

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Anderson County

Honorable Frank R. Addy, Circuit Court Judge

JAMAL RASHAD BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001357

APPENDIX

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S.C. SUPREME COURT

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INDICTMENT 81

State of South Carolina

In the Court of General Sessions

County of Anderson

State of South Carolina,)
)
 Plaintiff,)
)
 -vs-)
)
 Jamal Rashard Brown,)
)
 Defendant.)
 _____)

2012-GS-04-1929

May 29, 2014

Transcript of Record

BEFORE:

The Honorable Alexander Macaulay, Judge

APPEARANCES:

Kristin Reeves, Esquire
Attorney for the State

Scott Robinson, Esquire
Attorney for the Defendant

Renee H. Tollison
Circuit Court Reporter

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EXHIBITS

No	DESCRIPTION	ID	EV
	<i>No exhibits were presented during the hearing</i>		

1 (WHEREUPON, court convened with all parties present
2 and the following proceedings were had commencing at
3 approximately 11:01 a.m.)

4 THE COURT: Good morning.

5 MS. REEVES: Good morning, Judge. Before you
6 is Jamal Brown. He is pleading guilty to voluntary
7 manslaughter on indictment number 2012-GS-04-1929. There
8 is a recommendation in this case of twelve years, and the
9 Defendant has served seven hundred and one days.

10 THE COURT: All right. Are you Jamal Rashad
11 Brown?

12 THE DEFENDANT: Yes, sir, I am.

13 THE COURT: If you would, please, sir, raise
14 your right hand.

15 (WHEREUPON, the Defendant was duly sworn.)

16 THE COURT: Madam Solicitor, what's the maximum
17 sentence on voluntary manslaughter?

18 MS. REEVES: Up to thirty years, Your Honor.

19 THE COURT: And the recommendation in this
20 case?

21 MS. REEVES: Twelve years.

22 THE COURT: Straight time?

23 MS. REEVES: Yes, sir.

24 THE COURT: And he has seven hundred and one
25 days time served?

1 MS. REEVES: Yes, sir.

2 THE COURT: Mr. Robinson, do you represent the
3 Defendant?

4 MR. ROBINSON: I do, Your Honor.

5 THE COURT: Have you explained to the Defendant
6 the charges in the indictment, the possible punishments
7 and his constitutional rights to include the right to a
8 jury trial?

9 MR. ROBINSON: I have, Your Honor.

10 THE COURT: In your opinion, does the Defendant
11 understand the charges, the punishments and his rights?

12 MR. ROBINSON: He does, Your Honor.

13 THE COURT: In your investigation of the facts
14 and circumstances of this case, do you feel the State
15 could produce sufficient evidence to establish the
16 Defendant's guilt beyond a reasonable doubt, and if he
17 should stand trial he would most probably be found
18 guilty?

19 MR. ROBINSON: Yes, sir.

20 THE COURT: Are you aware of any physical,
21 emotional or mental condition that might affect the
22 Defendant's understanding what he's doing today?

23 MR. ROBINSON: No, Your Honor.

24 THE COURT: Has he been committed for
25 examination of capacity as well as -- what is it -- in

1 other words, has he had a mental evaluation?

2 MR. ROBINSON: He hasn't because he's had no --
3 he's not ---

4 THE COURT: Well, I just want to be sure.
5 That's based on your observation?

6 MR. ROBINSON: Yes, sir.

7 THE COURT: Well, based on the representation
8 of counsel and the personal observations, my own personal
9 observation of the Defendant, I find the Defendant to be
10 knowledgeable, perceptive and well in control of his
11 faculties and, therefore, competent to stand trial and
12 enter this plea.

13 **JAMAL RASHAD BROWN,**

14 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

15 EXAMINATION

16 BY THE COURT:

17 Q. Now, Mr. Brown, before I can accept a plea of
18 guilty, it is necessary for me to make sure that plea is
19 made freely and voluntarily. That means I need to ask
20 you some questions. If you do not understand the
21 questions or the words I use, please advise me, and I'll
22 explain them to you. Also, if at any time during
23 questioning you need to consult with your attorney,
24 you'll be permitted to do that as well. Do you
25 understand?

- 1 A. Yes, sir.
- 2 Q. How old are you, sir?
- 3 A. Twenty-five -- twenty-six. Sorry.
- 4 Q. How far have you gone in school?
- 5 A. Eleventh grade, but I have a GED.
- 6 Q. You do have your GED?
- 7 A. Yes, sir.
- 8 Q. What kind of work do you do?
- 9 A. What kind of work did I do?
- 10 Q. Yes, sir.
- 11 A. Lawn service. I had a few restaurant jobs.
- 12 Q. Are you married?
- 13 A. No, sir.
- 14 Q. Do you have any children?
- 15 A. I have four.
- 16 Q. And how old are your children?
- 17 A. Eight, six, five, and three.
- 18 Q. And who do your children live with?
- 19 A. Their mother.
- 20 Q. One mother?
- 21 A. Yes, sir, one mother.
- 22 Q. Do you contribute toward the support of your
- 23 children?
- 24 A. Yes, sir.
- 25 Q. Do you do it voluntarily or through court order?

1 A. Voluntarily.

2 Q. Are you under the influence of any medications,
3 drugs or alcohol at this time?

4 A. No, sir.

5 Q. Are you aware of any physical, emotional or mental
6 condition that might affect your ability to understand
7 and appreciate what you're doing today?

8 A. I understand, sir.

9 Q. You're not aware of any sort of condition that might
10 affect that?

11 A. No, sir.

12 Q. You've heard your attorney tell me that he's
13 explained to you the charges against you and the possible
14 punishments and your constitutional rights and that you
15 understand these things. Is that correct?

16 A. Yes, sir.

17 Q. You've also heard that the maximum sentence on
18 voluntary manslaughter is thirty years. Do you
19 understand that?

20 A. Yes, sir.

21 Q. And of course, voluntary manslaughter is a violent
22 crime, and it's also most serious. That affects your --
23 that would affect your ability to have parole if you
24 commit a same or similar crime in the future. In other
25 words, you'd be either subject to the two-strikes law or

1 the three-strikes law. Do you understand that?

2 A. Yes, sir, I'm aware of it.

3 Q. Are you on probation or parole at this time?

4 A. No, sir.

5 Q. Do you fully understand the nature of the charges
6 against you and the range of possible punishments?

7 A. Yes, sir, I do.

8 Q. Have you fully discussed all aspects of your case
9 with your lawyer?

10 A. Yes, sir.

11 Q. Do you need any more time to talk to your lawyer?

12 A. Yes, sir. I've had plenty of time.

13 Q. You've had plenty of time?

14 A. Yes, sir.

15 Q. You don't need any more time?

16 A. No.

17 Q. Are you completely satisfied with Mr. Robinson's
18 services as your attorney?

19 A. Yes, sir, I am.

20 Q. Do you have any complaint you want to make about
21 your lawyer?

22 A. No, sir.

23 Q. Do you understand when you plead guilty you waive
24 certain important constitutional rights? First, you give
25 up your right to remain silent. That is the right to say

1 nothing at all. It's called the right against self-
2 incrimination. You cannot be required to testify against
3 yourself or offer evidence against yourself. Do you
4 understand this?

5 A. Yes, sir.

6 Q. Second, you give up your right to a jury trial. In
7 a jury trial, you'd be presumed to be innocent, and all
8 twelve members of the jury would have to be convinced of
9 your guilt beyond a reasonable doubt. In fact, as I say,
10 the burden is on the State to prove your guilt beyond a
11 reasonable doubt. You do not have to present any
12 evidence or even take the stand at all. In fact, I would
13 instruct the jury you have the right to remain silent and
14 they cannot consider the fact that you did not testify or
15 present any evidence against you. Do you understand
16 that?

