147 (1992). While the general purpose of Rule 11, SCRCP is a sound one, on the facts of this case, the rule has been applied in a manner which has violated the Appellant's rights to due process of law. The Applicant attempted to bring to the Court's attention the fact that his court-appointed lawyer had neglected to insure that all his issues were properly raised, and that crucial evidence was introduced. Judge William's order denying the Applicant's 2008 *pro se* 59(e) Motion/Motion to Reconsider, dismissed the Applicant's effort to correct these omissions pursuant to Rule 11 without a hearing. Therefore, the Court wishes to allow the Applicant his right to be fully heard on collateral review, his one full bite at the apple.

This Court finds that the appropriate remedy on the facts of this case is to re-open the Applicant's 2006 PCR action docketed at 2006-CP-38-0462. This Court hereby grants the Applicant a hearing on the issue(s) he raised in his 2008 *pro se* Motion which this Court construes as a Motion to Re-open or Reconsider his first PCR Application. The Court however, expressly declines to address issues relating to the representation provided by the Applicant's court-appointed counsel at his initial PCR hearing or issues involving the Applicant's mental competency. This Court finds that all questions regarding Applicant's mental capacity and competency were dealt with adequately at the initial hearing. The Court is satisfied with Judge Williams' ruling on Ms. Hinds's investigation into Mr. Haynes's mental health history and her decisions resulting there from. Therefore, this Court declines to hear *any* matters regarding the Applicant's mental capacity, competency, or- his state of mind. This Court allows one exception to the Court's ruling that it will not delve into the question of the representation provided by PCR Counsel in the original PCR

action. One of the errors alleged in the Applicant's 2008 *pro se* motion pertained to the lack of a DNA test. While this issue was raised in the Applicant's original PCR hearing, it was not litigated to this Court's satisfaction and therefore, the Court does not exclude that issue from the Amended Application authorized for hearing by this Order. Likewise, while the Applicant may not raise issues concerning his competence to stand trial or his sanity, he is not prohibited from addresses other issues addressing how evidence of his mental health history might have been used to rebut or otherwise explain evidence offered against him had he gone to trial. Accordingly, it is hereby ordered that:

1. The Applicant's original PCR case, docketed at 2006-CP-38-0462 is hereby re-opened;
2. The Applicant is authorized to file an Amended PCR Application within 30 days of the filing date of this Order;
3. The Amended Application authorized by this order may *not* deal with any issues pertaining to the Applicant's mental competency inasmuch as this Court finds that those issues were adequately addressed in the Applicant's original PCR hearing;
4. The Applicant may include in his amended application errors concerning the handling of DNA evidence in his case inasmuch as this Court finds that he has not previously had the opportunity to be fully heard on this issue;
5. The Applicant may additionally present evidence regarding any other alleged error not litigated at his initial PCR Hearing;
6. The Court shall convene and hear the Applicant's Amended PCR Application at a date to be determined.

IT IS SO ORDERED.



Edgar W. Dickson
Chief Administrative Judge
First Judicial Circuit

This 12th day of March, 2013.

Orangeburg, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

2006-CP-38-0462

EZEKIAL HAYES, 309200)

Applicant,)

v.)

AMENDED POST-CONVICTION RELIEF
APPLICATION

THE STATE OF SOUTH CAROLINA,)
 Respondent.)

The Applicant alleges that his right to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the U. S. Constitution, as well as Article I, § 14 of the South Carolina Constitution was violated, prior to and during his guilty plea proceeding. He alleges that his pleas were not voluntarily and intelligently entered, and that his right to due process of law was violated in the trial court. The Post-Conviction Relief Application previously filed on April 20, 2006 under docket number 2006-CP-38-0462, is hereby amended to include the following additional specific allegations:

1. Plea Counsel was ineffective for neglecting to introduce evidence during the Applicant's sentencing proceeding concerning the Applicant's medical history where said evidence should have been presented in mitigation of the penalty to be imposed.
2. Plea Counsel was ineffective for failing to clarify the Applicant's mental health history for the sentencing judge when the Applicant answered the Court's inquiry concerning whether he had a history of mental illness negatively.
3. Plea Counsel was ineffective for failing to refute statements made by the prosecutor concerning footwear impressions found at the scene where said statements significantly overstated the findings of SLED regarding the impressions in question and advised the Court that the State believed they could have proven the impressions were made in the victim's blood when, at the time of the plea, SLED had issued a report finding the impressions were negative for phenol and appeared to be "in mud."
4. Plea Counsel was ineffective for failing to adequately investigate the circumstances under which the Applicant's statement was given and for failing to discuss with him potential grounds for challenging the admissibility of his statement.

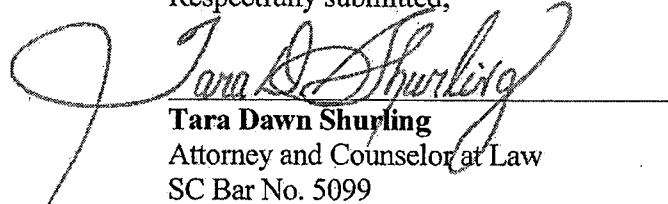
5. Plea Counsel was ineffective for failing to adequately investigate the degree to which the Applicant's memory deficits and impaired cognitive abilities may have impacted his ability to make a knowing and voluntary statement.
6. Plea Counsel was ineffective for failing to advise the Applicant of the procedures that could be employed during a jury trial to challenge the reliability and admissibility of his pre-trial statement to law enforcement.
7. Plea Counsel was ineffective for failing to adequately explain to the Applicant the fact that substantive errors of law made during a jury trial could be appealed to a higher court if he was convicted.
8. Plea Counsel was ineffective for failing to explain to the Applicant that a challenge to the admissibility of his statement would have to be evaluated by both the trial judge and the jury if he challenged his statement at a jury trial.
9. Plea Counsel was ineffective for failing to advise the Applicant of the ways in which he might challenge his alleged confession at a jury trial, including his ability to demonstrate that his initial failure to provide details concerning his whereabouts and behavior during the operative time period was consistent with his medical history and not reflective of guilt.
10. Plea Counsel was ineffective for allowing the Applicant to plead guilty without first exploring the possibility that the Applicant's mental deficits had been capitalized upon by law enforcement to obtain a false confession.
11. Plea Counsel was ineffective for allowing the Applicant to plead guilty without adequately advising him of the limited forensic value of the footwear impressions being asserted by the State as evidence of his guilt.
12. Plea Counsel was ineffective for allowing the Applicant to make the decision to waive his right to trial by jury without first adequately explaining all the forensic evidence claimed by the State to support his guilt and the manner in which that evidence might be challenged a jury trial.
13. Plea Counsel was ineffective for failing to adequately advise the Applicant of the fact that an adverse ruling on the admissibility of his statement could be appealed to a higher court in the event he was convicted by jury.
14. Plea Counsel provided the Applicant ineffective assistance of counsel by failing to petition the Court for funding to pay for an independent forensic expert in the field of DNA analysis to assist the defense in reviewing and weighing DNA evidence in this case.



15. The Applicant received ineffective assistance of counsel where Plea Counsel mislead him concerning the evidentiary value of the forensic evidence related to his shoes and their alleged connection to the victim's murder.
16. Plea Counsel was ineffective for failing to investigate the possible application of a lesser-included offense to the facts in the Applicant's case.
17. Plea Counsel failed to provide the Applicant effective assistance of counsel when she failed to advise him concerning the law relating to the lesser-included offense of voluntary manslaughter and its potential application to the facts in his case if he went to trial by jury.
18. Plea Counsel provided the Applicant ineffective assistance of counsel where she failed to move in the trial court for funding to hire an expert witness to assist the defense in evaluating a potential claim that his statement to law enforcement constituted a false confession.

The Applicant has no further amendments at this time. A copy of this amendment has been served on opposing counsel, Megan E. Harrigan, Assistant Attorney General and Margaret E. Hinds, Esquire, Plea Counsel.

Respectfully submitted,



Tara Dawn Shurling
Attorney and Counselor at Law
SC Bar No. 5099
3614 Landmark Dr., Ste. A
Columbia, SC 29204
803-738-8622
803-738-1600 (Fax)

ATTORNEY FOR APPLICANT

This 3rd day of September, 2013.

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

EZEKIAL HAYNES, # 309200,)
Applicant,)

CASE NO.: 2006-CP-38-0462

v.)

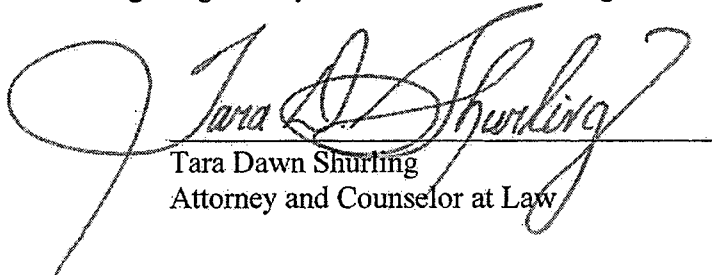
CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA,)
Respondent.)

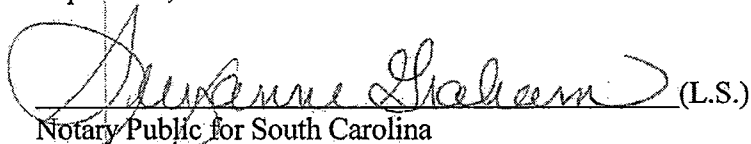
The undersigned attorney hereby certifies that a true copy of the Amended Post-Conviction Relief Application in the above matter has been served on opposing counsel this 3rd day of September, 2013, by email and by mailing one (1) copy, postage prepaid, properly addressed to:

Megan E. Harrigan
Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211

The original having been sent to the Orangeburg County Clerk of Court for filing.


Tara Dawn Shurling
Attorney and Counselor at Law

SWORN TO BEFORE ME this 3rd day of
September, 2013.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: 2/28/2023

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
 FIRST JUDICIAL CIRCUIT

EZEKIAL HAYNES, # 309200,)
 Applicant,)
 v.)
)
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 Respondent.)

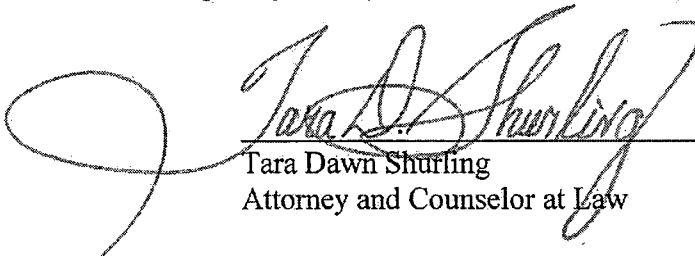
CASE NO.: 2006-CP-38-0462

CERTIFICATE OF SERVICE

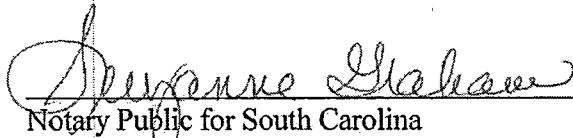
The undersigned attorney hereby certifies that a true copy of the Amended Post-Conviction Relief Application in the above matter has been served on the Margaret E. Hinds, Esquire this 3rd day of September, 2013, by email and by mailing one (1) copy, postage prepaid, properly addressed to:

Margaret E. Hinds, Esquire
 Second Circuit Public Defender
 2 Lander Lane
 Aiken, South Carolina 29803

The original having been sent to the Orangeburg County Clerk of Court for filing.


 Tara Dawn Shurling
 Attorney and Counselor at Law

SWORN TO BEFORE ME this 3rd day of
 September, 2013.

 (L.S.)
 Notary Public for South Carolina

My Commission Expires: 2/28/2023

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
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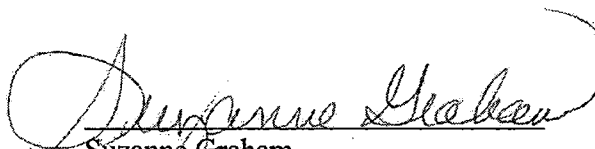
CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA,)
Respondent.)

The undersigned attorney hereby certifies that a true copy of the Amended Post-Conviction Relief Application in the above matter has been served on the Honorable Edgar W. Dickson this 3rd day of September, 2013, by email and by mailing one (1) copy, postage prepaid, properly addressed to:

The Honorable Edgar W. Dickson
Circuit Court Judge for the First Circuit
P.O. Box 1949
Orangeburg, SC 29116-1949

The original having been sent to the Orangeburg County Clerk of Court for filing.


Suzanne Graham
Paralegal to Tara Dawn Shurling

SWORN TO BEFORE ME this 3rd day of
September, 2013.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: Jan. 16, 2017

1 State of South Carolina) In the Court
2 County of Orangeburg) Of Common Pleas

3 Docket No. 2006-CP-38-0462
4

5
6 Ezekiel Haynes,)
Applicant,)

7
8 vs.)

Transcript of Record

9
10 State of South Carolina,)
Respondent.)

11
12 February 20, 2014
13 St. Matthews, South Carolina
14

15 B E F O R E:

16 The Honorable Edgar W. Dickson, Judge.
17

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

19 Tara Shurling, Esquire
20 Attorney for the Applicant

21 Megan Harrington, Assistant Attorney General
22 Attorney for the Respondent
23

24 Brenda J. Sigwald, Circuit Court Reporter
For the Honorable R. Knox McMahon
25 P.O. Box 206, Jackson, South Carolina 29831

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1 POST CONVICTION RELIEF HEARING

2 MS. HARRINGTON: May it please the Court?

3 THE COURT: Yes, ma'am.

4 MS. HARRINGTON: This is the matter of Ezekiel
5 Haynes versus the State of South Carolina, Docket No.
6 2010-CP-38-1000 and also the No. 2006-CP-38-0462. Mr.
7 Haynes was indicted during a March 2005 term of the
8 Orangeburg County Grand Jury for murder. He was
9 represented by Margaret Hinds.

10 On May 17th, 2005 Mr. Haynes appeared before the
11 Honorable Perry M. Buckner where he pled guilty as indicted
12 to murder. Pursuant to negotiations between Mr. Haynes and
13 the State, Judge Buckner sentenced him to 40 years
14 imprisonment.

15 Your Honor, Mr. Haynes filed a direct appeal, but
16 elected to withdraw it on April 25th, 2006. An order of
17 dismissal and remittitur were issued May 23rd, 2006. Mr.
18 Haynes filed his initial application for post-conviction
19 relief on April 20th, 2006, setting forth allegations of
20 ineffective assistance of counsel for failure to
21 investigate and prepare a defense; counsel was ineffective
22 by violating the professional rules of conduct by
23 intimidating applicant to plead guilty; that counsel failed
24 to file pre-trial motions related to his murder indictment;
25 and that plea counsel failed to examine statements, police

1 reports, and prepare to receive reports regarding any
2 investigation as well as prosecutorial and judicial
3 misconduct in an involuntary guilty plea.

4 The State filed its return on September 21st of
5 2006. An evidentiary hearing was convened May 19th, 2008
6 before the Honorable James C. Williams, Jr. Mr. Haynes
7 was present and represented by Counsel, Glen Walters, Sr.
8 The State was represented by Assistant Attorney General
9 Vince Luther (phonetic). Prior to that entry of a written
10 order of dismissal, Mr. Haynes submitted a pro se Motion to
11 Alter or Amend or Reconsider pursuant to Rule 59(e) of the
12 South Carolina Rules of Civil Procedure, asking the Court
13 to address additional claims for relief that were not
14 presented at the hearing.

15 In a written Order dated October 29th, 2008, Judge
16 Williams denied and dismissed Mr. Haynes application. The
17 State filed a return to Mr. Haynes pro se 59(e) motion on
18 November 4th, 2008, and on March 4th, 2009 Judge Williams
19 dismissed the motion.

20 Thereafter applicant filed an appeal on the denial
21 of his first post-conviction relief action on November 5th,
22 2008. A petition of certiori was filed on August 17th,
23 2009, on his behalf by Mr. Franklin Best (phonetic).

24 The South Carolina Supreme Court denied certiori on
25 June 10th of 2010, and remitter was sent on June 29th of

1 2010.

2 Thereafter, Mr. Haynes filed a second application
3 for post-conviction relief on July 13th of 2012 -- 2010, I
4 apologize -- alleging judicial misconduct. Fifth, Sixth
5 and Fourteenth Amendment violations, due process
6 violations, subject matter jurisdiction violations as well
7 as ineffective counsel. The application was not forwarded
8 to the State by the Orangeburg Clerk of Court until
9 December 3rd, 2010. On May 17th of 2011, the State made
10 its return and Motion to Dismiss asking that the
11 application be summarily dismissed as excessive and beyond
12 the statute of limitations.

13 On June 6th of 2011, this Court signed a
14 conditional Order of Dismissal provision dismissing the
15 application, but giving Mr. Haynes 20 days from the date of
16 service to object to the conditional Order of Dismissal.
17 This Order of Dismissal was personally served on Mr. Haynes
18 on September 13th of 2011. After receiving no reply from
19 the applicant, this Court signed a Final Order of Dismissal
20 on December 20th of 2011 and this Final Order was filed on
21 January 9th of 2012.

22 On January 31st, 2012, Mr. Haynes retained counsel,
23 Tara Shurling, and filed a reply to the Conditional Order
24 of Dismissal, which was served on her and the applicant the
25 next day. On February 2nd, 2012, Mr. Haynes, through his

1 counsel, filed a Motion to Alter or Amend or Reconsider
2 pursuant to Rule 59(e); and in his motion, Mr. Haynes asked
3 the Court to allow him to proceed on a full merits hearing
4 on his excessive application or in the alternative, reopen
5 his first PCR action and allow Mr. Haynes to present
6 testimony and evidence regarding the allegations that were
7 raised in his pro se 59(e) motion.

8 The State made a return to this motion on August
9 17th, 2012, and a hearing on this motion was convened
10 before Your Honor on August 20th of 2012 at the Orangeburg
11 County Courthouse. Following this hearing, this Court
12 granted Mr. Haynes motion and reopened his conditional
13 post-conviction relief action, Docket or Case No.
14 2006-CP-38-0462, allowing him 30 days to file an amended
15 application and specifically ruling that the amended
16 application did not deal with any issues pertaining to Mr.
17 Haynes mental competency or mental health and the issues
18 that were litigated in his prior PCR Hearing but would
19 allow Mr. Haynes to present evidence regarding alleged DNA
20 errors committed by counsel.

21 An Order to this effect was signed by Your Honor on
22 March 12th, 2013. Thereafter, Mr. Haynes, through his
23 counsel, Tara Shurling, filed an amended application on
24 September 3rd of 2013, and we are here for a hearing today
25 based on the Court's Order.

1 THE COURT: Ms. Harrington, one of the other things
2 that we mentioned in our pre-trial conference before we
3 started was we were -- I was going to consolidate the 2010
4 case with the 2006 case so they'd all be in one file.

5 MS. HARRINGTON: Certainly, Your Honor. Which case
6 number would Your Honor prefer to be the surviving case
7 number?

8 THE COURT: The surviving case number is still
9 going to be 2006-CP-38-0462.

10 MS. HARRINGTON: Thank you, Your Honor.

11 THE COURT: That'll make everybody much more
12 nervous when they see it.

13 MS. HARRINGTON: I'm sure, Your Honor.

14 THE COURT: So we'll work with that one, okay.

15 MS. HARRINGTON: And, Your Honor, Ms. Shurling
16 doesn't have any procedural history, I would like renew the
17 State's Motion to Dismiss at this time.

18 THE COURT: Yes, ma'am.

19 MS. SHURLING: I'll be very briefly, Your Honor.

20 I -- I don't have any specific objections to the procedural
21 history as it was recited by the Respondent; however, she
22 covered an awful lot of territory quickly and I'm concerned
23 that I might have missed something. I would just note,
24 Your Honor, that the procedural history set forth in your
25 Order of March 12th, 2013, is an extremely detailed and

1 accurate description of the procedural history of this
2 rather tortured case and I would rely on that procedural
3 history. Thank you.

4 THE COURT: Okay. Thank you. Ms. Harrington, you
5 want to renew your objection to --

6 MS. HARRINGTON: Yes, Your Honor.

7 THE COURT: Go ahead and preserve the record, you
8 know.

9 MS. HARRINGTON: Yes, Your Honor, I understand Your
10 Honor has already previously ruled upon Mr. Haynes motion
11 and granted the subsequent hearing, but I would like to
12 renew the State's objection to preserve this issue for
13 appellant review in his 59(e) motion, applicant sought to
14 proceed forward on his successive application which was
15 untimely and on entirely new grounds that was raised in his
16 successive application; or the alternative, he sought to
17 reopen his 2006 application to also address issues that
18 were not previously raised and the State would move that
19 this motion should be denied because our Appellate Courts
20 have been very clear that the 59(e) motion is not the
21 appropriate avenue to raise additional grounds for relief
22 in a PCR action.

23 The State would rely on Arnold & Plath v. State,
24 cite no. 309 S.C. 157, 1992. The only way to raise the new
25 grounds would be to file a subsequent application, which in

1 this case would still likely be dismissed as successive
2 pursuant to S.C. Code Annotated 17-27-90 and beyond the
3 Statute of Limitations pursuant to S.C. Code Annotated
4 17-27-45. It clearly -- the applicant here is trying to go
5 through successive application or through his 2006
6 application to raise issues that were not previously
7 presented to the Court or ruled upon. And the 59(e) motion
8 is not the appropriate avenue or vehicle to do so.

9 Additionally if the -- a successive application
10 would be the more appropriate ground to do so, but this
11 still would not be considered newly discovered evidence and
12 the State wants to be clear on the record about that
13 because these grounds were known to Applicant at the time
14 of his first hearing, if not before. Mr. Haynes asserts
15 that he did try to raise these issues during the first PCR
16 but he was -- by counsel. That does not amount to the
17 procedural circumstances to allow a successive application
18 pursuant to *Aice v. State* 305 S.C. 448, 1991.

19 At best, if Mr. Haynes has a problem with the prior
20 post-conviction relief counsel, a federal habeas channel is
21 the appropriate way to deal with that issue, not through
22 filing a successive application or through reopening this
23 2006 application pursuant to Rule 59(e); and the State will
24 again renew our motion to ask Your Honor to deny his 59(e)
25 motion.

1 THE COURT: Ms. Harrington, I appreciate your
2 objection and I believe I understand the grounds of it, but
3 I'm going to continue to go -- plow forward as I have
4 previously ordered, but I want to note your objection on
5 the record.

6 MS. HARRINGTON: Thank you, Your Honor. I
7 appreciate that.

8 THE COURT: Thank you. All right. Now let's see,
9 Ms. Shurling, anything that we need to get on the record
10 before we take testimony?

11 MS. SHURLING: Yes, sir.

12 THE COURT: Yes, ma'am.

13 MS. SHURLING: Thank you very much. Your Honor,
14 first I would like to say that my client and I are very
15 grateful for Your Honor's ruling allowing us the privilege
16 of reopening the 2006 post-conviction relief case, and I do
17 not wish to appear unappreciative or disrespectful in
18 putting a couple of objections on the record, but I feel
19 for my client's benefit I must.

20 THE COURT: But it's more fun when I get objections
21 from both sides.

22 MS. SHURLING: Pardon.

23 THE COURT: It's more fun when I get objections
24 from both sides.

25 MS. SHURLING: Thank you. Your Honor, I would

1 formally object at this time to the limitations the Court
2 has put on the scope of the issues that may be addressed in
3 this proceeding. Specifically, since the State is
4 objecting to Your Honor having a -- an appropriate basis
5 for reopening in 2006 PCR, I feel constrained to renew my
6 objection to Your Honor's ruling that I may not address the
7 improper conduct of the applicant's first court-appointed
8 post-conviction relief case in his initial collateral
9 review. We presented significant evidence to the Court
10 that the court-appointed counsel in this matter received
11 payment of fees in connection with the handling of this
12 post-conviction relief case and that certain
13 representations to both my client and his family were made
14 that were not honored.

