

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Anderson County

Honorable Brooks P. Goldsmith, Circuit Court Judge

KEITH A. RUCKER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001144

APPENDIX

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)

ORIGINAL

Plaintiff,)

v.)

Case Nos.

2011-GS-04-00546, 00547

KEITH ANTONIO RUCKER,)

Defendant.)

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on January 16, 2013, before The Honorable J. Cordell Maddox in the Anderson County Courthouse, 100 South Main Street, Anderson, SC 29622; attended by counsel as follows:

APPEARANCES:

Catherine T. Huey, Esq.,
 Appearing for The State.

Donald Leverette "Chuck" Allen, Esq.,
 Appearing for the Defendant.

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I-N-D-E-X
JANUARY 16, 2013
(STATE OF SOUTH CAROLINA v. KEITH ANTONIO RUCKER)
(PLEA HEARING)
(2011-GS-04-00546, 00547)

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IDENTIFICATION ENTERED

*****NO EXHIBITS OFFERED*****

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P R O C E E D I N G S

(12:32 P.M.)

MS. HUEY: Keith Rucker.

THE COURT: Yes, ma'am.

MS. HUEY: Your Honor, may it please The Court, before you is Keith Antonio Rucker, he is pleading guilty to voluntary manslaughter, 2011-GS-04-546, as well as death or, um, injury to a child in utero, 2011-GS-04-547. And the recommendation from The State is a twenty-five year sentence on the manslaughter charge and fifteen consecutive on the death in utero charge.

THE COURT: Consecutive?

MS. HUEY: Yes, sir, consecutive.

(WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A CONFERENCE, OFF THE RECORD.)

(WHEREUPON, PROCEEDINGS CONTINUED.)

THE COURT: All right, Mr. Rucker, if you would, raise your right hand.

(WHEREUPON, **KEITH ANTONIO RUCKER** WAS DULY SWORN AND TESTIFIED AS FOLLOWS:)

THE COURT: All right, I need to ask you some questions. Uh, first question is on this voluntary manslaughter charge the original charge was murder. You have a right to have the voluntary manslaughter charge, um, sent back to the Grand Jury. Do you want to waive

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1 that right?

2 **MR. ALLEN:** I'll probably need to confer with him on
3 that, Your Honor, if we could---

4 **THE COURT:** Okay.

5 **MR. ALLEN:** ---have just a moment.

6 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
7 CONFERENCE, OFF THE RECORD.)

8 (WHEREUPON, PROCEEDINGS CONTINUED.)

9 **MR. RUCKER:** I'll waive it.

10 **THE COURT:** You're waiving that right? (After
11 pause) Okay, I need to ask you some questions. If you
12 need to stop me or you need to speak to your lawyer, um,
13 please do at the time because if you answer, I'm gonna
14 assume you understood my question; okay?

15 **MR. RUCKER:** Yes, sir.

16 **THE COURT:** How long have you been in jail?

17 **MR. RUCKER:** Almost two years.

18 **THE COURT:** Anybody got the date, or a time?

19 **MR. RUCKER:** January 19th will be two years for me.

20 **MS. HUEY:** Sorry, Judge, I have it written down
21 right over here.

22 **MR. ALLEN:** And that is -- that is about right, but
23 I don't have the precise---

24 **MS. HUEY:** Seven-hundred-and-twenty-seven days,
25 Judge.

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1 **THE COURT:** Thank you. All right, have you had any
2 drugs or alcohol within the last twenty-four hours?

3 **MR. RUCKER:** No, sir.

4 **THE COURT:** Are you taking any kind of
5 prescriptions or medication prescribed to you by a
6 doctor?

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

8 **THE COURT:** All right. Has anybody threatened you
9 in any way or promised you anything to get you to plead
10 guilty here today?

11 **MR. ALLEN:** No, sir.

12 **THE COURT:** All right. Have you had plenty of time
13 to speak with your lawyer?

14 **MR. RUCKER:** Yes, sir.

15 **THE COURT:** And are you satisfied with his services?

16 **MR. RUCKER:** Yes, sir.

17 **THE COURT:** Has he done everything that you've asked
18 him to do?

19 **MR. RUCKER:** Yes, sir.

20 **THE COURT:** Have you asked him to do things that he
21 has refused to do?

22 **MR. RUCKER:** No, sir.

23 **THE COURT:** All right. So you're completely
24 satisfied with him?

25 **MR. RUCKER:** Yes, sir.

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1 **THE COURT:** All right. And you've met with him
2 plenty of times; is that correct?

3 **MR. RUCKER:** Yes, sir.

4 **THE COURT:** Do you understand that if you want to
5 plead guilty you have to waive your constitutional
6 rights?

7 **MR. RUCKER:** Yes, sir.

8 **THE COURT:** Are you waiving your right to a jury
9 trial today?

10 **MR. RUCKER:** Yes, sir.

11 **THE COURT:** Are you waiving your right to put up a
12 defense to these charges?

13 **MR. RUCKER:** Yes, sir.

14 **THE COURT:** Are you waiving your right to remain
15 silent?

16 **MR. RUCKER:** Yes, sir.

17 **THE COURT:** You also have the right to have a trial
18 and require The State to come in, bring witnesses to
19 testify against you, have your lawyer cross-examine them,
20 uh, and confront them. That's your right of
21 confrontation under the Constitution. Are you waiving
22 your right to confrontation?

23 **MR. RUCKER:** Yes, sir.

24 **THE COURT:** All right. Now, you've been in jail
25 seven-hundred-and-twenty-seven days, have you had plenty

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1 of time to think about your decision today to plead
2 guilty?

3 **MR. RUCKER:** Yes sir. Well, I've been wrote (sic) a
4 statement on myself so...

5 **THE COURT:** I know, but what I'm asking is, you're
6 here today to plead guilty---

7 **MR. RUCKER:** Yes, sir.

8 **THE COURT:** ---you understand that?

9 **MR. RUCKER:** Yes, sir.

10 **THE COURT:** And that's your decision based upon your
11 own thought processes and your conversation with---

12 **MR. RUCKER:** Yes, sir.

13 **THE COURT:** ---uh, your lawyer?

14 **MR. RUCKER:** Yes, sir.

15 **THE COURT:** So you want to plead guilty today?

16 **MR. RUCKER:** Yes, sir.

17 **THE COURT:** All right. And Mr. Allen, have you had
18 plenty of time to speak to him? You think he understands
19 the elements of the charges and his waiver of
20 Constitutional rights?

21 **MR. ALLEN:** Yes; and may it please The Court,
22 just -- just quickly, Your Honor, we have met almost a
23 half-a-dozen times out at the detention center. We've
24 had correspondence through the mail; he's written me
25 several times. We've -- we've really had a lot of time

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1 together for me to counsel him and advise him. So,
2 uh---

3 **THE COURT:** Okay.

4 **MR. ALLEN:** ---yes, sir.

5 **THE COURT:** But you understand you have the right to
6 go to trial today and have twelve members of the
7 community who are your peers render a verdict based upon
8 the evidence presented? Do you understand that?

9 **MR. RUCKER:** Yes, sir.

10 **THE COURT:** And if you plead guilty you're waiving
11 that right.

12 **MR. RUCKER:** Yes, sir.

13 **THE COURT:** So you're waiving that right?

14 **MR. RUCKER:** Yes, sir.

15 **THE COURT:** All right. All right, do you want to
16 plead guilty to voluntary manslaughter and to death of a
17 child in utero?

18 **MR. RUCKER:** Yes, sir.

19 **THE COURT:** And are you guilty of those two charges?

20 **MR. RUCKER:** Yes, sir.

21 **THE COURT:** All right. Yes, ma'am?

22 **MS. HUEY:** Your Honor, may it please The Court. On
23 January 18th of 2011, twenty-three-year-old Kacy Roberson
24 failed to pick up her two young children from daycare
25 which was obviously highly unusual. The school called

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1 her step-father, Steven Tripp, and had him do a wellbeing
2 check.

3 When Mr. Tripp arrived at the victim's apartment,
4 [REDACTED] Ridge, which is in the city limits of
5 Anderson, through the cracked front door he could see Ms.
6 Roberson. Her head was covered in blood and she was naked
7 from the waist down.

8 Nine-one-one was dispatched, and she was pronounced
9 dead at the scene, Your Honor. The Defendant, who is the
10 father of the victim's children, had not been seen since
11 he left the apartment in the victim's car at 2:00 P.M.
12 which was the estimated time of her death. A BOLO was
13 issued for the Defendant---

14 **THE COURT:** 2:00 P.M.?

15 **MS. HUEY:** Yes, sir. A BOLO was issued for the
16 Defendant and the car, and the car was found abandoned in
17 Lavonia, Georgia.

18 An autopsy was performed by Forensic Pathologist
19 Doctor Brett Woodard. He ruled that her death was a
20 homicide caused by asphyxia due to a foreign body
21 obstruction and manual strangulation. She had contusions
22 to the right side of her face, lips, left chin, and left
23 forehead, also contusions and abrasions about her neck.
24 Further, her jaw was fractured. Doctor Woodard retrieved
25 a small round plastic container from deep within her

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1 throat. Ms. Roberson was sixteen to eighteen weeks
2 pregnant at the time of her murder which was also
3 evidenced at her autopsy.

4 Your Honor, the Defendant eventually turned himself
5 in at the Lavonia Police Department around the next day.
6 He eventually gave two detailed, um, statements after
7 having been Mirandized and, um, waiving his rights, Your
8 Honor. Um, he gave two statements regarding the
9 incidents surrounding the victim's death. In the
10 statements he, uh, claims that he became enraged over the
11 victim allegedly cheating on him, telling him that the
12 baby with which she was pregnant was not his, and that
13 she no longer wanted to be with him. Um, as a result
14 they got in to an altercation. Uh, he pinned her down on
15 the bed and just, according to his statement, started
16 assaulting her over and over again in the head and face
17 area. He claims to have blacked out during a portion of
18 this, Your Honor. He claims to have tried to kill
19 himself, um, shortly after this in their apartment. Um,
20 but nonetheless he ultimate -- ultimately says that he
21 left the apartment and he knew that -- that she was dying
22 when he left the apartment.

23 Um, Your Honor, the Defendant, um, as far as a prior
24 record goes, Your Honor, he has a 2000 DUI. He has a
25 2004 statutory rape, um, which I believe involves the

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1 victim in this case, Your Honor. They began a
2 relationship when he -- when she was fourteen. Um, he
3 went to jail for a brief amount of time, um, as a result
4 of that relationship. She maintained contact with him,
5 um, through the jail, um, and then they started up
6 shortly thereafter him getting out of jail, Your Honor.

7 Um, the victim's mother is here, Your Honor; she
8 would like to address The Court at the appropriate time.
9 I will go ahead and tell you that, um, the -- at least
10 the -- the mother in this case is not, um, happy with The
11 State's recommendation. She obviously, and rightfully
12 so, wants a life sentence in this case, and I certainly
13 don't blame her. You, as the Judge, knows the reason we,
14 um, typically enter into negotiations is because I can
15 guarantee a plea, um, and at trial I cannot.

16 **THE COURT:** Right. All right, in fact that brings
17 up something I forgot to ask you. You understand that
18 there is a recommendation here of twenty-five years, uh,
19 and fifteen consecutive. I don't have to go along with
20 that. You understand that?

21 **MR. RUCKER:** Yes, sir.

22 **THE COURT:** And in fact, I can sentence you up to
23 thirty years on the voluntary manslaughter and thirty
24 years on the, um, death in utero for a total of sixty
25 years.

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1 **MR. RUCKER:** Yes, sir.

2 **THE COURT:** And -- and I'm not bound by their
3 recommendation. Do you understand that?

4 **MR. RUCKER:** Yes, sir.

5 **THE COURT:** And you accept that?

6 **MR. RUCKER:** Yes, sir.

7 **MR. ALLEN:** Could I add something to that, Your
8 Honor?

9 **THE COURT:** Yeah.

10 **MR. ALLEN:** We -- we've talked about that very
11 thoroughly and explicitly. He -- he, and I will -- I
12 will join in his answer that he -- he thoroughly
13 understands the maximum penalties that are available
14 under the law.

15 **THE COURT:** And he understands that even though
16 there's a recommendation, I could exceed those or I can
17 go under those?

18 **MR. ALLEN:** He does understand that, Your Honor.

19 **THE COURT:** Okay. All right, do you admit to those
20 facts?

21 **MR. RUCKER:** Yes, sir.

22 **THE COURT:** Do you admit to everything that she told
23 me?

24 **MR. RUCKER:** No, sir; not all it, sir.

25 **THE COURT:** What -- what -- what don't you -- what

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1 do you admit to?

2 **MR. RUCKER:** I admit that far as me smacking her,
3 yes I did do that. And, I -- I did strangle her. Yes,
4 sir, I did do that. But far as -- I don't agree with
5 what them sitting there say (sic) that there was blood
6 all over her. I don't believe that because I didn't hit
7 her in the head with anything that was blunt -- blunt
8 trauma head. I didn't hit her with anything. But they
9 said that she was -- she had blood all over her and
10 that's not true.

11 **THE COURT:** Okay, but you admit that you strangled
12 her until she was dead?

13 **MR. RUCKER:** Yes, sir.

14 **THE COURT:** And the Solicitor just told me that
15 there was a plastic what?