17 A. Yes, sir.

18 Q. Third, you give up the right to confront. That is
19 the right to see, hear and cross examine any witnesses
20 called against you as well as the right to present and
21 call witnesses on your own behalf. Do you understand
22 that?

23 A. Yes, sir, I do.

24 Q. Do you understand that when you plead guilty you
25 give up your constitutional rights?

1 A. Yes, sir.

2 Q. Do you understand you will not get a jury trial?

3 A. Yes, sir, I do understand.

4 Q. Do you understand that when you plead guilty you
5 give up any defenses you may have?

6 A. Yes, sir.

7 Q. Also, if you've given an incriminating statement in
8 this case, do you understand that when you plead guilty
9 you waive or give up your right to challenge whether or
10 not such statement was given in accordance with your
11 constitutional rights freely and voluntarily?

12 A. Yes, sir.

13 THE COURT: Madam Solicitor ...

14 Q. Also, when you plead guilty, you do admit the truth
15 of the charges made against you?

16 A. Yes, sir.

17 THE COURT: Madam Solicitor, have you -- has
18 the Defendant been allowed access to all of his discovery
19 material, Brady and Rule 5?

20 MS. REEVES: Yes, sir.

21 THE COURT: Is that correct, Mr. Robinson?

22 MR. ROBINSON: Yes, sir.

23 Q. Have you seen the materials that the State would
24 rely on?

25 A. Yes, sir.

1 Q. All right. Understanding then the nature of the
2 offense and the consequences of a guilty plea, how do you
3 plead in this case? How do you wish to plead to these
4 charges?

5 A. No contest, Your Honor.

6 Q. You can't to a felony.

7 A. Well, I'm pleading -- I plead guilty.

8 Q. Are you in fact guilty?

9 A. Yes, sir.

10 Q. Do you want to tell me what you did?

11 A. Well, I was robbed, and I went back to the house
12 where I was robbed from and fired a firearm, and I
13 apparently took the victim's life.

14 Q. Did you know what you did was wrong?

15 A. Yes, sir.

16 Q. Do you believe you'd be convicted if you stood
17 trial?

18 A. Yes, sir.

19 THE COURT: All right. As I understand,
20 negotiations or at least discussions have been a
21 recommended sentence of twelve years and credit for seven
22 hundred and one days time served?

23 MS. REEVES: Yes, sir.

24 THE COURT: Is that what you understand, Mr.
25 Robinson?

1 MR. ROBINSON: It is, Your Honor.

2 Q. Is that what you understand, Mr. Brown?

3 A. Yes, sir.

4 Q. Do you want me to accept that recommendation?

5 A. Yes, sir. If not, I would like to withdraw the
6 plea.

7 MR. ROBINSON: You'll accept ---

8 A. Yeah, I accept the ---

9 MR. ROBINSON: --- if he ---

10 A. Yeah, if you -- yeah, yeah.

11 Q. You use understanding ---

12 A. I apologize.

13 Q. You're pleading guilty to a sentence of twelve years
14 with credit for seven hundred and one days time served?

15 A. Yes, sir.

16 MR. ROBINSON: Your Honor?

17 THE COURT: Yes, sir.

18 MR. ROBINSON: If I can clarify that a little
19 bit?

20 THE COURT: Certainly.

21 MR. ROBINSON: What I advised Jamal was if the
22 Court doesn't accept the recommendation, he'll let you
23 stand down and withdraw your plea. That's what ---

24 THE COURT: No, that's not true because it's
25 not a negotiated plea; it's a recommended sentence.

1 MR. ROBINSON: But I told him he could withdraw
2 if he chose ---

3 THE COURT: He could ask to do that, but it's
4 not -- he can't control me.

5 MR. ROBINSON: Correct.

6 Q. All right. Has anyone recommended any sort of
7 sentence other than the twelve years that has been
8 recommended by the solicitor to your attorney? In other
9 words, has somebody suggested any sentence or condition
10 of sentence?

11 A. No, sir.

12 Q. Has anyone promised you anything or held out any
13 reward to get you to plead guilty?

14 A. No, sir.

15 Q. Has anyone threatened you or used force to cause you
16 to plead guilty?

17 A. No, sir.

18 Q. Has anyone used any pressure or intimidation to
19 cause you to plead guilty?

20 A. No, sir.

21 Q. Do you have any complaint you want to make about
22 anyone connected with this case including the solicitor,
23 the police officers, or even your lawyer? Has anyone, in
24 other words, mistreated you in any way?

25 A. No, sir.

1 Q. Have you had enough time to make up your mind as to
2 whether or not you want to plead guilty?

3 A. Yes, sir.

4 Q. Are you pleading guilty of your own free will?

5 A. Yes, sir.

6 Q. Have you understood my questions?

7 A. Yes, sir, I have.

8 Q. Is there anything you'd like to ask me about what
9 we've been over so far?

10 A. Oh, no, sir.

11 Q. Has anyone suggested to you how to answer my
12 questions?

13 A. No. It's just common sense.

14 Q. You did a good job. You may have discussed parole
15 or parole eligibility with your lawyer or other people,
16 but no one can tell you when, if ever, or under what
17 conditions you may be eligible for parole. You should
18 assume that you will serve the entire time in jail that I
19 sentence you to. Do you understand this?

20 A. Yes, sir.

21 Q. Also, do you understand you have the right to appeal
22 your guilty plea and the sentence of the Court, but you
23 must do so within ten days?

24 A. Yes, sir.

25 THE COURT: All right. Madam Solicitor, what

1 are the facts of this case as you have them?

2 MS. REEVES: Thank you, Judge. This incident
3 occurred on June 27th of 2012. Like the Defendant said,
4 the victim got into a fight with the Defendant, and the
5 victim took some money from the Defendant. Right after
6 that happened, the parties split up, but the Defendant
7 came back with a gun, I believe, to get his money back.
8 But he admits to having the gun and being scared and
9 firing the shot. That shot hit the victim in the chest,
10 and he died of that bullet wound.

11 The victim's name was Cameron Morris. He's 21 years
12 old -- he was 21 years old. His mother is present in the
13 courtroom. She does not wish to speak. She wanted you
14 to know that she was here. She wished, of course, that
15 the Defendant could be sentenced to more time but does
16 understand the reason for the recommendation.

17 THE COURT: Thank you very much.

18 Q. Do you agree with the facts as stated by the
19 solicitor?

20 A. Yes, sir.

21 THE COURT: And any prior record?

22 MS. REEVES: He has a 2005 possession of a
23 stolen pistol, 2007 possession of crack and a 2009 CDV.

24 Q. Now, does that sound like your record as well?

25 A. Yes, sir.

1 Q. Has each and every answer that you've given the
2 Court today been absolutely truthful?

3 A. Yes, sir.

4 THE COURT: All right. I find that there's a
5 substantial factual basis for this plea. I find that the
6 Defendant's decision to plead guilty is freely,
7 voluntarily, knowingly and intelligently made with the
8 advice of counsel, an attorney with whom the Defendant
9 says he is satisfied. The Defendant's plea of guilty is
10 accepted. Comes now the Defendant, Jamal Rasha Brown,
11 who in open court and his own proper person pleads guilty
12 to indictment number 2012-GS-04-1929 and submits to the
13 sentence of the Court.