15 If the State is pursuing their argument that Your
16 Honor is out of bounds, so to speak, in allowing my client
17 to reopen that 2006 post-conviction relief case, then I
18 would renew, for the record, my inability to argue that the
19 actions of the Court are justified at least in part by the
20 conduct of his original court-appointed attorney and argue
21 the -- the manner in which that impacted his ability to
22 have one full and fair bite at the apple the first go
23 around.

24 Secondly, Your Honor, I would just object for
25 the record to the limitation that has been placed on my

1 ability to argue issues that relate to ineffective
2 assistance of counsel with regard to presenting claims of
3 incompetency, claims that my client was not competent to
4 stand trial and that counsel neglected to investigate and
5 present evidence that might have been used -- used for that
6 end toward arguing that at the time of the original court
7 proceedings. Those are my two objections that I am
8 preserving, Your Honor. And at this time, I am prepared to
9 go forward.

10 THE COURT: Okay.

11 MS. HARRINGTON: If I could briefly respond to
12 those two objections of Ms. Shurling.

13 THE COURT: Okay.

14 MS. HARRINGTON: In regards to Ms. Shurling's
15 objection to not being able to go into whether or not PCR
16 counsel was effective, our State Courts have been very
17 clear that that is not a non-post-conviction relief and the
18 federal case I believe Ms. Shurling is eluding to, Martinez
19 v. Bryan which does elaborate federal action through habeas
20 corpus and you have ineffective counsel, our State Supreme
21 Court in Kelly v. State, an Order filed on June 20th of
22 2013, explicitly held that Martinez is not applicable in
23 state post-conviction relief actions and that is not a
24 meritorious ground on which the State alleges Ms. Shurling
25 can go forward on or Mr. Haynes, excuse me, can go forward

1 on.

2 Additionally, in regards to being able to go into
3 mental health, Your Honor's Order very explicitly says that
4 this issue was raised and ruled upon by Judge Williams. At
5 this time, the State would also object to the allegations
6 in Mr. Haynes amended application, Allegations 1, 2, 5, 9,
7 and 10 as they directly deal with Ms. Hinds' representation
8 in regards to applicant's mental health competency or
9 medical history. The State would move at this time to
10 dismiss these allegations as violations of the Court's
11 prior ruling.

12 MS. SHURLING: May I respond?

13 THE COURT: You may respond to the -- to the
14 strikes.

15 MS. SHURLING: Thank you. Your Honor.

16 THE COURT: 1, 2, 5, 9, and 10.

17 MS. HARRINGTON: 1, 2, 5, 9, and 10, Your Honor.

18 THE COURT: Okay.

19 MS. SHURLING: Thank you. With specific reference
20 to those objections, Your Honor, I very studiously honored
21 Your Honor's instructions with regard to not raising
22 allegations concerning the manner in which original trial
23 counsel handled the issue of my client's competency at the
24 time of his original proceeding. The allegations that are
25 being presented in this amended application that was served

1 on the State back in, I believe September of 2013, go to
2 question of how my client's prior medical history, a great
3 head injury and medical history since the time of an
4 automobile accident may have been used by counsel with
5 regard to collateral matters not specifically competent to
6 stand trial; specifically concerning matters that could
7 have been addressed if my client had proceeded to trial
8 with regard to a statement that the State would have sought
9 to introduce against him.

10 Also a claim that trial counsel failed to use
11 certain readily available medical information concerning
12 the client as part of a reasonable plea in mitigation.
13 There was a plea bargain in this case wherein the judge had
14 a sentencing range of 30 to 40 years; 10 years day-for-day;
15 that's a pretty hefty difference in the penalty and we
16 would submit that counsel was ineffective for failing to
17 utilize the record of the client's medical condition and
18 his prior injuries as part of the plea in mitigation that
19 might have helped the client receive a sentence closer to
20 the lower end of the range before the Court as opposed to
21 the maximum that he received.

22 THE COURT: And just for the record, let me just --
23 when a person has post-conviction relief action, he has one
24 shot, you know. And the reason that I have ruled the way I
25 did in is -- if -- and I would not phrase that the PCR

1 counsel conduct to be improper counsel, but I would phrase
2 as there were issues that I thought he could have raised
3 that were not raised, which is -- which, Ms. Shurling, you
4 brought to my attention, which is the reason I allowed you
5 to go forward and deal with that issue. The reason that
6 I'm not allowing you to go forward on the issue of mental
7 capacity was -- and the way I so ruled -- was the fact that
8 in the review of that record, it was clear that -- well, I
9 shouldn't use that word. I'm not going to use that word
10 clear. It never is or we wouldn't be here. But it
11 appeared to me that the matter was fully litigated before
12 Judge Williams in the prior PCR and that's why it's not
13 going to get re-litigated. Okay.

14 With regard to the motion about not responding to
15 1, 2, 5, 9, and 10, I'll take that under advisement and
16 rule on it after I complete the hearing today.

17 Okay. Ms. Shurling.

18 MS. SHURLING: Your Honor, in light of that ruling,
19 there's one additional point I would need to make.

20 THE COURT: Okay.

21 MS. SHURLING: I am, of course, as an Appellant
22 Attorney, very familiar with the Martinez decision,
23 however, Martinez has not turned out to be quite the golden
24 goose that people thought it was going to be in many
25 respects. And the client would still have the problem of

1 the fact that given his limited intellectual ability and
2 his lack of knowledge of the law, he pursued efforts to
3 advise the Court and appeal to the Court's sense of justice
4 to get another post-conviction relief opportunity as
5 opposed to pursuing a federal habeas based on his limited
6 knowledge. And he just felt like something had gone wrong
7 and he was trying to get help. But in the process, his
8 timeliness for pursuing a federal habeas application under
9 U.S. 20-254, Section 2254, would have expired. And while
10 it's true that if he had filed a timely application, he
11 would have had an opportunity to raise issues under
12 Martinez that were not fully developed by original PCR
13 counsel. That won't do a thing to help him, a, with the
14 Statute of Limitations; and b, and I apologize that I don't
15 know the names of the cases off the top of my head, but the
16 line of cases that are following Martinez and interpreted
17 Martinez, have shown is that while Martinez rules that the
18 Federal Court will no longer consider the failure of
19 post-conviction relief counsel to raise and develop an
20 issue in the State Court as an absolute bar to the Federal
21 Court considering it in habeas corpus, a curious thing has
22 happened since that ruling. That being that if there are
23 issues that should have been raised and therefore evidence
24 and testimony that should have been introduced on those
25 issues in the collateral proceeding, you may, in the

1 context of Martinez challenge, introduce that testimony and
2 evidence as part of your claim that the reason your issue
3 was not exhausted at the State level because you had
4 ineffective assistance of PCR counsel. But if the Court
5 finds that your claim that the reason the issue was not
6 exhausted at the State level based on ineffective
7 assistance of PCR is justified based on that proffer, they
8 don't then allow you to introduce that evidence on an
9 underlying issue of the merits of those issues. And I
10 share your -- I can tell by the look on your face that it,
11 it doesn't seem to make much sense to me either and I can
12 provide Your Honor copies of the Federal cases that were
13 replied the case thusly. But basically what they're saying
14 is they'll take a look at what the evidence on those issues
15 would have been to decide whether PCR counsel was
16 ineffect -- was actually ineffective and once they say yes,
17 PCR counsel was ineffective, therefore, we will consider
18 these issues although they would normally be barred for
19 lack of State exhaustion.

20 Then when they're considering the merit of those
21 issues, they only consider the record as it existed below
22 and they will not take into account the additional evidence
23 and testimony that was introduced in support of the claim
24 that the PCR lawyer was ineffective. So even he didn't
25 have a problem with the Statute of Limitations, the

1 likelihood that he would be able to develop a record on the
2 issues in question is virtually non-existent.

3 THE COURT: In the Federal habeas corpus thing, I'm
4 essentially taking care -- I think I'm taking care of that
5 issue by allowing him to go forward on the issues that the
6 PCR attorney did not develop. Whether that turns out to be
7 the case or not, I don't know, but that's where -- that's
8 where I think we are.

9 MS. SHURLING: Your Honor's ruling in the interest
10 of justice is certainly giving him his best shot at that.
11 I'll put it that way.

12 THE COURT: Well we'll -- we'll see.

13 MS. SHURLING: Okay.

14 THE COURT: Thank you.

15 MS. SHURLING: Thank you, Your Honor. I'm ready to
16 proceed whenever the Court's ready.

17 MS. HARRINGTON: And I would just like to note my
18 objection for 1, 2, 5, 9 and 10 and ask that I -- be a
19 running objection so I don't have to object throughout the
20 hearing.

21 THE COURT: It is a running objection and I'm just
22 not ruling on it until after I've heard everything.

23 MS. HARRINGTON: Certainly, Your Honor. Thank you.
24 I just want to make sure we're clear for appellant review.

25 THE COURT: We can only hope about that. Okay.

1 All right. Ms. Shurling?

2 MS. SHURLING: In speaking of that, Your Honor, we
3 had discussed briefly in Chambers the question of whether
4 or not I would present additional testimony from my
5 client's mother. And at that juncture we had agreed that
6 we would be incorporating the records from previous
7 proceedings. However, I have never called Ms. Haynes as a
8 witness and the questions that were put to her in an
9 earlier proceeding do not fully develop the matter that I
10 need the Court to hear today. So I will need to call her,
11 but it will be very brief.

12 THE COURT: Okay.

13 MS. SHURLING: Thank you. And my first witness,
14 Your Honor, if you're ready --

15 THE COURT: I'm ready.

16 MS. SHURLING: -- will be the applicant, Ezekiel
17 Haynes.

18 THE COURT: Come on up here, please.

19 EZEKIEL HAYNES,
20 having been duly sworn, testified as follows:

21 THE COURT: All right. If you'd have a seat
22 please, sir. And as soon as you get comfortable, let me
23 know, okay?

24 Okay. You ready?

25 MS. SHURLING: Yes.

1 THE COURT: Your witness.

2 MS. SHURLING: Your Honor, I would like to note for
3 the record that I just noticed that in the Order reopening
4 the PCR action, Docket 2006-CP-38-0462 --

5 THE COURT: Uh-huh (affirmative response).

6 MS. SHURLING: -- it appears that we left the N out
7 of Mr. Haynes' name. His name is Haynes not Hayes and I
8 apologize. I believe I'm the one that typed that.

9 THE COURT: Okay. And it's noted that way on your
10 amended --

11 MS. SHURLING: And I didn't catch it until Your
12 Honor said something just a moment ago. My apologies to my
13 client for misspelling his name.

14 THE COURT: Okay. All right.

15 MS. SHURLING: There won't be -- there won't be any
16 confusion about it, I don't, Your Honor, because I have his
17 SCDC Number there as well.

18 THE COURT: Okay. Well the next Order will have it
19 spelled correctly.

20 MS. HARRINGTON: And, Your Honor, I do think there
21 are two different spellings of Mr. Haynes' first name; is
22 it with an e or a at the end.

23 MS. SHURLING: I'm going to get him to spell his
24 whole name for us right now.

25 THE COURT: Okay.

Ezekiel Haynes - Direct Examination by Ms. Shurling

DIRECT EXAMINATION

1
2 BY MS. SHURLING:

3 Q Ezekiel, will you spell your first and last name
4 for us please.

5 A E-Z-E-K-I-E-L.

6 MS. SHURLING: I've got it wrong on two scores,
7 Your Honor, I'm sorry.

8 THE COURT: That's okay.

9 BY MS. SHURLING:

10 Q And it's Haynes, correct? H-A-Y-N-E-S?

11 A Yes.

12 Q And can you tell us what your SCDC Number is?

13 A 3 --

14 Q Speak up.

15 A 309200.

16 Q 309200?

17 THE COURT: Correct.

18 MS. SHURLING: Correct.

19 BY MS. SHURLING:

20 Q Okay. Mr. Haynes, one thing that I've had to talk
21 to you about before and you are very soft spoken and your
22 lawyer's got a hearing problem, okay and I'm sure everybody
23 in this courtroom can probably hear you better than me, but
24 I have some hearing loss in my right ear and I'm going to
25 get a little closer to you so I can hear you better, but I

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 would ask that you speak up, okay?

2 A (The witness nodded his head.)

3 THE COURT REPORTER: I need him to answer.

4 BY MS. SHURLING:

5 Q Okay. Mr. Haynes, there's one other thing. The
6 nice lady sitting in front of you has to be able to take
7 down every word you say in order to provide a transcript
8 for everyone later, should we need one. So you have to
9 make auditory responses; you have to speak out loud. You
10 can't nod your head; you have to say yes, ma'am, no, ma'am
11 or yes, sir, no, sir to the Court, okay?

12 A Yes, ma'am.

13 Q Okay. Thank you very much. Mr. Haynes, going back
14 to the time of your original case, who was your lawyer; at
15 the time of your plea, who was your lawyer?

16 A Hinds.

17 Q Ms. Hinds?

18 A Yes, ma'am.

19 Q And was she a public defender or was she someone
20 your family had hired?

21 A She was a public defender.

22 Q Public defender. Okay. And did there come a time
23 when Ms. Hinds talked to you about whether you should enter
24 a plea or go to trial?

25 A Yes.

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 Q Okay. So you had a discussion with her about
2 making a decision about whether you were going to go to
3 trial or whether you were gonna enter a plea, correct?

4 A Ms. Peggy.

5 Q Okay. So did she ever discuss with you -- before
6 you had to make the decision about the plea, did she
7 discuss with you what a jury trial would be like if you had
8 one?

9 A No.

10 Q Did she tell you that if you had a jury trial, you
11 would have a right for instance to confront the witnesses
12 presented against you by the State and cross-examine them
13 at a jury trial?

14 A I don't understand.

15 Q Pardon?

16 A I don't understand that.

17 Q Did she tell you that if you went to trial by jury
18 that the State would put up evidence and witnesses against
19 you? Did she discuss that with you? And did she tell you
20 that she would then have a chance to cross-examine those
21 witnesses on your behalf at a jury trial?

22 A No.

23 Q Did she ever discuss with you something called
24 impeachment?

25 A No.

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 Q Did she ever discuss with you some of the ways at a
2 jury trial she might could try to convince the jury that a
3 witness's testimony shouldn't be believed?

4 A No.

5 Q Did she discuss with you how lawyers can make
6 objections and motions and raise legal issues during a jury
7 trial?

8 A No.

9 Q Did she ever tell you that mistakes that were made
10 during a jury trial that were brought up by her during the
11 trial in an objection or a motion could be taken to a
12 higher court, a court with higher authority if you were
13 convicted?

14 A No.

15 Q In other words, did she tell if you were convicted
16 by a jury that you could then ask a court of more power
17 than the Trial Court, an Appellate Court, to review the
18 mistakes that you said were made during your trial?

19 A No.

20 Q She never discussed that with you?

21 A No.

22 Q Now, I've got the cart a little bit before the
23 horse. If she didn't, did -- I assume she never -- I don't
24 want to do that. I'll rephrase.

25 Did she ever tell you that if you pled guilty, on

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 the other hand, that you were waiving the right to raise
2 any substantive errors of law or any legal issues
3 concerning the strength of the State's case or anything?

4 A I don't understand.

5 Q No?

6 A I don't understand.

7 Q Okay. What about your statement; did you have
8 discussions with your lawyer about the statement that the
9 State was attributing to you in this case?

10 A Yes, ma'am.

11 Q Pardon?

12 A Yes, ma'am.

13 Q You did? And did your lawyer discuss with you how
14 it would be handled if you had a jury trial and not being
15 very clear, I'm sorry. Did she tell you how the question
16 of whether the jury could hear your statement or not, would
17 be decided if you went to trial by jury?

18 A No.

19 Q Did she ever explain to you that before a jury
20 would ever hear your statement, you would have a right to
21 move to suppress the statement and have a hearing at which
22 you ask the judge to consider keeping your statement out?

23 A No.

24 Q Did she tell you that if you had a trial by jury
25 and your statement had come in, that you would have a right

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 to have the jury instructed that even they would have to
2 make a decision about whether or not the statement was
3 knowingly, voluntarily, and intelligently entered before
4 they could consider it on the issue of guilt or innocence?

5 A No.

6 Q So she didn't -- she did not explain to you that
7 even with a statement coming into evidence that you would
8 have a right to have the jury instructed that their
9 consideration of that statement was a two-step process?

10 A No.

11 Q No? Okay. Did she ever tell you that if you were
12 convicted at a trial by jury and you had tried to keep your
13 statement out of evidence, that the Court's rulings on
14 whether or not that statement should come into evidence or
15 not could be appealed to a higher court, to an Appellate
16 Court?

17 A No. No.

18 Q Okay. I've tried to explain to you, Mr. Haynes,
19 and I'm not sure you understand, but do you understand
20 that -- that His Honor, Judge Dixon, has ruled that we
21 can't go into the question of your medical history with
22 regard to whether or not you were even competent to stand
23 trial; that issue has already been decided and we're not
24 being allowed to revisit that; do you understand that?

25 A I'm not sure.

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 Q Okay. Well let's just -- I'm going to try to ask
2 little questions, little short, easy questions and you just
3 answer my specific question and we should not run afoul
4 with His Honor's ruling, okay? All right?

5 A Uh-huh.

6 Q All right. Did you discuss your medical history
7 with your lawyer, Ms. Peggy Hinds?

8 A You mean my accident?

9 Q Yes, did you tell her that you had been in a
10 serious car accident?

11 A Yes.

12 Q And how long was that car accident before the
13 incident you were on trial for?

14 A Not long.

15 Q Within a year?

16 A Yeah, yeah.

17 Q A good bit less than a year?

18 A I'm not sure when.

19 Q Within a year?

20 A Yes.

21 Q Okay. And can you describe for us briefly what
22 your injuries were in that car accident?

23 A Well, I -- I --

24 THE COURT: You need to speak up because the Court
25 Reporter can't hear you right there. You've got to talk

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 louder than that.

2 BY MS. SHURLING:

3 Q And your lawyer can't hear you either and if I
4 can't hear you then I can't decide what to ask next. I'm
5 sorry.

6 A I have a hard time speaking sometimes and I get
7 angry because I can't -- people that know me can't --

8 Q Mr. Haynes, let me tell you something. This Court
9 is not going to make judgments about how your speech
10 sounds, okay; you don't have to be worried or embarrassed
11 about how you sound when you talk. And I will state as an
12 officer of the Court, Your Honor, that from my very first
13 meeting with Mr. Haynes forward, he has exhibited great
14 difficulty --

15 MS. HARRINGTON: Your Honor, I would object because
16 that is an issue that Ms. Shurling is attempting to raise
17 his competency here and so any testimony or her previous
18 experience representing him I would object to it.

19 THE COURT: I'm Edgar Dixon and I'm going to let
20 her tell me -- tell me that. You can go forward.

21 MS. SHURLING: Thank you. Your Honor, I would just
22 note that from my earliest communications with him through
23 present day, he has exhibited difficulty with speech. He
24 has difficulty getting his words out at times. I would
25 come close to describing it as a stutter, but it is

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 different from what I -- I'm not an expert. It is not --
2 it is different from what I traditionally describe as a
3 stutter, but close. And so I -- I just would like the
4 Court to note that this is not something that's just taking
5 place today. It's consistent with my prior experience with
6 him.

7 THE COURT: All right.

8 BY MS. SHURLING:

9 Q Ezekiel, I want you to listen to me very carefully.
10 Mr. Haynes, I'm sorry, I didn't mean to sound
11 disrespectful. This is a very, very important day in Court
12 for you. I know it's hard, but you have got to concentrate
13 and speak up and nobody's going to make fun of you,
14 nobody's going to feel badly about you. You've got to just
15 do your best and speak up so we can hear you, okay?

16 A Yes.

17 Q Okay. Did you discuss this automobile accident
18 with your lawyer, Peggy Hinds?

19 A Yes, ma'am.

20 Q Did you discuss with her how the accident had
21 affected you mentally?

22 A Yes, ma'am.

23 Q Did you advise your lawyer of any ways that you
24 were different after the accident from the way you'd been
25 before the accident?

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 A Yes.

2 Q Can you tell us some of the things you told her?

3 A That I get angry. I have seizures and scared or
4 mad, mad. I can't, you know -- I can't --

5 Q Did the injury sustained affect your memory?

6 A Yes, it did.

7 Q How significantly did it affect your memory?

8 A I don't -- I don't --- more mentally changed or
9 efficient.

10 Q The difficulty that you're having with speech, is
11 that something that came about after the accident or have
12 you always had difficulty with speech?

13 A I have --

14 Q Since the accident?

15 A After.

16 Q Okay.

17 THE COURT: He needs to respond.

18 MS. SHURLING: I thought -- I'm sorry, I thought he
19 said after.

20 THE COURT: Did you say after?

21 THE WITNESS: After.

22 THE COURT: Okay. I'm sorry.

23 MS. SHURLING: That's okay. It's difficult. I
24 concede?

25 THE COURT: Ms. Shurling, I'm not trying to keep

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 you from -- or telling you how to do this, but you had
2 indicated you were going to put his mother up. Do you
3 think that would be more effective?

4 MS. SHURLING: That's exactly what I was just
5 shifting gears to do. I'm going to address some of that
6 with the mother shortly.

7 BY MS. SHURLING:

8 Q Did you talk with Attorney Hinds about how you
9 might could try to use your medical history in an argument
10 about whether or not your statement ought to be admissible
11 at trial?

12 A Yes.

13 Q Did y'all talk about that?

14 A Yes.

15 Q Okay. And did she tell you -- you said -- earlier
16 I asked you about knowing about hearings and jury
17 instructions and stuff; you didn't discuss any of that with
18 her?

19 A No.

20 Q Okay. So what did she tell you about how your
21 mental history and your injuries might be used at trial?

22 A She -- she -- she told me -- she told me that my
23 mental health is like problem.

24 Q Like what, pardon me?

25 A Just a problem.

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 Q Okay. Let me move on for just a moment. Did she
2 discuss with you telling the judge about your mental
3 history, your medical history, as part of the sentencing
4 procedure in this case.

5 A No, she said she wasn't going to do that.

6 Q Okay. And why did she tell you she wasn't going
7 into that in your sentencing?

8 A It was her and my mom, just about my mental health
9 records and she didn't want to go in front the judge with
10 me because she wanted me to tell the Judge.

11 Q Okay. Let me be clearer. I'm not talking about
12 using it at trial. I'm talking about once you decided you
13 were going to enter a guilty plea, you remember when you
14 were going to Court for the guilty plea?

15 A Yes.

16 Q Did you understand that there was a negotiated plea
17 agreement for you to plead guilty to murder and that you
18 would get somewhere between the minimum of 30 years, but
19 never more than a cap of 40?

20 A Yes, that's what she said.

21 Q Okay. And you knew that?

22 A Yes.

23 Q Okay. Did she discuss using your medical condition
24 as a way to try to convince the judge to give you on the
25 low end of that range, on the 30-end-year range instead of

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 the 40; did y'all discuss that?

2 A Yes.

3 Q But she didn't do it?

4 A No.

5 Q Did you want her to?

6 A Yes.

7 Q Okay. Now during -- well first off, before you
8 made a decision to plead, did Ms. Hinds review, you guys
9 all call it your motion for discovery, but it's not
10 actually the motion; it's the materials the State provided
11 your lawyer after the motion was final. Your discovery
12 materials, did she review those with you before you entered
13 your plea?