16 **MS. HUEY:** We think it might have been like a makeup
17 bottle of some sort.

18 **THE COURT:** Makeup bottle. Did you put that---

19 **MR. RUCKER:** No, sir, that I did not do. I wouldn't
20 have no reason to lie, I confessed to everything, so
21 wouldn't I sit there and tell the truth about everything?
22 I sat up here and told them everything. That I did not
23 know nothing about.

24 **THE COURT:** You didn't put anything down her throat?

25 **MR. RUCKER:** No, sir.

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1 **MR. ALLEN:** Your Honor, here -- just if I -- could I
2 add that his confession is about like four or five, six
3 pages long? I mean, he gave a lengthy confession.

4 **THE COURT:** Okay.

5 **MS. HUEY:** And he does leave that out in his
6 confession, Your Honor, but he also claims to have
7 blacked out during a portion of the assault.

8 **THE COURT:** Is that true?

9 **MR. RUCKER:** Yes, sir, but I know for a fact that I
10 ain't sitting here and put nothing down her throat; I
11 know that. I didn't do that.

12 **THE COURT:** And -- and this was the mother of your
13 child?

14 **MR. RUCKER:** She told me that the baby was not mine.
15 So, I don't know---

16 **THE COURT:** But now, she was pregnant with a baby
17 but---

18 **MR. RUCKER:** Yes, sir.

19 **THE COURT:** ---didn't you-all have another child?

20 **MR. RUCKER:** No, sir.

21 **THE COURT:** Okay. All right, she was pregnant with
22 your child. That's what -- that was your assumption?

23 **MR. RUCKER:** Yes, sir.

24 **THE COURT:** Okay.

25 **MR. ALLEN:** Though there was some question about

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1 that, Your Honor.

2 **THE COURT:** Okay. All right, so you're admitting to
3 me that you're guilty of voluntary manslaughter and death
4 of a child in utero?

5 **MR. RUCKER:** Yes, sir.

6 **THE COURT:** All right. Yes, sir, I'll be happy to
7 hear from you.

8 **MR. ALLEN:** Yes, sir, may it please The Court, Your
9 Honor. Before I begin, let me -- let me just say that
10 anything I say, anything I propose here, Your Honor, any
11 of my commentary is not to diminish the loss that this
12 family---

13 **THE COURT:** No, I understand.

14 **MR. ALLEN:** ---has experienced.

15 **THE COURT:** In fact, uh, to the family, let me --
16 let me -- this is always the hardest part for you. It's
17 not the hardest part, it's the hardest part in this
18 courtroom. Mr. Allen has to represent his client. He
19 has to tell me these things. Um, he has told his
20 client -- I can promise you this, because every lawyer
21 does -- you don't say a word to this family, you don't
22 write 'em notes, you don't apologize. But, now is the
23 time that he has to defend his client and so, the only
24 reason I tell you that is often times I see victims get
25 very upset at what the defense lawyer tells me, and don't

1 do that. That's what he has to do. And then I'm gonna
2 hear from you, okay? Yes, sir?

3 **MR. ALLEN:** And, Your Honor, I have full sympathy
4 for -- for the family certainly. Um, Your Honor, for
5 background information, um, Mr. Rucker is twenty-nine-
6 years old. He has a tenth grade education. Uh, he is
7 single. He does have one child. And, Your Honor, as he
8 said, he's been incarcerated for about two years, but
9 prior to his incarceration he was gainfully employed,
10 Your Honor. And he was evaluated during the pendency of
11 this case and during his custody, uh, by The State and
12 there was, I should mention, there's some -- some -- some
13 mention made in those records in that evaluation of
14 adjustment disorder as well as some manic depression from
15 some years ago. Um---

16 **THE COURT:** Who evaluated him?

17 **MR. ALLEN:** It's -- I don't recall the particular
18 psychologist or psychiatrist, but I did---

19 **THE COURT:** You-all -- you-all---

20 **MS. HUEY:** I have it, Judge, if you just give me
21 one -- Department of Mental Health, Judge---

22 **THE COURT:** Okay. You-all approach just a minute.
23 You know what I'm going to ask you.

24 **MS. HUEY:** Yes, sir, Judge, and that's why I'm -- I
25 don't think---

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1 **THE COURT:** Double Check.

2 **MS. HUEY:** ---that is the case but I will double
3 check.

4 **THE COURT:** Chuck, come here please.

5 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A BENCH
6 CONFERENCE, OFF THE RECORD.)

7 (WHEREUPON, PROCEEDINGS CONTINUED.)

8 **THE COURT:** I'm going to ask Mr. Allen to ask his
9 client if he recalls---

10 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A BENCH
11 CONFERENCE, OFF THE RECORD.)

12 (WHEREUPON, PROCEEDINGS CONTINUED.)

13 **THE COURT:** All right, so when you---

14 **MS. HUEY:** Doctor Domino (phonetic), Judge.

15 **THE COURT:** ---were evaluated, you -- you were
16 evaluated by a male, is that correct?

17 **MR. RUCKER:** Yes, sir.

18 **THE COURT:** And -- okay. And you've looked through
19 your file and made sure there's no problem there?

20 **MS. HUEY:** Yes, sir.

21 **THE COURT:** Okay; I apologize. I'm sorry,
22 Mr. Allen, go ahead.

23 **MR. ALLEN:** Yes, sir, may it please The Court. So,
24 those were some of the findings. And I should also add,
25 Your Honor, for The Court's information, he -- he grew up

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1 in the north Georgia area, and he grew up in a very
2 abusive, uh, home environment. Uh, a lot of neglect,
3 there was drug abuse by the -- the natural mother. Uh,
4 it led to him being moved around in numerous, uh, foster
5 homes in north Georgia. He had adjustment problems with
6 school. Uh, that -- it was a pretty consistent problem
7 he had, and I think he -- I think -- but, you know,
8 the -- the abusive environment that he grew up in, I
9 really think it -- it led to some isolation, uh, issues
10 and -- and obviously some adjustment, um, issues for him.

11 And I would -- I would also again point out that
12 this -- this conviction in the State of Georgia, it was
13 the same young lady, um, and it was a consensual
14 relationship, she just wasn't of the age of consent.
15 There's about five years difference in their age.

16 They remained in contact while he was incar- -- he
17 originally got a probationary sentence on that, then he
18 was revoked a couple times, uh, after the original
19 sentence and they maintained contact throughout the --
20 the five or six-year period. In fact, she contacted him
21 after he was released in August of 2010, which -- which
22 was about six months prior to this occurring. And they
23 resumed their relationship. So, but I did want to point
24 out that that was the -- that's the same, uh, young lady
25 involved in that case.

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1 And, Your Honor, he -- he, um, he loved her
2 immensely; I mean they -- they were living together.
3 They lived in the same apartment.

4 And she, uh -- he had become suspicious of -- of a
5 third party being involved, another -- another young man,
6 and on the morning this happened, um, he -- he confronted
7 her and she confronted him and they -- and this -- it's
8 when it occurred. And I think it would probably be
9 consistent with the adjustment disorder and the manic
10 depression, his reaction.

11 Of -- of course, again, it's -- it's -- it's a
12 tragic situation; it's a terrible situation. But again,
13 I just provide this information for the benefit of The
14 Court.

15 And he did, according to his statement -- and -- and
16 again, he gave a -- about a five or six-page statement
17 admitting most everything. He did try to, uh, take his
18 own life at the time. He tried to hang himself with a
19 belt. He tried but was unsuccessful.

20 And as far as his cooperation, Your Honor, he turned
21 himself in a matter of hours -- within a matter of hours
22 that it occurred. He went to north Georgia, that's where
23 his family is, and he turned himself in the following day
24 and again gave that confession. He fully cooperated and
25 didn't put law enforcement through the rigorous

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1 investigation that they would have had to done otherwise.

2 So, he was cooperative.

3 And he -- he regrets -- and he's gonna speak to The
4 Court -- address The Court, Your Honor, here momentarily.
5 But, uh, he tells me that not a day goes by that he
6 doesn't, uh, think of this and regret it. He loved her
7 immensely; they had a serious relationship, and he is,
8 uh, he -- he ju- -- he ju- -- he regrets it and he wishes
9 that there was something he could do to undo it.

10 Again, he's been in custody for almost, uh, two
11 years, and, Your Honor, um, we would just ask for a
12 concurrent -- we would respectfully request a concurrent
13 sentence. That's a long time; that's a long time. And
14 we would -- we would just, again, respectfully request a
15 concurrent sentence. Thank you, Your Honor.

16 **THE COURT:** Yes, sir, I'll hap- -- be happy to hear
17 from you, but you need to speak to me, not to the family.
18 If you want to say something to the family, you need to
19 say it through me, okay?

20 **MR. RUCKER:** Yes, sir.

21 **THE COURT:** Okay, go ahead.

22 **MR. RUCKER:** Um, I know that my apologies might fall
23 on deaf ears, but I'm truly sorry. And I didn't mean for
24 what happened to happen. You know, I really loved Kacy
25 with all my heart, and my family, or anybody around me,

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1 seeing us together could see that and verify that.

2 You know, I understand my, um -- when I got 2003,
3 you know, she was young, and it really wasn't about her
4 age. It was about how she made felt (sic). And, I was
5 deeply in love with Kacy and even her -- even
6 Ms. Roberson know how I felt about her, you know, because
7 there were times where Ms. Roberson would invite me to
8 her house. There was times where, um, Ms. Roberson would
9 sit there and take me to my home that's in Hartford.
10 There's plenty of times that me and Rob- -- me -- me and
11 Ms. Roberson sat down and discussed about her daughter,
12 so she know how I felt about her.

13 And, I'm truly sorry. Every day I think about it; I
14 have to sit there and go to sleep. And I have to sit
15 there and these thoughts in my head. And, you know,
16 there's plenty of times that I wish I was dead because
17 what I did. I can't take back what I did. The only
18 thing I can sit there and do is ask them for forgiveness;
19 that's all I can do. And I'm truly sorry. I wish I
20 could take it back. Every day I wish I could, but I
21 can't.

22 **THE COURT:** Well, what happened that day?

23 **MR. RUCKER:** That morning we had -- that morning we
24 took the kids to school and we came back to the---

25 **THE COURT:** How many children were there in the

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1 home?

2 **MR. RUCKER:** Two, [REDACTED] (phonetic) and [REDACTED].

3 **THE COURT:** And, these were not your children---

4 **MR. RUCKER:** No, sir---

5 **THE COURT:** ---these were someone else's children?

6 **MR. RUCKER:** ---but I loved them as my own.

7 **THE COURT:** And how old were they?

8 **MR. RUCKER:** [REDACTED]-- I think at the time [REDACTED] was
9 two. If I'm not mistaken, I think at the time [REDACTED]
10 was four -- maybe four I think, if I'm not mistaken.

11 **THE COURT:** Okay; they were young?

12 **MR. RUCKER:** Yes, sir. And um, we came back to the
13 apartment, and she had said that she had to take the
14 blankie -- the blankie -- [REDACTED] blankie back to the
15 school to give to her because she was crying for it. So
16 we went back to the school, and we came back to the
17 apartment.

18 So, I felt something wasn't right and I asked her.
19 I was like, you know, talk to me, let me know what's
20 going on. You know, I mean, do you want me here; do you
21 want to be with me? And that's when she sat there and
22 talk with me; she was like, no, I don't want to be with
23 you, I don't love you, and the baby's not yours. And,
24 it's like her words they hurt me. I have never had
25 somebody sit there and say those type of things to me.

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1 And my feelings is -- I just reacted.

2 **THE COURT:** Okay. Anything else?

3 **MR. ALLEN:** That -- that's all we have, Your Honor.

4 **THE COURT:** All right. Before I hear from them, I'm
5 gonna accept the plea and find it freely and voluntarily
6 made based upon the advice of counsel. I find that, um,
7 Mr. Rucker has waived his right to presentment even
8 though voluntary manslaughter is a lesser included,
9 right?

10 **MS. HUEY:** Yes, sir, Your Honor.

11 **THE COURT:** Um, I want to make sure he understood
12 that he had the opportunity to go back to the Grand Jury.
13 I find he waived that right. I also find he waived all
14 of his Constitutional rights and that he is pleading
15 guilty today on the advice of -- of very good counsel and
16 also knowingly and voluntarily.

17 I'll be happy to hear.

18 **MS. HUEY:** And Judge, I may have misspoken regarding
19 on whether he was the father of the children. He was
20 holding himself as the father figure at the time.

21 **THE COURT:** To this four-year-old---

22 **MS. HUEY:** The two young children, yes, sir.

23 **THE COURT:** ---and-two-year old?

24 **MS. HUEY:** I mean, he was -- he was living in the
25 same home as the victim.

1 **THE COURT:** What'd you think when they would come
2 home (sic)?

3 **MR. RUCKER:** You know, I really...

4 **THE COURT:** I mean, you held yourself out as a
5 father figure; right?

6 **MR. RUCKER:** Yes, sir.

7 **THE COURT:** They -- they looked at you as their
8 father?

9 **MR. RUCKER:** Yes, sir.

10 **THE COURT:** So, they lost their mother because you
11 killed her.

12 **MR. RUCKER:** Yes, sir.

13 **THE COURT:** And they're gonna lose the person they
14 looked to as their father because you're going to prison.

15 **MR. RUCKER:** Yes, sir.