14 All right. Anything further from the State?

15 MS. REEVES: No, sir.

16 THE COURT: And the victim's mother does not
17 wish to speak?

18 MS. REEVES: Correct.

19 THE COURT: Mr. Robinson, what do you have to
20 say on behalf of Mr. Brown?

21 MR. ROBINSON: May it please the Court. Your
22 Honor, Jamal is a young man who has some big dreams. He
23 wants to take this time to get some more education, some
24 skills and be a model for his children. I spoke with
25 Jamal at length about this case. The prosecutor and I

1 have been negotiating this case for a long time. They
2 have been very good to deal with. We've shared all the
3 information and so forth. We've come to this conclusion
4 that I think is in Jamal's best interest.

5 But Your Honor, he is a very good man. I've enjoyed
6 working with him. He's actually one of the easiest
7 clients I've dealt with in a long time. He's very
8 cheerful and so forth. But it's a situation that -- the
9 example here is that guns do not solve problems. Guns
10 are the problems themselves. He understands that. And
11 it's one of the lessons he's going to tell his kids, not
12 to be around drugs or guns, to get their education and to
13 do something with themselves. And when he gets out,
14 he'll still be a young man. And he wishes to be a good
15 father, to be a husband and a good citizen. I would ask
16 the Court to accept the recommendation in this case.

17 THE COURT: All right. Anything you'd like to
18 say, Mr. Brown?

19 THE DEFENDANT: No, sir.

20 THE COURT: All right. Indictment number 2012-
21 GS-04-1929, the sentence of the Court that the Defendant
22 Jamal Rashad Brown be committed to the State Department
23 of Corrections for a term of twelve years plus pay the
24 costs and assessments as applicable. The Defendant be
25 given credit for seven hundred and one days time served.

1 Special conditions of the sentence he's to undergo drug
2 and alcohol testing and treatment, substance abuse
3 counseling as directed to include ATU.

4 All right. Is there a problem?

5 MR. ROBINSON: Oh, he just told me that he
6 doesn't do drugs.

7 THE COURT: All right. Then you won't have to
8 do it.

9 MR. ROBINSON: Thank you, Your Honor.

10 THE COURT: Very good.

11 MS. REEVES: Thank you, Judge.

12 (WHEREUPON, the hearing ended at approximately 11:18
13 p.m.)

14 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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Certificate of Reporter

I, the undersigned Renee H. Tollison, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Anderson County, South Carolina, on the 29th day of May 2014.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

February 4, 2015

S/ *Renee H. Tollison*

Circuit Court Reporter

FILED-CLERK'S OFFICE
ANDERSON SC

STATE OF SOUTH CAROLINA

2015 JAN 15 PM 3:06

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

COMMON PLEAS AND
GENERAL SESSIONS

2015-CP-04-00117

Jamal Rashad Brown 322638
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention P.O. Box 1151, Fairfax, S.C. 29827

2. Name and location of Court which imposed sentence
Anderson County

3. Name(s) of co-defendant(s) (if any)

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 20126504-01929 Murder

(b) _____

(c) _____

A TRUE COPY
JAN 15 2015
Clerk of Court
Revised 3/2003

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 _____

(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?

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

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) No issue was preserved

(b) _____

(c) _____

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

(a) Ineffective assistance of counsel.

(b) _____

(c) _____

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

(a) "See the white sheet."

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction: no

(a) any petition in a State Court under South Carolina Law? no

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no

(d) any other petitions, motions or applications in this or any other Court? no

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? *no*

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) *cannot find to raise these issues.*

- (b) _____
- (c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. guilty plea
 - ii. _____
 - iii. _____

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

restitution

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

no

In his application for PCR, the applicant claims that he is being in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.

The applicant claims that he received ineffective assistance of counsel prior to his guilty plea.

In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief. *Exum v. State*, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000)

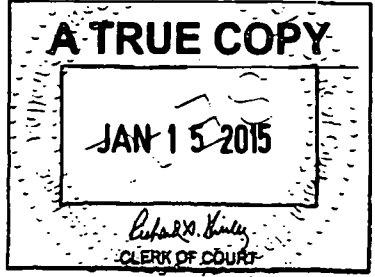
A defendant who enters a plea on the advice of counsel may only attack the voluntariness and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel error the defendant would not have, plea guilty, but would have insisted going to trial. *Reber v. State*, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009) A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial. *Jahrom v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

Plea counsel is ineffective within the meaning of the Sixth Amendment only when the applicant satisfies both requirements. *Stall v. State*, 383 S.C. 559, 661, 681 S.E.2d 592, 595 (2009).

COMMON PLEAS AND GENERAL SESSIONS

2015 JAN 15 PM 3:05

FILED-CLERK'S OFFICE ANDERSON SC



1. The applicant seeks injunctive relief on the grounds of a denial of due process and a full and fair trial. The standard of review is whether the evidence is sufficient to support a finding of probable cause. The applicant claims that the evidence is insufficient to support a finding of probable cause. The applicant also claims that the evidence is insufficient to support a finding of probable cause. The applicant also claims that the evidence is insufficient to support a finding of probable cause.

The applicant was arrested and detained on June 27, 2012, based on information received by defendant, Investigator Oglesby, the Municipal Criminal Officer for 3146. The applicant claims that the investigator Oglesby made material misrepresentation in his affidavit to secure the warrant and this false statement is necessary to finding of probable cause that 3146 was alleged committed.

The affidavit stated as the following:

On 6/27/2012, at approximately 1:42 p.m., Defendant James K. Brown allegedly did without consent with machine of a thought allegedly about 3146. 3146 is with a victim in color, 35 height. on the chest area. victim was pronounced dead on scene. Defendant has been identified through investigative sources and his given a voluntary written statement admitted to the said crime.

"The important, same."

The Fourth Amendment prohibits a search without probable cause. It prohibits officers to violate the Fourth Amendment, if, in order to obtain a warrant, he deliberately or with reckless disregard for the truth made material false statement or omit material fact. *Id.*, 475 F.3d at 631, *cit.*; *Frank v. Dulane*, 438 U.S. 154 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978)

In the context of a criminal proceeding, to be entitled to a bench hearing, a defendant, must make a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth was included by the officer in the warrant affidavit. *Frank*, 438 U.S. at 155-56. In addition, the allegedly incorrect information in the warrant, must be essential to the probable cause determination. *United States v. Colby*, 699 F.2d 297 (4th Cir. 1982).

Officer Oglesby with reckless disregard for the truth included false statement in his warrant affidavit and that is material to the probable cause determination. Officer Oglesby knew that the text was false and the applicant of being the owner and Bill Miller.

cannot perform more definite unless counsel failed to use the test result to show that there is false statement in relevant affidavit that the applicant is entitled to a French v. Dulane hearing, unless the fourth statement claim has 916a and necessary to show that the applicant was not the trigger man under Mill 916. 916a.

There is a reasonable probability that the applicant was prejudiced unless counsel failed to move to suppress alleged evidence like:

The gun, witness, and mistress's statement, any testimony about the shooting death of 916. 916a, any statement made by the applicant, any doctor report. Had counsel moved to exclude this alleged evidence from trial, the applicant would have insisted going to trial, had he known that he had a French v. Dulane constitution, and any alleged evidence was obtainable in a reasonable effort at trial. Excluded this alleged evidence from trial would have been a violation, the state came at trial. The applicant was deprived of his right to trial.