14 A No.

15 Q Okay. Did she -- what did she tell you about the
16 forensic evidence in this case; do you know what that
17 means, forensic evidence?

18 A No.

19 Q What, if anything, did she tell you about footprint
20 evidence in this case?

21 A She -- she said that they had a footprint.

22 Q She said they had footprints?

23 A Yes.

24 Q And did she, what did she tell you about the
25 State's position; did she say they said it was a match to

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 your shoes?

2 A She said it was a match, but not really it was like
3 1 in like 99 something.

4 Q Okay. She said it was a match, but it wasn't in
5 blood like they wanted to say?

6 A Yes.

7 MS. HARRINGTON: Objection. I don't believe that
8 was his testimony and Ms. Shurling is giving testimony.

9 BY MS. SHURLING:

10 Q Well, say it again. I'm sorry.

11 A She said that they had a footprint like mine, but
12 it wasn't a match --

13 Q Do you recall during your guilty plea proceeding a
14 point in the record when the prosecutor told the judge that
15 if they had gone to trial --

16 MS. SHURLING: Your Honor, I think it's on page 13.
17 Let me check real quick. It is. Page 13 of the guilty
18 plea record, Your Honor, lines 16 through 19.

19 BY MS. SHURLING:

20 Q Do you recall them saying they found shoe
21 impressions inside the trailer that we believe we could
22 have proved were actually put in her blood that matched the
23 defendant's boots or his shoes; you remember the Solicitor
24 saying that?

25 A Yes.

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 Q Based on what Ms. Hinds had told you about the
2 discovery, was that accurate; was that right?

3 A No.

4 Q Did your lawyer object to that?

5 A No.

6 Q Did you know that you could speak up and say that's
7 not right?

8 A No.

9 Q Would you have wanted your lawyer to point out to
10 the judge that they did not have a footprint in the
11 victim's blood?

12 A I didn't know.

13 Q After your plea, at some point, did you request a
14 copy of your discovery materials from your trial attorney?

15 A Yes.

16 Q And in those discovery materials, did you find a
17 report from SLED that said that the footprint in question
18 did not contain phenol and was probably mud?

19 A Yes.

20 MS. SHURLING: A moment's indulgence, Your Honor.

21 (WHEREUPON there was a pause in the proceedings.)

22 BY MS. SHURLING:

23 Q At some point in the multiple prose pleadings you
24 filed in this case, the papers, legal papers you filed
25 yourself, did you attach pages from the discovery received

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 from Ms. Hinds' file.

2 A Yes.

3 MS. SHURLING: May I approach, Your Honor?

4 THE COURT: You may.

5 BY MS. SHURLING:

6 Q Do you recognize this document?

7 A Yes.

8 Q Is this page part of the discovery materials that
9 were sent to you by Ms. Hinds?

10 A Yeah.

11 Q And the number up in the right-hand corner here,
12 that was put on there by you and it was put on there by you
13 when you filed this document along with some of your pro se
14 pleadings?

15 A Yes.

16 MS. SHURLING: Your Honor, at this time, I would
17 move to introduce this document as Applicant's 1.

18 MS. HARRINGTON: The State has no problem with this
19 document coming in. However, it appears it's only part of
20 a full report. At the bottom, it says results and you can
21 see there is nothing listed. The State would object unless
22 the entire complete report comes in.

23 THE COURT: Do you have the complete report, Ms.
24 Shurling?

25 MS. SHURLING: Your Honor, I have two pages. The

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 pages unfortunately are not numbered. So I don't know.

2 THE COURT: Are those the two pages you have?

3 MS. HARRINGTON: Your Honor, there's two pages in
4 the report, Your Honor.

5 THE COURT: Okay.

6 MS. HARRINGTON: The State would just note our
7 objection for the record that there is no one here to
8 authenticate that that's the entire report. The latent
9 print report that I received is different than these two
10 pages. They're not stapled together and there's no way to
11 tell if this is the complete report or how many pages the
12 report is.

13 THE COURT: All right.

14 MS. SHURLING: And I would simply note, Your Honor,
15 that I am introducing this to show that the -- and I will
16 by the way introduce other documents to verify that the lab
17 case number on this page is the same lab case number that
18 has been used on a complete set of DNA materials that have
19 been provided to me directly by SLED. So we can confirm
20 the SLED ID number and that it indicates -- it has a list
21 of all the physical evidence sent to SLED and that verifies
22 that I-26 was the footprint and I-27 was the other
23 footprint and I-27 it indicates that the photo sent to
24 document footwear phenol is negative, which anybody that
25 watches CSI knows what phenol is. And that footwear

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 appears to be -- I mean it says, Your Honor, footwear
2 appears to be in mud, but it was an impression, so I
3 presume that that is a typo and it meant footprint and I
4 have an extra copy of this, Your Honor.

5 THE COURT: Let's be --

6 MS. HARRINGTON: Your Honor, when you're talking
7 about what I-26, are you referring to a 3-page latent
8 prints department report? Because I don't see any
9 description on the sheet and I can't find it in our file.

10 MS. SHURLING: One second, Your Honor, I've got my
11 cart somewhat before the horse.

12 Your Honor, at the top of this document, it
13 states -- I'm sorry. It says that I items 26 and 27 was
14 received in a cardboard box, were further contained in a
15 brown paper bags. Item 26 was 4 separate cuttings, all
16 pieces were received. And then if you go to a SLED DNA
17 analysis report that I will get into in a moment, it shows
18 the results of the DNA testing on Item 26 which was the one
19 print. On the other one there is no DNA report on it
20 presumably because this one says that it was negative for
21 phenol and was mud.

22 MS. HARRINGTON: Your Honor, the State would just
23 object. It might be easier for us to go ahead and
24 introduce these in. It would just be I here. There are
25 different numbers for -- for different items that reflected

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 her latent reports as well as DNA. I see two different
2 I-20, items 26.1 and 26.2 are clearly different latent
3 prints and clearly different in DNA analysis. If there is
4 no explanation here, the State would object to that. It is
5 not found in the Solicitor's file and there's also no date
6 on here.

7 MS. SHURLING: I can explain, Your Honor.

8 THE COURT: Okay. I'll give you an opportunity to
9 explain.

10 MS. SHURLING: It was the representation of the
11 State that they had a footprint that they could prove --
12 they believe they can prove it matched my client and that
13 it was in the victim's blood. The DNA report, this
14 document shows four cuttings from the kitchen tile were
15 admitted under Item 26. The DNA report shows a report on
16 those four items under 26. It shows nothing for an
17 examination of Item 27. The reference to Item 27 on this
18 one says that the phenol was negative and that the
19 footprint appeared to be mud.

20 THE COURT: Okay. But I think Ms. Harrington's
21 objection is that page was not part of the -- of the
22 report, not in the Solicitor's file and it's not --

23 MS. HARRINGTON: And I -- I want, and I believe we
24 have testimony. I don't want to speak ahead, but I do not
25 believe that that is in the public defender's file as well.

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 MS. SHURLING: Your Honor, I just solved it. One
2 moment please. In the footprint report, which is yet
3 another document, it describes Item 26 as being four
4 cuttings from the kitchen crime scene and then each
5 sub-number references the floor cuttings.

6 THE COURT: Right.

7 MS. SHURLING: And it then refers to photographs
8 that were taken, the footwear is 26.1, another photograph
9 is 26.2, the DNA report on the other hand refers to DNA
10 testing done on swabs from the actual floor before the
11 pictures were taken and refers to the four cuttings from
12 the kitchen floor. Item no. 27 on this latent print
13 report, there's no reference to Item 27 on it.

14 THE COURT: Yes, ma'am. And I understand that.
15 What Ms. Harrington wants --

16 MS. HARRINGTON: The State's objection is that
17 there's not anyone here from SLED to analyze this. I've
18 never seen this before. It's not in the Solicitor's file
19 and I just can't --

20 THE COURT: And I understand. If it's not part of
21 the solicitor's file and if nobody can identify that page,
22 you know --

23 MS. SHURLING: Your Honor, she has the complete
24 report sitting there.

25 THE COURT: She doesn't have any --

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 MS. HARRINGTON: This is not a page from this
2 report and it may be easier to introduce this. I have
3 copies, but this is not a part of the latent print report;
4 it's 3 pages and I'd like to enter it as a Court's Exhibit
5 and we'll provide the copies, Your Honor. And, Your Honor,
6 I apologize, I only have one. I have a copy of the latent
7 prints --

8 MS. SHURLING: But that's this one. You've got the
9 whole --

10 MS. HARRINGTON: That's not it right there.

11 MS. SHURLING: Okay. You've got this one.

12 MS. HARRINGTON: Your Honor, I'd like to introduce
13 these as a Court's exhibit. I only have one copy of the
14 DNA.

15 MS. SHURLING: Let me get clear on what you're
16 handing up.

17 MS. HARRINGTON: This is from your office.

18 MS. SHURLING: The DNA report.

19 MS. HARRINGTON: And this is the 3-page SLED.

20 MS. SHURLING: Right.

21 MS. HARRINGTON: I just handed you as the Court's
22 Exhibits.

23 MS. SHURLING: Your Honor, I'd be happy to move
24 those in as Applicant Exhibits.

25 MS. HARRINGTON: Do you have another copy? I only

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 have a personal copy.

2 MS. SHURLING: I do. And, Your Honor, on the copy
3 of the DNA report from SLED, just by way of authentication,
4 I'm sorry, my mouth's not working, I left the e-mail
5 transmission from Robin Taylor, who was custodian of
6 records from DNA, the DNA Section, her e-mail encrypted
7 e-mail address and all on the top of this to authenticate
8 the document.

9 THE COURT: I think the only thing that they wanted
10 was to make sure that they had -- other than you, for it to
11 go into evidence. That's the only thing. And as long as
12 we have pages, if everybody's in agreement with those
13 pages, if you'd mark them and identify them on the record,
14 we'll be fine.

15 MS. SHURLING: Yes, sir, Your Honor, and then I'm
16 going to address this one that we're arguing about in a
17 moment.

18 THE COURT: Okay.

19 MS. SHURLING: Because I have got to be able to
20 authenticate this somehow. All right.

21 Initially, Your Honor, I would introduce the
22 complete DNA report from SLED indicating SLED Lab No.
23 L04-13558?

24 THE COURT: Go ahead.

25 MS. SHURLING: And it is dated May 9th, 2005 and

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 this will be Applicant's 1. All right.

2 THE COURT REPORTER: 2.

3 MS. HARRINGTON: Is it 7 pages; I just want to make
4 sure we have the complete one in. If it's all 7 pages the
5 State has no objection.

6 MS. SHURLING: Let me count them. They are indeed,
7 Your Honor. They're out of order, but they're all here.

8 THE COURT: Seven pages?

9 MS. SHURLING: Yes, sir.

10 THE COURT: And that's Applicant's --

11 THE COURT REPORTER: We've got the Forensic
12 Services lab report from SLED is No. 1 and then this is the
13 DNA right here.

14 MS. SHURLING: I'm sorry. The lab report --

15 THE COURT: You both come up here and let's make
16 sure; I think that might be the one we're arguing about.

17 MS. SHURLING: Let's do the DNA report please as
18 No. 1 and then the 3-page latent print department, 3
19 pages --

20 THE COURT REPORTER: Is No. 2.

21 MS. SHURLING: Is No. 2.

22 THE COURT: That's the latent print?

23 MS. SHURLING: Yes, Your Honor.

24 MS. HARRINGTON: And the State has no objection to
25 either of those, Your Honor.

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 THE COURT: Okay. So Applicant's 1 would be the
2 DNA Reporter and Applicant's 2, is the latent prints and
3 they're in without objection.

4 (WHEREUPON Applicant's Exhibits 1 and 2 were
5 entered into evidence.)

6 MS. SHURLING: Yes, Your Honor, and I will address
7 the presence of this page addressing the footprint on
8 another SLED document with Ms. Hinds when I have her on the
9 stand. For now I would just like to ask that it be marked
10 as Applicant's for ID only.

11 THE COURT: Okay. So Applicant's 3 for ID only?

12 MS. SHURLING: Yes, sir.

13 THE COURT: And that's in -- and what would that be
14 called; what is that on the heading of that page?

15 MS. SHURLING: It is --

16 The COURT REPORTER: Latent Print and Crime Scene
17 Department Examination Worksheet.

18 THE COURT: Latent Print Worksheet. Okay.

19 MS. SHURLING: And that document, Your Honor,
20 reports the -- the way the items were received whether they
21 were in cardboard boxes or evidence bags or whatever and
22 then describes each item. And on the description of that
23 shoe print, it notes that it was tested for phenol and
24 negative and so forth. We'll get back into that in a
25 minute.

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 BY MS. SHURLING:

2 Q So we'll backtrack. You would have wanted your
3 attorney to point out to the judge that was getting ready
4 to sentence you that, that there was no evidence of a
5 footprint in blood?

6 A Yes.

7 Q Okay. And by the time you were entering your plea,
8 had there already been in the discovery information that
9 said that the footprint was consistent with your shoes, but
10 it was also consistent with anybody else with that same
11 kind of shoes, with the same characteristics?

12 A Yes.

13 Q Okay. And would you have wanted your lawyer to
14 interrupt the Solicitor and make that point clear?

15 A Yes.

16 Q To the Court?

17 A Yes.

18 Q Okay. So you would have wanted her to interrupt
19 and object to this representation about the footprint in
20 blood and you would have wanted her to introduce for the
21 Court the medical records concerning your case and some
22 testimony or statements from your mother or something to
23 put the issue of your medical condition -- your medical
24 history before the Court in plea and mitigation to the
25 judge in sentencing?

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 A Yes.

2 Q And I explained to you what plea and mitigation
3 meant, didn't I?

4 A Yes.

5 Q You should have known before I told you; did you?

6 A Yes.

7 Q Okay. I just want to make it clear on that.

8 MS. SHURLING: All right. Your Honor, if I could
9 have one moment to reorganize my --

10 Your Honor, I would note for the record that the
11 document that was introduced as Applicant's 2 is the
12 document that indicates that on each of these shoe
13 impression photographs that Item No -- and they're about
14 five of them, could have been made by the Item 30, left or
15 right shoe, or another shoe that displays the same combined
16 class characteristics --

17 THE COURT: Okay.

18 MS. SHURLING: -- as opposed to a claim of some
19 sort of match. Okay.

20 BY MS. SHURLING:

21 Q At the time you were making your decision about
22 going to trial or pleading, that footprint technology
23 wasn't the same as like fingerprints; did you understand
24 that?

25 A No.

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 Q If you had understood that the Courts have said
2 that footprint technology is not as advanced and conclusive
3 as fingerprint testimony, would that have impacted your
4 decision about going to trial?

5 A Yes.

6 Q Did your lawyer ever explain that to you?

7 A No.

8 Q Okay. Sorry. Moving right along.

9 MS. SHURLING: A moment's indulgence, Your Honor,
10 I'm just checking these off to be sure -- we've covered I
11 think almost everything.

12 BY MS. SHURLING:

13 Q Did you discuss with your lawyer the circumstances
14 under which your statement was given? Did she talk to you
15 about when they took your statement?

16 A Yes.

17 Q And were you questioned on one day? two days?
18 three days? How long were you questioned?

19 A Two.

20 Q Two days, and where did you stay between the first
21 day and the second day?

22 A In jail.

23 Q In jail?

24 A Yes.

25 Q Okay. And did you tell law enforcement anything

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 about being involved in this crime or knowing anything
2 about it on the first day of your interrogation?

3 A No.

4 Q Nothing?

5 A No.

6 Q How about the other way around; did law enforcement
7 reveal to you a lot of the details about Shaunta Davis'
8 death?

9 A Yes.

10 Q How long did they interrogate you?

11 A Maybe two hours, three hours.

12 Q Okay. And when they were questioning you about
13 whether you were involved in the killing, did they tell you
14 things about the crime scene while they were questioning
15 you?

16 A Yes.

17 Q Did their questions contain information about the
18 case?

19 A Yes.

20 Q For example, did they tell you how she died?

21 MS. HARRINGTON: I object to leading at this point.

22 THE COURT: And I know that she's leading and I'm
23 just trying to figure where we're going with this?

24 MS. SHURLING: Oh, okay. I apologize, Your Honor,
25 I'm trying to --

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 BY MS. SHURLING:

2 Q You didn't give your statement until the second
3 day?

4 A Yes.

5 Q Did you discuss with your lawyer how if you went to
6 trial what arguments you could make for keeping that
7 statement out of evidence?

8 A The statement --

9 THE COURT REPORTER: What?

10 BY MS. SHURLING:

11 Q It was what?

12 A A dream I had that night.

13 Q The statement was about a dream you had that night?

14 A Yes.

15 Q What night? The night of the killing or the night
16 you spent in jail?

17 A The night in jail.

18 Q And did you tell your lawyer that?

19 A Yes.

20 Q Did the written statement say anything about it
21 being about a dream?

22 A He said, Just write what you said.

23 Q Okay. So you discussed all this with your lawyer?

24 A Yes.

25 Q And again, did she talk to you about how you could

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 use that to try to convince the judge not to let your
2 statement come in evidence?

3 A No.

4 Q Did she ever talk to you about how evidence of your
5 medical condition, your memory loss; that sort of thing
6 could be used to explain some of your behavior on day one
7 of your interrogation, the first time the police talked to
8 you?

9 A No.

10 Q No?

11 A No.

12 Q Okay.

13 MS. SHURLING: I'll move along; Your Honor.

14 BY MS. SHURLING:

15 Q Okay. You said you knew from your lawyer that the
16 State said there was -- going to say there was a match
17 footprint, right?

18 A Yes.

19 Q She told you it wasn't in blood; she told you they
20 said it wasn't blood, right? Is that right?

21 A Yes.

22 Q Well, did she talk to you about how if you went to
23 trial, the State would be talking about all the evidence
24 that they had against you; you talked about that, right?

25 A Yes.

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 Q Did she ever talk to you about some of the stuff
2 that you could have introduced in your defense if you went
3 to trial?

4 A No.

5 Q Did she tell you that you would have a right to
6 argue the lack of evidence the same way they were arguing
7 the presence of forensic evidence?

8 A No.

9 Q Just for example, did you talk about the fact that
10 there weren't any fingerprints?

11 A No.

12 Q The fact that there weren't any hair samples found
13 at the scene that matched you or anything like that?

14 A No.

15 Q You never talked about how you could use that at
16 trial?

17 A No.

18 Q Okay. Did you ever talk about other crimes that
19 you might could ask the judge to tell the jury about if you
20 went to trial by jury?

21 MS. SHURLING: Your Honor, that's in reference to
22 allegation number 16 and 17.

23 THE WITNESS: I don't understand.

24 BY MS. SHURLING:

25 Q Okay. You were charged with murder, right?

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 A Yes.

2 Q Did your lawyer ever talk with you about the fact
3 that if you went to trial, depending on what evidence came
4 out, that you might could ask the judge to let the jury
5 consider what we call lesser-included offenses?

6 A No.

7 Q Okay. Now I explained to you what a
8 lesser-included offense was, didn't I?

9 A Yes.

10 Q Okay. Did you ever hear anything about a crime
11 called voluntary manslaughter?

12 A No.

13 Q Did your lawyer ever cover with you that there was
14 another kind of killing crime, we call it a homicide, that
15 was less serious than murder?

16 A No.

17 Q So there's no discussion about the difference
18 between a killing that's a murder and a killing that's a
19 voluntary manslaughter?

20 A No.

21 Q If you had known if you had proceeded to trial by
22 jury there might have, there could have been an opportunity
23 to ask the jury to consider your possible guilt of this
24 lesser crime, would you have pleaded guilty or would you
25 have gone to trial.

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 A I -- I don't -- I don't -- I don't want to go to
2 trial.

3 Q Okay. Ezekiel, you said you talked to your lawyer
4 about your car wreck and your health issues. Did you ever
5 tell her you hear voices sometimes?

6 A Yes.

7 Q Pardon?

8 A Yes. Yes, ma'am.

9 Q You did? And have you ever talked to doctors about
10 hearing voices or, or counselors about hearing voices
11 before that, before this trial?

12 A Yes.

13 Q I'm sorry, this plea. I misspoke.

14 A Yes.

15 Q And you shared that information with Ms. Hinds?

16 A Yes.

17 Q And again did she discuss anything with you about
18 potentially using that part of your history in your favor
19 if you went to trial?

20 A No.

21 Q And did she discuss possibly introducing that as a
22 factor to get the judge to consider being lenient with you
23 on your sentence?

24 A Yes.

25 Q She did discuss that?

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 A Before I plea.

2 Q Pardon?

3 A Before I plea.

4 Q Okay. You understood that the plea bargain was for
5 sentence of 30 to 40 years, correct?

6 A Yes, ma'am.

7 Q And you remember the judge asking you if you knew
8 the sentence for murder had to be served day for day,
9 right?

10 A Yes.

11 Q Okay. And did I understand your testimony
12 correctly a moment ago; you said nobody ever talked to you
13 about another kind of homicide called voluntary
14 manslaughter?

15 A No.

16 Q So I assume that nobody told you that a conviction
17 for that crime would not result in a sentence that had to
18 be served day for day?

19 A No.

20 Q If you had known that, would that have impacted
21 your decision to enter a plea of guilty?

22 A Yes.

23 Q During your guilty plea proceeding, at some point,
24 did the judge ask your lawyer about whether you had a
25 mental health history?

Ezekiel Haynes - Direct Examination by Ms. Shurling

1 A Yes.

2 Q And did your lawyer tell the judge anything about
3 your history?

4 A No.

5 MS. SHURLING: Your Honor, my flag fell off. If I
6 may be permitted, I will look for that and recite into the
7 record while the State is asking their questions and I'll
8 provide the Court with that cite after the Respondent has
9 their time for cross.

10 MS. HARRINGTON: No questions for this witness.

11 THE COURT: You may step down. Thank you, sir.
12 All right.

13 MS. SHURLING: Your Honor, I would very briefly
14 call Betty Haynes please.

15 THE COURT: And before you call her, I have before
16 her, her direct examination during the hearing of the
17 original PCR hearing.

18 MS. SHURLING: Yes, sir, Your Honor.

19 THE COURT: It goes for about ten pages and
20 everything --

21 MS. SHURLING: I was just going to question her
22 about the chain on these medical records that I want to
23 introduce.

24 THE COURT: How -- we've already -- oh, the medical
25 records?

1 MS. SHURLING: The medical records, Your Honor.

2 THE COURT: Yeah, I'll let you bring her up for the
3 medical records, okay?

4 MS. SHURLING: Okay. And, Your Honor, in her
5 testimony at the original PCR proceeding and I'm sorry if
6 Your Honor can refresh my recollection.

7 THE COURT: Sure.

8 MS. SHURLING: Was there specific questioning about
9 memory loss? That's what I cannot recall.

10 THE COURT: I believe there was. She couldn't
11 remember much. Ezekiel was an A student. He couldn't
12 comprehend what the teacher was saying. Okay.

13 MS. SHURLING: Your Honor, if I may ask her about
14 the medical records and then be permitted just one or two
15 questions about the memory issue.

16 THE COURT: She's already got that in here. I'll
17 let you ask her a little bit more in there.

18 All right. We're going -- Let's do that and see if
19 I -- I'll let you ask maybe two questions about that.

20 MS. SHURLING: Ms. Betty Haynes, please.

21 THE COURT: I note for the record that we've
22 already gone over about half of what we had planned.

23 MS. SHURLING: Thank you, Your Honor. I will be
24 exceedingly brief.

25 THE COURT: Ma'am?

Betty Haynes - Direct Examination by Ms. Shurling

1 MS. SHURLING: I'll be exceedingly brief with this
2 witness.

3 Ms. Haynes, watch your step going up to the witness
4 box please.

5 BETTY HAYNES,
6 having been duly sworn, testified as follows:

7 THE COURT: All right. If you'd be careful getting
8 up there and get in there and pull the microphone close to
9 you and when you're comfortable, let me know so I can tell
10 Ms. Shurling to begin asking you questions. Pull up close
11 to it. Okay. Thank you.