16 **THE COURT:** Did any of that connect up or did you
17 think about that at all?

18 **MR. RUCKER:** Yes, sir, I thought about it. You
19 know---

20 **THE COURT:** Before you did it?

21 **MR. RUCKER:** No -- no, I'm saying -- not when I --
22 not when I did it; I'm saying like after it was done, I
23 was like, man, I can't believe what I done. You know, I
24 mean, I thought about them; I was like, this is gonna
25 affect them more than anything---

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1 **THE COURT:** Yeah.

2 **MR. RUCKER:** ---you know, because, not only did, you
3 know, I mean, they lose their mother, but they looked at
4 me as their father, you know, and I provided for them.
5 And I know that's gonna hurt them more than anything.
6 And there's not a, you know I mean (sic), a day go by
7 that I don't pray for them.

8 **THE COURT:** Okay. All right, I'll be happy to hear,
9 um -- if you-all would, and -- and I know that this is
10 very difficult for you, and I know that one of the things
11 that you want to do most is talk to him. Legally you
12 can't.

13 **MS. TRIPP:** I don't want to talk to him.

14 **THE COURT:** Well, legally what you need to do is
15 address everything to me. Okay; yes, ma'am? Give us
16 your name just for the record.

17 **MS. TRIPP:** My name is Debbie Hyde Tripp, I'm Kacy
18 Roberson's mother.

19 You know, Your Honor, I have prayed and thought
20 about what I should say when this day finally came. I
21 even debated if I should say anything at all, and I know
22 if the roles were reversed, that Kacy would say something
23 for me. When I was told that I would have this
24 opportunity to speak to you, I wasn't sure of everything
25 we'd hear before my time came to speak. I have to say

1 this is the hardest thing I've ever written in my life.

2 I've come to know that in matters involving two
3 people that there are at least three sides to every
4 situation; side one, side two, and then the truth. We
5 will never know Kacy's side of this, we will never know
6 her thoughts, feelings and fears. The closest we'll get
7 to that is what the facts and evidence can prove.

8 Kacy is my middle child out of five. She worked
9 hard and did her best to take care of the kids. At the
10 time of her death they were three and four-years-old.
11 She had talked to me and wanted to go back to school and
12 become a nurse. She wanted more than just a forty-hour-
13 a-week job in a plant somewhere. She wanted a career to
14 support her children. She asked for our help to keep her
15 kids at night while she worked that third shift job until
16 she could find something else. We never got to that day.
17 The last text messages I got from her were on that Monday
18 evening. She said she just wished he'd leave and the
19 next one said he was already packing his things.

20 She had planned on going -- coming to my house that
21 day to put job applications in online. I was taking
22 medicine for an infected tooth and when she didn't show
23 at ten that morning I took that medicine and fell asleep
24 and nobody woke me up 'til around six-thirty that evening
25 when preschool called and said she'd failed to pick up

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1 her kids. After getting the children we went to her
2 apartment and found her.

3 I made her a promise a long time ago; I told her
4 that when nobody else would be there, I would be. I'll
5 always feel that I broke that promise. I was sleeping as
6 she was dying, and I didn't help her.

7 Since that day I have become a single parent with
8 three children. My oldest daughter is fifteen, and her
9 kids are now five and six. Our world will never flip
10 back to right. This never ends for us.

11 For twenty-two years I was mom and dad to Kacy. She
12 was the one child I shared with no one. She even told me
13 happy Father's Day. It's the one holiday that hurts the
14 most. She's not here to say that anymore. She won't be
15 there to see her kids start school, go to prom, graduate
16 college, and when they get married and start their own
17 families. These two little children should have their
18 mother beside them through everything they do. Even with
19 all the love, affection, and support I give them, it
20 won't be the same as their mother's love. Every person
21 I've met that knew her has told me how awesome of a
22 mother she was. She didn't have a lot, but she said as
23 long as she had her kids, she was happy.

24 Both of her children have asked in the past month
25 why their mommy had to die. That's one question I can't

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1 give an honest answer to. My daughter wasn't sick,
2 wouldn't spend weeks and months with doctors in hospice.
3 She wasn't in a car accident. With both of those
4 situations, the loss and pain would still be just as
5 great, yet I think the mind could process those. But
6 this, this just has nowhere to go. The mind can't store
7 it, and it tears you into more pieces than you can
8 number.

9 The coroner told me the baby she carried was a
10 little girl. We named her Angel Magnolia. She deserved
11 to be called more than just an unborn baby. Even though
12 we didn't get to meet her, hold her, she was real. The
13 only sound she ever made in this world was a heartbeat.
14 Before Christmas that year, they were fussing and Kacy
15 ended up in the Emergency Room concerned about the baby.
16 I sat with her for hours. Her nurse couldn't find the
17 baby's heartbeat and went and got another one. This
18 nurse soon found baby Angel's heartbeat, and for those
19 brief moments in an ER I heard my granddaughter's heart
20 beating. She was wrapped in a pink and white polka-dot
21 blanket and placed in her mother's arms for burial.

22 I don't know all the details of what happened that
23 day. They didn't let me in the apartment that night. I
24 haven't seen the pictures that were taken, but whatever
25 happened was so bad we couldn't open her casket.

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1 What I do know is my daughter didn't deserve the
2 death she got. A wild animal doesn't deserve the death
3 she got, and every baby has a right to be born.

4 The place I sit is cold, dark, and can quickly
5 destroy you. I struggle not to dwell in these places,
6 and sometimes it's really hard. No matter what people
7 tell me, I know I'm not a strong person, yet I do walk in
8 a strength I can't explain. I know where it comes from,
9 I just can't explain it.

10 I have prayed for what I should do and how I should
11 move from day to day, and then I look into the faces of
12 the three children that I am responsible for. And so, I
13 now move by the grace of God and forgiveness, not because
14 he deserves it personally, I think he deserves -- doesn't
15 deserve anything. He doesn't deserve his next breath; he
16 made sure Kacy didn't get another one, and poor little
17 Angel didn't get her first in this world. He doesn't
18 even deserve the safety of the cell in which he sits.
19 When he put his hands on her to harm her is when he lost
20 all respect this world had to offer, and the second he
21 took her life is when he should have lost the rights to
22 his own.

23 Just because I didn't see her doesn't mean that the
24 people who did didn't talk. I know how he left her. He
25 watched her die at his hands and didn't stop until my

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1 baby was dead. Why did someone whose address has
2 belonged to a city, county, or state more than it's ever
3 belonged to himself get to decide that these lives of
4 these two ladies weren't worth living? And this is why I
5 can't allow myself to dwell here. If I do, I will become
6 bitter and hateful, and those three children deserve
7 better than to be raised by a bitter woman. Bitterness
8 poisons the lives of others, and God knows we've already
9 lost enough. Grace is given daily by God, and
10 forgiveness doesn't mean mini- -- minimizing the
11 seriousness of the offense. Forgiveness isn't even for
12 the other person, it's for yourself. Forgiveness isn't
13 forgetting neither, it's two totally different things.
14 It's relinquishing my right to get even. Never avenge
15 yourselves; leave that to God. He'll repay those who
16 deserve it. If I linger in bitterness, I become evil and
17 that I would pass on to my daughter and grandchildren,
18 and they would pass it on to others as well and I can't
19 do that to them.

20 This Friday, just two days away, will be the two
21 years since my daughter was murdered, and the past two
22 years I have set here quietly waiting. I haven't pushed
23 any issues, I haven't even made one phone call venting at
24 the legal system and why it's taking so long. In fact,
25 when family and friends got upset about it, I defended

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1 the system and believed everything was being done
2 accordingly; they were crossing T's and dotting I's.
3 Then Monday, just two days ago, the system I trusted
4 slapped me in the face. I don't agree with this sentence
5 they have recommended, I knew nothing about it. After
6 being told six months ago that no offer would be made
7 without talking to me first, it was done anyway. I
8 didn't even know that the man- -- it was dropped down to
9 manslaughter. I thought it was still murder.

10 This is the fourth court date we've had for this
11 plea. There's no -- there was no offer a month ago when
12 we sat here in this room and were sent home at lunchtime
13 because he changed his mind. I feel as though he's
14 making a mockery of this court after making a full
15 confession and dragging us in and out of this courtroom.
16 The reason we're here today is because of him, and I feel
17 that he's getting more rights than we're given. How can
18 anyone tell me, Kacy, and her children that my daughter's
19 death is only worth twenty-five years and my
20 granddaughter's fifteen? I am hurt beyond belief. I
21 feel we were sold out with this.

22 They told me from the beginning that his crimes
23 carried thirty to life for each offense. This offer is
24 just a slap on the wrist. This isn't his first time in
25 jail. Georgia released him early on a ten-year sentence

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1 for statutory rape charge, and at the end of the five
2 months he was here, he beat and murdered my daughter,
3 taking two lives. Does anyone really want to give him
4 another chance to ever walk among our loved ones just to
5 see what he'll do next?

6 After today I don't ever want to see him again. I
7 don't want Kacy's kids to ever have to see him again.
8 They won't learn hate from me but that doesn't mean they
9 won't learn it and experience it somewhere, and I don't
10 want to know if they would act on their right to get
11 even. I don't want another family to ever stand here
12 like this today because of him.

13 I do know that God is the most just judge there is,
14 and one day he'll settle the score. He will balance the
15 books and right all the wrongs. Until that day, we are
16 to live by the laws of this world and today, right now,
17 Your Honor, this is your courtroom and you, they tell me,
18 get the final say in his sentence and whether or not I
19 agree, I will honor your decision. However, I do ask
20 that you consider a much tougher sentence, and I pray God
21 always guides you.

22 I don't get to buy my daughter and granddaughter
23 gifts anymore. Instead I make flower arrangements and I
24 carry 'em to her grave. I play (sic) -- pray no one ever
25 has to know what it's like to stand six feet above your

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1 heart and you can't touch it. I will tell you it's the
2 saddest place on earth. No matter how pretty the flowers
3 are or how nice the stone is or how bright the solar
4 lights I placed there shine, the very last place you ever
5 want to see your child's name is written in granite.

6 I do ask, when you make your decision -- for you,
7 sir, will be Kacy and baby Angel's last legal voice -- is
8 just please, whatever you decide, don't sell my girls
9 short. This is the last thing those two ladies deserves
10 (sic), and as far as the baby being his, he knew that.
11 She told me it couldn't be anybody else's. And these
12 arguments they had she told me started because he was
13 telling her it wasn't his baby. He had another girl in
14 Lavonia, Georgia, pregnant at the time; I have the
15 messages from the girl to prove it. That's where he ran
16 to that night.

17 **THE COURT:** How -- how far along was she---

18 **MS. TRIPP:** Her pediatrician---

19 **THE COURT:** ---I know -- how old was Angel?

20 **MS. TRIPP:** ---tell us -- or obstetrician, I'm
21 sorry -- tells us that she was about seventeen, eighteen
22 weeks.

23 **THE COURT:** Okay.

24 **MS. TRIPP:** This was straight up murder, no way
25 around it.

1 **THE COURT:** Yeah; thank you. Anyone else? I'll be
2 happy to hear from anybody.

3 All right, I've accepted---

4 **MR. ALLEN:** Yes sir, could we just -- just -- just
5 one moment?

6 **THE COURT:** Yeah.

7 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
8 CONFERENCE, OFF THE RECORD.)

9 (WHEREUPON, PROCEEDINGS CONTINUED.)

10 **THE COURT:** You-all want to give me just a minute,
11 I've got to write some...

12 (After pause) Anything, Mr. Allen?

13 **MR. ALLEN:** No, sir; nothing further, Your Honor.

14 **THE COURT:** (After pause) Okay. As I said, I've
15 accepted the plea.

16 Um, ma'am, I'm gonna say something to you because
17 something you said made more sense to me than, uh --
18 I've -- I've unfortunately taken a lot of murder pleas,
19 and most of the time people -- the victim's families --
20 get's up -- get -- get up and they're so angry that
21 they -- they -- and I understand they're angry, but they
22 are so angry that they -- they can't articulate, um, some
23 of the great truths in life. And -- and I think, quite
24 frankly, that you've articulated one of the great truths
25 in life in what you said and that was that forgiveness is

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1 not for him but it was for you. And you have how many
2 children that you're raising now?

3 **MS. TRIPP:** Three.

4 **THE COURT:** Three? Um, that forgiveness that you
5 have is -- is going to influence them in a good way, um,
6 and in ways that you'll never know. Bitterness, if -- if
7 they see it and know that you have it, uh, will ruin them
8 because they'll grow up with that and with a, um, view of
9 the world that, um, that would be a bad thing. So, what
10 you said, I -- I thank you for because I've never heard
11 anybody say that there. I believe that I've heard it
12 said at First Baptist Church, but I've never heard it
13 said in here.

14 The second thing that I want to tell you is that the
15 Solicitor's Office in this county has a very difficult
16 job and I -- and I oftentimes disagree with them as
17 Ms. Huey will tell you and they disagree with me probably
18 more often than I disagree with them. Um, their problems
19 are -- are -- are myriad. Um, to take this case from an
20 arrest to the end of a jury trial is fraught with so many
21 landmines that I know exactly what they're doing here
22 today. And what they're doing is they're taking away all
23 the landmines. Mr. Rucker, you're how old; thirty?

24 **MR. RUCKER:** No, sir, I's (sic) twenty-nine.