2. The applicant enters a plea on the advice of counsel who performs a full belief on a high standard of reasonable apprehension of serious and significant harm for failing to advise the applicant before the guilty plea that he has a Fairbairn warrant claim that has merits and he can file an ex parte application to suppress and alleged evidence that was obtained illegally. The statute is based on the gunshot residue test result had excluded the applicant as the trigger man who shot and kill Mr. Morris. The investigator Ogilby relevant affidavit looked probable cause.

The affidavit stated as the following:

On 6/27/2012, at approximately 1:42 pm, Defendant James R. Brown allegedly did without cause and with alleged malice aforethought allegedly shot Mr. Morris with a silver color .38 handgun, on time in the chest area. Mr. Morris was pronounced dead on scene. Defendant has been identified through investigator source and his given a voluntary written statement admitted to the said crime.

Officer Deane did a test for gunshot residues on the applicant's left hand and the result came back that the applicant was not the trigger man. The investigator should have known that his affidavit looked — probable cause that the applicant alleged shot and kill Mr. Morris.

The applicant claims that the investigator sought an arrest warrant based on affidavit that — contained no information or evidence of probable cause that he was the trigger man who shot and kill Mr. Morris. *Mulvey v. Brigg*, 475 U.S. 335, 344-45, 106 S.Ct. 1082, 1098, 89 L.Ed.2d 271 (1985) The Supreme Court held an officer who seeks a warrant on the basis of an affidavit that does not show reasonably objective probable cause — even if the Magistrate merely issues the warrant, — according to *Brigg*. The determinative question is whether a reasonably well-trained officer... would have known that his affidavit failed to establish probable cause and that he should not have applied for a warrant.

The officer's application for a warrant was not
 objected to by ~~the~~ ~~sheriff~~, because it created the
 unnecessary danger of an unlawful arrest.
 Id., at 344, 106 S. Ct. at 1028. Subsequently, in
~~the~~ ~~case~~ ~~v.~~ ~~the~~ ~~county~~, 878 F.2d 1406, 1408,
 (11th Cir. 1989) the appellate court took note of a situation in
 which an officer sought a warrant to arrest
 James based on an affidavit stating that the
 "did... commit the offense of false report of
 a crime"; the court held that the officer had violated
 the constitution by seeking the warrant, because
 such a conclusory affidavit clearly is insuffi-
 cient to establish probable cause. The
 affidavit contains neither information providing
 the basis for the officer's belief nor any affirmative
 allegation that the officer had personal knowledge
 of the circumstances surrounding the alleged
 commission of the crime. Id., at 1408-09.

Shortly before the applicant's arrest a gunshot
 was heard and the result can be seen
 that the applicant is not the trigger man. By
 seeking an arrest warrant on the basis of
 an affidavit stating that the applicant allegedly shot
 and killed 2161. 2161 was a clearly established
 constitutional right of the applicant.

33
counsel performance was deficient such counsel
failed to litigate on Fourth Amendment claim
that bore merit, and used the test result
of the gun shot residue to show that he
is not the trigger man who shot and killed
Mr. Morris. Also, counsel should have used
this test result to attack on the State witness
sitting state to a his statement.

There was reasonable probability that the applicant
was prejudiced such counsel failed to move
to suppress alleged evidence like:

The gun, witness statements, any
test about the shooting, death of Mr. Morris,
any statement made by the applicant, any
doctor report. Had counsel more later
excluded these alleged evidences from trial, the
applicant would have insisted going to trial,
knowing that the State needed these alleged evidences
to help presentation his case to the jury.
The applicant was deprived of his right to trial.

3. The applicant enters a plea on the advice of counsel which performance fell below an objective standard of reasonable which counsel was in a position to know for failing to file on Form 101 before the guilty plea to quash the State indictment and litigate on due process of the Fourteenth Amendment claim that he is entitled. This violation is based on claim of prosecutorial misconduct which the State knowingly presented to the grand jury, presenting false evidence to supporting his murder charge. This false statement is necessary to supported the State charge.

The indictment read as the following:
 That James H. Brown alleged did in Anderson County, Ga on about June 27, 2012, unlawfully and allegedly with malice aforethought allegedly kill Willie Morris by means of, allegedly shooting with a handgun and that, Willie Morris died a proximate result thereof. This is a violation of section 16-3-10 of the South Carolina code of law (1976) as amended.

"The suggested basis."

State v. Thipt, et al. 440 S.E. 2d 341 (S.C. 1994)

In State v. Thipt, the Supreme Court dealt not ordinarily
 again with the sufficiency of evidence before
 grand jury. State v. Williams, 301 S.E. 369, 392 S.E. 2d
 181 (S.C. 1980); State v. Williams, 263 S.E. 290, 210 S.E. 2d
 295 (S.C. 1974) re application to the grand jury
 where, on behalf of a defendant make a colorable
 claim of prosecutorial misconduct. It is usually
 difficult for a defendant to make such a claim,
 the Court of Appeals in State v. Thompson, 305 S.E.
 496, 409 S.E. 2d 420 (Ct. App. 1990) held that speculation
 about potential abuse of grand jury for prosecutorial
 misconduct is insufficient indictment. Thompson, 305
 S.E. at 502, 409 S.E. 2d at 424. Emphasis in the
 original, fortunately, given the nature of State
 grand jury proceedings, there is a complete record
 available for analysis, etc., noted above, the
 Court will only entertain this type of challenge
 to an indictment, where there is a colorable
 claim of prosecutorial misconduct in the grand
 jury proceeding. The next inquiry is whether
 the defendant was prejudiced by the
 admission of the evidence or its removal
 during the indictment

The false statement of facts in the body of the indictment is that, Mr. James R. Brown alleged that Mr. Morris by means of, allegedly shooting him with a handgun.

The State knowingly that Officer Deary did a test on the applicant left hand for gunshot residue and the result came back showing that the applicant never shot the murder weapon that killed Mr. Morris. The test result of the gunshot residue showed that the applicant was not the trigger man that killed Mr. Morris.

The State presented false evidence in the grand jury, proceeding would that later case, however when the State charged in based on a lie and the grand jury was misled, the test result was known before the applicant was presented to the grand jury.

The gunshot residue test result is strong evidence that attacks on the statement of facts in the indictment and the witnesses and they state that were unreliable and not credible:

can a performance was deficient sub. can and
 failed to litigate on defense claim that have
 merits, when the state charges based on a lie
 that the applicant alleged shot and kill Mr. Morris.
 The gunshot evidence that was did on the applicant's
 left hand and the result came back that the
 applicant is not the trigger man.

There is reasonable probability that counsel -
 ineffective assistance prejudiced the applicant
 defense, perhaps counsel failed to demand to quash
 the indictment; the state admitted into evidence
 false evidence in the grand jury proceeding, If,
 you excluded this statement of fact that was -
 false evidence from the indictment and from
 the grand jury, proceeding, that, [Mr. Journal & Bureau
 alleged that Mr. Morris by means of, alleged shooting
 him with a handgun.] The applicant would
 not have pled guilty but insisted going to trial
 knowing that the gunshot evidence is strong
 evidence showing that the state obtain an -
 indictment from the grand jury that based
 on false evidence.

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

I, Jamal Brown #322838, 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.

Jamal Brown
Applicant

SWORN or affirmed to and subscribed before me this
11 day of December, 2014.

Virginia
Notary Public

My Commission Expires: 12-12-22

FILED-CLERK'S OFFICE
ANDERSON SC
2015 JAN 15 PM 3:06
COMMON PLEAS AND
GENERAL SESSIONS

A TRUE COPY
JAN 15 2015
Richard M. Kinley
CLERK OF COURT

Revised 3/2003

STATE OF SOUTH CAROLINA)
)
County of ANDERSON)

VERIFICATION

I, Jamal Brown #322838, 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.