12 You remember when you were sitting down there in
13 the audience how hard it was to hear your son.

14 THE WITNESS: Yes, sir.

15 THE COURT: Okay. You need to talk louder than he
16 did.

17 THE WITNESS: Okay.

18 THE COURT: Okay. Can you do that?

19 THE WITNESS: Yes, sir.

20 THE COURT: Okay. A little bit louder than that?

21 THE WITNESS: Okay.

22 THE COURT: Okay. All right, Ms. Shurling.

23 **DIRECT EXAMINATION**

24 **BY MS. SHURLING:**

25 Q Ms. Haynes, you're just as bad as Ezekiel. Sit up

Betty Haynes - Direct Examination by Ms. Shurling

1 and get a little closer to that microphone, okay?

2 A Yes, ma'am.

3 Q Thank you. Back when your son was originally in
4 trouble on these charges, did you sign papers for Ms. Peggy
5 Hinds so that she could get copies of some of your son's
6 medical records?

7 A Yes, ma'am.

8 Q And did you subsequently get a copy of those same
9 medical records for yourself?

10 A Yes, ma'am.

11 Q And after your son was convicted and the case was
12 turned over to the South Carolina Commission on Indigent
13 Defenses Appellant Division, did you provide his appeals
14 lawyer, Elizabeth Franklin Best, a copy of those medical
15 records?

16 A Yes, ma'am.

17 MS. SHURLING: May I approach, Your Honor?

18 THE COURT: Yes, ma'am.

19 MS. SHURLING: And I believe I've already given
20 Respondent a copy of these?

21 MS. HARRINGTON: Yes, and the State does have an
22 objection at the appropriate time.

23 BY MS. SHURLING:

24 Q Ms. Haynes, can you please look through these and
25 see if you could, first off, can you identify the letter on

Betty Haynes - Direct Examination by Ms. Shurling

1 top?

2 A Yes, ma'am.

3 Q What is that correspondence?

4 A South Carolina, CID.

5 Q Whose it from?

6 A This is SLED -- no, this is -- Ms. Best.

7 Q And what was the purpose of that letter?

8 A This is for to prove to her that Ezekiel had a
9 mental problem and that he was going to mental health in
10 Holly Hill.

11 Q This letter is where she's returning the medical
12 records to you after the appeal, correct?

13 A Yes, ma'am.

14 Q And she says she's retaining a copy in her file?

15 A Yes, ma'am.

16 Q Okay. And can you flip through these records for
17 me and see if you can identify those as the records that
18 you provided Ms. Best?

19 A Yes, ma'am, it's the records.

20 Q And again, just so the record's clear, this is a
21 copy of the same records that were provided to Attorney
22 Peggy Hinds?

23 A Yes, ma'am.

24 Q And this was prior to your son's plea or after?

25 A This was prior, prior to his plea.

Betty Haynes - Direct Examination by Ms. Shurling

1 Q Okay. Your Honor, I would move to introduce, I
2 think we can introduce the letter, the letter and the
3 records as 1 exhibit please. The Respondent has a copy and
4 I believe an objection?

5 MS. HARRINGTON: Yes, the State has a two-fold
6 objection. First I object under Rules of Evidence 901 for
7 improper authentication; no proper foundation has not been
8 laid to allow these medical records to come in. The State
9 would rely on Stevens v. Allen 336 S.C.439, 2002. This is
10 not the proper way to authenticate and move in medical
11 records.

12 Additionally, the State would object under 802 as
13 well.

14 THE COURT: Okay.

15 MS. SHURLING: And I would respond, Your Honor, by
16 noting the records are being introduced for the purpose of
17 identifying the reference that was provided by the
18 applicant's mother to defense counsel. I am not seeking to
19 introduce the records as proof of the matter asserted, but
20 rather proof of the records that were provided to defense
21 counsel.

22 MS. HARRINGTON: And if the State could briefly
23 respond, the records are part and parcel of the allegations
24 that Ms. Shurling is attempting get in involving his
25 medical history, which the State has already objected to

Betty Haynes - Direct Examination by Ms. Shurling

1 that coming in. Although Ms. Shurling is asserting it's
2 not for the proof of the matter asserted, the State would
3 still object under 802 as well as under 901. This isn't
4 proper identification.

5 THE COURT: Okay.

6 MS. HARRINGTON: And as to prejudice, calling it
7 prevalent -- it does show prejudice and the State would
8 object to those records coming in on those two grounds.

9 THE COURT: I'm going to get them marked. That
10 will be Appellate's -- Applicant's 3, 4, I think it's 4.
11 All right.

12 Now, we'll hear what Ms. Hinds has to say.

13 MS. SHURLING: Thank you, sir.

14 BY MS. SHURLING:

15 Q Okay. Ms. Haynes, I'm sorry, I've been doing this
16 long enough to know better. I apologize. Thank you.

17 Ms. Haynes, very, very quickly, how long was your
18 son's car wreck before these charges were brought against
19 him for murder?

20 A About six months.

21 Q And was there a marked difference in his mental
22 abilities after the accident from before?

23 A Yes, ma'am.

24 MS. HARRINGTON: Your Honor, the State would
25 object. It's already in the record from before. We heard

Betty Haynes - Direct Examination by Ms. Shurling

1 testimony about this and Your Honor was specific about --

2 THE COURT: I think I've already pointed it out and
3 I told her I'd let her ask a couple of brief questions.

4 MS. HARRINGTON: Thank you, Your Honor.

5 THE COURT: Yes, ma'am.

6 BY MS. SHURLING:

7 Q Did the -- based on your -- well, first off, where
8 was he living after the accident?

9 THE COURT: Okay. What I want you to do, if you
10 want to go into, you said you were going to ask a couple of
11 quick comments -- questions about mental.

12 MS. SHURLING: Yes, sir.

13 THE COURT: And --

14 MS. SHURLING: I was only establishing her
15 opportunity for observation and the next question is my
16 last question.

17 THE COURT: Okay.

18 BY MS. SHURLING:

19 Q Did he stay with you?

20 A Yes, ma'am.

21 Q Did you have an opportunity to observe his
22 condition?

23 A Yes, ma'am.

24 Q And did, in your observation, his memory change
25 after the accident?

Betty Haynes - Direct Examination by Ms. Shurling

1 A Yes, ma'am.

2 Q No further questions. Oh, you have to wait. The
3 Respondent may have something they want to ask you?

4 THE COURT: Ms. Harrington, any questions?

5 MS. HARRINGTON: Court's indulgence.

6 THE COURT: Okay. Take your time.

7 MS. HARRINGTON: No cross-examination of this
8 witness, Your Honor.

9 THE COURT: You may step down. Thank you, ma'am.

10 MS. HARRINGTON: I want to be clear. No. 4 was
11 only admitted for ID only, correct.

12 THE COURT: Wait just a moment. I want to hear
13 from Ms. Hinds. If Ms. Hinds remembers it or not.

14 MS. SHURLING: And I've got extras of those other
15 things too I think.

16 THE COURT: Okay. You going to call Ms. Hinds
17 next?

18 MS. SHURLING: A moment's indulgence.

19 THE COURT: Sure.

20 (WHEREUPON there was a pause in the proceedings.)

21 MS. SHURLING: Your Honor, I call attorney Margaret
22 Hinds to the stand please.

23 THE COURT: Okay.

24 BARBARA HINDS,

25 having been duly sworn, testified as follows:

Margaret Hinds - Direct Examination by Ms. Shurling

1 THE COURT: Ms. Hinds, I know you can speak --

2 THE WITNESS: I'll speak as loud as I can.

3 THE COURT: Okay. Thank you, ma'am.

4 **DIRECT EXAMINATION**

5 BY MS. SHURLING:

6 Q Thank you, Ms. Hinds.

7 Ms. Hinds, do you recall representing Ezekiel
8 Haynes?

9 A I do.

10 Q Before his guilty plea, did you discuss with him
11 the distinctions between a jury trial and a guilty plea?

12 A Yes, I did.

13 Q Did you explain to him his right to be fully heard
14 in his defense in a jury trial?

15 A I did.

16 Q Did --

17 MS. HARRINGTON: I object to leading.

18 THE COURT: Okay. Well, I will note your objection
19 to leading.

20 But Ms. Shurling, I'm going to let you lead because
21 I want you to move it along.

22 MS. SHURLING: Thank you.

23 THE COURT: And if we get to a critical place, then
24 I ask you to not lead.

25 MS. SHURLING: Thank you.

Margaret Hinds - Direct Examination by Ms. Shurling

1 THE COURT: Okay. Okay. Go ahead.

2 BY MS. SHURLING:

3 Q Did you discuss with him your ability to
4 cross-examine the State's witnesses if you went to trial?

5 A Yes, I did.

6 Q Did you explain to him the legal concept of
7 impeachment?

8 A Yes, I did.

9 Q Did you explain to him the different ways in which
10 you as his defense attorney could impeach the credibility
11 of the State's witnesses?

12 A Absolutely. I actually have made a speech where I
13 go through and I explain and try to educate clients
14 about -- most clients have never seen a trial. Maybe
15 they've seen something on TV, so I've got a procedure that
16 I go through usually about midway through the process
17 explaining exactly what each is.

18 Q And in this case, Mr. Haynes was very young wasn't
19 he?

20 A He was.

21 Q 18?

22 A Yes.

23 Q And had no significant criminal history?

24 A He was on probation for -- I think maybe something.
25 It was a felony, but I don't think it was anything huge.

Margaret Hinds - Direct Examination by Ms. Shurling

1 Q Okay. It was a DJJ matter, wasn't it?

2 A No, my recollection, I could be wrong, but it was
3 actually an adult charges.

4 Q If I misspoke, I apologize.

5 A I want to say it was grand larceny.

6 Q Being a little more specific about preparing for
7 trial versus a guilty plea, did you explain to him how he
8 would have the opportunity to question the admissibility of
9 his statement if he went to trial?

10 A I did.

11 Q Did you explain to him that there would be a
12 hearing in front of a Judge out of the presence of the jury
13 on that issue?

14 A I did.

15 Q Did you tell him that regardless of what the judge
16 did that the jury would then have to be instructed that
17 they would also have to make certain threshold
18 determinations about the statement before they could
19 consider it as evidence of guilt?

20 A That is included in my explanation of trial
21 procedure, correct.

22 Q Do you by any chance have a copy of that?

23 A No, I don't.

24 Q And that's not something that you get clients to
25 sign off on, like a checklist or anything?

Margaret Hinds - Direct Examination by Ms. Shurling

1 A No, it's not.

2 Q Okay. And did you discuss with him the fact that
3 if he raised such issues concerning his statement at a jury
4 trial and were convicted that he would have the opportunity
5 to appeal the trial judge's rulings to a higher Court, to
6 an appellant court?

7 A He understood he had both the ability to appeal
8 either a guilty plea or to a guilty -- trial, yes.

9 Q Okay. And did you explain to him the limited value
10 of a direct appeal from a guilty plea?

11 A I believe I was probably a little more blunt than
12 that, but yes, I pretty much told him that an appeal from a
13 guilty plea was possible, it was his right, but it was not
14 likely to be successful.

15 Q Okay. So you told him he would get an appeal
16 whether he had a plea or he had a right to an appeal
17 whether he had a plea or a jury trial?

18 A That's correct.

19 Q Did you tell him what issues he could raise on a
20 direct appeal from a guilty plea?

21 A I don't know if that was specifically in the
22 context of appeals spoke about that, but in going over the
23 discovery, yes.

24 Q Okay. Well, maybe I should have asked that from
25 the other direction. Did you explain to him the things he

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1 could not appeal in a direct appeal from a guilty plea?

2 A That he was getting -- particularly he was giving
3 up the rights that he would have at trial.

4 Q Okay.

5 A Yes.

6 Q Do you recall on the record when the Solicitor
7 advanced to the Court that if they had gone to trial they
8 had matching shoe -- shoe prints that matched your client
9 that he believed they could have established were made in
10 the victim's blood?

11 A I remember the -- the evidence would have shown
12 only that they could have matched footwear consistent with
13 Mr. Haynes footwear, not that they could have matched it to
14 him. And no, there's nothing in discovery that said it was
15 in blood. I did not object. That should have been
16 objected to at the time that the prosecutor was giving his
17 recitation of the facts.

18 Q I'm sorry, you said you didn't object why?

19 A I didn't catch it.

20 Q Okay. But there -- there was information in the
21 discovery package that established that it was not blood?

22 A Yes, I knew that.

23 MS. SHURLING: Thank you. One moment. Pardon me.

24 BY MS. SHURLING:

25 Q DO you recall at some point Mr. Haynes bringing you

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1 and requesting a copy of the discovery materials in this
2 case?

3 A Not specifically, but I'm sure he probably did.

4 Q Could I ask you please to take a look at this
5 document that's been marked Applicant's 3 for ID only and
6 ask if you remember seeing that in the discovery materials?

7 A I've never seen that. I don't have a copy of it in
8 my file and I've never seen that.

9 Q Well, can you tell me what you had in the discovery
10 that established that the footprint was not blood?

11 A The longer report, the report -- the one that was 7
12 pages long.

13 MS. SHURLING: A moment's indulgence. Excuse me.

14 BY MS. SHURLING:

15 Q Applicant's 1 refers to DNA analysis on four swabs
16 from the kitchen, marked as Item 26.8, 26.9, 26.10, and
17 26.11?

18 THE COURT: Ms. Shurling, if you will let her look
19 at it.

20 MS. SHURLING: I'm just -- I'm sorry.

21 THE WITNESS: That's all right.

22 BY MS. SHURLING:

23 Q If you could please look at the bottom of page 4 of
24 7 and tell us what the report says concerning the analysis
25 on the four different swabs taken from 26?

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1 A Are you talking about this?

2 Q If you would publish, please, the last two lines.

3 A No human DNA detected from Items 26.8, 26.10 or
4 26.11.

5 Q Okay. And can you show me where on that report it
6 addresses a finding concerning the shoe impression that was
7 marked and referenced as No. 27?

8 A I could be wrong, but this is the DNA report. I
9 believe there was a report just on the footprint.

10 MS. SHURLING: A moment's indulgence, Your Honor.
11 I'm missing No. 2.

12 BY MS. SHURLING:

13 Q If you could look at Applicant's No. 2 for me and
14 identify that document?

15 A South Carolina Law Enforcement Division Forensic
16 Services Lab Report.

17 Q And doesn't it specifically refer to latent print
18 report as opposed to DNA?

19 A Yes, it's from the Latent Prints Department.

20 Q And if you could find in that report for me the
21 portion that references Item 27 being the other shoe
22 impression?

23 A Are you talking about the results section?

24 Q Yes.

25 A Okay. It says in Items 27.1 through 27.6, which

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1 would have been black and white photographs of footwear
2 impressions are not identified with the items or these
3 shoes.

4 Q So is there any finding in that report that
5 references what the print was made in, whether it was blood
6 or mud or --

7 A No.

8 Q So we know that neither Applicant's 1 or 2 would
9 have been the document that provided you that information.
10 Do you know what document you had that did?

11 A It may have been from listening here today quite
12 honestly. I don't remember, all I remember is that the
13 footwear impressions could be tracked to a shoe of similar
14 characteristics and nothing else that implicated Mr.
15 Haynes.

16 Q Okay. And so you are comfortable saying that you
17 knew prior to the plea that the impression was not in
18 blood; you had been provided some --

19 MS. HARRINGTON: Your Honor, I would object to Ms.
20 Hinds' testimony is that she's not sure if she heard that
21 for the first time today and that's what her recollection
22 is. Asked and answered already and a mischaracterization
23 of the testimony that we just heard from Ms. Hinds.

24 THE COURT: I think what she's trying to make sure
25 is -- and I could be wrong -- but that when Ms. Hinds was

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1 doing the plea that she felt uncomfortable the shoes were
2 not something that was going to convict him; is that where
3 we're going with that?

4 BY MS. SHURLING:

5 Q I want to -- if I understood you correctly, prior
6 to the guilty plea proceeding, you had been provided
7 information that the shoe impressions were not in blood;
8 you knew that. You don't remember how, but you know you
9 knew it?

10 A Whether it was because I -- if it had come back
11 blood, I believe that would have been DNA tested also and
12 there was no DNA test that I can recall on this -- on that.

13 Q Okay. And again, you didn't have any sort of
14 strategic or tactical reason for not objecting to that
15 reference by the solicitor?

16 A No. No, I didn't.

17 Q And at some point and I apologize my flag fell off,
18 but at some point during the proceeding, do you recall the
19 judge asking you about your client's mental health history?

20 A I believe he asked, yes.

21 Q And did you consider at that point making the judge
22 aware of your client's medical history and his severe
23 injury in the automobile accident and whatever information
24 you had gleaned from your investigation concerning his
25 medical condition?

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1 A I had different information than what's been
2 presented here. In one of the interviews with his parents,
3 I was told that he was diagnosed about 4 years prior to
4 this with a seizure disorder.

5 Q With what, pardon me?

6 A A seizure disorder.

7 Q Right.

8 A As far as I knew that was the extent of it. I was
9 not told, in all of my meetings with Mr. Haynes, he
10 responded, he asked questions, we were able to carry on
11 conversations. At that point in time, there was no doubt
12 in my mind that he knew what we had discussed and I was
13 able to discuss it with him.

14 Q Ms. Hinds, I'd like to ask you to look at these
15 records that I believe have been marked Applicant's 4 for
16 ID at the moment. And I realize that letter is from
17 Appellant Defense not from you. But if you could look
18 through those and see if they appear to be the same records
19 that you were provided a copy of?

20 A Only this first page.

21 Q Pardon?

22 A I haven't seen those.

23 THE COURT: Which page have you seen before?

24 THE WITNESS: What starts with this medical
25 assessment form.

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1 BY MS. SHURLING:

2 Q The Vocational Rehabilitation Assessment?

3 A Uh-huh (affirmative response).

4 Q May I see that please? I think there was another
5 copy.

6 MS. SHURLING: Your Honor, I'm going to have to ask
7 for that extra copy back. Thank you.

8 BY MS. SHURLING:

9 Q Ms. Hinds, I thought I understood you to say four
10 pages, but would you please take a look at this and see if
11 it's -- if that appears to be the six page report; is it
12 four or six; I think it's -- it might make it easier if I
13 point out that that document is printed front and back.
14 Your copy.

15 THE WITNESS: Beg the Court's indulgence. I'm
16 trying to put them in the same order and make sure that
17 what I've got is the same.

18 MS. SHURLING: I might can make this simpler, Your
19 Honor, may I see the copy from your file, Ms. Hinds, and we
20 may just introduce what we know came out of the file?

21 THE COURT: I'll just give you -- if you've got
22 copies made, I'll just give you mine.

23 MS. SHURLING: Okay.

24 MS. HARRINGTON: Your Honor, the State's copy
25 appeared to only be 1, 3, and 6 with no back on them. Let

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1 me make sure I have a complete copy.

2 THE COURT: We're going to have to do that.

3 BY MS. SHURLING:

4 Q Ms. Hinds, may I see your copy again please? If I
5 could get you to look at the front page of the last sheet
6 of the report --

7 THE COURT: And before you do that, since the State
8 doesn't have all of these --

9 MS. SHURLING: This is -- Thank you.

10 THE COURT: Does that have all the pages?

11 MS. SHURLING: It does, Your Honor. It actually
12 has a page or 2 I didn't have.

13 BY MS. SHURLING:

14 Q Ms. Hinds, if I could get you to look at page 5 and
15 6 at the bottom under the far left hand column captioned
16 with, What you want to change or need help with, it's at
17 the very bottom Item No. 4 and if you would look at the
18 corresponding No. 4 column on the far right side, which
19 says, How will you know things are better,

20 Tell me what is reported there, please. Addressing
21 the left-hand column first if you will?

22 A The voices can go away.

23 Q And the far right hand column?

24 A I'm not sure, ma'am, I can't -- I won't hear them.

25 Q I won't hear them?

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1 A Yes.

2 Q Thank you. So would you agree that in addition to
3 documenting the seizure disorder, that this document
4 confirms that he had been reporting auditory
5 hallucinations?

6 A That's what he's reporting in that draft.

7 Q It's documentation of him reporting auditory
8 hallucinations?

9 A Correct.

10 Q Thank you.

11 MS. SHURLING: Your Honor, at this point, I would
12 move to introduce this as Applicant's 5 I guess.

13 THE COURT: Before we do this, because I want Ms.
14 Hinds to keep her file, why don't we make a copy of it.

15 MS. SHURLING: Yes, Your Honor.

16 THE COURT: Any objection?

17 MS. HARRINGTON: The State would still object under
18 hearsay and aggregate grounds.

19 THE COURT: Okay. Since that -- since that came
20 out of her file, I'm going to let it in for purposes of
21 what Ms. Hinds would have had before her.

22 MS. SHURLING: Your Honor, I will commit to the
23 Court that in a matter of days when Madame Court Reporter
24 has submitted these for filing with the Clerk of Court's
25 Office, I will obtain a certified copy of this for Ms.

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1 Hinds' file and be responsible for getting it to her.

2 THE COURT: Okay.

3 MS. HARRINGTON: I would just like to make sure the
4 State has a copy of that.

5 THE COURT: Well, yeah.

6 MS. SHURLING: Oh, of course. I need one for my
7 file.

8 MS. HARRINGTON: Thank you, Your Honor.

9 THE COURT: Okay.

10 MS. SHURLING: And I need one for my file, Your
11 Honor.

12 THE COURT: Okay. Okay. Ms. Shurling, anything
13 else?

14 BY MS. SHURLING:

15 Q And my only point was did you consider raising the
16 full spectrum of the medical information you had available
17 to the judge?

18 A The problem is that the -- the rest of the report I
19 felt was more damning than anything else. It chronicles
20 aggressive behavior, assaultive behavior, and I thought
21 that it would hurt him more than help him.

22 Q Okay. Thank you. And it's your testimony here
23 today that you did discuss with Mr. Haynes the -- the
24 procedure you can employ for trying to keep his statement
25 out and his right to appeal the decision of the trial judge

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1 if he ruled adversely to you on that point?

2 A Yes, I did.

3 Q Thank you. In addition, did you ever discuss with
4 Mr. Haynes the various degrees of homicide recognized in
5 South Carolina, including specifically, voluntary
6 manslaughter?

7 A I believe we discussed it briefly on the first time
8 I met with him. My way of meeting with a new client,
9 usually I don't have discovery the first time I meet them,
10 so my point is to get in there, get some background
11 information and then to talk about what they're charged
12 with. Then give them the elements, give them the range of
13 potential sentences. If there are lesser included, I also
14 discuss it at that time. In addition, when we were meeting
15 months later, we discussed it again.

16 Q And did you explain to him that if he went to trial
17 by jury, depending on what evidence was deduced at trial,
18 you would have the opportunity to request that the jury be
19 instructed on voluntary manslaughter in addition to murder?

20 A Yes, I did.

21 Q And did you explain to him the differences in the
22 penalty ranges for voluntary manslaughter and murder?

23 A Yes, as well as the difference between day for day
24 and 85 percent.

25 Q Okay. Did you ever consider asking the Court for

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1 funding to hire an expert witness on the subject of false
2 confessions?