25 **THE COURT:** Twenty-nine. They're taking away all

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1 the landmines that could happen and do happen all over
2 this country, um, in trials before juries. So, I -- I'm
3 concerned that -- that you feel like that the system --
4 specifically, I assume, you're talking about the
5 Solicitor's Office, and -- and -- and -- somehow let you
6 down. I -- I promise you, I have, um, sat here now for
7 twelve years almost and um, have seen those landmines
8 that nobody foresaw explode and a case that looked like
9 it was locked up, um, go by the wayside. And -- and
10 quite frankly, that would be the worst thing that could
11 ever happen to you, to get up here in a trial and have a
12 mistrial for some reason that nobody could control and
13 then have to start back over. Or, have a jury that might
14 be hung up. Um, only one person -- I mean, our jury
15 system really, really works, and occasionally you have
16 someone of good conscience on the jury who just for some
17 reason may not want to convict. At that's (sic) time you
18 start over again. I've done that before; okay?

19 So, while I -- I know you're angry about the
20 recommendation, um, or -- or disappointed -- maybe that's
21 a better word -- um, please understand I -- I -- I deal
22 with them every day and -- and like I said, um, they
23 will tell you that -- that we don't -- we're not in the
24 same -- we have different jobs, and I -- I know for a
25 fact that they go down to their office and talk bad about

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1 me. So I'm not doing this just to help them, but I know
2 what they're doing here; okay? Um, all right, and I
3 thank you for your words.

4 Mr. Rucker, I've accepted your plea and I just, you
5 know, I just can't think of anything, uh -- I listen to
6 your lawyer tell me how you were sort of shipped around
7 to different families and foster homes and, you know,
8 I've told prisoners here before who've had children -- I
9 think I told one today -- go home and be a daddy because
10 if you don't, um, you know that -- your actions will be
11 visited on your children and -- and quite frankly I think
12 you're one of them because somebody didn't take care of
13 you. But, what you've admitted doing is going into an
14 apartment while a four-year-old and a two-year-old were
15 at school and I guess you said you actually took the
16 blanket back to the school; right? You-all took a
17 blanket back?

18 **MR. RUCKER:** Yes, sir.

19 **THE COURT:** And then came home and got in an
20 argument and you strangled the woman that you've loved
21 and went to jail for until she died. And, while you
22 blacked out, somebody shoved a makeup bottle down her
23 throat, and I'm assuming that that happened while you
24 blacked out, because surely nobody else came in and did
25 that; okay? Um, and so what you did is heinous. And --

1 and -- and I don't think you're heinous, what you did is
2 heinous.

3 Um, and so what I'm gonna do is I'm gonna deviate
4 from the recommendation. And let me tell you this before
5 you go back to the detention center and start getting
6 angry at Mr. Allen, Mr. Allen's a good lawyer. He has
7 fought for you -- I think this is the third or fourth
8 time we've come up here. Um, he has asked for concurrent
9 sentences. Uh, his presentation here, um, given a
10 separate set of facts, would have swayed me that you
11 might need some leniency. So, and again, Mr. Allen and I
12 are from different parts of this system, so I'm not
13 trying to build him up either, but he's a good lawyer, he
14 knows what he's doing.

15 **MR. RUCKER:** Yes, sir.

16 **THE COURT:** But, as she said, the final word is
17 mine, and I'm gonna deviate from the recommendation.

18 On the voluntary manslaughter, uh, the sentence is
19 thirty years; and on the, um, death to a child in utero,
20 which is -- is, um, amazingly sad, is seventeen years.
21 Those are to run consecutive.

22 So, I don't do that out of anger, I think that's
23 the proper sentence. I don't disagree with any
24 recommendation that you-all made. And Mr. Allen, um,
25 there's nothing more you could have done.

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1 **MR. ALLEN:** Yes, sir.

2 **THE COURT:** So, I've gone up on the, uh,
3 manslaughter from twenty-five to thirty and I've gone up
4 on the uh, child in utero from fifteen to seventeen and
5 I'm running them consecutive so the sentence will be
6 forty-seven years. Good luck to you.

7 **MS. HUEY:** Thank you, Judge.

8 **THE COURT:** Thank you.

9 (WHEREUPON, HEARING ENDED AT 1:18 P.M.)

10 *****END OF REQUESTED TRANSCRIPT*****
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1 STATE OF SOUTH CAROLINA)

2) CERTIFICATE OF REPORTER

3 COUNTY OF ANDERSON)

4

5 I, THE UNDERSIGNED VIVIAN H. CROSS, OFFICIAL COURT
6 REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF
7 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
8 TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THOSE
9 PROCEEDINGS REQUESTED AND EVIDENCE INTRODUCED IN THE TRIAL
10 OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF
11 GENERAL SESSIONS FOR ANDERSON COUNTY, SOUTH CAROLINA, ON
12 THE 16th DAY OF JANUARY 2013.

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

15

16

17

18

19

20

21

Vivian H. Cross

22

VIVIAN H. CROSS, COURT REPORTER

23

TENTH CIRCUIT AT LARGE

24

NOVEMBER 24, 2014

25

FORM 5

STATE OF SOUTH CAROLINA)

) IN THE COURT OF COMMON PLEAS

County of Anderson, S.C.)Keith Antonio Buckle 353845)

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

2014-CP-04-1429

v.)

APPLICATION FOR)

POST-CONVICTION RELIEF)

State of South Carolina)

A TRUE COPY

JUL - 1 2014

Richard M. Kiley
CLERK OF COURT**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention Perry Correctional Inst.
2. Name and location of Court which imposed sentence Anderson County General Session Court
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 1-14-13 (2011GS0400546) 30 Years consecutive
 - (b) 1-14-13 (2011GS0400547) 17 Years consecutive

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) _____
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓ yes
- (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. South Carolina Court of Appeal
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results: Ap
- i. Appellate Case No. 2013-000191
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) The effective Assistance of Counsel
- (b) Coercive Nature of the Plea Bargain
- (c) Conflict of Interest
- (d) Involuntary Plea
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Tricia Counsel failed to investigate the facts surrounding the nature of the offense.
- (b) Forced Plea by threats from the Solicitor, and attorney using same tactics as Coahurcan
- (c) Plea was forced by threats from attorney.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. N/A
- iii. _____
- iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

NO

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

(a) which grounds have been presented:

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

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

- i. _____
- ii. N/A
- 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) MA
 (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?

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. Chuck Allen Law Firm
1204 North Main Street Post Office Box 2961
 ii. Anderson, South Carolina 29422
 iii. _____

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

i. Plea Hearing - General Sessions
Bond Hearing - Not attended
 ii. _____
 iii. _____

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

New Trial, New Attorney

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

No

STATE OF SOUTH CAROLINA)

County of Anderson)

VERIFICATION

I, Keith Buckner, 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.

Keith Buckner

SWORN to and subscribed before me this 11
day of June, 2014.

Tamara Cawwell (L.S.)
Notary Public

My Commission Expires
September 25, 2023

My Commission Expires: _____

FILED CLERK'S OFFICE
ANDERSON CO
2014 JUL 1 PM 4 30
CLERK'S OFFICE
ANDERSON CO
GENERAL SESSIONS

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

I, Keith Rucker, 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.

Keith Rucker
Applicant

SWORN or affirmed to and subscribed before me this

11 day of June, 2014.

Jamarcus Cinwell
Notary Public

My Commission Expires: My Commission Expires
September 25, 2023

FILED CLERK'S OFFICE
JUL 1 2014
2014 JUL 1 PM 4 31
COMM. PLAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	FOR THE TENTH JUDICIAL CIRCUIT
	)	
Keith Antonio Rucker	)	C.A. No. 2014-CP-04-1429
S.C.D.C. No. 353895	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN¹
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for Post-Conviction Relief filed July 1, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. In March 2011, the Anderson County Grand Jury indicted Applicant for murder (2013-GS-32-3509) and death or bodily injury to a child in utero during the commission of a violent crime (2011-GS-04-0547). Chuck Allen, Esq., represented Applicant. On January 16, 2013, Applicant pled guilty as indicted. The Honorable J. Cordell Maddox sentenced Applicant to a term of thirty (30) years imprisonment for voluntary manslaughter; and to a term of seventeen (17) years imprisonment for death a child in utero.

A timely Notice of Appeal was filed; however, Counsel for Applicant informed the Court of Appeals that he did not believe there were any issues of merit to raise on appeal. Subsequently, the South Carolina Court of Appeals dismissed the appeal due to Applicant's

¹ By Order dated July 17, 2014, Hugh Welborn, Esq. has been appointed counsel.

failure to provide the Court with a written explanation pursuant to Rule 203(d)(B)(iv), SCACR. The Remittitur was issued on March 13, 2014.

II.

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

1. "Ineffective assistance of counsel"
 - a. "trial counsel failed to investigate the facts surrounding the nature of the offenses"
2. "Coercive nature of the plea bargain"
 - a. "Forced plea by threats from the solicitor and attorney using scare tactics and coercion"
 - b. "Plea was forced by threats from attorney"
3. "Conflict of interest"
4. "Involuntary plea"

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

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

III.

Respondent submits Applicant's allegation of ineffective assistance of plea counsel is without merit. In a PCR action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v.

Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

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

IV.

Respondent interprets Applicant's remaining claims as allegations that his guilty plea was involuntary. Accordingly, Respondent submits these claims have no merit. 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, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be

allowed to depart from the truth of his statements.” Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 279 S.C. 264, 305 S.E.2d 247.

V.

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

[Signature block on next page]

VI.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

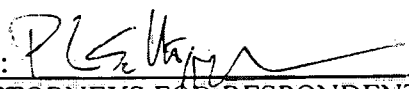
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

PATRICK SCHMECKPEPER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

September 29th, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
	)	
	)	2014-CP-04-1429
KEITH ANTONIO RUCKER, #353895,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

Mr. Hugh Wingo Welborn, Esquire
PO Box 173
Anderson, SC 29622

DATED this 29th day of September, 2015.


Ashley Haworth, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON) COURT OF COMMON PLEAS

Keith A. Rucker,)
)
 v.) Case No. 14-CP-04-1429
)
 State of South Carolina,)
)
 Defendant.)

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on February 9th, 2016, before The Honorable Brooks P. Goldsmith in the Court of Common Pleas for the Tenth Judicial Circuit; attended by counsel as follows:

APPEARANCES:

Hugh Welborn, Esq.
 Post Office Box 173
 Anderson, South Carolina 29622
 Appearing for Applicant

Patrick Schmeckpeper, Esq.
 OFFICE OF ATTORNEY GENERAL
 P O Box 11549
 Columbia, South Carolina 29211
 Appearing for State of South Carolina

TRANSCRIBED FOR VIVIAN CROSS
 CIRCUIT COURT REPORTER

Transcribed by:

Deborah A. Garrison
Circuit Court Reporter – 13th Judicial Circuit
 P O Box 27145
 Greenville, South Carolina 29616
dgarrison@sccourts.org

Keith A. Rucker v State of South Carolina

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Case No. 14-CP-04-1429

Hearing of February 9, 2016

Before The Honorable Brooks Goldsmith

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Keith A. Rucker v State of South Carolina
Case No. 14-CP-04-1429
Hearing of February 9, 2016
Before The Honorable Brooks Goldsmith

3

THE COURT: All right.

2 MR. SCHMECKPEPER: May it please
3 the Court, this is the case of Keith Antonio
4 Rucker versus the State of South Carolina,
5 2014-CP-04-1429.

6 The Applicant was originally
7 indicted for murder and death or bodily
8 injury to a child in utero during the
9 commission of a violent crime. Represented
10 by Chuck Allen. He pled guilty on January
11 16th, 2013, of the lesser-included offense of
12 voluntary manslaughter and death or bodily
13 injury to a child in utero.

14 He was sentenced by The Honorable
15 Cordell Maddox to thirty (30) years
16 imprisonment for voluntary manslaughter and a
17 consecutive seventeen (17) for the death of a
18 child in utero.

19 Your Honor, at this time I believe
20 that the Applicant has a Motion and also
21 wants to put his allegations on the record.

22 THE COURT: I'll be glad to hear
23 from you, Mr. Welborn.

24 MR. WELBORN: Your Honor, may it
25 please the Court, I do represent the

1 Applicant in this case.

2 I've spoken to him on more than one
3 occasion. My most recent conversation was on
4 the 28th of January this year. During that
5 conversation he told me that he wanted this
6 matter continued. He said, 'I'm doing a lot
7 of research on my own on this' and said he
8 was not ready to go forward yet.

9 I talked to him a moment ago and he
10 said the same thing.

11 For the court's understanding, I
12 will do whatever the court wants. I'm ready
13 to go forward but he doesn't feel comfortable
14 doing that. I respect that if he feels like
15 he wants to do more. But I'll abide by
16 whatever the court wants to do in that
17 regard.

18 THE COURT: Well, let me hear the
19 position of the State.

20 MR. SCHMECKPEPER: Your Honor, the
21 State objects to a continuance on the grounds
22 as stated by Mr. Rucker. He is represented
23 by able counsel who says that he is prepared
24 to go forward. There is no right to hybrid
25 counsel or hybrid representation,

Keith A. Rucker v State of South Carolina

5

Case No. 14-CP-04-1429

Hearing of February 9, 2016

Testimony of Applicant - Direct Examination

1 particularly in a PCR. Since counsel is
2 ready to go forward, I would object to a
3 continuance.