Jamal Brown

SWORN to and subscribed before me this Dec.
day of 12-23, 2014.

Debbie L. McCoskey (L.S.)
Notary Public

My Commission Expires: 7-10-24

FILED-CLERK'S OFFICE
ANDERSON SC
2015 JAN 15 PM 3:06
COMMON PLEAS AND
GENERAL SESSIONS

A TRUE COPY
JAN 15 2015
Richard D. Binkley
CLERK OF COURT

JUDGE OF SOUTH CAROLINA
40 COUNTY OF ANDERSON

JAMAL R BROWN 322838
APPLICANT

VS

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

) 2015-CP-04-00117

) MOTION TO AMEND POST-CONVICTION
RELIEF

PLEASE TAKE NOTICE THAT THE APPLICANT JAMAL R BROWN THROUGH ITS UNDERSIGNED DEFENDENT WILL MOVE BEFORE THE COURT OF COMMON PLEAS, TO ASK THAT THE COURT MAY APPOINT FOR A MOTION TO AMEND POST-CONVICTION RELIEF.

1) INEFFECTIVE ASSISTANCE OF COUNSEL

- a) ~~COUNSEL~~ ^{COUNSEL} WAS INEFFECTIVE INASMUCH AS HE FAILED TO ADEQUATELY INVESTIGATE MY CASE
- b) PRIOR TO MY PLEA, COUNSEL WAS INEFFECTIVE INASMUCH HE FAILED TO INVESTIGATE AND INTERVIEW CRUCIAL WITNESSES.
- c) PRIOR TO MY PLEA, COUNSEL WAS INEFFECTIVE INASMUCH HE FAILED TO INVESTIGATE EXCULPATORY EVIDENCE OF FORENSIC REPORTS TO BUILD POSSIBLE DEFENSE TO MY CASE.

2) INVOLUNTARY GUILTY PLEA, MY GUILTY PLEA WAS INVOLUNTARILY UNKNOWN AND UNINTELLIGENTLY ENTERED INASMUCH COUNSEL PRE-TRIAL INVESTIGATION OF MY CASE UNREASONABLE AND PREJUDICE ME INTO PLEADING GUILTY

A) FAILURE TO INVESTIGATE THIRD PARTY.

JAMAL R BROWN
8/18/15 10:45 AM

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
)	
Jamal Rashad Brown,	)	C.A. No. 2015-CP-04-0117
S.C.D.C. No. 322838,)	
)	
Applicant,)	
)	
v.	)	RETURN¹
)	
State of South Carolina,)	
)	
Respondent.)	
)	

Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed January 15, 2015, 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. Applicant was indicted by the September 2012 term of the Anderson County Grand Jury for murder (2012-GS-04-1929). Applicant was represented by Scott Robinson, Esq. On May 29, 2014, the Applicant pled guilty to the lesser included offense of voluntary manslaughter. The Honorable Alexander Macaulay sentenced Applicant to a term of twelve (12) years imprisonment. Applicant did not appeal his conviction or sentence.

Attached herewith 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. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

¹ By Order of Jan. 30, 2015, Hugh Welborn, Esq., has been appointed to Applicant's case.

II.

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

1. Ineffective Assistance of Counsel
 - a. "Counsel failed to move to quash the indictment"

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

III.

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

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

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

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

IV.

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

V.

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

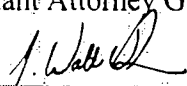
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

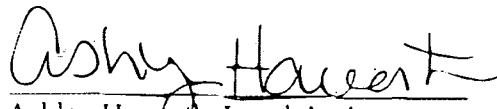
July 16th, 2015

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON)	
)	
	)	2015-CP-04-0117
JAMAL RASHAD BROWN, #322838)	
)	
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 17th day of July, 2015.



 Ashley Haworth, Legal Assistant
 For Respondent

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State of South Carolina.		In the Court of Common Pleas
County of Anderson		
Jamal Rashad Brown,)	
Applicant,	)	2015-CP-04-0117
-vs-	)	September 2, 2015
State of South Carolina,)	
Respondent.	)	Transcript of Record
-----)	

B E F O R E:
The Honorable Frank R. Addy, Jr., Judge

A P P E A R A N C E S:
Hugh Wingo Welborn, Esquire
Attorney for Applicant
John Walter Whitmire, Esquire
Attorney for Respondent

Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

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I N D E X

<u>Witnesses</u>	<u>Page</u>
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Direct Examination By Mr. Welborn	4
Cross-Examination By Mr. Whitmire	15
SCOTT ROBINSON	
Direct Examination By Mr. Whitmire	17
Cross-Examination By Mr. Welborn	21
Reporter's Certificate	27

E x h i b i t s

For the Applicant:

<u>Marked</u>	<u>Description</u>	<u>I.D.</u>	<u>Admitted</u>
	None offered.		

For the Respondent:

<u>Marked</u>	<u>Description</u>	<u>I.D.</u>	<u>Admitted</u>
	None offered.		

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 9:56 a.m.)

4 MR. WHITMIRE: The first matter for today is Jamal
5 Rashad Brown v. State of South Carolina, case number
6 2015-CP-04-0117. Mr. Brown was indicted for murder.
7 He entered a guilty plea to the lesser included offense
8 of voluntary manslaughter. He was represented by Scott
9 Robinson.

10 Judge Macaulay accepted his guilty plea and
11 accepted the State's recommendation of a 12-year
12 sentence. He has since filed a timely application for
13 post-conviction relief and is presently alleging
14 ineffective assistance of counsel for failure to
15 investigate third-party guilt, failure to investigate
16 exculpatory evidence, and failure to interview crucial
17 witnesses in part.

18 At this time I turn matters over to his attorney
19 Hugh.

20 MR. WELBORN: May it please the Court. May I call
21 my first witness?

22 THE COURT: Please. Go right ahead.

23 MR. WELBORN: Call Jamal Brown to the stand.

24 **JAMAL RASHAD BROWN,**

25 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

1 THE COURT: Have a seat, please, sir.

2 MR. WELBORN: May I approach the witness?

3 THE COURT: Please.

4 DIRECT EXAMINATION

5 BY MR. WELBORN:

6 Q Mr. Brown, I'm going to hand you your materials in
7 case you need to reference them, okay --

8 A Yes, sir.

9 Q -- that you brought with you today including the
10 trial transcript.

11 For the record, you're Jamal Brown?

12 A Yes, sir, I am.

13 Q Mr. Brown, you pled guilty to involuntary
14 manslaughter back on May 14th of -- May 29, 2014; is
15 that correct?

16 A Yes, sir.

17 Q And as a result of that, there was a recommended
18 sentence of 12 years which the court gave you; is that
19 correct?

20 THE COURT: I think it was voluntary. You may
21 have misspoke.

22 MR. WELBORN: I should have said that. Thank you.

23 THE WITNESS: Yes, sir. Yes, sir.

24 BY MR. WELBORN:

25 Q Now, you filed this post-conviction relief

1 petition, so I'm going to ask you a few questions about
2 that, Mr. Brown.

3 You have alleged, first of all, in your return
4 here that your lawyer failed to move to quash the
5 indictment. What do you mean by that and why did he
6 not do that for you?

7 A Sir, well, the court session was not in at the
8 time of the indictment, and I wanted to challenge the
9 indictment because in the law, it says that the court
10 must be in session when the indictment is handed out.
11 And I was indicted September the 18th, which it wasn't.
12 The court -- it was not general session, was not this
13 court at that time, so I wanted to pretty much
14 challenge the indictment and get the indictment threw
15 out.