3 A To be truthful with the Court, I would probably
4 look into that today. I don't know that we were at a point
5 in 2005 that that was something that was readily done, and
6 in particular I doubt at that point in time in Orangeburg I
7 would have been given money for that, no.

8 Q I understand, but -- and I appreciate your candor
9 with the Court, but as I understand your testimony, if you
10 were dealing with the same client, same circumstances
11 today, you would consider asking for funding for such an
12 expert?

13 A I would.

14 Q Thank you. Did you -- you didn't even try in this
15 case?

16 A No, I did not.

17 Q And did you ever ask for funding for experts in
18 other cases during your time as a public defender?

19 A Not on false confessions, no.

20 Q Never?

21 A Never.

22 Q Did you ask for funding for psychologists or
23 psychiatrists in various cases?

24 A In some cases, yes.

25 Q And were you on occasion granted funding for

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1 independent psychological evaluations or psychiatric
2 evaluations?

3 A I honestly can't answer that. It goes back too
4 far. I can't remember where the lines changed and that
5 kind of thing. I don't want to misspeak.

6 Q Would you -- rephrase. At the end of the day, was
7 there any direct forensic evidence tying your client to
8 this murder?

9 A No, it was all circumstantial. It was basically
10 circumstantial.

11 Q Including the fact that he had been seen with the
12 young woman the night --

13 A In question.

14 Q -- before she died?

15 A Yes.

16 Q But she was, in fact, his second cousin, correct?

17 A Correct.

18 Q And they were known to spend a lot of time together
19 on a regular basis?

20 A That would be correct.

21 Q Okay. So would it be fair to say that the
22 statement in this case was your major hurdle in terms of
23 trying to defend Mr. Haynes?

24 A Yes.

25 MS. HARRINGTON: Objection. Argumentative.

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1 THE COURT: Okay. Well, I'll note it for the
2 record. Okay.

3 MS. SHURLING: Thank you. Your Honor, if I can
4 check my list real quickly, I believe I'm done.

5 THE COURT: Okay.

6 BY MS. SHURLING:

7 Q I guess the only remaining question would be,
8 you've already addressed the question of getting funding
9 for an expert. Did you ever discuss with the applicant or
10 even his family the possibility of raising a false
11 confession defense?

12 A That would have been what it would have come down
13 to if we were going to trial because we would have had to
14 have gotten over that hurdle somehow, yes.

15 Q But did you discuss the fact that there was such a
16 thing as a false confession defense with Mr. Haynes?

17 A Yes.

18 MS. SHURLING: No further questions, Your Honor.

19 THE COURT: Ms. Harrington?

20 MS. HARRINGTON: Your Honor, may we have a brief
21 break before -- get a drink of water and hit the restroom
22 real quick.

23 THE COURT: That would be great.

24 MS. HARRINGTON: Thank you.

25 THE COURT: And, Ms. Hinds, you may step down if

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1 you'd like to, but as you are well aware, you may not talk
2 to the attorneys about your testimony.

3 MS. SHURLING: I'm fairly confident, she don't want
4 to talk to me anymore.

5 THE COURT: All right. We'll take about a 10
6 minute break.

7 MS. HARRINGTON: Thank you, Your Honor.

8 (WHEREUPON a brief recess was observed.)

9 THE COURT: All right.

10 MS. HARRINGTON: May it please the Court?

11 THE COURT: Yes, ma'am.

12 **CROSS-EXAMINATION**

13 **BY MS. HARRINGTON:**

14 Q Good afternoon, Ms. Hinds. How long have you been
15 practicing law?

16 A Since May of 1997.

17 Q Where are you presently employed?

18 A First Judicial Circuit, Office of the Public
19 Defender. That's been my entire career.

20 Q Do you remember your testimony in Mr. Haynes first
21 PCR hearing?

22 A Somewhat. I looked through it, I can't --

23 Q You've had an opportunity to review it before
24 coming today?

25 A I have.

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1 Q Do you recall testifying before that you met with
2 Mr. Haynes eighteen times prior to his guilty plea?

3 A I did.

4 Q Does that seem like a correct recollection?

5 A It does.

6 Q Did you file any Brady or Rule 5 motions in this
7 case?

8 A I did.

9 Q Do you believe that the State fully complied and
10 gave you all materials related to the case that they had?

11 A To my knowledge they have.

12 Q Do you have any reason to believe they didn't?

13 A No.

14 Q Did you review these materials with Mr. Haynes?

15 A I did.

16 Q And I believe you testified before on direct that
17 you went over all the elements of the -- of murder with him
18 and what the State would be required to prove at a jury
19 trial?

20 A I did.

21 Q I believe you testified there was a colloquy or
22 speech you go over with clients advising them of all their
23 trial rights, correct?

24 A Yes, ma'am.

25 Q And you advised him that if he was tried and

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1 convicted he could appeal, correct?

2 A I did.

3 Q Did you discuss Mr. Haynes version of the facts
4 with him?

5 A I did.

6 Q Can you describe what your client told you
7 transpired giving rise to these charges?

8 A There was more than one version. The final version
9 was very close to his second statement.

10 Q Do you have a copy of that second statement in
11 front of you?

12 A The one from 12/10?

13 Q Yes, I believe --

14 THE COURT: December 4th.

15 THE WITNESS: December 10th.

16 THE COURT: December 10th. Okay.

17 BY MS. HARRINGTON:

18 Q How many statements are in your file from your
19 client?

20 A I believe there were at least two maybe three.

21 Q And --

22 A Two for sure.

23 Q Can you -- when you say that the final version that
24 your client told you, when you said there were multiple
25 versions, what different things would change between the

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1 versions?

2 A Consistent with the first statement that he gave
3 the initial one was the he hadn't seen her at all. There
4 was a version where he had seen her and she was -- he was
5 actually -- she wanted to have relations with a young man
6 in the trailer. He was kind of being a watch guard in
7 terms of he was supposed to take her home when they were
8 done, but he fell asleep.

9 Q And then that final statement you said was closer
10 to statement number two, correct?

11 A Yes.

12 Q Can you summarize to the Court what statement
13 number 2 or the final version you heard from your client
14 was?

15 A Well, basically there was a group of young men over
16 there. There were words that the young men ganged up on
17 him at first. I believe that at one point the young lady
18 ended up in a confrontation with Mr. Haynes and it was at
19 that point that he ended up hitting her.

20 Q When you say hitting her, do you -- did he tell you
21 what he hit her with or do you recall from the statements
22 what he hit her with?

23 A I don't recall.

24 Q Does it -- never mind. Does the statement say
25 anything about wrapping a blind cord around her neck?

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1 A Yes, it did.

2 Q The statement talks about both hitting and wrapping
3 the blind cord around her neck?

4 A It did.

5 Q Is that consistent with the autopsy that was
6 performed on the victim?

7 A It is.

8 Q Did your client ever tell you that this statement
9 was the result of a dream?

10 A No.

11 Q Did your client ever tell you that this statement
12 was false?

13 A No.

14 Q Or that he was lying to law enforcement when he
15 gave this statement on 2/10 (sic) of '04?

16 A I -- I don't know that he ever did, he just told me
17 a different story. He never said it was false, but then he
18 said that he basically, like I said, told me another
19 version that was pretty close to what he had written in his
20 statement.

21 Q So eventually his story or version he told you was
22 consistent with what's in statement number two from 12/10
23 of '04?

24 A Yes, ma'am.

25 Q You stated that your client told you there was an

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1 altercation or fight with some boys, correct?

2 A Correct.

3 Q Did he give you the name of these boys so you could
4 track them down?

5 A He couldn't give me any kind of identification
6 information whatsoever. He said he didn't know them,
7 didn't know their names. I believe the only identification
8 was that maybe the young lady had told him they were white
9 city slickers.

10 Q Did you ever have to follow up and find these boys?

11 A There was no way to.

12 Q Did you discuss how the altercation could have
13 possibly been presented to a jury at trial in regards to
14 getting a voluntary manslaughter conviction?

15 A We discussed that.

16 Q Based on your years as appellant defender, do you
17 believe this case is a likely candidate for a voluntary
18 manslaughter conviction as opposed to murder?

19 A The problem as I saw it was, there was nothing else
20 corroborating his version of what happened; these boys even
21 being there. So they would have to believe that in order
22 to get the point where a jury would come back with
23 voluntary manslaughter. We did discuss it. My job is to
24 give him advice and I could say in all likelihood, I did
25 not think I did that.

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1 Q Additionally you testified that your client, Mr.
2 Haynes, had a confrontation with the victim, correct?

3 A That's what he told me, yes.

4 Q And he told you that then he struck her, correct?

5 A Yes.

6 Q After -- did he ever explain to you why after he
7 struck her a blind cord was wrapped around her neck?

8 A He did not.

9 Q Would you briefly characterize the state's evidence
10 against Mr. Haynes?

11 A Of course the statements implicated against
12 himself. The other stuff was circumstantial. It was the
13 fact that what evidence was found directly across the
14 street from where he was at, the fact that they had
15 witnesses who could show or try to show that he was the
16 last person seen with Shaunta or to be with Shaunta. The
17 first thing -- as I said, it was consistent with a type,
18 but it certainly didn't go directly to him. But there were
19 certainly things that could be argued in that case.

20 Q When you say consistent with type, is this the
21 first case you had dealing with latent shoe prints or shoe
22 impressions?

23 A No.

24 Q Is SLED often able to get a definitive match or is
25 it normally consistent with a certain type of shoe?

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1 A Usually consistent with a certain type. The only
2 time I've ever seen something get more specific is if there
3 is a particular disfigurement to the shoe. In other words,
4 that would make it unique in some way. If there had been a
5 specific gouge out of it at a certain spot. That kind of
6 thing.

7 Q Did you explain to your client that because it was
8 just a consistent type, not a match, you could argue to the
9 jury that this was indeed not his shoe?

10 A Yes.

11 MS. HARRINGTON: Court's indulgence?

12 (WHEREUPON there was a pause in the proceedings.)

13 BY MS. HARRINGTON:

14 Q After your initial discussions with Mr. Haynes, did
15 he ever ask you to enter into plea negotiations with the
16 State on his behalf?

17 A Yes, he did.

18 Q Did he ever tell you he wanted a trial?

19 A I think towards the beginning -- I don't know that
20 he ever said, I want a trial, but that looked to be where
21 we were going. If I can refer to my notes, I think I can
22 tell you when he started asking me about a plea.

23 Beginning of May. There was a meeting at the
24 beginning of May where -- he had said that he was looking
25 to see what kind of plea offer I could get him.

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1 Q Did the -- what offer did the State make in this
2 case? Or did they make multiple offers?

3 A They made two offers; they weren't very much
4 different though. Initially there was no offer. The first
5 offer was for basically 40 -- flat out 40. I continued to
6 try to negotiate over a period of time and the most I could
7 get with concession was a cap of 40.

8 Q Did you relay this offer to your client?

9 A I did.

10 Q Did you explain to him that the mandatory minimum
11 for murder was 30 years, and therefore, the sentence range
12 was potentially 40 years to 30 years or 30 to 40?

13 A I did.

14 Q And I believe you testified before you explained to
15 him day, day-by-day sentence, day-for-day sentence?

16 A I did. He absolutely was told it was a day-for-day
17 sentence.

18 Q You testified on direct that there's a guilty plea
19 or that there's a colloquy you go over with clients early
20 on to explain their rights to a trial, correct?

21 A Yes.

22 Q Is there anything you go over when a client is
23 getting ready to plea, some sort of guilty plea checklist
24 or anything?

25 A Yes.

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1 Q Does your file contain one for Mr. Haynes?

2 A It does.

3 Q Can you review for the Court the general review of
4 what's on there and what you covered with your client?

5 A The initial part -- basically the first three are
6 that -- what he's charged with; his age; education; we had
7 discussed his version of what happened; 4, 5, 6 and 7 all
8 the way down to eight, I guess, has to do with -- 7 has to
9 do with the -- he absolutely has a right to plead not
10 guilty; the rights that he would have a trial that he would
11 be giving up, if he pled guilty; the fact that he has the
12 right to appeal within 10 days; about the fact that we have
13 gone over lesser included offenses; the fact if he does
14 plead guilty he'll be under oath and obviously he has to
15 answer truthfully; 9 has to do with the maximum sentence on
16 whatever the person is charged with; 10 and 11 did not
17 apply in this particular case; 12 is documenting whether or
18 not the person is on probation or parole.

19 Q To the best of your recollection, was Mr. Haynes on
20 probation or parole at this time?

21 A I believe he was on for grand larceny.

22 Q Was that an adult offense?

23 A Yes, ma'am.

24 The next one would be that I had made no
25 representation with respect to length the of the sentence,

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1 other than -- and there was a place to fill it in and what
2 was written in is cap of 40 years/day-for-day sentence.

3 It goes on to say that the Judge is the final
4 sentencer. It talks a little bit about the potential
5 collateral consequences of some fees. Again it goes back
6 to whether the person has any kind of record. And has a
7 place for myself to sign and for the defendant to sign.

8 Q Did you sign a guilty plea checklist that you
9 reviewed with him?

10 A I did.

11 Q Did your client, Mr. Haynes, sign that guilty plea
12 checklist?

13 A He did, on May 16th.

14 Q And that was the day before the plea, correct?

15 A Yes.

16 Q Did he ever indicate to you that he didn't
17 understand any of those questions that you reviewed with
18 him?

19 A No.

20 Q And I believe you testified that you recalled your
21 past testimony from the first PCR hearing on May 19th of
22 2008, correct?

23 A I think I do.

24 Q Do you recall being asked about your client's
25 competency at that hearing?

Margaret Hinds - Cross-Examination by Ms. Harrington

1 A Yes.

2 Q Do you recall testifying before that you had any
3 reason to doubt his competency?

4 A I didn't. I can tell you that the young man here
5 today is not in the same shape as the one that I
6 represented back in 2005 in my opinion. In fact, we --
7 obviously I was present at the PCR in 2008 or '09, whenever
8 it was, and I saw a deterioration then also and I believe
9 that at this point he may be even worse. But at the time
10 that we entered into this plea, he was asked the questions,
11 he was answering questions, there was no doubt in my mind
12 he knew what was going on and knew what was happening and
13 knew what the consequences were.

14 Q Whose decision was it to plead guilty, yours or Mr.
15 Haynes?

16 A His.

17 Q Did you formulate any sort of strategy for
18 mitigation at the guilty plea?

19 A The fact that he had a violent record, the fact
20 that where the tragedy it was, that this was all family.
21 It was obvious to everybody that he cared about Ms. Davis.
22 Those kind of things and he was young.

23 Q Do you recall on direct being asked about what I
24 believe has been introduced as Applicant's No. 5, the
25 various documents you had in your file regarding his mental

Margaret Hinds - Cross-Examination by Ms. Harrington

1 health or medical condition?

2 A I do.

3 Q And I believe your testimony before was you didn't
4 want the Court to see the report because it showed
5 aggressive and hostile tendencies, correct?

6 A Correct.

7 Q Do you stand by that today?

8 A Yes.

9 MS. HARRINGTON: Court's indulgence.

10 (WHEREUPON there was a pause in the proceedings.)

11 BY MS. HARRINGTON:

12 Q Regarding the allegations about the SLED footprint
13 report, do you have a copy of that in front of you?

14 A I don't.

15 MS. HARRINGTON: May I approach, Your Honor --

16 THE COURT: Sure.

17 MS. HARRINGTON: -- with Applicant's No. 2?

18 THE COURT: I think it's No. 3.

19 MS. SHURLING: Three.

20 THE COURT: That's the one that's just for
21 identification; it's that one page.

22 MS. HARRINGTON: No, No. 2 is the full report.

23 THE COURT: All right. Well which one -- I think
24 that was, well No. 2 is in full. I thought you were asking
25 about the footprint.

Margaret Hinds - Cross-Examination by Ms. Harrington

1 MS. HARRINGTON: This does deal with the footprint.

2 It's the latent prints --

3 THE COURT: Okay.

4 MS. HARRINGTON: -- department report.

5 THE COURT: Okay. Let the Applicant see it.

6 Okay.

7 BY MS. HARRINGTON:

8 Q Do you recognize that document?

9 A I do.

10 Q Was this document in your file?

11 A It was.

12 Q Did you see any reason to challenge the
13 admissibility of this report if you were to go to trial?

14 A I think that the -- in my opinion, what -- if it
15 had been used was the fact that it was so vague it didn't
16 actually point directly to Mr. Haynes. In other words, if
17 there was a shoe that was consistent with the shoe that he
18 had.

19 MS. SHURLING: I apologize. I couldn't hear any of
20 that.

21 THE WITNESS: I'm sorry, I'll speak up. Can you
22 repeat the question?

23 BY MS. HARRINGTON:

24 Q Based on your review of the report that you had in
25 your file at the time, did you see any reason to challenge

Margaret Hinds - Cross-Examination by Ms. Harrington

1 the admissibility of that report?

2 A No, I did not.

3 Q And I believe you testified that it actually helped
4 your client that it was so vague and would have used that
5 to your advantage at trial?

6 A That would be correct. It could have been one of
7 any number of shoes.

8 Q And did you explain to your client how you could
9 use the report to your benefit at trial; that it was vague
10 and could be any number of shoes?

11 A We discussed that, yes.

12 Q Do you have Applicant's No. 1, which is the DNA
13 analysis from SLED in your file?

14 A I do have it in my file. I don't have it readily
15 accessible.

16 MS. HARRINGTON: May I approach, Your Honor.

17 THE COURT: Yes.

18 BY MS. HARRINGTON:

19 Q Let me hand you what's been marked as No. 2.

20 A Yes.

21 Q Can you turn to page 4 please?

22 A Yes.

23 Q Do you recall applicant's counsel asking you on
24 direct to read the second line from the bottom, No human
25 DNA detected from Items 26.8, 26.10 and 26.11 on direct?

Margaret Hinds - Cross-Examination by Ms. Harrington

- 1 A Correct.
- 2 Q Will you read that bottom line there for the Court?
- 3 A Insufficient human DNA detected for STRD analysis
- 4 from Item 26.9.
- 5 Q Item 26.9 is a piece of the floor as well, correct?
- 6 From the trailer?
- 7 A Correct.
- 8 Q And that doesn't say that there's no human DNA
- 9 detected, just that it's insufficient to run any sort of
- 10 report or analysis, correct?
- 11 A Correct.
- 12 Q And again, just so the record's clear, what's been
- 13 pre-marked as Applicant's Exhibit No. 3, you don't have a
- 14 copy of this in your file, correct?
- 15 A I do not.
- 16 Q And you've never seen this document before,
- 17 correct?
- 18 A No.
- 19 Q Ms. Hinds, do you recall testifying on direct that
- 20 you reviewed with your client that you could challenge the
- 21 statement he gave to law enforcement in a pre-trial
- 22 hearing?
- 23 A Yes.
- 24 Q Did he seem to understand this?
- 25 A He did.

Margaret Hinds - Cross-Examination by Ms. Harrington

1 Q And you explained to your client that you could
2 also challenge the statement in front of the jury, the
3 credibility of the statement and a variety of factors when
4 he gave this statement, such as how long he'd been there?

5 A Yes, I did.

6 Q You testified that back in 2005 you didn't consider
7 using a false confession expert, correct?

8 A I did not.

9 Q Were false confession experts often used in 2005?

10 A No. To my recollection, no.

11 Q Based on your tenure in the PD's office, would you
12 say that's a more recent phenomena, the false confession
13 experts been used in South Carolina?

14 A I would.

15 Q And again I believe you testified earlier during
16 your questioning that your client never told you the
17 statement was false or was a dream; he just gave you
18 multiple statements and the last statement was close, the
19 last version was close to the statement he gave law
20 enforcement, correct?

21 A That would be correct.

22 Q But again, he never told you the statement was
23 false?

24 A No.

25 Q And he never told you the statement was a dream,

Margaret Hinds - Cross-Examination by Ms. Harrington

1 correct?

2 A No.

3 Q Turning again to Applicant's No. 1, the DNA
4 analysis, did you have an opportunity to review this before
5 his guilty plea?

6 A Yes, I did.

7 Q Does anywhere in this report show that your
8 client's DNA was linked to the crime scene or the victim's
9 body?

10 A Absolutely not.

11 Q Did you explain to your client why this was
12 advantageous?

13 A I did.

14 Q Based on your years as a public defender, did you
15 see any benefit from seeking out an independent DNA expert?

16 A No, there was nothing they had here. There was no
17 reason to.

18 Q Do you think there would have been a possible risk
19 if you had sought an outside DNA expert?

20 A You just never know. They could have uncovered
21 something that this DNA expert missed.

22 Q And did you explain to your client that this report
23 didn't implicate him in the crime and --

24 A Yes, because we discussed the fact that it
25 basically was Ms. Davis' DNA, but not his.

Margaret Hinds - Cross-Examination by Ms. Harrington

1 MS. HARRINGTON: A moment's indulgence, Your Honor?

2 THE COURT: Take your time.

3 MS. SHURLING: Your Honor, for the record, I had
4 notified respondent, I believe, yesterday, but it certainly
5 could have been earlier today. I wasn't any longer
6 pursuing the specific allegation with regard to a DNA
7 expert.

8 MS. HARRINGTON: I don't believe we were told that
9 yesterday and I just want to make sure the record's clear.
10 You told me there were allegations and you were going to
11 withdraw, but I was not informed of that.

12 BY MS. HARRINGTON:

13 Q And again you testified you don't have anything in
14 your file showing that the footprint was not in blood,
15 correct?

16 A I don't. That I can't answer.

17 Q Do you recall testifying before you weren't certain
18 whether or not you knew that before the guilty plea or know
19 that now after listening to applicant's case in chief?

20 A That would be correct.

21 MS. HARRINGTON: A moment's indulgence, Your Honor.
22 (WHEREUPON there was a pause in the proceedings.)

23 MS. HARRINGTON: Your Honor, no further questions,
24 Your Honor.

25 THE COURT: Ms. Shurling, anything -- and you're

Margaret Hinds - Redirect Examination by Ms. Shurling

1 limited to her cross.

2 MS. SHURLING: Pardon.

3 THE COURT: I'm very sorry. Your redirect is
4 limited to her cross-examination.

5 MS. SHURLING: I understand.

6 REDIRECT EXAMINATION

7 BY MS. SHURLING:

8 Q Ms. Hinds, I understand that you subsequently added
9 to your testimony, but earlier today, did you not initially
10 testify that you knew before the plea that the footprint in
11 question was not in blood?

12 A I think I testified that I wasn't sure after
13 hearing this whether or not I knew it or I discovered that
14 in here.

15 Q Okay.

16 A I did know that it only matched a shoe
17 characteristic -- whatever that print was.

18 Q Okay. If I understood you correctly, your
19 responses to Respondent's questions a moment ago said that
20 the discovery materials which you'd been given established
21 that there was no DNA or other forensic evidence directly
22 tying your client to this crime, correct?

23 A I have nothing. That's correct.

24 Q Okay. If you knew that, would that alone not have
25 been a basis for objecting to what the solicitor said

Margaret Hinds - Redirect Examination by Ms. Shurling

1 during the plea; that they had footprints that matched your
2 client; that they thought they could establish were in the
3 victim's blood?

4 A I missed it. I made a mistake. I was not happy
5 with myself when I --

6 Q I understand. But I'm saying, regardless of
7 whether you'd seen that piece of paper or not, based on
8 what you did know, that's something you wished you'd have
9 objected to?

10 A That's correct.

11 Q Thank you.

12 If you did not know that -- let's look -- let's
13 backtrack for just a second. If you did not have previous
14 knowledge of that and it was something that existed and
15 you'd found out about it at a later time, would you
16 consider that to be a Brady violation?