4 MR. WELBORN: And, Your Honor, on
5 behalf of my client, I'm happy to do whatever
6 the court wants.

7 THE COURT: I understand. The
8 application was filed roughly a year and a
9 half ago. Is there any specific evidence
10 that you are trying to obtain that you have
11 been unable to obtain or just you just
12 generally feel not ready to go.

13 MR. WELBORN: My client feels that
14 he is not ready to go. I've got what I need,
15 Judge. Again, uh, -- sometimes clients feel
16 very uncomfortable in these situations and I
17 have to, on behalf of my client, ask the
18 court to understand that.

19 THE COURT: All right, Mr.
20 Welborn. I understand your Motion but I am
21 going to deny your Motion for a continuance.
22 Mr. Schmeckpeper, are you ready to proceed?

23 MR. SCHMECKPEPER: Your Honor, we
24 will let Mr. Welborn put his position on the
25 record, if the Court pleases.

Keith A. Rucker v State of South Carolina

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Case No. 14-CP-04-1429

Hearing of February 9, 2016

Testimony of Applicant - Direct Examination

1 THE COURT: Mr. Welborn.

2 MR. WELBORN: Your Honor, if it
3 pleases the court, uh, my client has alleged
4 in his application ineffective assistance of
5 counsel. He states that his counsel, Mr.
6 Allen, failed to investigate the fact
7 surrounding the nature of the offenses.

8 He also states that he was coerced
9 into a plea bargain by the solicitor and his
10 attorney, that there was a conflict of
11 interest; that because of all this, there was
12 an involuntary plea.

13 At this time, I would call Mr.
14 Rucker to the stand.

15 (WITNESS TAKES STAND)

16 KEITH A. RUCKER, having been sworn
17 to tell the truth, and nothing but the truth,
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. WELBORN:

21 Q. Mr. Rucker, can you hear me, sir?

22 A. (Affirmative nod).

23 Q. The court can't pick up nods or your
24 head or ---

25 A. I can hear you; yes, sir.

Keith A. Rucker v State of South Carolina

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Case No. 14-CP-04-1429

Hearing of February 9, 2016

Testimony of Applicant - Direct Examination

1 Q. Thank you, sir. If you can't, let
2 me know. You are Keith Antonio Rucker, sir?

3 A. Yes, that's who I am.

4 Q. And, Mr. Rucker, you entered a
5 guilty plea in this particular case on
6 January 16th, 2013; is that correct?

7 A. Yeah, that's correct.

8 Q. And you were originally indicted for
9 murder and for death or bodily injury to a
10 child in utero, and you also pled guilty to
11 those charges; is that correct?

12 A. That's correct.

13 Q. And you received a term of thirty
14 years for voluntary manslaughter as opposed
15 to murder, and a term of seventeen years for
16 the death of this child; is that correct?

17 A. That's correct.

18 Q. All right. Now, you've alleged in
19 your application, Mr. Rucker, that your
20 lawyer, Chuck Allen, who is in the courtroom
21 was ineffective. You said in the following:
22 that he failed to investigate the facts
23 surrounding the nature of these offenses.
24 Tell the court -- first of all, how many
25 times did you meet and speak with Mr. Allen,

roughly?

2 A. He come to the county jail like
3 twice.

4 Q. He came twice to the county jail?

5 A. (Affirmative nod).

6 Q. Did you see him at any other time?

7 A. Except in the courtroom, that was
8 it.

9 Q. How many times did you see him in
10 the courtroom, sir?

 A. Uh, I had came to court twice. One,
12 I was supposed to have came and we had spoke
13 -- and then they sent me back.

14 The second time I came back, that's
15 when we had a plea agreement.

16 Q. So you saw him twice in jail and you
17 saw him twice in court?

18 A. Right.

19 Q. A total of four times?

20 A. I won't say it was four times, I
21 didn't see him in court but that one time.

22 Q. How much time did he spend talking
23 to you at the county jail on those two
24 occasions?

25 A. Not even an hour.

Keith A. Rucker v State of South Carolina

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Case No. 14-CP-04-1429

Hearing of February 9, 2016

Testimony of Applicant - Direct Examination

1 Q. And did he get -- did he hire a
2 private investigator, or do you know?

3 A. No, I don't know nothing about no
4 investigator. He didn't tell me nothing
5 about hiring no investigator.

6 Q. Do you think for some reason that he
7 didn't investigate your case properly?
8 Because that's what you've allege.

9 A. Yeah, like he threw me under the
10 bus.

11 Q. How did he do that, Mr. Rucker?

12 A. Well, when we went to court, you
13 know, I was sitting there and he walked out
14 with the judge and the solicitor. That right
15 there made me feel uncomfortable, made me
16 feel like he was going against me.

17 He told me that I was going to get
18 thirty years. He didn't say nothing about I
19 was going to get forty-seven years. If I'd
20 knowed that I was going to get forty-seven
21 years, I would have told everybody let's just
22 go to trial. That's how I felt like.

23 But me not knowing about the law, I
24 took his advice. I went on his advice. By
25 me going on his advice, I got the wrong

1 advice and shouldn't have never did that
2 because now I got forty-seven years. That
3 wasn't my intention, to get forty-seven
4 years.

5 When we come to court, that's what
6 he was telling me. 'Mr. Rucker, they trying
7 to give you thirty years.' I didn't want to
8 take the thirty years at first but he was,
9 like, 'that's all they are going to be
10 willing to do.' So I was, like, 'okay, all
11 right, then I'll take the thirty years.'

12 But when I come up here in the
13 courtroom, I don't get thirty years; I get
14 forty-seven.

15 Q. Now, how did -- relating back to
16 your allegations, tell me in particular what
17 did he not investigate that you thought that
18 he should have, that would have changed your
19 desire to plead guilty.

20 A. Well, mainly what they was saying
21 wasn't true.

22 Q. Such as?

23 A. They had things in there as far as
24 some items that got found. I really don't
25 know ---

Keith A. Rucker v State of South Carolina

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Case No. 14-CP-04-1429

Hearing of February 9, 2016

Testimony of Applicant - Direct Examination

1 Q. Are you talking about in the guilty
2 plea transcript, that there are some items
3 that aren't true?

4 A. Yeah, 'cause the State said that
5 they recommended twenty-five years. Why
6 didn't I get it?

7 Q. Now, in that transcript, for the
8 judge's understanding, the trial judge
9 explained in some detail deviating from the
10 recommendation because -- (pause) -- deviated
11 from the recommendation because of some of
12 the facts that he heard during that hearing.
13 That is in the transcript, isn't it?

14 A. Well, I don't understand that. I
15 ain't been over that since -- probably is.

16 Q. It is in there. So the judge
17 explained to you that he didn't have to
18 accept the recommendation. Do you remember
19 that?

20 A. I wouldn't have accepted it at the
21 time if I'd knew that was what I was going to
22 get.

23 Q. I'm sorry? What did you say, sir?

24 A. I said I wouldn't have accepted it
25 at the time if I'd knew that was what I was

1 going to get.

2 Q. Okay.

3 A. If I'd known that I was going to get
4 forty-seven years, I wouldn't have accepted
5 it.

6 Q. Well, let me rephrase my question.

7 A. What's to rephrase.

8 Q. I want to make sure that you under-
9 stand what I just asked you, because that's
10 not the answer that I asked. Okay?

11 Here's my question, did you -- do
12 you remember that the judge told you at the
13 hearing that he could not abide by the
14 recommendation. They call that a deviation
15 from the recommendation.

16 A. He said that he wasn't going there.

17 Q. Well, that's the same thing. Do you
18 remember hearing that?

19 A. Yeah.

20 Q. So you knew at that particular time
21 that the judge, that he might change and go
22 with a different sentence; is that right?

23 A. That was a possibility, yes.

24 Q. Now, back to your allegation, that
25 allegation is different from what you put in

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1 here. It says that he failed to investigate
2 the facts surrounding the nature of the
3 offense(s). The court needs to hear, Mr.
4 Rucker, what facts did Mr. Allen not
5 investigate.

6 A. As far as what he didn't document?
7 Or the indictment?

8 Q. Anything in this case, at all, that
9 he failed to investigate, please tell Judge
10 Goldsmith what he failed ---

11 A. Can I read this? Can I read the
12 paper that I have? I have something here
13 now, can I read it?

14 Q. Yes, sir. You got it there in front
15 of you?

16 A. (Affirmative nod).

17 Q. Tell the court.

18 A. Well, it says that, (reading): "I'd
19 like to add a due process, Fourteenth
20 Amendment due process, constitutional claim.

21 I have several documents that I would
22 like to introduce to prove my claim.

23 I recently learned that the South
24 Carolina Legislature enacted Statute 14-9-210
25 as a mandatory guideline, which mandates that

1 the solicitor shall prepare and through the
2 proceedings in the court of General Sessions
3 submit.." ---

4 MR. SCHMECKPEPER: Your Honor, I
5 object to this testimony. It's not
6 responsive to the question.

7 APPLICANT: Can I speak? It's my
8 time to speak.

9 THE COURT: Hang on just a
10 moment, let me hear his objection.

11 APPLICANT: I have a right, too.

12 MR. SCHMECKPEPER: My objection is
13 that it is not responsive to his application
14 and is not relevant to any of his claims,
15 Your Honor.

16 THE COURT: I understand the
17 objection, but I overrule the objection.
18 You may continue.

19 APPLICANT: Thank you, sir.
20 Before I was so rudely interrupted, I was
21 saying that I have several documents that I'd
22 like to introduce as exhibits to prove my
23 claim.

24 (Reading), "I recently learned that
25 the South Carolina Legislature enacted

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1 Statute 14-9-210 as a mandatory guideline
2 which mandates that the solicitor shall
3 prepare and through the proceedings in the
4 court of General Sessions submit to the grand
5 jury what is intended for court in the Court
6 of General Sessions. Indictments pending in
7 the county court in which the punishment may
8 exceed a fine of a hundred dollars or
9 imprisonment for thirty days."

10 Here I have a court calendar, which
11 is right here. I have a court calendar to
12 prove that the "Assistant Solicitor
13 knowingly, willingly and intelligently
14 committed a crime for intrinsic fraud as well
15 as perjury inasmuch as she was publishing
16 false information in my documents."

17 (Reading): "Further, Assistant
18 Solicitor alleged that this indictment was
19 True Billed by the Grand Jury of Anderson
20 County on March 29th, 2011", which is in
21 complete contradiction of South Carolina Code
22 14-9-210, because as the court calendar will
23 prove, Anderson County did not have a
24 lawfully convened court of General Sessions
25 on March 29th, 2011.

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1 "Instead my indictment was presented
2 at a Court of General Sessions convened on
3 March 29th, 2011, when the Grand Jury for
4 Anderson County convened on their own.
5 Again, the court calendar for Anderson County
6 will prove that the Grand Jury of Anderson
7 County could not have returned a True Bill of
8 indictment to a Court of General Sessions on
9 March 29th, 2011." There was no Court of
10 General Sessions convened in Anderson County
11 on that date.

12 She then used this illegal document
13 illegally to prosecute me and convict me.
14 Her actions constitute fraud and perjury.

15 She intentionally misled the Court
16 and the South Carolina Legislature and
17 Constitution 16-17-735. My attorney was
18 ineffective by not discovering the false
19 information disclosed in my indictment and
20 the actual time that a Court of General
21 Sessions was indeed convened in Anderson
22 County. Had I known that I was not indicted
23 by a lawfully-convened Grand Jury in
24 accordance with the statute 14-9-210, I would
25 not have pled guilty.

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1 Had I known that the assistant
2 solicitor presented false information in my
3 individual, I would not have entered a guilty
4 plea.

5 No indictment can be True Billed by
6 a Grand Jury when a Circuit Court lacks
7 jurisdiction. Since Grand Jury jurisdiction
8 coexists with criminal court jurisdiction of
9 the court in which it is empaneled, for which
10 it is to make inquiry:

11 *State v. McCleary* 270 S.C. 289 S.E.
12 2d, South Carolina, 1982.

13 *State v. Funderburk*, 259 S.C. 256,
14 190 S.E. 2d, 1972.

15 *State v. Willard*, 259 S.C. 571, 193
16 S.E. 2d, 1972.

17 The statutory terms are clear,
18 unambiguous and require the county
19 solicitor to prepare and submit bills of
20 indictment to the senior judge of the
21 Court of General Sessions from the Grand
22 Jury.

23 The Court of General Sessions
24 statute must be construed strictly
25 against the statute (sic) and in favor of

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1 the defendant: *State v Black* 274 S.E.
2 2nd, 1991.

3 *State v. Gentry*, 360 S.C. 936, 2005.

4 That would not be an issue here.

5 Instead, I contend that the Court of
6 General Session failed to follow
7 statutory law regarding jurisdictional by
8 failing to specific the manner and means
9 for the lawful return of true billed
10 indictments.

11 The jurisdiction of the court is to
12 be determined by the laws of the state
13 and -- *State v. Howard*, 564 S.C. 379,
14 2000.

15 *Anderson v. Anderson*, 299 S.C. 110,
16 115 two eight nine seven nine. 1989.

17 South Carolina statute 14-9-210
18 cannot be disregarded by no court. 14-9-
19 210 afford me my Fourteenth Amendment
20 constitutional right to due process of
21 law.