16 Q Did you talk to your lawyer, Mr. Robinson, about
17 that?

18 A No, sir. I was not aware of it until I was
19 incarcerated and I studied a little bit and I seen that
20 I had a possibility -- I had a chance to go afterwards,
21 so I put it into the PCR application.

22 Q So if I'm understanding that allegation, you're
23 saying the Grand Jury was not in session on the day
24 that you were indicted; is that what you're saying?

25 A No. The Grand Jury actually handed down the

1 indictment, but what I'm saying is general sessions was
2 not going at the time, and in the law book it says
3 general sessions, it must be a court term at the time
4 of the indictment from the Grand Jury.

5 Q All right. You've alleged that Mr. Robinson was
6 ineffective because he failed to adequately investigate
7 your case. What did he not do in specifics?

8 A Okay. First of all, your attorney has the duty to
9 investigate witnesses at the least, and there was no
10 witnesses investigated prior to me pleading guilty to
11 this crime. It was several witnesses. I grew up
12 amongst these people, and there was several witnesses
13 that gave testimony and gave statements and false names
14 and I know and can prove that they gave statements and
15 false names. And when I brung it to my attorneys's
16 attention, he just pretty much just brushed it off.

17 Q Well, for the record, who were those witnesses?
18 What were their names?

19 A Well, Xavier Johnson which was a part of the case,
20 the actual case, and he gave a statement. And Donald
21 Starkes, Jr.'s name and Donald Starkes, Jr., is an
22 actual person. He gave a statement. And Donald
23 Starkes, III.

24 Q Did you tell your lawyer those names?

25 A Yes, sir.

1 Q And what would those witnesses, to your knowledge,
2 have said?

3 A Well, the witnesses gave -- when they gave
4 statements, they gave statements that could -- I mean,
5 it could have been challenged. If I would have went to
6 trial, they could have been challenged. Those
7 statements that they gave could have been suppressed in
8 court.

9 Q They were written statements?

10 A Yes, sir.

11 Q Did you see those statements?

12 A Yes, sir. I have the statements in my motion for
13 discovery.

14 Q And did Mr. Robinson see those statements?

15 A Yes, sir. We spoke about it on a couple of
16 different occasions. And I actually wrote letters to
17 his office explaining to him that these people that
18 wrote statements, wrote statements in false names.

19 Q In false names?

20 A Yes, sir.

21 Q In other words, they signed under false names?

22 A Yes, sir. Yeah.

23 Q So did you give me the proper names a moment ago?

24 A Yeah.

25 Q Did you give me their real names?

Jamal Rashad Brown v. State of South Carolina 2015-CP-04-0117
Jamal Rashad Brown - Direct Examination by Mr. Welborn

1 A Yes, sir. Xavier Johnson was a witness. He was a
2 crucial witness. He was the first witness that called
3 the police.

4 MR. WHITMIRE: Objection; hearsay.

5 THE COURT: Overruled. Go ahead.

6 BY MR. WELBORN:

7 Q What do you think he would have said? What's his
8 statement say in general?

9 A Well, his statement saying that I came in the
10 house --

11 MR. WHITMIRE: Objection; hearsay.

12 THE COURT: It's part of the record. I'll allow
13 it. Go ahead.

14 THE WITNESS: Okay. Well, his statement was
15 actually he never said that -- that I fired and killed
16 the victim, but he did say that he seen me with a
17 firearm. And when he gave the statement, he gave the
18 statement about things that didn't happen, so I was --
19 what I wanted to do is challenge his statement.

20 Q Do you remember how he signed his name? You said
21 it was a different name?

22 A He signed his name as Donald Starkes, Jr.

23 Q And that's not his real name?

24 A No. His name is Xavier Johnson. And his mother,
25 which is Ann Ruth Brown, which was one of the witnesses

1 as well, gave a statement saying that her son, Xavier
2 Johnson, the victim, and Brandon Banks was in the room
3 together. So it's proof in the statements that Xavier
4 Johnson was one of the people that gave a statement,
5 but he gave a statement in his brother's name to defend
6 himself because he had outstanding warrants at the
7 time.

8 Q Any other witnesses?

9 A Yes. Donald Starkes, Jr., actually gave the
10 name -- a statement in Donald Starkes, III, which is
11 not a real person at all.

12 Q And in general terms, what did his statement say?

13 A His statement said that he seen a guy fighting,
14 trying to get away, and that he seen -- he said he seen
15 the guy -- can I go back and read a little bit of it?

16 Q Sure. Take your time.

17 A Donald Starkes, Jr., said he had seen somebody
18 fighting and they were bumping everywhere and yelling,
19 and he opened the door and went downstairs and seen his
20 mother crying, Ann Ruth Brown, which is his mother,
21 which is also another witness in the case. He said, "I
22 ran back upstairs and saw Brandon, I don't know what
23 his last name is, pulling the guy in the orange shirt,"
24 which was reported me, allegedly me.

25 Q Okay.

1 A "And trying to get him down the steps. They were
2 fighting." So --

3 Q What's incorrect about that statement?

4 A I mean, what's incorrect, there's nothing
5 incorrect about this statement, but he wrote a
6 statement in Donald Starkes, III's name which is not an
7 accurate or real person at all. Donald Starkes, III,
8 who Donald Starkes, Jr., wrote this statement under the
9 name of Donald Starkes, III, Donald Starkes, III, is
10 not even a relevant person. He's not a real person at
11 all, so yeah.

12 Q So you told Mr. Robinson about these witnesses?

13 A Yes, sir, I did.

14 Q And any other witnesses? Are those the ones?

15 A Yeah. Those are the only two statements that are
16 wrote or written in false names.

17 Q All right. You allege that he failed to
18 investigate your case. Is that what you mean by that?
19 You also say he failed to interview your witnesses.
20 How did he fail to investigate your case or what is
21 that what you meant?

22 A Yeah. If he -- okay. I feel -- I feel like if he
23 would have investigated the witnesses, if he would have
24 had photo I.D.'s of the actual witnesses, he would have
25 been able to prove that the witnesses gave names in

1 false names. It was not just negligence on his part
2 but also standard operational procedures. You're
3 supposed to move, separate the witnesses and get photo
4 lineups. In my motion of discovery, I never was given
5 none of that. And these guys gave false statements
6 because wasn't nobody really there to separate them or
7 get their actual I.D.'s, and my attorney failed to --
8 what I say by my attorney failed to investigate, if he
9 would have investigated these witnesses, then he would
10 have -- I would have had some truth to prove my -- my
11 allegations right now.

12 Q You also say he failed to investigate the forensic
13 reports. Apparently there was some exculpatory
14 evidence. Tell us about that.

15 A Yes, sir. I received some letters from SLED
16 stating that the GSR --

17 MR. WHITMIRE: Objection; hearsay.

18 THE COURT: Overruled. Go ahead.

19 BY MR. WELBORN:

20 Q Go ahead.

21 A I actually have the documents by SLED with me
22 today. But the GSR reports was inconclusive.

23 Q And the GSR, what does that mean?

24 A Gunshot residue, sir.

25 Q Gotcha.

1 A Yes, sir. It was inconclusive. I asked my
2 attorney about this on several different occasions when
3 we spoke, and he said that he was waiting. Whatever I
4 got, he got. So he was waiting on the actual GSR
5 reports. So I went on my own and tried to speak with
6 the detectives and to retrieve these GSR reports, which
7 I never did, so I feel like that would have been
8 another thing that would have been favorable in my --
9 in my case. So that's why I said exculpatory evidence.