17 A I need you to rephrase the question. I'm sorry.

18 Q If you, in fact, had no notice in the discovery
19 that the footprint had been proven to not be in blood, If
20 you had later found out that there was a SLED report that
21 said there was no blood; would you consider the State's
22 failure to provide you that document a Brady violation?

23 A Yes, I would.

24 Q Thank you. No further questions.

25 MS. HARRINGTON: Briefly, Your Honor.

Margaret Hinds - Redirect Examination by Ms. Shurling

1 THE COURT: Okay. Ms. Harrington?

2 RE-CROSS-EXAMINATION

3 BY MS. HARRINGTON:

4 Q You testified in response to Ms. Shurling's
5 questions that you would have objected if you had known
6 that -- that it wasn't his blood, correct, if the DNA
7 showed it wasn't his blood in the trailer, correct?

8 A Correct.

9 Q But the comments made by the solicitor at the
10 guilty plea hearing weren't that his blood was on his
11 shoes, it was just that there was blood on his shoes,
12 correct?

13 A Correct.

14 Q It didn't say whose blood it was?

15 A Right.

16 Q It could have been the victim's blood or it could
17 have been other blood, correct?

18 THE COURT: If I could, it says her blood in the
19 transcript.

20 MS. HARRINGTON: Thank you, Your Honor. No further
21 questions.

22 MS. SHURLING: Your Honor, briefly.

23 REDIRECT EXAMINATION

24 BY MS. SHURLING:

25 Q Did you not just testify that there was no forensic

Margaret Hinds - Redirect Examination by Ms. Shurling

1 evidence conclusively tying your client to this crime?

2 A There was no DNA. There was a footprint consistent
3 with footwear that they alleged that they could show that
4 he was wearing.

5 Q Right. So the statement made by the solicitor was
6 that a shoe print that matched your client's shoes was
7 maybe in the victim's blood; that would be forensic
8 evidence if the victim's blood was on the bottom of your
9 client's shoes or a print they allege was made by your
10 client's shoes, would that not have been forensic evidence
11 tying him to the crime?

12 A It would have.

13 Q Thank you.

14 THE COURT: Anything?

15 MS. HARRINGTON: No, Your Honor.

16 THE COURT: You may step down. Thank you, ma'am.

17 All right. Any, any other witnesses, Ms. Shurling.

18 MS. SHURLING: No, sir, Your Honor. At this time,
19 I would put on a motion on the record my motion that we
20 adjourn this proceeding with leave to --

21 THE COURT: I'll second that.

22 MS. SHURLING: You second that. What I would like
23 to do, Your Honor, with permission of the Court is ask for
24 authorization for funding from the South Carolina
25 Commission on Indigent Defense to have an expert evaluate

1 Mr. Haynes in the context of the statements given in
2 connection with this case with specific reference to
3 whether or not based on his particular psychological
4 profile and medical history whether there would have been a
5 basis here for a defense on finding of false confession.

6 THE COURT: All right.

7 MS. SHURLING: And I would ask that the record be
8 held open for me to submit a report on that from an expert.

9 THE COURT: Okay. The basis for you thinking it's
10 a false confession is what?

11 MS. SHURLING: His assertion that what he had
12 actually told law enforcement on the second day of
13 interrogation was that he was telling them about a dream
14 that he had had the day after spending an entire day with
15 law enforcement, basically feeding him many of the details
16 concerning the incident and the -- and, Your Honor, if I
17 might -- and I apologize.

18 Ms. Harrington, did you introduce a copy of my
19 client's confession.

20 MS. HARRINGTON: No.

21 MS. SHURLING: It's been heavily referenced here
22 today, Your Honor. I move to introduce it as an
23 Applicant's Exhibit.

24 MS. HARRINGTON: No objection.

25 THE COURT: That's from December 10th?

1 MS. SHURLING: Sir?

2 THE COURT: That's the December 10th confession?

3 MS. SHURLING: Yes, Your Honor.

4 THE COURT: So that would be Applicant's 5 -- 6?

5 THE COURT REPORTER: Uh-huh (affirmative response).

6 MS. HARRINGTON: It's six pages.

7 THE COURT: The Applicant's Confession of December
8 10th statement is in record, marked as Applicant's 6; is
9 that correct?

10 THE COURT REPORTER: Yes, sir.

11 THE COURT: Without objection.

12 (WHEREUPON Applicant's Exhibit No. 6 was entered
13 into evidence.)

14 MS. SHURLING: And, Your Honor, now that this has
15 been marked as an Applicant's Exhibit, I would ask the
16 Court to make note that in this statement it specifically
17 says -- and I have -- I do have a point.

18 It says I put the rope around her, r-o-p-e, and I
19 will tell you it is on page -- yes page 4 near the top. I
20 put the rope around her neck, n-i-c-k.

21 And I point that out, Your Honor, as just an
22 example of -- defense counsel said that the statement was
23 consistent with the fact that the girl had been strangled
24 with the cord from the venetian blind. What it's
25 consistent with is, is him saying that she'd been strangled

1 with something. He refers to it as a rope, but it is not
2 as specific and detailed as has been alleged here today.
3 That's just one of the kinds of details that would be
4 something that someone whose an expert in -- in false
5 confessions and people who have made false confessions as a
6 result of being fed information would be able to further
7 analyze and determine if it's noteworthy and sheds any
8 light on whether such a defense would be plausible in this
9 case.

10 MS. HARRINGTON: Your Honor, may I be heard briefly
11 on that?

12 The distinction that Ms. Shurling pointed out from
13 Applicant's No. 6 is a distinction not a difference.
14 That's extremely splitting hairs, whether you call it a
15 rope from a venetian blind or a cord from a venetian blind.
16 I additionally object to allowing the record to be left
17 open to get funding. Ms. Shurling has been on notice for
18 this hearing since 2012. That is ample time for this to
19 have been done. Finality needs to be reached in this
20 process.

21 Additionally, while I understand that Ms. Shurling
22 was originally retained and now has let the Respondent know
23 that her applicant, her client, is indigent, this is
24 funding that could have been asked for a long time ago and
25 I don't think any need has been shown for it here today. I

1 know she brings the burden of proof but finality needs to
2 be reached. This is something that Ms. Shurling has had
3 ample opportunity to do since back in 2012 to get this done
4 and we object to the record being left open. It's
5 prejudicial to the State and to Ms. Hinds, who is
6 representing her questionable reputation here in Court to
7 allow this to keep lingering on now for years. It's
8 already been going on for two years at this point just on a
9 59 motion and the State would object to the record being
10 left open.

11 THE COURT: Ms. Shurling?

12 MS. SHURLING: Your Honor, very briefly. The point
13 was not cord versus rope so much as the fact that it
14 doesn't say a word about it coming from a venetian blind.

15 THE COURT: Ms. Shurling, I understand. I think I
16 understand that.

17 MS. SHURLING: Thank you. And as far as the public
18 defender having the shadow of this PCR hanging over her
19 head, you know, I don't mean to make light of this, but
20 there's not a public defender in the State that doesn't
21 deal with PCR's on such a regular basis that it's -- this
22 is hardly a monumentous event in the life of a public
23 defender.

24 THE COURT: All right. Well, I don't know how a --
25 anyone could evaluate what he was thinking by the use, here

1 8 or 9 years ago about whether that was a false statement
2 or not.

3 MS. SHURLING: Yes, sir.

4 THE COURT: And I understand that might be a nice
5 thing to have at some point, particularly some point back
6 in 2006 or '05 or whenever he pled, but I'm going to deny
7 your request to leave the record open or to grant you
8 funding to do an expert evaluation today.

9 MS. SHURLING: Thank you, Your Honor.

10 THE COURT: I will list your objection to my
11 ruling, but that will be preserved on the record.

12 MS. SHURLING: Thank you, Your Honor. And so I
13 would also then note my objection of course would be that
14 had counsel pursued funding at the time contemporaneous
15 with these charges that an expert would have been able to
16 make an evaluation on this very plausible defense at the
17 time contemporaneous with his prosecution. I would note
18 and certainly welcome the opportunity to provide Your Honor
19 with documentation that the entire concept of false
20 confessions and -- was one well known to the defense bar at
21 the time of this case. In fact, there are many notable,
22 famous cases involving confessions that were ultimately
23 proven to have been false and induced under questionable
24 circumstances predating this trial; and I'd be happy to do
25 some research on that for the Court if you would allow me.

1 And lastly, Your Honor, with regard to Applicant's
2 No. 3, which has been introduced for identification
3 purposes only, I would note several things. One, my client
4 had a copy of that document in a stack of discovery
5 materials he gave me and said he got from Ms. Hinds file.
6 I'm not disputing Ms. Hinds' representation that it's not
7 in her file now; and I have been granted the opportunity at
8 a break to go through every page of what's been given to
9 Ms. Harrington as the solicitor's file and I've confirmed
10 that it's not in the solicitor's file. But I would also
11 note that this document does -- appears to be one that it
12 would be highly unlikely -- unlikely for my client to have
13 been able to manufacture it. I'm certainly not asking that
14 Your Honor take it on face value.

15 What I would ask is that I be allowed very quickly
16 to provide SLED with a copy of what I do have and a
17 subpoena asking that they provide me -- review their file
18 and provide me -- if that document is in fact in the file,
19 provide me a complete copy of it and that I be allowed to
20 submit it to the Court.

21 THE COURT: For what purpose? Because it seems to
22 me the sole purpose of that is to prove that there was no
23 blood attached -- none of his blood or any blood attached
24 to the shoe, correct?

25 MS. SHURLING: Correct, Your Honor.

1 THE COURT: Okay. And one of the things that I
2 clearly heard from Mr. Haynes when he was on the stand was
3 that he wasn't -- he was told by Ms. Hinds not to be
4 concerned about the shoe because the shoe was only
5 something to show it was similar to the same type of shoe,
6 you know.

7 MS. SHURLING: I understand, Your Honor. My client
8 said he had been told that, he thought he'd been told it
9 wasn't blood, but Ms. Hinds has testified here today that
10 she's not sure she knew it wasn't blood.

11 THE COURT: But what I'm getting is, it doesn't
12 matter. Tell me why it matters because that wasn't really
13 taken into consideration by anybody?

14 MS. SHURLING: Your Honor, in that case, I will
15 rely on counsel's testimony that based on what she does
16 acknowledge was provided to her. She -- there was nothing
17 providing any evidence of any forensic evidence tying my
18 client to the crime and that based on that, if nothing
19 else, she should have objected to the solicitor's remarks.
20 Thank you.

21 THE COURT: Which she did say. Okay.

22 MS. SHURLING: Thank you.

23 THE COURT: Okay. Thank you, ma'am.

24 All right. What I'll do is I'll review my notes
25 and evidence that went in and I will get back with my

1 decision.

2 MS. HARRINGTON: Your Honor, I would just like to
3 briefly -- before we complete the record, renew the State's
4 objections to Applicant's 1, 2, 5, 9 and 10 is a violation
5 of Your Honor's prior ruling and order as well as renew our
6 objections that a 59(e) is not the proper avenue with which
7 to pursue these new attachments.

8 THE COURT: Okay. 59(e) I'm still denying.

9 MS. HARRINGTON: Thank you, Your Honor.

10 THE COURT: It's still preserved on the record. 1,
11 2, 5, 9 and 10 I'm going to address in my order, okay?

12 MS. HARRINGTON: Thank you, Your Honor.

13 MS. SHURLING: And, Your Honor, I'm going to do it
14 simpler. I would at this time renew any objections I made
15 earlier in this proceeding, I would renew at this time,
16 please.

17 THE COURT: Okay. And I'll deny them same as I
18 did.

19 MS. SHURLING: Thank you.

20 THE COURT: And what I do, ladies, I have -- these
21 are copies of 5 and I'll take that to -- I'll take that,
22 okay?

23 MS. SHURLING: Oh, thank you, Your Honor.

24 MS. HARRINGTON: Thank you, Your Honor.

25 THE COURT: We all have them now.

1 MS. SHURLING: Thank you, sir.

2 THE COURT: Thank y'all so much.

3 MS. SHURLING: Thank you again for having us in
4 your chambers, Your Honor.

5
6 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)

2 County of Aiken)

Certificate of Reporter

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6 I, THE UNDERSIGNED, Brenda J. Sigwald,
7 Official Court Reporter for the Fifth Judicial Circuit of
8 the State of South Carolina, do hereby certify that I
9 reported the proceedings in the captioned case in the Court
10 of Common Pleas in and for the State of South Carolina on
11 the 20th day of February, 2014.

12 I FURTHER CERTIFY that the foregoing pages,
13 constitute a true, accurate and complete transcript of said
14 hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 1st day of April, 2015.

19
20
21 *Brenda J. Sigwald*

22 Brenda J. Sigwald,
23 Court Reporter and Notary Public
24 For the State of South Carolina
25 My commission expires
January 4, 2020

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Ezekial Haynes, SCDC # 309200,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2006-CP-38-0462

ORDER OF DISMISSAL
ATTEST: TRUE COPY

Winniford B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed July 13, 2010. An evidentiary hearing was convened on February 20, 2014, at the Calhoun County Courthouse. Applicant was present at the hearing and was represented by Tara D. Shurling, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. After reviewing all testimony and other evidence presented at the hearing, along with a review of all records provided to the Court, this Court finds that there are no constitutional deprivations or other grounds on which to grant relief and is denying and dismissing this application with prejudice.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant was indicted during the March 2005 term of the Orangeburg County Grand Jury for Murder (2005-GS-38-0036). Applicant was represented by Margaret E. Hinds, Esquire. On May 17, 2005, Applicant appeared before the Honorable Perry M. Buckner, where he pled guilty as indicted. Judge Buckner sentenced Applicant to forty years imprisonment pursuant to a negotiated plea cap between Applicant and the State.

Applicant filed a direct appeal, but elected to withdraw it on April 25, 2006. An Order of Dismissal and Remittitur were issued on May 23, 2006.

Applicant filed his first post-conviction relief application on April 20, 2006 (C.A. No. 2006-CP-38-00462), setting forth the following grounds for relief:

1. Ineffective assistance of counsel;
 - a. "Counsel failed to investigate case to prepare a defense for Applicant."
 - b. "Counsel was ineffective by the violations she committed in accordance of Professional Conduct Rules, Counsel showed more interest to intimidated Applicant to pled guilty to Murder charge."
 - c. "Plea Counsel failed to file pre-trial motions to have standing issues of the Murder Indictment, Rule 5 motion and waivers to be evaluated by trial court."
 - d. "Plea Counsel failed to examine statements, police investigated reports and failed to receive reports of pending investigation reports of case."
2. Prosecutorial and Judicial Misconduct; and
3. Involuntary guilty plea.

The State filed its Return on September 21, 2006. An evidentiary hearing was convened on May 19, 2008, before the Honorable James C. Williams, Jr. Applicant was present and represented by counsel, Glenn Walters, Sr., Esquire. Respondent was represented by Assistant Attorney General Lance Boozer. Prior to the entry of a written Order of Dismissal, Applicant submitted a *pro se* "Motion to Alter/Amend *pro se* Rule 59(e) SCRCP and Motion to Reconsider, *pro se* applicable S.C. Court Rules" on May 27, 2008. By written Order dated and filed October 29, 2008, Judge Williams denied and dismissed the application in full.¹ The State filed a Return to Applicant's *pro se* 59(e) Motion on November 4, 2008. By written Order dated March 4, 2009, Judge Williams dismissed the motion.

On November 5, 2008, Applicant appealed the denial of his first post-conviction relief application. Applicant's Petition for Writ of Certiorari was filed on August 17, 2009. The South

¹ The Clerk of Court's stamp on the Order of Dismissal improperly reflects that the order was filed in 1998. The correct year of filing is 2008.

Carolina Supreme Court denied the Petition on June 10, 2010. The Remittitur was sent on June 29, 2010.

Thereafter, on July 13, 2010, Applicant filed a second application for post-conviction relief (C.A. No. 2010-CP-38-1000), alleging:

1. Judicial Misconduct;
 - a. "The S.C. Supreme Court in the cert for PCR case No. 2006-CP-38-462 engaged in acts of judicial fraud and an abuse of discretion failed to stay the cert pending removing the case, including this case, is petitioned to be removed to the California District Court under 3:08-CU-10-1105-MMC. A Writ of Mandamus for this is pending in the 9th Circuit under 10-71855."
2. "Fifth, Sixth, and Fourteenth Amendment Violation."
3. "Due Process."
4. "Subject Matter Jurisdiction."
5. "Ineffective Counsel."

The Orangeburg County Clerk of Court did not forward the application to Respondent until December 3, 2010. On May 17, 2011, Respondent made its Return and Motion to Dismiss, seeking summary dismissal of the application as successive to his prior post-conviction relief application and filed beyond the statute of limitations. On June 6, 2011, this Court signed a Conditional Order of Dismissal, provisionally dismissing the application but allowing Applicant twenty days from the date of service to object to the application's dismissal. This Conditional Order of Dismissal was filed on June 16, 2011 and Applicant was personally served on September 13, 2011. After receiving no reply from Applicant, this Court signed a Final Order of Dismissal on December 20, 2011; this Final Order of Dismissal was filed on January 9, 2012.

On January 31, 2012, Applicant, through retained counsel Tara D. Shurling, filed a Reply to the Conditional Order of Dismissal. On February 2, 2012, Applicant, though his counsel, filed a "Motion to Reconsider/Alter/Amend Final Order Pursuant to Rule 59(e) SCRPC"; in this Motion, Applicant asked this Court to allow him to proceed to a full merits hearing on his

successive application, or in the alternative, re-open his first post-conviction relief action (C.A. No. 2006-CP-38-0462) and allow Applicant to present testimony and evidence regarding the allegations he raised in his *pro se* 59(e), SCRCP, motion. Respondent made its Return to this motion on August 17, 2012. A hearing on this Motion was convened on August 20, 2012 at the Orangeburg County Courthouse before this Court. Following this hearing, this Court granted Applicant's motion and re-opened his initial post-conviction relief action, docket number 2006-CP-38-0462.² This Court allowed Applicant thirty days to file an amended application and specifically ruled that the amended application could not raise with any issues pertaining to Applicant's mental competency or any other issue presented in his initial action, finding that these issues were fully addressed and ruled upon in his earlier post-conviction relief hearing. An Order to this effect was signed March 12, 2013.

Applicant filed an amended Application on September 3, 2013, alleging:

1. Plea counsel was ineffective for neglecting to introduce evidence during Applicant's sentencing proceeding concerning the Applicant's medical history;
2. Plea counsel was ineffective for failing to clarify the Applicant's mental health history for the sentencing judge when the Applicant answered the Court's inquiry concerning whether he had a history of mental illness negatively;
3. Plea counsel was ineffective for failing to refute statements made by the prosecutor concerning footwear impressions found at the scene;
4. Plea counsel was ineffective for failing to adequately investigate the circumstances under which Applicant's statement was given and failing to discuss potential grounds for challenging its admissibility;
5. Plea counsel was ineffective for failing to adequately investigate the degree to which the Applicant's memory defects and impaired cognitive abilities may have impacted his ability to make a knowing and voluntary statement;
6. Plea counsel was ineffective for failing to advise Applicant of the procedures that could be employed during a jury trial to challenge the reliability and admissibility of his pre-trial statement;
7. Plea counsel was ineffective for failing to adequately explain to Applicant that substantive errors of law made during a jury trial could be appealed to a high court if convicted;

² At the beginning of the evidentiary hearing, this Court ruled that the two actions (C.A. No. 2006-CP-38-0462 and 2010-CP-38-1000) are hereby consolidated into one action, with the surviving case number 2006-CP-38-0462.

8. Plea counsel was ineffective for failing to explain to Applicant that a challenge to the admissibility of his statement would have to be evaluated by both the trial judge and jury if challenged in a jury trial;
9. Plea counsel was ineffective for failing to advise Applicant of the ways in which he might challenge his statement to law enforcement based on his medical history;
10. Plea counsel was ineffective for allowing Applicant to plead guilty without first exploring the possibility that Applicant's mental deficits had been capitalized by law enforcement to obtain a false confession;
11. Plea counsel was ineffective for allowing Applicant to plead guilty without adequately advising him of the limited forensic value of the footwear impressions being asserted by the State as evidence of his guilt;
12. Plea counsel was ineffective for allowing Applicant to make the decision to waive his right to trial by jury without first adequately explaining all forensic evidence and how such evidence could be challenged during a jury trial;
13. Plea counsel was ineffective for failing to adequately advise Applicant of the fact that an adverse ruling on the admissibility of his statement could be appeal to a high court in the event he was convicted by a jury;
14. Plea counsel was ineffective for failing to petition the court for funding for an independent forensic expert to review the DNA evidence;
15. Plea counsel was ineffective for misleading Applicant of the evidentiary value of the forensic evidence related to his shoes;
16. Plea counsel was ineffective for failing to investigate the possible application of the a lesser included offense to the facts in Applicant's case;
17. Plea counsel was ineffective for failing to advise Applicant on the law of lesser included offenses and possible application to his case; and
18. Plea counsel was ineffective for failing to petition the court for funding to hire an expert witness on false confessions.

A hearing on these allegations was convened on February 20, 2014 at the Calhoun County Courthouse. Applicant was present and represented by Tara D. Shurling, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. At the evidentiary hearing, Applicant expressly abandoned allegation number 14 regarding Counsel's alleged failure to consult with a DNA expert; therefore, this allegation must be denied and dismissed with prejudice and will not be analyzed in this Order.

At the beginning of the hearing, Respondent renewed its objections to this Court's ruling on Applicant's 59(e), SCRCP, reopening Applicant's original 2006 post-conviction relief action. After listening to argument and reply, this Court denied Respondent's motion. Additionally,

Respondent moved to dismiss allegations 1, 2, 5, 9, and 10 of Applicant's amended application, as in direct violation of this Court's oral and written ruling that this Court would not address any issues regarding Counsel's representation in regards to Applicant's mental health, competency, or state of mind based on this Court's satisfaction with Judge Williams' rulings in regards to Counsel's investigation into Applicant's mental health history and any decisions made in reference to his mental health or competency. This Court took Respondent's motion under advisement and allowed Applicant to delve into these issues at the evidentiary hearing. At this time, this Court grant's Respondent's motion to dismiss these allegations, finding them to be in violation of this Court's prior ruling. However, as these allegations were discussed at the evidentiary hearing, this Court will address the merits of each allegation below.

TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from his mother and plea counsel, Margaret E. Hinds, Esquire, (hereafter "Counsel"). This Court also had before it a copy of the Applicant's plea transcript, records from the Orangeburg County Clerk of Court, Applicant's appellate records, records from Applicant's prior post-conviction relief action, and Applicant's South Carolina Department of Corrections records.

During the evidentiary hearing, Applicant testified first on his own behalf. He testified that Counsel was appointed to represent him and that she refused to discuss a trial with him. He testified that she repeatedly told him he needed to plead guilty. He testified that she did not review any of his rights with him, including his appellate rights. He testified that Counsel did advise him that the State would call witnesses against him if he proceeded to trial and that his statement would be used against him. He testified that they discussed his statement, but never discussed the possibility of suppression or otherwise challenging the statement. He testified that

his statement to law enforcement was his recollection of a dream, of which he informed law enforcement but was omitted from his statement. He testified that he gave his statement after being questioned by law enforcement for three hours.

Applicant testified that he was in a serious accident with significant head trauma years before and that he advised Counsel of this. He testified that he has difficulty with speech, severe mood swings, and memory impairment all related to the accident. Additionally, he testified that he informed Counsel that he "heard voices." This Court notes that at times during the hearing, Applicant appeared to have a stutter, but that it was not continuous and appeared to be under Applicant's control. Additionally, Applicant appeared to have difficulty concentrating and would stare into space a times, but was also able to quickly respond to questions and focus at other times. He testified that Counsel advised him that these medical concerns were a "problem" and that she was not going to bring them up in court. He testified that he asked Counsel to have him evaluated and to present this information to the court, but Counsel refused.