22 I anticipate that the State -- uh,
23 *Brown v State* -- *State v. Brown*, 1994,
24 but that does not stand supported by law.

25 When the legislature enacted that

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1 something should be done, the legislature
2 also consciously intended that it should
3 be done no other way; not following 14-
4 210, the State lacked jurisdiction
5 completely as to return a true billed
6 indictment. That statute clearly a
7 jurisdictional statute which sets forth
8 the mandatory procedure to be utilized by
9 the State for the lawful return of true
10 billed indictments. That is why South
11 Carolina law holds that failure to comply
12 with the statutory law as to jurisdiction
13 deprives a court of subject matter
14 jurisdiction. Certainly the ruling in
15 State v. Clary explains that the Grand
16 Jury's jurisdiction is only authenticated
17 when the Grand Jury returns a true billed
18 indictment while attended by a court of
19 General Sessions. No indictment may be
20 returned by true bill when the circuit
21 court lacks jurisdiction, since Grand
22 Jury jurisdiction is coexistent with
23 criminal court jurisdiction of a court in
24 which it is empaneled, before which it is
25 to make inquiry.

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1 Simply put, a grand jury must
2 convene during a court of general
3 sessions to lawfully return a true billed
4 indictment. Consequently, in keeping
5 with Section 14-9-210, the State has no
6 jurisdiction to issue or return a true
7 billed indictment in a case.

8 As a result of the State's failure
9 to comply with 14-9-210 as well as the
10 unethical conduct of the assistant
11 solicitor, when she printed false
12 information on the face of my document on
13 purpose, any indictment would be null and
14 void.

15 Again, I would not have entered a
16 guilty plea had my attorney made me aware
17 of these fundamental issues.

18 DIRECT EXAMINATION CONTINUED

19 BY MR. WELBORN:

20 Q. Thank you. Now, let me ask you
21 this, in addition to what you have
22 alleged there, you've stated that you
23 felt that you were forced by threats from
24 the solicitor and your attorney, coerced
25 into pleading. Can you explain that?

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1 A. The same day that I came to court
2 for the plea, uh, I was sitting -- well,
3 not right over there, but the attorney
4 said, 'you know if you don't take this
5 plea, they're going for a Life sentence.'

6 Q. Did Mr. Allen say that?

7 A. I never said that he said it. I
8 said that I was coerced. I never said he
9 was the one who coerced me.

10 Q. Who coerced you by saying that to
11 you?

12 A. The man whoever brought it to me,
13 he's the one who said 'if you don't take
14 this plea, we're going to go for a Life
15 sentence.'

16 Q. And you don't know who that is?

17 A. No, I don't. I don't remember his
18 name.

19 Q. Okay. Well, the solicitor, can you
20 describe what that person looked like?

21 A. He was short, blond hair -- he was
22 an older guy.

23 Q. He worked for the solicitor's
24 office?

25 A. Yeah, I think he did.

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1 Q. Okay. You don't know his name?

2 A. No.

3 Q. All right. What did Mr. Allen do to
4 coerce you into pleading guilty?

5 A. He was, like, 'When we get up here,
6 don't say anything. I'm like in control
7 of everything and you just go along with
8 what I say.' So I was, like, 'okay.'

9 Now, I didn't go to school to be no
10 lawyer, so I didn't know the law like
11 that. I only know so much. So that's
12 why I asked for a continuous so that I
13 can continue my knowledge on the law and
14 when I come up here that I can speak
15 things to the effect of the way that it
16 is supposed to be spoke.

17 Q. Sure.

18 A. When we was up there -- if he was my
19 lawyer, he should have stopped and said,
20 'now, you understand that he's going to
21 give you forty-seven years?' He didn't
22 say that. The judge -- after the judge,
23 he ---

24 Q. Let me interrupt and ask you this,
25 Mr. Rucker, did Mr. Allen threaten you by

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1 saying 'you're going to go to prison
2 today if you don't plead and do exactly
3 what I tell you' or 'you've got to do
4 this.' Anything like that?

5 A. No, he didn't -- he ain't threatened
6 me. I'm saying I was coerced. To coerce
7 you, they don't have to threaten you.
8 They just have to mislead you into
9 believing something else.

10 Q. All right. You say that there was a
11 conflict of interest in this case. What
12 do you mean by that, Mr. Rucker?

13 A. I felt like, uh, -- as far -- he
14 sided with the solicitor and 'em. I
15 believe that they were together.

16 Q. What makes you say that? What did
17 he do that causes you to say that?

18 A. He was more in touch with the
19 solicitor than he was with me.

20 Q. Well, is it possible that he was
21 talking about the facts of the case or
22 trying to work something out for you?

23 A. (Negative gesture).

24 Q. That is not possible?

25 A. No.

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1 Q. It's not possible?

2 A. No.

3 Q. Okay. All right. You also allege
4 that you had an involuntary plea. That
5 means basically the same thing as
6 coercion. Is there anything that you
7 want to add to what you mean by this?

8 A. Uh, -- yeah. Like I said, if I knew
9 that I was going to get the time that I
10 was going to get, I would never have pled
11 guilty. Period. I would have insisted
12 on going to trial.

13 Q. Well, now, you could have gotten
14 more time had you gone to trial?

15 A. I got forty-seven years! You go
16 home every day. I got forty-seven years.

17 Q. But you could have gotten more time,
18 couldn't have you?

19 A. Look at me. I got forty-seven
20 years.

21 Q. Thank you. Please answer anything
22 that the opposing counsel or that the
23 Court may have for you.

24 THE COURT: Cross?

25 MR. SCHMECKPEPER: Thank you, Your

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1 Honor, may it please the court.

2 CROSS EXAMINATION

3 BY MR. SCHMECKPEPER:

4 Q. Mr. Rucker, how well do you remember
5 your guilty plea?

6 A. I remember it, I remember that day
7 good.

8 Q. Do you remember the judge telling
9 you what the potential range of sentences
10 were?

11 A. He said that he didn't have to go
12 along with the twenty-five years or
13 whatever the situation may be. He said
14 that he could give me more time

15 Q. Do you remember exactly what the
16 range was?

17 A. No, the thirty and seventeen, that's
18 what his range was.

19 Q. Pardon me?

20 A. (No verbal response).

21 Q. Can you say that again?

22 A. He give me thirty and seventeen.

23 Q. No. Do you know what the maximum
24 was?

25 A. No.

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1 Q. For voluntary manslaughter and for
2 death of a child in utero?

3 A. No. I knew the voluntary man-
4 slaughter was thirty years, I knew that.

5 Q. Turning your attention, if I may flip
6 the page for you, to Page 11, Line 22
7 through Line 1 of Page 12, could you
8 please read that?

9 A. Not really.

10 Q. Can you read?

11 A. I can't read real good. If you want
12 everybody to know it, you read it.

13 MR. SCHMECKPEPER: Do you mind
14 if I read it into the record?

15 THE COURT: Go ahead.

16 CROSS EXAMINATION CONTINUED

17 BY MR. SCHMECKPEPER:

18 Q. (Reading): "Do you remember the
19 court asking you if you knew that he
20 could in fact sentence you up to thirty
21 years on voluntary manslaughter and
22 thirty years on the death in utero, so a
23 total of sixty years?"

24 A. No, I don't remember that.

25 Q. Do you remember saying "Yes, sir" on

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1 Page 12, Line 1?

2 A. I said 'yes, sir' to a lot of
3 things.

4 Q. And we have already gone over -- do
5 you remember the Court saying, "I am not
6 bound by the State's recommendation?"

7 A. Yeah, but see I don't know the
8 State's recommendation.

9 Q. You said that you understood that.

10 A. (No verbal response).

11 Q. You understood that?

12 A. He's saying that to me -- I'm
13 looking at him and he's telling me what
14 to say. If I look at him and he says to
15 say 'yeah', then I'm going to say yeah.
16 That's what you're not understanding. I
17 am going on what he is telling me to say.
18 If he says to say 'yeah', then I'm going
19 to say 'yeah.'

20 Q. Do you remember the judge asking you
21 if you accepted that he ---

22 A. And he is saying 'yeah.' As long as
23 he is sitting there telling me to say
24 'yeah', that is what I am going to say.
25 That is what you're not understanding.

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1 MR. SCHMECKPEPER: If he could answer
2 my question, Your Honor.

3 CROSS EXAMINATION CONTINUED

4 BY MR. SCHMECKPEPER:

5 Q. And you understood that he pled
6 guilty that he didn't have to abide by
7 the State's recommendation?

8 A. Say that again.

9 Q. Do you remember the judge telling
10 you that if you accept it, that he could
11 sentence you above the recommendation?

12 A. Yeah. He -- I'm saying -- no, we
13 never went over the transcript like that.
14 From my understanding, it was 'you do
15 this, we're gonna do this.' That's what
16 he told me. He told me that I was only
17 to say yes, that he was going to take
18 care of everything. So that's what I
19 did. I ain't gone to no law school, so I
20 don't know nothing. But if you tell me
21 to get up there and say 'yes', I'm going
22 to say 'yes.' I thought it was to my
23 beneficial but it ain't.

24 Q. So your testimony is that you only
25 said yes because your counsel told you to

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1 say yes.

2 A. Right.

3 Q. Now, you were originally indicted
4 for murder; is that right?

5 A. Yeah.

6 Q. But you ultimately entered a plea to
7 voluntary manslaughter?

8 A. Yeah.

9 Q. Tell me if you remember the judge
10 asking you or informing that that you had
11 a right to send the voluntary
12 manslaughter charge back to the grand
13 jury?

14 A. The judge did, and he said 'you talk
15 to your client.' When he talk to me, he
16 said 'no, you don't want to do that.'

17 Q. So you remember ---

18 A. So I said I didn't want to do that.

19 Q. So you remember that when he asked
20 whether or not you wanted to send your
21 voluntary manslaughter charge back to the
22 grand jury, you said "I'll waive that"?

23 A. My lawyer told me to waive that.

24 Q. And he asked, "You are waiving that
25 right?" You said, "Yes, sir." Is that

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1 right?

2 A. Right.

3 Q. And the judge said "if you need to
4 stop me, if you need to speak to your
5 lawyer, please stop me at this time." Do
6 you remember saying, "Yes, sir."

7 A. (No verbal response).

8 Q. Do you remember ever asking the
9 judge to be able to speak to your lawyer
10 about any of this?

11 A. Say that again.

12 Q. Do you remember asking the judge for
13 more time to speak to your lawyer?

14 A. No.

15 Q. Do you remember that the judge asked
16 you if anybody had threatened you in any
17 way or promised you anything to get you
18 to plead guilty?

19 A. Yeah, he did ask that.

20 Q. And what was your answer?

21 A. I said no.

22 Q. Why?

23 A. You stand up in front of a judge in
24 a room like that, you ain't going to
25 remember every damn thing going on

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1 either.

2 Q. Do you remember the judge asking you
3 if you'd had plenty of time to speak with
4 your lawyer?

5 A. Yeah.

6 Q. What was your answer?

7 A. I told him yeah.

8 Q. Do you remember the judge asking you
9 whether or not you were satisfied with
10 your lawyer's services?

11 A. Yes.

12 Q. What did you tell him?

13 A. Every time I said yes. And the
14 reason I said yes every time was because
15 he was over there telling me what to say,
16 and that's the reason I said yes. If I
17 knew it -- this man asked me when we was
18 in court, 'do you want to fire me?' This
19 man asked me. Am I willing to take a lie
20 detector test? I'm willing to do
21 anything. This man came to court asking,
22 saying, 'do you want to fire me?' So
23 what am I supposed to do when this dude
24 come into the courtroom asking, 'do you
25 want to fire me?' That's what I can't

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1 understand.

2 Q. Do you remember the judge asking you
3 whether or not you were satisfied with
4 your attorney's services?

5 A. See what I'm saying. You be -- you
6 want me to answer your questions but you
7 don't want to answer mine.

8 MR. SCHMECKPEPER: Your Honor, please
9 instruct the witness to answer the
10 question.

11 THE COURT: You need to answer his
12 questions, though.

13 APPLICANT: Repeat it again.

14 CROSS EXAMINATION CONTINUED

15 BY MR. SCHMECKPEPER:

16 Q. Do you remember if the judge asked
17 you if you were satisfied with your
18 attorney's services?

19 A. Right.

20 Q. What did you answer?

21 A. "Yes."

22 Q. Do you remember the judge asking you
23 if he had done everything that you'd
24 asked him to do?

25 A. Yes.

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1 Q. What did you answer?