10 Q Now, from my understanding, GSR is gun residue on
11 your hands; is that correct?

12 A Yes, sir.

13 Q And it was inconclusive about whether you had it
14 on your hands; is that what you're telling the court?

15 A Yes, sir. Yes, sir.

16 Q Okay. Did they -- to your knowledge, did they
17 investigate anybody else or just you?

18 A No. I was the only one. It was actually three
19 people that was actually arrested or detained at the
20 time, and I was the only one that got GSR out of the
21 whole ordeal.

22 Q Now, let me ask you this: You say that
23 Mr. Robinson failed to investigate a potential third
24 party?

25 A Yes.

1 Q Are you referring to these people that were there
2 with you, the other people, or to whom are you
3 referring?

4 A Well, when I say introducing the third party, it
5 was statements that was written that introduced the
6 third parties. It's all in writing. There was another
7 person with a gun there as well, and that was never
8 GSR'd. So that's why I say failure to investigate a
9 third party, which was --

10 Q I'm sorry. Who was that person that was there?

11 A Actually, it was Kenny Rice.

12 Q Now, you pled guilty to this stuff?

13 A Uh-huh.

14 Q And you, of course, understand you waived your
15 privilege of incrimination here today. So who killed
16 this person? You didn't do it. Who did it?

17 A I'm not sure.

18 Q Okay. You understand if the court grants your
19 relief, then you can be retried and you might be
20 looking at getting 30 years or up to 30 years. Do you
21 understand that?

22 A That's understandable.

23 Q And knowing those things, that's what you want the
24 court to do?

25 A I want the court -- I really just want to be

1 relieved from this.

2 Q Well, I understand that. Let me ask you it in a
3 little different way. Okay? But for these errors that
4 you've alleged that Mr. Robinson made, would you have
5 insisted on going to trial?

6 A Yes, sir. I would have. If I had the
7 knowledge -- I really was under duress at the time. I
8 really, when I went to court May the 29th of 2014, I
9 wasn't willing to take the plea then. I spoke with my
10 attorney and told him I didn't want to take it, and he
11 told me that this was the day to take the plea. So my
12 family wasn't there to help me out or to be -- to be
13 supportive or anything at the time. I was just really
14 caught off guard because my mother called him, and to
15 his knowledge and to my knowledge, she said that I was
16 supposed to be going to court in June, but I was
17 actually taken to court May the 29th. So I wasn't
18 ready to take the plea, period.

19 Q Are you telling the court then that your plea was
20 not freely and voluntarily given?

21 A Yes, sir, I am.

22 Q Mr. Brown, we've gone over your issues I think
23 fairly thoroughly, but I want you -- you have your day
24 in court. I want you to tell the court, is there
25 anything else that you want the court to know about

1 this that shows that you believe you didn't have
2 effective representation and that it was -- your plea
3 was involuntarily given? Anything else?

4 A No, sir.

5 Q Thank you, sir.

6 A I rest my case, sir.

7 Q Thank you.

8 Answer what the State or the court may have.

9 MR. WHITMIRE: May it please the Court.

10 CROSS-EXAMINATION

11 BY MR. WHITMIRE:

12 Q Good morning, Mr. Brown.

13 A Good morning.

14 Q Mr. Brown, if I recall correctly, you just
15 testified that the police did a GSR test on you but not
16 three other people that they detained?

17 A Yes, sir.

18 Q Your testimony is that someone else had a gun
19 also?

20 A Yes, sir.

21 Q So you had a gun?

22 A Yes, sir, I did.

23 Q You gave a confession to police?

24 A Yes, sir, I did.

25 Q I recall you testified you're a little upset today

1 that Mr. Starkes, Jr., gave a false name?

2 A Yeah. I'm not upset about the situation. It's
3 just that it's the law. I mean, if I -- if you was to
4 investigate or if everything was investigated properly,
5 we wouldn't be going through this right now.

6 Q But you're not upset about the statement he gave,
7 you're upset that the name is wrong?

8 A Yeah. I'm not upset at all.

9 Q How many times did Mr. Robinson meet with you
10 prior to your guilty plea?

11 A We met on probably like four different occasions.

12 Q You spent about two years in pretrial detention?

13 A Yes, sir, I did.

14 Q You knew you were going to be charged with murder,
15 you were facing trial for murder if you didn't plea?

16 A Yes, sir.

17 Q This is not your first guilty plea, is it?

18 A No, sir.

19 MR. WHITMIRE: No further questions, your Honor.

20 THE COURT: Mr. Brown, you may step down. Thank
21 you, sir.

22 Any additional witnesses.

23 MR. WELBORN: No redirect and no additional
24 witnesses.

25 MR. WHITMIRE: May it please the Court.

1 State calls Mr. Robinson to the stand.

2 THE COURT: Come on up, please.

3 SCOTT ROBINSON,

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 THE COURT: Please state and spell your name for
6 the reporter.

7 THE WITNESS: Scott Robinson, R-o-b-i-n-s-o-n.

8 DIRECT EXAMINATION

9 BY MR. WHITMIRE:

10 Q Good morning, Mr. Robinson.

11 A Good morning.

12 Q Mr. Robinson, how long have you practiced law?

13 A I think the answer is too long, but I think it's
14 about 20 years. 20 years.

15 Q Predominant area of your practice?

16 A About 99 percent criminal defense.

17 Q Do you recall your representation in this matter?

18 A I do.

19 Q Have you had a chance the review your file?

20 A I have. I have.

21 Q What are the circumstances that led to your -- you
22 being retained on Mr. Brown's case?

23 A They contacted me. I was retained by Mr. Brown's
24 family. And then we started working on the case
25 immediately. Or I started working the case

1 immediately.

2 Q Can you further explain?

3 A I'm sorry.

4 Q Can you further explain when you started working
5 on the case?

6 A Sure. What I normally do in this case -- I've
7 done a lot of murder cases, and the first thing I'm
8 interested in doing is sitting down with the client,
9 Mr. Brown, get the whole story, exactly how this all
10 transpired. And we'd go through any witnesses that he
11 had, alibis. If there is a great alibi, we're going to
12 use the alibi. That's a great thing to do. But any
13 witnesses that he has, any sort of defenses he has.

14 What happened in this case was that Mr. Brown was
15 robbed by this guy named Killer Cam. He was the victim
16 in the case. Mr. Brown was robbed, got a gun, went
17 back to the house where this guy lived. It was an
18 upstairs where he lived. A bunch of guys there. Shot
19 the gun in this case, shot the gun that killed this guy
20 allegedly. He's arrested. He gives a confession, a
21 statement, so forth. And that was all -- that was what
22 we were looking at.

23 The witnesses, the people he talks about giving
24 false statements -- or it was mostly about false names
25 that they were giving, bad names and so forth in this

1 case. And that would be something at trial that you
2 could talk about in terms of cross-examine them
3 regarding -- go to credibility and so forth. But they
4 weren't fact witnesses that were there that said, "Oh,
5 yeah, Jamal didn't shoot this guy." The problem he had
6 in this case was that he had plenty of motive. The guy
7 robbed him. He was mad.

8 Q In other words, malice?

9 A Oh, I think there was a lot of malice that could
10 be shown by the solicitor that would make this case go
11 beyond a directed verdict stage to a jury. And, you
12 know, that was the problem that we had.