Applicant testified that Counsel never reviewed discovery materials with him, but then testified that she did review certain materials with him. He testified that Counsel advised him that his shoe print matched a shoe print found at the crime scene and that he needed to plead guilty or this would be introduced at trial. He introduced a copy of the SLED Latent Prints report discussing this shoe print as Applicant's Ex. No. 2. He also introduced a SLED DNA Analysis report as Applicant's Ex. No. 1 and testified that Counsel did not review this with him either.

Applicant testified that Counsel never reviewed lesser-included offenses (such as voluntary manslaughter) with him and did not explain that he could ask the trial court to instruct the jury on voluntary manslaughter if he went to trial. He testified that Counsel advised him that

she had negotiated a plea deal with the State for a cap of forty years imprisonment. He testified that Counsel explained to him, and he understood, that this would mean he would receive a sentence between thirty to forty years imprisonment if he pled guilty.

Following Applicant's testimony, his mother, Betty Haynes, testified. She testified that Applicant was in a serious car accident approximately six months prior to his arrest. She testified that his accident affected his memory and speech, and overall personality.

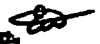
After Applicant's mother, Counsel testified. She testified that she has been practicing law since 1997 and that she has been exclusively employed as a public defender throughout her career. She testified that she was appointed to represent Applicant and that she met with him eighteen times. She testified that she filed the appropriate discovery motions and received these materials from the State. She testified that she thoroughly reviewed these materials with Applicant, including SLED DNA and Latent Print reports. She testified that she advised Applicant of all of his constitutional rights, including trial rights, in a standard colloquy that she uses with clients. She testified that she informed him of his appellate rights as well.

She testified that Applicant appeared to understand these conversations and that she had no difficulty communicating with Applicant. She testified that at the time of her representation, Applicant appeared to be engaged and fully functioning. She testified that Applicant's behavior today is completely incongruent with his behavior at the time she represented him and described Applicant currently as an "entirely different man" than the person she represented in 2005. She testified that she had no reason to doubt his competency or move for an evaluation. She testified that she was never informed by Applicant or his mother that he suffered from any mental defects or other impairments and that the information provided by Applicant and his mother in regards to what they told her is "completely inaccurate." She testified that Applicant and his mother never

advised her that he heard voices. She testified that Applicant's mother only advised her that he had been diagnosed with a seizure disorder four years prior. She testified that Applicant's mother did provide her with medical records, but that she made the decision not to use those records because they documented Applicant's very aggressive and hostile mood swings and violent behavior. She described these medical records as "very damning" and would have impacted Applicant negatively if she attempted to use them.

She testified that the evidence against Applicant was strong, including witness statements that the victim was last seen alive with Applicant, footprint impressions that were consistent with the type of shoes worn by Applicant, the victim's blood and earring found in an abandoned trailer across the street from Applicant's home, and Applicant's statements to law enforcement. She testified that she reviewed all evidence with Applicant and explained how it could possibly be used against him – and challenged – at trial. She testified that the SLED Latent Print report showed that shoe prints with the same class characteristics as Applicant's shoes were found at the crime scene across the street. She testified that she recalled that she was aware before the plea that the shoe prints were in blood, but that it has been so long since the plea that she cannot recall from where she received that information. She testified that she had no document in her file indicating that the shoes were in mud or any other substance other than blood. She testified that whether the prints were in blood or not was not exculpatory, it still showed that the shoe prints were likely left by Applicant's shoe. She testified that she also reviewed Applicant's statement with him several times.

Counsel testified that Applicant never informed her that the statement was false or a dream. She elaborated that Applicant's story was fluid and kept changing over time, but the final version of the facts he gave her was consistent with the statement he gave law enforcement. She

testified that Applicant informed her that he took the victim to the abandoned trailer across from his home because he wanted to have sexual relations with her and that when she rebuked him, he became angry and a fight ensued. She testified that she discussed voluntary manslaughter with Applicant, but explained that it would be hard to secure either a plea negotiation or conviction for the lesser-included offense because there were no witnesses that could corroborate his version of the facts. She testified that she advised Applicant that she could move to suppress his statement during a pre-trial hearing, and that if suppression was denied, he could still raise this issue before the jury and on an appeal. She testified that she did not employ a false confessions expert because Applicant never informed her that his statement was untrue or a result of any sort of coercion or other law enforcement tactic. Additionally, she testified that at the time of her representation of Applicant in 2005, false confession experts were rarely – if ever – used in Orangeburg, ~~if ever~~ 

She testified that she did a thorough investigation, including attempting to track down possible witnesses. She testified that Applicant informed her of “boys” who were present when he was with Applicant, but that he was unable to provide names, addresses, or descriptions that could assist in locating them. She testified that her investigation did not yield any exculpatory information.

She testified that she received two plea offers from the State, which she promptly presented to Applicant and his family. She testified that the first offer was for a negotiated sentence of forty years imprisonment. She testified that she informed Applicant that this would require him to serve forty years in full in prison before being released. She testified that the second offer that she received was for a negotiated cap of forty years imprisonment. She testified that she explained to Applicant and his family that this would require Applicant to serve

a sentence of between thirty to forty years imprisonment before he would be released, with the exact term between thirty to forty years within the court's discretion. She testified that she believed this plea offer was in Applicant's best interest, as he likely would have been convicted of murder at trial and received a harsher sentence. She testified that Applicant decided to accept the State's offer and plead guilty. She testified that he understood he could possibly receive a sentence of forty years. She testified that she explained all of the constitutional rights that Applicant would be forgoing with a guilty plea, including the right to challenge the State's witnesses and evidence, including his statement. She testified that once Applicant decided to plead guilty, she began working on mitigation to present to the court. She testified that she presented Applicant's lack of a violent record, age, family history, and community support to the court in mitigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant 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, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether an 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. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

"A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011), citing Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009).

After careful review based on the standard discussed above, this Court finds that Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is very credible and should be afforded great weight; conversely this Court finds Applicant's testimony is lacking credibility. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Allegation that Counsel failed to introduce Applicant's medical history in mitigation

Applicant alleges that plea counsel was ineffective for neglecting to introduce evidence of Applicant's medical history during Applicant's sentencing proceeding. See Amended Application Allegation No. 1. Respondent moved to dismiss this allegation as in violation of this Court's "Order Re-Opening PCR Action Docketed at 2006-CP-38-0462," which expressly declined to address this issue based on *res judicata*. This Court agrees with Respondent and finds that this allegation must be dismissed as in violation of this Court's previous Order reopening Applicant's post-conviction relief action.

Furthermore, this Court also finds that this allegation must be dismissed on the merits. Applicant alleges that Counsel should have presented his medical history in mitigation to secure Applicant a more lenient sentence. At the evidentiary hearing, Applicant testified that he suffers from auditory hallucinations, memory impairment, speech impediment, and severe mood swings related to an accident shortly before his arrest. He testified that he informed Counsel of his medical history and that she replied that this was a "problem" and she would not present it to the plea court. In sharp contrast, Counsel testified that Applicant was a completely different person when she represented him and that she had absolutely no difficulty discussing Applicant's case with him. Additionally, she testified that the information she received for Applicant and his

family was wholly incongruent with what was presented during the hearing, elaborating that she was only informed that Applicant had a seizure disorder. She testified that she was provided with medical records of Applicant, but after reviewing them, made a strategic decision not to use them in mitigation as they documented Applicant's very aggressive and hostile mood swings and violent behavior. She described these medical records as "very damning" and would have impacted Applicant negatively if she attempted to use them.

This Court finds that Counsel made a reasonable and strategic decision not to introduce Applicant's medical records based on a legitimate concern that the records would harm rather than help Applicant. See Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000) (when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel). Therefore, this Court finds that Counsel's performance was in accordance with professional standards and not deficient. Furthermore, this Court finds that Applicant is unable to prove any resulting prejudice. Applicant testified that he pled guilty with a full understanding that he could receive a sentence of up to forty years imprisonment and he was sentenced within the understood range. Furthermore, this Court agrees with Counsel that introduction of the medical records in question likely would have caused more harm to Applicant and would not have resulted in a shorter sentence. Based on the foregoing, this Court finds that Applicant has failed to demonstrate both deficiency and prejudice and is denying and dismissing this allegation with prejudice.

Allegation that Counsel failed to clarify Applicant's mental health history to the plea court

Applicant alleges that plea counsel was ineffective for failing to clarify the Applicant's mental health history for the sentencing judge when Applicant answered the court's inquiry concerning whether he had a history of mental illness negatively. See Amended Application

Allegation No. 2. Respondent moved to dismiss this allegation as in violation of this Court's "Order Re-Opening PCR Action Docketed at 2006-CP-38-0462." This Court agrees with Respondent and finds that this allegation must be dismissed as in violation of this Court's previous Order reopening Applicant's post-conviction relief action.

Furthermore, this Court also finds that this allegation must be dismissed on the merits. As discussed above, this Court finds that Counsel's credible testimony reveals that she had no knowledge of or reason to believe that Applicant had any mental conditions or defects that needed to be brought to the plea court's attention. Furthermore, this Court finds that Applicant's testimony regarding his mental status at the time of the incident and plea is not credible and sharply contrasts with Counsel's credible recollection. This Court finds that Counsel's performance was reasonable according to professional standards. Therefore, this allegation must be denied and dismissed with prejudice.

Allegation that Counsel failed to refute statements made by the prosecutor concerning the footwear impression found at the scene, failed to fully explain and mislead the Applicant regarding the significance of these impressions

Applicant alleges that plea counsel was ineffective for failing refute statements made by the prosecutor concerning footwear impressions found at the scene, which Applicant characterizes as "significantly overstated the findings of SLED regarding the impression in question and advised the [c]ourt that the State believed they could have proven that the impressions were made in the victim's blood, when, at the time of the plea, SLED had issued a report finding the impressions were negative for phenol and appeared to be in mud." See Amended Application Allegations No. 3, 11, and 15. At the evidentiary hearing, Counsel testified that the SLED Latent Print report showed that shoe prints with the same class characteristics as Applicant's shoes were found at the crime scene and she explained to

Applicant what this meant. She testified that she recalled that she was aware before the plea that the shoe prints were in blood, but that it has been so long since the plea that she cannot recall from where she received that information. She testified that she had no document in her file indicating that the shoes were in mud or any other substance other than blood. She testified that whether the prints were in blood or not was not exculpatory, as it still showed that the prints were likely left by Applicant's shoe – which she fully explained to Applicant. Applicant was unable to present any evidence showing that the shoe prints were not in blood or that Counsel knew or should have known this prior to Applicant's guilty plea. This Court finds that Applicant has failed to meet his burden of establishing any deficiency of counsel and finds that Counsel's performance was reasonable based on professional standards. Furthermore, this Court also finds that Applicant has failed to establish any prejudice, as the result of the proceeding would remain unchanged regardless of the material in which the shoeprint was made. Therefore, this allegation must be denied and dismissed with prejudice.

Allegation that Counsel failed to adequately investigate the circumstances under which Applicant's statement was given, failed to discuss potential grounds for challenging its admissibility pre-trial, during trial, and on appeal, including how his alleged memory defects and cognitive impairment may have impacted the statement, and failed to consult with a false confession expert

Applicant alleges that plea counsel was ineffective for failing to adequately investigate the circumstances under which Applicant's statement was given and failing to discuss potential grounds for challenging its admissibility. See Amended Application Allegations No. 4, 5, 6, 8, 9, 10, 13, and 18. At the evidentiary hearing, Counsel testified that she reviewed Applicant's statement with him several times. She testified that Applicant never informed her that the statement was false or a dream. She elaborated that Applicant's story was fluid and changed slightly over time, but the final version he gave her was consistent with the statement he

provided to law enforcement. She testified that the deviations in Applicant's account were not enough to cause her significant concern or lead her to believe that the statement was a false confession. She testified that Applicant informed her that he took the victim to the abandoned trailer across from his home because he wanted to have sexual relations with her, and that when she rebuked him, he became angry and a fight ensued. She testified that she had no reason to believe the statement was fabricated or consult with any experts regarding its admissibility. She testified that she reviewed with Applicant that he would not be able to challenge his statement's admissibility if he elected to plead guilty. This Court finds that Applicant has failed to meet his burden of establishing any deficiency of counsel and finds that Counsel's performance was reasonable based on professional standards. Counsel's credible testimony reveals that she saw no reason to believe that Applicant's statement was a fabrication and that she explained the possibility of challenging the statement's admissibility if he went to trial. Additionally, as discussed above, this Court finds that Counsel's credible testimony reveals that she had no knowledge of or reason to believe that Applicant had any mental conditions or defects on which to base such a challenge. Furthermore, this Court also finds that Applicant has failed to establish any prejudice, as the result of the proceeding would remain unchanged, i.e. — Applicant's statement would have been admissible even if challenged. Therefore, this allegation must be denied and dismissed with prejudice.

Allegation that Counsel failed to explain to Applicant that substantive errors of law made during a jury trial could be appealed to a higher court if convicted

Applicant alleges that plea counsel was ineffective for failing to explain that substantive errors of law could be appealed to a higher court if he was convicted. See Amended Application Allegation No. 7. Counsel's credible testimony reveals that she reviewed all of Applicant's

constitutional rights, including appellate rights, with him prior to trial and that she explained to him that he would be foregoing certain rights if he elected to plead guilty in lieu of proceeding to trial. This Court finds that Applicant has failed to meet his burden of establishing any deficiency of counsel and finds that Counsel's performance was reasonable based on professional standards. Furthermore, this Court also finds that Applicant has failed to establish any prejudice. Therefore, this allegation must be denied and dismissed with prejudice.

Allegation that Counsel failed to adequately explain all forensic evidence to Applicant and how the evidence might be challenged during a jury trial

Applicant alleges that plea counsel was ineffective for allowing Applicant to make the decision to waive his right to a jury trial without first explaining the forensic evidence claimed by the State and how it could be challenged during a jury trial. See Amended Application Allegation No. 12. Counsel's credible testimony reveals that she reviewed all discovery with Applicant, including forensic evidence, with Applicant, as well as explained how such evidence could be used at trial. After these discussions, Applicant voluntarily elected to accept the State's plea offer and forego a trial. This Court finds that Applicant has failed to meet his burden of establishing any deficiency of counsel and finds that Counsel's performance was reasonable based on professional standards. Furthermore, this Court also finds that Applicant has failed to establish any prejudice, as Applicant failed to establish what forensic evidence was not sufficiently reviewed with him or how it could have impacted his decision to plead guilty. Therefore, this allegation must be denied and dismissed with prejudice.

Allegation that Counsel failed to investigate the possibility of a lesser-included offense and explain to Applicant the law of lesser-included offense and how it may relate to his case

Applicant alleges that plea counsel was ineffective for failing to investigate the possible application of lesser-included offense to the facts of Applicant's case and for failing to explain to

Applicant how lesser-included offenses could possibly be used if he went to trial by jury. See Amended Application Allegations No. 16 and 17. Counsel testified that she discussed voluntary manslaughter with Applicant, but explained that it would be hard to secure either a plea negotiation or conviction for the lesser-included offense because there were no witnesses that could corroborate his version of the facts. This Court finds that Applicant has failed to meet his burden of establishing any deficiency of counsel and finds that Counsel's performance was reasonable based on professional standards and the facts of this case. Therefore, this allegation must be denied and dismissed with prejudice.

CONCLUSION

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

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

IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and

2. The Applicant must remain remanded to and in the custody of the State

AND IT IS SO ORDERED this 5th day of November, 2014.



EDGAR W. DICKSON
Presiding Judge
First Judicial Circuit

Orangeburg, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO.: 2006-CP-38-0462

Ezekial Haynes, #309200

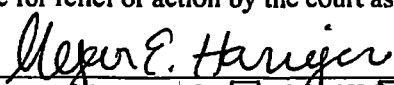
Plaintiff,

vs.

State of South Carolina

Defendant.

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Tara D. Shurling, Bar No. 5099 Address: 3614 Landmark Drive, Ste. A, Columbia SC 29204 Phone: _____ Fax: _____ E-mail: _____ Other: _____	Defendant's Attorney: Megan E. Harrigan, Bar No. <u>100108</u> Address: PO Box 11549, Columbia SC 29211 Phone: _____ Fax: _____ E-mail: _____ Other: _____
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☐ NO	
SECTION II: Motion/Order Type	
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for ☐ Plaintiff / ☒ Defendant 9/15/14 Date submitted	
SECTION III: Motion Fee	
☐ PAID - AMOUNT: \$ _____ ☒ EXEMPT: (check reason)	
☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: <u>S.Z.</u> Date Filed: <u>11/14/14</u> ☐ MOTION FEE COLLECTED: \$ <u>126 fee</u> ☐ CONTESTED - AMOUNT DUE: \$ _____	

Applicant respectfully submits, that the issues actually raised by him in this proceeding did not broach the subject matter prohibited.

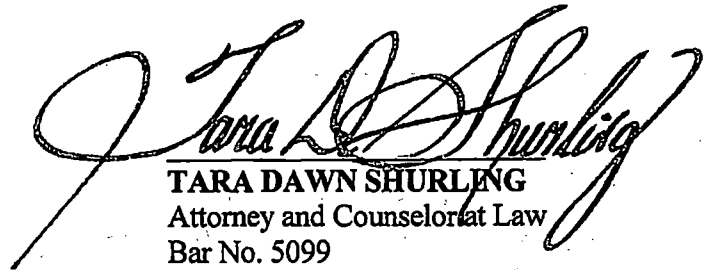
Allegations 1 and 2, as raised in the Amended Application for Post-Conviction Relief filed September 3, 2013, dealt with Plea Counsel's failure to address Applicant's mental health history and his medical history in mitigation of sentence. The specific issues raised, did not address Applicant's competency to stand trial or his sanity at the time of the incident. These allegations rather addressed the extent to which this evidence may have been used to argue in mitigation of penalty. Likewise, allegation number 5 dealt with the failure of Plea Counsel to adequately investigate the degree to which Applicant's memory defects and impaired cognitive abilities may have impacted his ability to make a knowing and voluntary statement. PCR Counsel respectfully submits that these allegations fell squarely within the ruling in this Court's March, 2013 Order in which it was specifically held that Applicant was "not prohibited from addressing other issues addressing how evidence of his mental health history might have been used to rebut or otherwise explain evidence against him had he gone to trial." March, 2013 Order, pg. 9, para.1. In addition, allegations number 9 and 10 specifically reference Plea Counsel's failure to advise Applicant of the ways in which his medical history and mental deficits might have been used at trial to challenge the statements allegedly made by him to law-enforcement. Once again, Applicant respectfully asserts that these two allegations fell within the scope of the allegations he was allowed to raise under the express language found in this Court's Order from March, 2013.

In addition to the above, the Order of Dismissal filed in this matter on November 14, 2014, failed to make note of the fact that Applicant renewed and preserved his objection to this Court's refusal to allow him to address allegations and evidence concerning his improper and deficient representation by original PCR Counsel. Applicant specifically notes that his current PCR Counsel renewed this objection at the evidentiary hearing held in this matter on February 20, 2014.

Wherefore, in light of the above, Applicant now respectfully requests an Amended Order of Dismissal pursuant to Rule 59 (e) SCRCP. Applicant requests that such an Amended Order reflect that his allegations number 1,2,5,9 and 10 were properly raised under the parameters of this Court's March, 2013 Order reopening the PCR action docketed at 2006-CP-38-0462. In addition, Applicant asks that the Amended Order

acknowledge his objection to being prohibited from presenting allegations and evidence in support of his claims addressing the improper and deficient representation he received in his original Post-Conviction Relief action.

Respectfully submitted,



TARA DAWN SHURLING
Attorney and Counselor at Law
Bar No. 5099

3614 Landmark Drive
Suite A
Columbia, S.C. 29204
(803) 738-8622 Phone
(803) 738-1600 FAX
tdslaw@shurlinglaw.com

ATTORNEY FOR APPLICANT

This 11th day of December, 2014.

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

EZEKIAL HAYNES, # 309200,)

Applicant,)

v.)

STATE OF SOUTH CAROLINA,)

Respondent.)

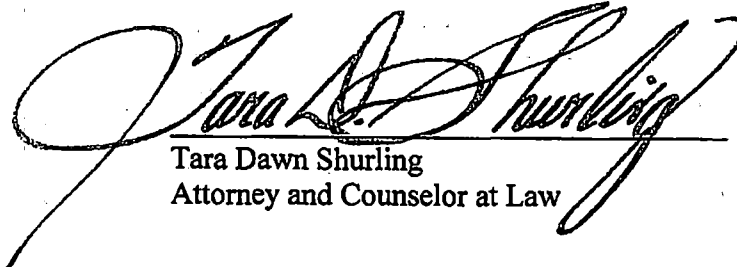
CASE NO.: 2006-CP-38-0462

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Motion to Alter or Amend pursuant to Rule 59(e) SCRPC in the above matter has been served on opposing counsel this the 11th day of December, 2014, by mailing one (1) copy in a stamped envelope properly addressed to:

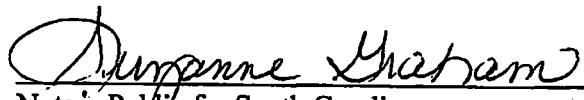
Megan E. Harrigan
Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211

The original having been sent to the Orangeburg County Clerk of Court for filing.



Tara Dawn Shurling
Attorney and Counselor at Law

SWORN TO BEFORE ME this 11th day of
December, 2014.

 (L.S.)
Notary Public for South Carolina

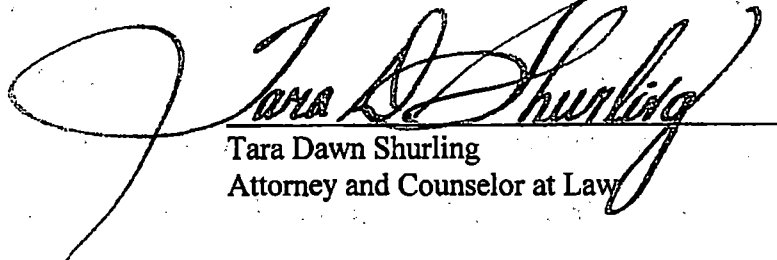
My Commission Expires: 2/28/24

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG) IN THE COURT OF COMMON PLEAS
EZEKIAL HAYNES, # 309200,) FIRST JUDICIAL CIRCUIT
Applicant,)
v.)
STATE OF SOUTH CAROLINA,)
Respondent.)
CASE NO.: 2006-CP-38-0462
CERTIFICATE OF SERVICE

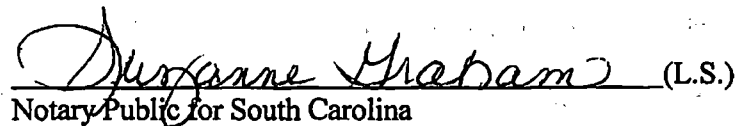
The undersigned attorney hereby certifies that a true copy of the Motion to Alter or Amend Pursuant to Rule 59(e) SCRPC in the above matter has been served on opposing counsel this the 11th day of December, 2014, by mailing one (1) copy in a stamped envelope properly addressed to:

The Honorable Edgar Warren Dickson
Circuit Court Judge for the First Circuit
P. O. Box 1949
Orangeburg, SC 29116

The original having been sent to the Orangeburg County Clerk of Court for filing.