2 A. "Yes."

3 Q. Do you remember that the Judge asked
4 you if you'd asked your attorney to do
5 things that he'd refused to do?

6 A. Yes, I remember that.

7 Q. What did you answer?

8 A. "Yes."

9 Q. You said that he'd refused to do
10 things that you'd asked him to do?

11 A. No, no, no. I told him everything
12 was -- that he'd done everything.

13 Q. You said that you were completely
14 satisfied with him, correct?

15 A. Right.

16 Q. And you said that you'd met with him
17 plenty of times?

18 A. Two times be plenty?

19 Q. But you agreed that you'd met with
20 him plenty of times, correct?

21 A. Two times in County, yeah.

22 MR. SCHMECKPEPER: Beg the Court's
23 indulgence.

24 APPLICANT: But what did it get
25 me, I say yeah, yeah, yeah. When they

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say forty-seven years, so -- it changed
my whole outlook. He didn't do what he
was supposed to have did. If he had
looked at the indictment ---

CROSS EXAMINATION CONTINUED

BY MR. SCHMECKPEPER:

Q. But you waived the indictment,
correct?

A. No, no, no.

Q. On one of the charges?

A. He would have found out that one of
my indictments was false. I proof right
here. I got proof. That's what I am
saying. Any lawyer, I don't care who
they are, is going to go through their
paperwork clearly, thoroughly, they are
going to find -- every inch, they are
going to go through it. He didn't do it
because if he would have found this. Me,
not knowing the law, but by getting other
people to help -- but the burden of proof
is not on me. He ain't helped me.

MR. SCHMECKPEPER: Your Honor, I
don't have any further questions.

THE COURT: Redirect?

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1 MR. WELBORN: None.

2 THE COURT: Thank you, Mr.
3 Rucker, you may step down.

4 (WITNESS STEPS DOWN)

5 THE COURT: Call your next
6 witness.

7 MR. WELBORN: If the court would
8 bear with me -- (sidebar with Applicant).

9 APPLICANT: It's over with.

10 MR. WELBORN: That's our case, Your
11 Honor.

12 THE COURT: Applicant rests.

13 MR. SCHMECKPEPER: The State calls
14 Chuck Allen.

15 (WITNESS TAKES STAND)

16 CHUCK ALLEN, having been sworn to tell
17 the truth, and nothing but the truth,
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. SCHMECKPEPER:

21 Q. Good morning, Mr. Allen.

22 A. Good morning.

23 Q. How you doing today?

24 A. All right.

25 Q. In terms of your investigation in

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1 this case -- let me jump back a little
2 bit, do you remember when you started
3 representing Mr. Rucker?

4 A. Yes, I remember generally. I don't
5 remember the particular day. I was
6 Court-appointed in this case. My records
7 indicate that I received the appointment
8 on February 10th, in the year 2012.
9 Records also indicate that in response to
10 the appointment that I met with Mr.
11 Rucker for the first time at the County
12 jail on February 15th, 2012.
13 Records also indicate that there were a
14 number of meetings. The next was March
15 14th, 2012, where I met with him at the
16 County jail.
17 Then there was a little bit of time that
18 passed and I did the typical
19 investigation, prepared the file and
20 served discovery Motions, that are
21 utilized in a criminal case. I did that
22 in July.
23 After discovery Motions were served, I
24 went back to the County jail that same
25 day, on July 25th, 2012. The purpose of

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1 that meeting was that there was -- there
2 was some question about Mr. Rucker's
3 background as far as some emotional or
4 psychological trauma. It being a case of
5 murder, and additionally the fetus, he
6 was facing two Life sentences, so you
7 don't want to leave any stone unturned.

8 When I met with him on July 25th,
9 2012, and I explained that I had asked
10 that he be evaluated on the issue of
11 capacity with respect to the ability to
12 know right from wrong and his ability to
13 conform his conduct accordingly. That
14 was done later in the Fall, and then we
15 got the report back.

16 I did numerous things in the
17 meantime. Then in November 12th, 2012,
18 I met with him again. I think at the
19 County jail. Let me back up. The
20 evaluation was done August 30th, 2012.

21 Q. Were you present when ---

22 A. I was not present for the evalua-
23 tion. He was still in Columbia, he was
24 transported to Columbia.

25 Then as far as meetings with him, I

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Case No. 14-CP-04-1429

Hearing of February 9, 2016

Testimony of Chuck Allen - Direct Examination

1 had a meeting with him at the courthouse
2 on December 13th, 2012.

3 Then I went back to the detention
4 center January 15th of 2013.

5 Then I think on January 16th, 2013,
6 the following day, is when he pled.

7 Q. So you met with him more than two
8 times at the jail?

9 A. It appears to be four or five times
10 that I went to the jail.

11 Q. Do you recall how long any of those
12 meetings were, roughly?

13 A. Half an hour. It was pretty -- the
14 case was, uh, -- of course, again it was
15 a very, very serious case. It was a
16 murder indictment. The other indictment
17 that he faced was -- and he faced Life
18 sentences on both of the indictments.
19 But the case was relatively -- I don't
20 want to say simple because it was such a
21 horrible situation, but Mr. Rucker had
22 given -- he had fled to somewhere in
23 north Georgia after the events occurred.
24 He was apprehended in north Georgia and
25 extradited back to South Carolina,

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1 extradited back to Anderson. At some
2 point he gave a full-fledged, four or
3 five-page, confession describing what
4 happened in detail. So the case wasn't
5 overly complicated as far as the proof
6 that the State had.

7 Q. Talking about investigation, did you
8 review the discovery with the Applicant?

9 A. I don't know if I reviewed it with
10 him. I certainly reviewed it -- yeah. I
11 don't know if we actually did that
12 together.

13 Q. Did you explain to him the situation
14 in this case?

15 A. Yeah. I mean, he understood that he
16 faced Life sentences, that he faced two
17 Life sentences; under a murder indictment
18 and then the additional indictment, he
19 faced two Life sentences, so he
20 understood that.

21 Q. Did you ever tell him that if he
22 pled guilty that he would only get thirty
23 years?

24 A. No. What we had done, and I was
25 pleasantly surprised that we had been

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Testimony of Chuck Allen - Direct Examination

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1 able to negotiate the murder indictment
2 to a voluntary manslaughter because,
3 quite frankly, there was -- there was
4 heat of passion but there not -- but in
5 my opinion, in my legal opinion there
6 wasn't sufficient legal provocation. If
7 we had gone to trial, I don't believe
8 that we would have gotten a jury charge
9 on voluntary manslaughter.

10 Like I say, I don't know that we
11 actually went over discovery because --
12 but I did, certainly.

13 Q. And you explained what some of the
14 negotiations/recommendations were?

15 A. Yes. There may have been some
16 negotiations prior to my involvement.
17 Like I said, he had an attorney prior to
18 me.

19 There were some discussions about
20 the recommendation was voluntary man-
21 slaughter. And, so, when he pled the
22 recommendation -- and you can see the
23 transcript was twenty-five on
24 manslaughter and fifteen on the
25 additional indictment. So we had a

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1 recommendation of a total of forty years.

2 Q. And did you explain to him that the
3 judge didn't have to accept that
4 recommendation?

5 A. I probably did. I don't have a
6 specific recollection of that. I frankly
7 was surprised at the deviation that the
8 judge went into -- after he heard the
9 facts of the case, and it was just a
10 horrible situation. After he heard the
11 facts of the case, he made it clear on
12 the record that he was probably going to
13 deviate from the recommendation. Of
14 course that meant that he was probably
15 going to deviate upward, not downwards
16 from the recommendation.

17 Q. I think the victim's family also
18 spoke at the hearing, isn't that correct?

19 A. Yes, it was the victim's mother.
20 She spoke extensively at the hearing.

21 Q. She requested a deviation too, isn't
22 that correct?

23 A. She was jumping up and down. She
24 wanted a life sentence. She really
25 complained. She said that it was a slam

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on the wrist, that her daughter had been
murdered, that this child that at the
time of gestation -- this young lady was
four months pregnant. She said that
she'd never know that granddaughter. She
was just somewhat -- in a restrained way,
she just kinda pitched a fit about it.

Q. Did you threaten or coerce the
Applicant in any way to plead guilty?

A. I mean, I didn't -- I wouldn't
consider it coercion but I am sure that I
told him that if this case were tried you
will probably end up with two life
sentences. That is probably what I told
him because that was the fact of the
matter. If the case had been tried, the
indictments submitted as true billed by
the Grand Jury, murder and then the
additional indictment for the fetus, the
evidence that the State had, the full-
fledged confession with no issues that I
discovered the involuntariness. There
was waivers signed on the Miranda rights
and his -- the voluntariness of the
interrogation responses, -- again, in my

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Testimony of Chuck Allen - Direct Examination

1 opinion, if we had gone to trial we
2 wouldn't have gotten a jury charge on
3 voluntary manslaughter.
4 I believe had we gone to trial that he
5 would have been found guilty of murder
6 and guilty of the death of the fetus,
7 that additional indictment. In my
8 opinion, if he had gotten -- my strong
9 opinion is that he would have gotten two
10 life sentences and he would never have
11 been released from prison.

12 So even though we had a recommenda-
13 tion (sic) of forty and forty is a long
14 time, the forty-seven was better than two
15 Life sentences.

16 He received a definite benefit from the
17 negotiated plea..

18 Q. Did you hear any coercive or
19 threatening statements made by the
20 solicitor to the Applicant, or any made
21 by anybody made to the Applicant?

22 A. No, I didn't hear anything like
23 that.

24 Q. Do you have any relationship with
25 the solicitor's office or with the

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1 presiding judge that could be perceived
2 as a conflict of interest?

3 A. I don't have any relationship with
4 the solicitor's office, other than a
5 professional relationship; which, as you
6 know, you have as a consequence of
7 practicing the profession.

8 The judge, he and I served in the
9 General Assembly together and were desk
10 mates -- for full disclosure.

11 MR. SCHMECKPEPER: Beg the Court's
12 indulgence.

13 THE COURT: Yes, sir.

14 DIRECT EXAMINATION CONTINUED

15 BY MR. SCHMECKPEPER:

16 Q. Did the Applicant even indicate to
17 you that he was unhappy with the guilty
18 plea or that he wanted more time to think
19 about it?

20 A. No, I don't have that recollection.
21 He wasn't entirely pleased because -- you
22 know, that's a long time, forty-seven
23 years, and I understood that. But it was
24 my contention with him that it was
25 definitely in his best interest; that

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Testimony of Chuck Allen - Cross Examination

1 even though it was not something
2 pleasurable for him to admit to and get
3 forty-seven years, it beat the heck out
4 of two Life sentences, because that's
5 what he was going to get if we got them
6 tried. He'll get out one day provided he
7 -- you know, something doesn't happen.
8 Maybe he can get out one day.

9 And it's eighty-five percent on both
10 of those indictments but if it had been
11 murder, that's day-for-day service on
12 whatever sentence that you get. Again,
13 if it was Life sentence on both, he'd
14 never have gotten out.

15 MR. SCHMECKPEPER: Your Honor, I have
16 no further questions.

17 THE COURT: Cross-examination?

18 MR. WELBORN: May it please the
19 court?

20 THE COURT: Yes, sir.

21 CROSS EXAMINATION

22 BY MR. WELBORN:

23 Q. Mr. Allen, you stated there in the
24 times that you spent with my client, at
25 one point in your notes you said that you

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Testimony of Chuck Allen - Cross Examination

1 did numerous things. What were those
2 numerous things?

3 A. I was kinda referring to this record
4 that I have here. Numerous entries.

5 I've got an entry of "reviewed SLED
6 reports."

7 I've got an entry of -- prepared, as
8 I mentioned before, the Motion for
9 discovery. I did that.

10 E-mailed requests from the file in
11 the Public Defender's Office, e-mailed
12 Katherine Hughey request to prepare the
13 Order for a mental evaluation on Mr.
14 Rucker.

15 Discovery material reviewed.

16 Reviewed CDs of discovery for
17 Rucker.

18 Some type of letter to Hughey.

19 Forensic evaluation services.

20 Request for autopsy report of the
21 victim(s).

22 More correspondence with somebody
23 named Sophia Smith at the South Carolina
24 Department of Mental Health regarding the
25 evaluation.

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Testimony of Chuck Allen - Cross Examination

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1 Numerous entries beyond that.

2 Q. He alleges that you failed to
3 investigate the facts. You just went
4 through a whole series of things that you
5 did.

6 A. (Affirmative nod).

7 Q. Did you interview other people in
8 this case besides what you mentioned
9 there, or ---

10 A. I don't have any recollection that I
11 did. Again, the -- really the facts
12 weren't in dispute. He didn't dispute
13 the facts. Again, he laid it out in
14 that statement. I don't know if you've
15 seen the statement but, I mean, it's a
16 very explicit detailed statement of what
17 occurred there. So the facts weren't
18 really in dispute. So that wasn't
19 necessary.

20 Q. He says that you used scare tactics
21 on him. What did you do to make him feel
22 like you used scare tactics?

23 A. Well, I professionally explained to
24 him again that there was an indictment
25 for murder and then an additional

1 indictment, that both of them carried
2 Life sentences. You know, that 'if we
3 try the case and it is a guilty verdict,
4 you're never getting out because you'll
5 have two Life sentences.' You know, that
6 is scary.

7 Q. Did he ask to take a lie detector
8 test at some point, Mr. Allen?

9 A. No.

10 Q. Thank you, Mr. Allen.

11 APPLICANT: No, I was saying now.

12 THE COURT: Anything else, Mr. ---

13 MR. SCHMECKPEPER: The State rests.

14 THE COURT: Thank you, sir. You
15 may step down.

16 MR. ALLEN: Your Honor, if I could
17 say this.

18 THE COURT: All right, sir.

19 MR. ALLEN: This case was a
20 horrible situation. I feel for him but,
21 you know, he was facing life and I was
22 sensitive to all that. I remain
23 sensitive to it. But I discharged my
24 duties as a professional.

25 APPLICANT: You said that you felt

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Testimony of Chuck Allen - Cross Examination

1 sorry for me, but you come in the
2 courtroom and you ---

3 THE COURT: All right, Mr. Rucker.

4 APPLICANT: Oh, man.

5 THE COURT: Anything in reply?

6 (WITNESS STEPS DOWN)

7 MR. WELBORN: No, sir.

8 THE COURT: I will be glad to hear
9 argument.

10 MR. WELBORN: Your Honor, I think my
11 client has presented his case as
12 precisely as he could and I would ask at
13 this time that you find that he would be
14 entitled to post-conviction relief.

15 THE COURT: Thank you, Mr.
16 Welborn.

17 MR. SCHMECKPEPER: Your Honor, the
18 State feels that the Applicant has failed
19 to meets its burden to show that he was
20 prejudiced, as evidenced by the testimony
21 presented. If you have any questions,
22 I'd be happy to answer those.

23 THE COURT: I don't have any
24 questions. I find that there has been a
25 complete and total failure of proof in

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Hearing of February 9, 2016

Ruling of The Court

1 this case and that the Court agrees with
2 the position of the Attorney General, and
3 the Applicant's petition is denied.
4 Would you please prepare the Order.

5 MR. SCHMECKPEPER: Yes, sir.

6 (HEARING CONCLUDED)

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Case No. 14-CP-04-1429

Hearing of February 9, 2016

Ruling of The Court

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Keith Antonio Rucker,
S.C.D.C. No. 353895

A TRUE COPY

THE COURT OF COMMON PLEAS

TENTH JUDICIAL CIRCUIT

MAY 17 2016

C.A. No. 2014-CP-04-1429

Clerk of Court

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL
(with prejudice)

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on July 1, 2014. Respondent filed its Return on October 1, 2015. An evidentiary hearing into the matter was convened on February 9, 2016, at the Anderson County Courthouse. Applicant was present at the hearing and was represented by Hugh W. Welborn, Esquire. Respondent was represented by Patrick Schmeckpeper, Esquire, of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. In March 2011, the Anderson County Grand Jury indicted Applicant for murder (2013-GS-32-3509) and death or bodily injury to a child in utero during the commission of a violent crime (2011-GS-04-0547). Chuck Allen, Esq., represented Applicant. On January 16, 2013, Applicant pled guilty as indicted. The Honorable J. Cordell Maddox sentenced Applicant to a term of thirty (30) years imprisonment for voluntary manslaughter; and to a term of seventeen (17) years imprisonment for death of a child in utero.

A timely Notice of Appeal was filed; however, Counsel for Applicant informed the Court of Appeals that he did not believe there were any issues of merit to raise on appeal. Subsequently, the South Carolina Court of Appeals dismissed the appeal due to Applicant's failure to provide the Court with a written explanation pursuant to Rule 203(d)(B)(iv), SCACR. The Remittitur was issued on March 13, 2014.

Allegations

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

1. "Ineffective assistance of counsel"
 - a. "trial counsel failed to investigate the facts surrounding the nature of the offenses"
2. "Coercive nature of the plea bargain"
 - a. "Forced plea by threats from the solicitor and attorney using scare tactics and coercion"
 - b. "Plea was forced by threats from attorney"
3. "Conflict of interest"
4. "Involuntary plea"

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject guilty pleas, 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 the legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2015), this Court makes the following findings of fact and conclusions of law based upon all of the probative evidence presented.

Involuntary Guilty Plea

Applicant's testimony that his guilty plea was involuntary is without merit. A plea of guilty is an admission or a confession of guilt, and is as conclusive as a verdict of a jury; it admits all material fact averments of the accusation, leaving no issue for the jury, except in those instances where the extent of the punishment is to be imposed or found by the jury. State v. Fuller, 254 S.C. 260, 266, 174 S.E.2d 774, 777 (1970); see North Carolina v. Alford, 400 U.S. 25, 37, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) (noting guilty pleas constitute a waiver of trial and an express admission of guilt upon which a sentence may be imposed). Thus, when a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. Jamison v. State, 410 S.C. 456, 468, 765 S.E.2d 123, 129 (2014). The rule that a plea must be intelligently made to be valid does not require that a plea be vulnerable to later attack if the defendant did not correctly assess every relevant factor entering into his decision. Jamison v. State, 410 S.C. 456, 471, 765 S.E.2d 123, 130 (2014).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 422 (2000); Boykin v. Alabama, 395 U.S. 238 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). 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). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, an Applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977).

In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a defendant must be advised of the constitutional rights he is waiving. Id. Specifically, a defendant must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. In addition, a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived. Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999).

Sentencing Range

Applicant's allegation that he was misled as to what his sentence would be is without merit. The plea judge went through an extensive colloquy with Applicant. It ensured Applicant understood that he was waiving a number of constitutional rights, including the right to trial, the right to remain silent, the right to put up a defense, and the right to confront witnesses. Tr. p. 6; 8. Applicant acknowledged he understood he had to waive those rights to plead guilty. Id.

The plea judge further explained to Applicant that the maximum penalty on each offense was thirty years, and that the maximum aggregate sentence he could receive was sixty years. Tr. p. 11. Applicant said he understood. Id. The plea judge informed applicant that he was not bound by the State's recommendation of forty years. Tr. p. 11-12. Applicant said he understood. Id.

This Court finds Applicant's sworn statements at the plea hearing are dispositive, and his guilty plea knowing and voluntary. See Harris v. Leeke, supra. Applicant's contrary testimony at the evidentiary hearing – that if he had known that he would get a forty-seven year sentence, he would not have pled guilty – is not credible. In any event, it does not form a valid basis for relief. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997) (“Wishful thinking

regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made."'). Applicant was aware of and understood the sentencing range, of the possibility that the sentencing judge would deviate from the sentencing recommendation, and of the constitutional rights he was waiving by pleading guilty. Because Applicant has failed to meet his burden with respect to this allegation, it is denied and dismissed.

Coercion

This Court further finds Applicant's allegations of coercion are without merit. Counsel admitted he told Applicant he was facing the prospect of life imprisonment if he proceeded to trial, and that he thought pleading guilty was in his best interest. Rather than attempting to coerce Applicant into an involuntary guilty plea, this Court finds counsel gave sound legal advice.

Accordingly, Applicant has failed to meet his burden to prove his plea was coerced. This allegation is therefore denied and dismissed.

Conflict of Interest

This Court finds Applicant has failed to meet his burden to prove any conflict of interest. The constitutional right to effective assistance of counsel includes the right to conflict free counsel. See, e.g., Cuyler v. Sullivan, 446 U.S. 335, 100 S.Ct. 1708 (1980). An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's. Staggs v. State, 372 S.C. 549, 551, 643 S.E.2d 960, 692 (2007). Until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance. Lomax v. State, 379 S.C. 93, 102,

665 S.E.2d 164, 168 (2008) (citing Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809, 811 (1984)).

Applicant's testimony that counsel spent too much time at the solicitor's table, and appeared to be "on their side" does not constitute evidence that counsel actively represented conflicting interests. Instead, it reflects a misunderstanding of counsel's duty to negotiate, particularly in light of the fact that he did not believe it was possible that counsel was trying to work something out on his behalf. Counsel testified credibly that he was able to negotiate a plea for Applicant that allowed him to plea to voluntary manslaughter rather than murder. Counsel stated he was surprised at the offer, considering he did not think Applicant would have been entitled to a jury charge on voluntary manslaughter at trial. Accordingly, there is no doubt in this Court's mind that counsel was zealously advocating for Applicant.

Counsel testified credibly that he did not have any conflicting or competing interests.

Because Applicant has failed to present any evidence that counsel was acting under a conflict of interest, this allegation is denied and dismissed with prejudice.

Failure to Investigate

This Court finds Applicant has failed to meet his burden with respect to failure to investigate. Without a doubt, "[a] criminal defense attorney has a duty to investigate, but this duty is limited to a reasonable investigation." Ard v. Catoe, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007). Accordingly, the controlling standard for counsel's duty to investigate is *reasonableness*. Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 64 (2011). So long as a defendant's attorney conducts a reasonable investigation, including interviewing potential witnesses when it is reasonable to do so, his performance will not be deficient. *Id.* at 457, 710 S.E.2d at 65. Moreover, failure to conduct an independent investigation does not constitute

ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result. Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998).

Counsel testified that he met with Applicant roughly seven (7) times, prepared discovery motions, and had Applicant evaluated. Counsel testified that he reviewed the evidence and discovery material. Counsel said that he did not remember whether he interviewed witnesses, but that the facts were not in dispute.

This Court finds counsel's investigation entirely reasonable, particularly in light of the fact that Applicant gave a full confession. Moreover, Applicant has failed to present this Court with any evidence or meritorious issue that counsel missed. See Moorehead, supra.

Applicant's allegation that counsel was ineffective in failing to investigate the indictment issue is entirely without merit. First, a grand jury may issue indictments outside a term of general sessions. See Administrative Order Re: Authority of Judge Designated as a Chief Judge for Administrative Purposes - Circuit Court, 2011-02-04-01 (S.C. Sup. Ct., dated February 4, 2011) (the chief judge for administrative purposes may convene the grand jury outside a term of general sessions as the public interest may necessitate); see also S.C. Const. Art. V. § 4 ("The Chief Justice of the Supreme Court shall set the terms of any court and shall have the power to assign any judge to sit in any court within the unified judicial system."). In any event, Applicant has failed to show that but for counsel's purported error in failing to object to the alleged deficiency in the indictments he would have proceeded to trial, particularly in light of the fact that Applicant *waived indictment* to the charge of voluntary manslaughter immediately prior to pleading guilty. Tr. p. 3-4. This allegation is therefore denied and dismissed.

ALL OTHER ALLEGATIONS

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

[Signature follows]



CONCLUSION

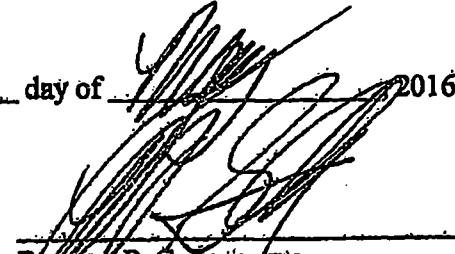
Based on the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

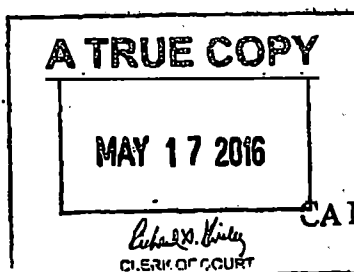
IT IS THEREFORE ORDERED

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

AND IT IS SO ORDERED this 10 day of May 2016.


BROOKS P. GOLDSMITH
Presiding Judge
Tenth Judicial Circuit

_____, South Carolina



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FILED CLERK'S OFFICE
ANDERSON SC.
2016 MAY 17 AM 11:14
COMMON PLEAS AND
GENERAL SESSIONS

WITNESSES

Andy Heaton, Anderson Police Dept.

ARREST WARRANT NUMBER

1723060

ACTION OF GRAND JURY

MAR 29 2011

Foreperson

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-04-00546

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

MAR 29 2011

Term

THE STATE

vs.

Keith Antonio Rucker

CTH

Indictment for

Murder

SC Code: 16-03-0010, 0020

CDR Code: 0116

A TRUE COPY

JUL -1 2014

CLERK OF COURT

COMMITMENT

11/10/13-RT

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

INDICTMENT

At a Court of General Sessions, convened on MAR 29 2011, the Grand Jurors of Anderson County present upon their oath:

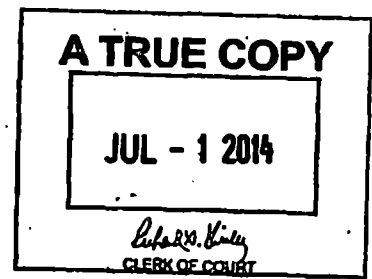
Murder

That Keith Antonio Rucker did in Anderson County, on or about January 18, 2011, unlawfully and with malice aforethought kill Kacey Roberson by means of blunt force trauma and strangulation, and that Kacey Roberson died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

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

Catherine J. Huey
ASSISTANT SOLICITOR

DOCKET NO. 2011-GS-04-00547



WITNESSES
Andy Heaton, Anderson Police Dept.

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS
MAR 29 2011
Term

ARREST WARRANT NUMBER
I723061

THE STATE
vs.

Keith Antonio Rucker

ACTION OF GRAND JURY
TRUE BILL
MAR 29 2011
Foreperson of Grand Jury
Date:

COMMITMENT

1/16/13-RT

CTH

Indictment for

Child / Death or bodily injury to a child in utero
during the commission of a violent crime

SC Code: 16-03-1083 (A) (1)
CDR Code: 3304

VERDICT
Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

INDICTMENT

At a Court of General Sessions, convened on MAR 29 2011, the Grand Jurors of

Anderson County present upon their oath:

Child / Death or bodily injury to a child in utero during the
commission of a violent crime

That **Keith Antonio Rucker** did in Anderson County, on or about **January 18, 2011**, commit a violent crime as defined in Section 16-1-60, Code of Laws of South Carolina, (1976), as amended, that caused the death of, or bodily injury to a child who was in utero at the time the violent crime was committed. All in violation of Section 16-3-1083, Code of Laws of South Carolina, (1976), as amended.

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

Catherine J. Huey
ASSISTANT SOLICITOR