Tara Dawn Shurling
Attorney and Counselor at Law

SWORN TO BEFORE ME this 11th day of
December, 2014.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: 2/28/24

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Ezekial Haynes, SCDC # 309200,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2006-CP-38-0462

**RETURN TO APPLICANT'S
"MOTION TO RECONSIDER/ALTER/
AMEND FINAL ORDER PURSUANT
TO RULE 59(E) SCRPC"**

Respondent, by and through undersigned counsel, making its Return to Applicant's "Motion to Reconsider/Alter/Amend Final Order Pursuant to Rule 59(E) SCRPC," would respectfully show unto this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant was indicted during the March 2005 term of the Orangeburg County Grand Jury for Murder (2005-GS-38-0036). Applicant was represented by Margaret E. Hinds, Esquire. On May 17, 2005, Applicant appeared before the Honorable Perry M. Buckner, where he pled guilty as indicted. Judge Buckner sentenced Applicant to forty years imprisonment pursuant to a negotiated plea cap between Applicant and the State. Applicant filed a direct appeal, but elected to withdraw it on April 25, 2006. An Order of Dismissal and Remittitur were issued on May 23, 2006.

Applicant filed his first post-conviction relief application on April 20, 2006 (C.A. No. 2006-CP-38-00462), setting forth the following grounds for relief:

1. Ineffective assistance of counsel;
 - a. "Counsel failed to investigate case to prepare a defense for Applicant."

- b. "Counsel was ineffective by the violations she committed in accordance of Professional Conduct Rules, Counsel showed more interest to intimidated Applicant to pled guilty to Murder charge."
- c. "Plea Counsel failed to file pre-trial motions to have standing issues of the Murder Indictment, Rule 5 motion and waivers to be evaluated by trial court."
- d. "Plea Counsel failed to examine statements, police investigated reports and failed to receive reports of pending investigation reports of case."
- 2. Prosecutorial and Judicial Misconduct; and
- 3. Involuntary guilty plea.

The State filed its Return on September 21, 2006. An evidentiary hearing was convened on May 19, 2008, before the Honorable James C. Williams, Jr. Applicant was present and represented by counsel, Glenn Walters, Sr., Esquire. Respondent was represented by Assistant Attorney General Lance Boozer. Prior to the entry of a written Order of Dismissal, Applicant submitted a *pro se* "Motion to Alter/Amend *pro se* Rule 59(e) SCRCP and Motion to Reconsider, *pro se* applicable S.C. Court Rules" on May 27, 2008. By written Order dated and filed October 29, 2008, Judge Williams denied and dismissed the application in full.¹ The State filed a Return to Applicant's *pro se* 59(e) Motion on November 4, 2008. By written Order dated March 4, 2009, Judge Williams dismissed the motion.

On November 5, 2008, Applicant appealed the denial of his first post-conviction relief application. Applicant's Petition for Writ of Certiorari was filed on August 17, 2009. The South Carolina Supreme Court denied the Petition on June 10, 2010. The Remittitur was sent on June 29, 2010.

II.

Thereafter, on July 13, 2010, Applicant filed a second application for post-conviction relief (C.A. No. 2010-CP-38-1000), alleging:

¹ The Clerk of Court's stamp on the Order of Dismissal improperly reflects that the order was filed in 1998. The correct year of filing is 2008.

1. Judicial Misconduct;
 - a. "The S.C. Supreme Court in the cert for PCR case No. 2006-CP-38-462 engaged in acts of judicial fraud and an abuse of discretion failed to stay the cert pending removing the case, including this case, is petitioned to be removed to the California District Court under 3:08-CU-10-1105-MMC. A Writ of Mandamus for this is pending in the 9th Circuit under 10-71855."
2. "Fifth, Sixth, and Fourteenth Amendment Violation."
3. "Due Process."
4. "Subject Matter Jurisdiction."
5. "Ineffective Counsel."

The Orangeburg County Clerk of Court did not forward the application to Respondent until December 3, 2010. On May 17, 2011, Respondent made its Return and Motion to Dismiss, seeking summary dismissal of the application as successive to his prior post-conviction relief application and filed beyond the statute of limitations. On June 6, 2011, this Court signed a Conditional Order of Dismissal, provisionally dismissing the application but allowing Applicant twenty days from the date of service to object to the application's dismissal. This Conditional Order of Dismissal was filed on June 16, 2011 and Applicant was personally served on September 13, 2011. After receiving no reply from Applicant, this Court signed a Final Order of Dismissal on December 20, 2011; this Final Order of Dismissal was filed on January 9, 2012.

On January 31, 2012, Applicant, through retained counsel Tara D. Shurling, filed an untimely reply to the Conditional Order of Dismissal. On February 2, 2012, Applicant, though his counsel, filed a "Motion to Reconsider/Alter/Amend Final Order Pursuant to Rule 59(e) SCRCF"; in this Motion, Applicant asked this Court to allow him to proceed to a full merits hearing on his successive application, or in the alternative, re-open his first post-conviction relief action (C.A. No. 2006-CP-38-0462) and allow him to present testimony and evidence regarding the allegations he raised in his *pro se* 59(e), SCRCF, motion in his 2006 action. Respondent

made its return to this motion on August 17, 2012. A hearing on this motion was convened on August 20, 2012 at the Orangeburg County Courthouse before this Court. Following this hearing, this Court granted Applicant's motion and re-opened his initial post-conviction relief action, docket number 2006-CP-38-0462. This Court allowed Applicant thirty days to file an amended application and specifically ruled that the amended application could not raise with any issues pertaining to Applicant's mental competency or any other issue presented in his initial action, finding that these issues were fully addressed and ruled upon in his earlier post-conviction relief hearing. An order to this effect was signed March 12, 2013.

Applicant filed an amended Application on September 3, 2013, alleging the following grounds for relief:

1. Plea counsel was ineffective for neglecting to introduce evidence during Applicant's sentencing proceeding concerning the Applicant's medical history;
2. Plea counsel was ineffective for failing to clarify the Applicant's mental health history for the sentencing judge when the Applicant answered the Court's inquiry concerning whether he had a history of mental illness negatively;
3. Plea counsel was ineffective for failing to refute statements made by the prosecutor concerning footwear impressions found at the scene;
4. Plea counsel was ineffective for failing to adequately investigate the circumstances under which Applicant's statement was given and failing to discuss potential grounds for challenging its admissibility;
5. Plea counsel was ineffective for failing to adequately investigate the degree to which the Applicant's memory defects and impaired cognitive abilities may have impacted his ability to make a knowing and voluntary statement;
6. Plea counsel was ineffective for failing to advise Applicant of the procedures that could be employed during a jury trial to challenge the reliability and admissibility of his pre-trial statement;
7. Plea counsel was ineffective for failing to adequately explain to Applicant that substantive errors of law made during a jury trial could be appealed to a high court if convicted;

8. Plea counsel was ineffective for failing to explain to Applicant that a challenge to the admissibility of his statement would have to be evaluated by both the trial judge and jury if challenged in a jury trial;
9. Plea counsel was ineffective for failing to advise Applicant of the ways in which he might challenge his statement to law enforcement based on his medical history;
10. Plea counsel was ineffective for allowing Applicant to plead guilty without first exploring the possibility that Applicant's mental deficits had been capitalized by law enforcement to obtain a false confession;
11. Plea counsel was ineffective for allowing Applicant to plead guilty without adequately advising him of the limited forensic value of the footwear impressions being asserted by the State as evidence of his guilt;
12. Plea counsel was ineffective for allowing Applicant to make the decision to waive his right to trial by jury without first adequately explaining all forensic evidence and how such evidence could be challenged during a jury trial;
13. Plea counsel was ineffective for failing to adequately advise Applicant of the fact that an adverse ruling on the admissibility of his statement could be appeal to a high court in the event he was convicted by a jury;
14. Plea counsel was ineffective for failing to petition the court for funding for an independent forensic expert to review the DNA evidence;
15. Plea counsel was ineffective for misleading Applicant of the evidentiary value of the forensic evidence related to his shoes;
16. Plea counsel was ineffective for failing to investigate the possible application of the a lesser included offense to the facts in Applicant's case;
17. Plea counsel was ineffective for failing to advise Applicant on the law of lesser included offenses and possible application to his case; and
18. Plea counsel was ineffective for failing to petition the court for funding to hire an expert witness on false confessions.

A hearing on these allegations² was convened on February 20, 2014 at the Calhoun County Courthouse. Applicant was present and represented by Tara D. Shurling, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. Testifying at the hearing were Applicant, his mother, and plea counsel Margaret E. Hinds, Esquire. Following its review of the testimony and evidence presented at the hearing, the Court found that there were no constitutional deprivations or other errors entitling

² At the beginning of the evidentiary hearing, Applicant expressly abandoned allegation number 14 regarding Counsel's alleged failure to consult with a DNA expert.

Applicant to relief and denied and dismissed the application with prejudice. A formal order to this affect was signed on November 5, 2014 and filed on November 14, 2014.

On December 11, 2014, Applicant served a copy of his "Motion to Reconsider/Alter/Amend Final Order Pursuant to Rule 59(E) SCRC," on Respondent. This Return follows.

III.

In his "Motion to Reconsider/Alter/Amend Final Order Pursuant to Rule 59(E) SCRC," Applicant asserts that the Court's order "erroneously finds that some of the issues raised . . . violated the March, 2013 Order" and improperly dismisses these allegations accordingly. Applicant also argues that the order failed to address that Applicant renewed and preserved his objection to this Court's refusal to allow him to address allegation and evidence concerning prior post-conviction relief counsel.

Respondent submits that this Court's twenty page Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRC. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Respondent submits that this Court fully ruled on all issues properly presented at the post-conviction relief hearing and that Applicant's "Motion to Reconsider/Alter/Amend Final Order Pursuant to Rule 59(E) SCRC" should be denied. Respondent also notes that the Court's Order of Dismissal addresses the merits of all allegations presented by Applicant at the hearing, notwithstanding its additional ruling that many of the allegations must be dismissed as in violation of the Court's previous Order. As the merits of each allegation were addressed fully in the order, Respondent submits that Applicant's assertions are without merit.

IV.

WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that said Motion be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

BY:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

December 16, 2014

STATE OF SOUTH CAROLINA	)	
COUNTY OF ORANGEBURG	)	IN THE COURT OF COMMON PLEAS
	)	
	)	2006-CP-38-0462
EZEKIAL HAYNES, #309200	)	
Applicant,	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return to Applicant's "Motion to Reconsider/Alter/Amend Final Order Pursuant to Rule 59(e), SCRCP"** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Tara Dawn Shurling, Esquire
Law Office Of Tara Dawn Shurling, PA
3614 Landmark Drive, Suite A
Columbia, SC 29204**

DATED this 16th day of December, 2014.


Sara B. Moore, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
 COUNTY OF ORANGEBURG)

Ezekial Haynes, SCDC # 309200,)
 Applicant,)

v.)

State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2006-CP-38-0462

**ORDER DENYING APPLICANT'S
 "MOTION TO RECONSIDER/ALTER/
 AMEND FINAL ORDER PURSUANT
 TO RULE 59(E) SCRPC"**

FILED
 WITH
 CLERK
 OF
 COURT
 ORANGEBURG, SC

2015 JAN -2 AM 11:45

This matter comes before this Court by way of Applicant's "Motion for Rehearing pursuant to Rule 59(a), SCRPC, and Motion to Alter or Amend pursuant to Rule 59(e) SCRPC," asking this Court to alter or amend its Order of Dismissal denying Applicant post-conviction relief.

I.

The records before this Court show that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant was indicted during the March 2005 term of the Orangeburg County Grand Jury for Murder (2005-GS-38-0036). Applicant was represented by Margaret E. Hinds, Esquire. On May 17, 2005, Applicant appeared before the Honorable Perry M. Buckner, where he pled guilty as indicted. Judge Buckner sentenced Applicant to forty years imprisonment pursuant to a negotiated plea cap between Applicant and the State. Applicant filed a direct appeal, but elected to withdraw it on April 25, 2006. An Order of Dismissal and Remittitur were issued on May 23, 2006.

Applicant filed his first post-conviction relief application on April 20, 2006 (C.A. No. 2006-CP-38-00462), setting forth the following grounds for relief:

1. Ineffective assistance of counsel;
 - a. "Counsel failed to investigate case to prepare a defense for Applicant."

- b. "Counsel was ineffective by the violations she committed in accordance of Professional Conduct Rules, Counsel showed more interest to intimidated Applicant to pled guilty to Murder charge."
- c. "Plea Counsel failed to file pre-trial motions to have standing issues of the Murder Indictment, Rule 5 motion and waivers to be evaluated by trial court."
- d. "Plea Counsel failed to examine statements, police investigated reports and failed to receive reports of pending investigation reports of case."
- 2. Prosecutorial and Judicial Misconduct; and
- 3. Involuntary guilty plea.

The State filed its Return on September 21, 2006. An evidentiary hearing was convened on May 19, 2008, before the Honorable James C. Williams, Jr. Applicant was present and represented by counsel, Glenn Walters, Sr., Esquire. Respondent was represented by Assistant Attorney General Lance Boozer. Prior to the entry of a written Order of Dismissal, Applicant submitted a *pro se* "Motion to Alter/Amend *pro se* Rule 59(e) SCRCF and Motion to Reconsider, *pro se* applicable S.C. Court Rules" on May 27, 2008. By written Order dated and filed October 29, 2008, Judge Williams denied and dismissed the application in full.¹ The State filed a Return to Applicant's *pro se* 59(e) Motion on November 4, 2008. By written Order dated March 4, 2009, Judge Williams dismissed the motion.

On November 5, 2008, Applicant appealed the denial of his first post-conviction relief application. Applicant's Petition for Writ of Certiorari was filed on August 17, 2009. The South Carolina Supreme Court denied the Petition on June 10, 2010. The Remittitur was sent on June 29, 2010.

II.

Thereafter, on July 13, 2010, Applicant filed a second application for post-conviction relief (C.A. No. 2010-CP-38-1000), alleging:

- 1. Judicial Misconduct;
 - a. "The S.C. Supreme Court in the cert for PCR case No. 2006-CP-38-462 engaged in acts of judicial fraud and an abuse of discretion failed to stay the cert pending removing the case, including this case, is petitioned to be removed to the California

¹ The Clerk of Court's stamp on the Order of Dismissal improperly reflects that the order was filed in 1998. The correct year of filing is 2008.

District Court under 3:08-CU-10-1105-MMC. A Writ of Mandamus for this is pending in the 9th Circuit under 10-71855."

2. "Fifth, Sixth, and Fourteenth Amendment Violation."
3. "Due Process."
4. "Subject Matter Jurisdiction."
5. "Ineffective Counsel."

The Orangeburg County Clerk of Court did not forward the application to Respondent until December 3, 2010. On May 17, 2011, Respondent made its Return and Motion to Dismiss, seeking summary dismissal of the application as successive to his prior post-conviction relief application and filed beyond the statute of limitations. On June 6, 2011, this Court signed a Conditional Order of Dismissal, provisionally dismissing the application but allowing Applicant twenty days from the date of service to object to the application's dismissal. This Conditional Order of Dismissal was filed on June 16, 2011 and Applicant was personally served on September 13, 2011. After receiving no reply from Applicant, this Court signed a Final Order of Dismissal on December 20, 2011; this Final Order of Dismissal was filed on January 9, 2012.

On January 31, 2012, Applicant, through retained counsel Tara D. Shurling, filed an untimely reply to the Conditional Order of Dismissal. On February 2, 2012, Applicant, ~~through~~ ^{through} his counsel, filed a "Motion to Reconsider/Alter/Amend Final Order Pursuant to Rule 59(e) SCRPC"; in this Motion, Applicant asked this Court to allow him to proceed to a full merits hearing on his successive application, or in the alternative, re-open his first post-conviction relief action (C.A. No. 2006-CP-38-0462) and allow him to present testimony and evidence regarding the allegations he raised in his *pro se* 59(e), SCRPC, motion in his 2006 action. Respondent made its return to this motion on August 17, 2012. A hearing on this motion was convened on August 20, 2012 at the Orangeburg County Courthouse before this Court. Following this hearing, this Court granted Applicant's motion and re-opened his initial post-conviction relief action, docket number 2006-CP-38-0462. This Court allowed Applicant thirty days to file an amended application and specifically ruled that the amended application could not raise ~~with~~ any issues pertaining to Applicant's

mental competency or any other issue presented in his initial action, finding that these issues were fully addressed and ruled upon in his earlier post-conviction relief hearing. An order to this effect was signed March 12, 2013.

Applicant filed an amended Application on September 3, 2013, alleging the following grounds for relief:

1. Plea counsel was ineffective for neglecting to introduce evidence during Applicant's sentencing proceeding concerning the Applicant's medical history;
2. Plea counsel was ineffective for failing to clarify the Applicant's mental health history for the sentencing judge when the Applicant answered the Court's inquiry concerning whether he had a history of mental illness negatively;
3. Plea counsel was ineffective for failing to refute statements made by the prosecutor concerning footwear impressions found at the scene;
4. Plea counsel was ineffective for failing to adequately investigate the circumstances under which Applicant's statement was given and failing to discuss potential grounds for challenging its admissibility;
5. Plea counsel was ineffective for failing to adequately investigate the degree to which the Applicant's memory defects and impaired cognitive abilities may have impacted his ability to make a knowing and voluntary statement;
6. Plea counsel was ineffective for failing to advise Applicant of the procedures that could be employed during a jury trial to challenge the reliability and admissibility of his pre-trial statement;
7. Plea counsel was ineffective for failing to adequately explain to Applicant that substantive errors of law made during a jury trial could be appealed to a high court if convicted;
8. Plea counsel was ineffective for failing to explain to Applicant that a challenge to the admissibility of his statement would have to be evaluated by both the trial judge and jury if challenged in a jury trial;
9. Plea counsel was ineffective for failing to advise Applicant of the ways in which he might challenge his statement to law enforcement based on his medical history;
10. Plea counsel was ineffective for allowing Applicant to plead guilty without first exploring the possibility that Applicant's mental deficits had been capitalized by law enforcement to obtain a false confession;
11. Plea counsel was ineffective for allowing Applicant to plead guilty without adequately advising him of the limited forensic value of the footwear impressions being asserted by the State as evidence of his guilt;
12. Plea counsel was ineffective for allowing Applicant to make the decision to waive his right to trial by jury without first adequately explaining all forensic evidence and how such evidence could be challenged during a jury trial;

13. Plea counsel was ineffective for failing to adequately advise Applicant of the fact that an adverse ruling on the admissibility of his statement could be appeal² to a high court in the event he was convicted by a jury; appealed
14. Plea counsel was ineffective for failing to petition the court for funding for an independent forensic expert to review the DNA evidence;
15. Plea counsel was ineffective for misleading Applicant of the evidentiary value of the forensic evidence related to his shoes;
16. Plea counsel was ineffective for failing to investigate the possible application of the a lesser included offense to the facts in Applicant's case;
17. Plea counsel was ineffective for failing to advise Applicant on the law of lesser included offenses and possible application to his case; and
18. Plea counsel was ineffective for failing to petition the court for funding to hire an expert witness on false confessions.

A hearing on these allegations² was convened on February 20, 2014 at the Calhoun County Courthouse. Applicant was present and represented by Tara D. Shurling, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. Testifying at the hearing were Applicant, his mother, and plea counsel Margaret E. Hinds, Esquire. Following its review of the testimony and evidence presented at the hearing, this Court found that there were no constitutional deprivations or other errors entitling Applicant to relief and denied and dismissed the application with prejudice. This Court issued a formal order to this affect, signed on November 5, 2014 and filed on November 14, 2014.

On December 11, 2014, Applicant served a copy of his "Motion to Reconsider/Alter/Amend Final Order Pursuant to Rule 59(E) SCRPC," on this Court. Respondent filed a return to the motion thereafter.

III.

This Court's find³ that its twenty page Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRPC. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Having carefully reviewed the entire record in this

² At the beginning of the evidentiary hearing, Applicant expressly abandoned allegation number 14 regarding Counsel's alleged failure to consult with a DNA expert.

matter, this Court finds that there is no basis for altering or amending its prior ruling.³ Therefore, this Court hereby denies the Applicant's Motion in its entirety, and affirms the previous Order of Dismissal.

This Court notes that if the Petitioner desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served within thirty days of the service of this Order. Petitioner is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND, IT IS SO ORDERED this 30th day of December, 2014



EDGAR W. DICKSON
Presiding Judge
First Judicial Circuit

Orangeburg, South Carolina

FILED FOR RECORD
WINNIE A. B. CLARK
CLERK OF COURT
ORANGEBURG, SC

2015 JAN -2 AM 11:45

³ The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction relief file, since oral argument will not aid the Court in reaching its decision. See Rule 59(f), SCRCP.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

COUNTY OF ORANGEBURG)

CASE NO.: 2006-CP-38-0462

EZEKIAL HAYNES, #309200)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,)

vs.)

STATE OF SOUTH CAROLINA)

Defendant.)

FILED FOR RECORD
WINNIE A. B. CLARK
CLERK OF COURT
ORANGEBURG, SC

2015 JAN -2 AM 11:44

Plaintiff's Attorney:

Tara D. Shurling, Bar No. 5099

Address:3614 Landmark Drive, Ste A, Columbia SC
29204

Phone: _____ Fax: _____

E-mail: _____ Other: _____

Defendant's Attorney:

Megan E. Harrigan, Bar No. 1001587

Address:

PO Box 11549, Columbia SC 29211

Phone: _____ Fax: _____

E-mail: _____ Other: _____

- ☐ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)
☒ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☐ NO**SECTION II: Motion/Order Type**☒ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Megan E. Harrigan ☒ Plaintiff / ☒ Defendant

12/16/14

Date submitted

SECTION III: Motion Fee☐ PAID - AMOUNT: \$ _____☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☒ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____**JUDGE'S SECTION**☐ Motion Fee to be paid upon filing of the attached
order.☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____☐ CONTESTED - AMOUNT DUE: \$ _____

WITNESSES

SGT. J. BONNETTE

Arresting Agency:
Orangeburg Co. Sheriff Dept.

ARREST WARRANT NUMBER

H659763

Arrested: Dec 10, 2004

ACTION OF GRAND JURY

May Joseph
Foreperson of Grand Jury
Date: March 16, 2005

VERDICT

TRUE BILL

Date MAR 16 2005

Foreperson of Petit Jury
Date:

DOCKET NO. 2005GS38-0036

The State of South Carolina

County of

ORANGEBURG

COURT OF GENERAL SESSIONS

March 14, 2005 TERM

**THE STATE
vs.**

Ezekiel Haynes

Indictment for

MURDER

SC Code: 16-03-10
CDR Code: 0116
Class: FEL-EXM

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

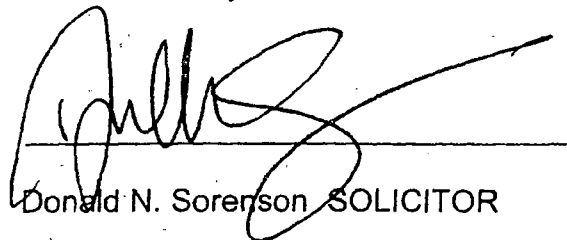
INDICTMENT
2005GS38-0036

At a Court of General Sessions, convened on March 14, 2005 the Grand Jurors of Orangeburg County present upon their oath:

MURDER

That Ezekiel Haynes, did in Orangeburg County, on or about December 7, 2004, with malice aforethought, kill one Chanta Davis by means of striking the victim with a blunt object and strangled her with a mini blind cord, and the said victim did die as a proximate result thereof. This offense being in violation of the Common Law of South Carolina, and Section 16-3-10 of the Code of Laws of South Carolina, as amended.

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


Donald N. Sorenson SOLICITOR