13 Q Just a few questions for the record. Did you
14 utilize your private investigator, Brad Baxter?

15 A I did.

16 Q How many times did you meet with Mr. Brown during
17 your representation?

18 A It was at least four times. I can't tell you
19 exactly, but it was plenty of time to know about this
20 case. We actually -- this was Judge Macaulay. This
21 was a nontrial week, I believe, at that time. And we
22 were negotiating all the way up until the plea in this
23 matter. And if we had not -- the trial docket, I
24 believe, was June. That's when the trial would have
25 taken place. We wanted to get in. Ms. Reeves and I

1 had been negotiating in this case, and I felt that a
2 voluntary manslaughter plea in this case with the
3 malice that we had, because he was looking at life in
4 prison in this matter. I don't know -- I'm sure he
5 realized that because he's a smart guy. But life in
6 prison is a big difference between maxing out
7 potentially in 2020. I think he had already done over
8 700 days in jail.

9 Q When y'all went into the plea that day, he was
10 hoping to get that 12-year recommendation?

11 A I think so. Yeah. He actually -- I think we did
12 it in this courtroom, and I think he sat over there and
13 we just talked about it. There was no pressure. This
14 was Judge Macaulay. And if you don't want to do it, if
15 he didn't want to do the plea, he wouldn't have done
16 the plea.

17 Q And Judge Macaulay made him allocute?

18 A Yeah. He has one of those questions that
19 attorneys -- he'll ask the client what you did. And a
20 lot of times that will just -- you just think to
21 yourself, "Wow. Okay." And he admitted what he did.

22 Q Was there anything unusual about this guilty plea
23 in the context of the hundreds that you've done before?

24 A I didn't think it was unusual. I think it was a
25 very sound guilty plea. He knew what he was doing. I

1 mean, this was -- he was not on the trial docket for
2 May. He was there to plead. If he didn't want to
3 plead, he could go back to his cell and we could have
4 gone to trial. But if he went to trial in this case,
5 because of what he did as far as being robbed, being
6 mad and then going back to get even with this guy or
7 get his money back, that was -- there was a lot of
8 malice there.

9 Q Whose decision was it to plead?

10 A His, absolutely.

11 Q Did you try this case to the best of your ability?

12 A Absolutely.

13 Q Mr. Robinson, please answer any questions opposing
14 counsel may have.

15 A Sure.

16 THE COURT: Cross.

17 CROSS-EXAMINATION

18 BY MR. WELBORN:

19 Q Mr. Robinson, did -- did you investigate those
20 statements?

21 A Yes. It was a question of the statements were not
22 real. His main concern was these were the wrong names.
23 These names of these people that gave these statements,
24 the names of the people were -- was wrong. That's what
25 his big concern was.

1 Q The statements were correct?

2 A No. His big -- they weren't fact witnesses. They
3 weren't there with Mr. Brown at the scene saying, "Oh,
4 gosh. Mr. Brown didn't shoot the gun." They
5 weren't -- that's not what they were. They were just
6 people that had some information on something. That's
7 my recollection. But his contention was they gave the
8 wrong names:

9 Q You had a private investigator, you say, in this
10 case?

11 A Brad Baxter.

12 Q He'd been doing it a long time, hadn't he?

13 A Brad's a former sergeant or something in the
14 Anderson County Police Department. He knows everybody.
15 And he's someone that I trust. He's worked on a large
16 number of murder cases with me before that turned out
17 well.

18 Q Mr. Brown says that you should have investigated
19 exculpatory evidence of these forensic reports. What
20 can you tell us about that?

21 A The forensic reports were inconclusive.

22 Q Inconclusive?

23 A They were supposedly, according to what you asked
24 a minute ago, they were inconclusive, I guess, as far
25 as GSR.

1 Q Yes, sir.

2 A That's all they were. It didn't say it wasn't
3 him. Didn't say it was him. It just was inconclusive.
4 So I'm not really sure what that does other than saying
5 it's inconclusive.

6 Q He said you failed to investigate a possible third
7 party that could have done this. How do you address
8 that? What, if anything, did you do?

9 A This third party, that's a new thing to me. I
10 don't know -- we had a confession where he says, "I
11 shot my gun. I shot the gun." He was mad. He had
12 been robbed. He went back up there to this guy's house
13 upstairs, all these other guys. He says he shot the
14 gun. And it's hard to get around that a lot of times.
15 And there was no mention of someone else that was doing
16 this. He had the motive. He had the malice to shoot
17 this guy. Was the guy a bad guy? Yes. This Killer
18 Cam guy, bad guy. But it didn't give him the right to
19 go back there with a gun and shoot the guy and give a
20 statement and come back and say, "Well there is someone
21 else that did this," because there was no evidence that
22 anyone else did it.

23 Q Did you sense in talking with Mr. Brown that he
24 was feeling forced or coerced into making this plea?

25 A Absolutely not. He's not the type of individual

1 to let that happen. He doesn't -- this, as I said
2 before in the direct, this was a nontrial week, and he
3 had the opportunity, if he wished to, to not plead.
4 And it was his choice. It's just -- it's -- the
5 question for him was do you want to go to trial and
6 risk on the facts of this case with a confession and do
7 you want to risk life in prison. That's what the
8 question was. Because if we had not chosen -- if he
9 had not chosen to plead that day, it was going to go to
10 trial. And it wasn't going to trial for voluntary
11 manslaughter. I don't think I could have gotten the
12 voluntary manslaughter lesser included instruction
13 because of the malice that we had in this case because
14 the statement he gave in terms of why he went back into
15 that house with a gun and shot the gun and killed this
16 guy.

17 Q Were there any questions that he asked you that
18 caused you to doubt whether or not he understood what
19 he was doing?

20 A Absolutely not. No. Huh-uh. Actually, I
21 spent -- while he sat here, we were probably here maybe
22 an hour or so or more. I would have stayed here all
23 day to make sure that he did it, that he wanted to do
24 it because it's always his choice.

25 Q Thank you, sir.

1 MR. WHITMIRE: No redirect, your Honor.

2 THE COURT: Thank you very much.

3 MR. WHITMIRE: State requests Mr. Robinson to be
4 released from his subpoena at this time. We also rest.

5 THE COURT: Certainly. You are free to go. Thank
6 you. Be careful stepping down. We had somebody trip
7 yesterday.

8 THE WITNESS: Thank you, Judge.

9 MR. WHITMIRE: We'd be happy to answer any
10 additional questions the court may have.

11 THE COURT: No additional witnesses from the
12 State?

13 MR. WHITMIRE: None, your Honor.

14 THE COURT: Anything in reply?

15 MR. WELBORN: Nothing.

16 THE COURT: Very good.

17 Any argument on this? I feel like I've got a
18 pretty good feel of what's being alleged.

19 Anything from the State?

20 MR. WHITMIRE: Like I said, if you have any
21 questions.

22 MR. WELBORN: Judge, we put forth the facts of
23 this case and just ask the court to rule.

24 THE COURT: Very good. The court will take this
25 matter under advisement, and I will have y'all an order

1 probably later on today at the earliest, tomorrow,
2 Friday, at the latest. Okay?

3 MR. WHITMIRE: Thank you, Judge.

4 MR. WELBORN: Thank you, your Honor.

5 THE COURT: Pleasure to meet you, Mr. Brown. Take
6 care of yourself.

7 (WHEREUPON, the hearing ended at 10:25 a.m.)

8 ***END OF REQUESTED TRANSCRIPT OF RECORD***

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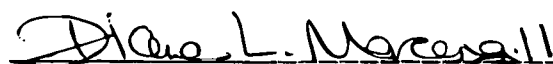
Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Anderson County, South Carolina, on the 2nd day of September 2015.

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

September 13, 2016



Diane L. Marcengill, RPR CRR
Circuit Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Jamal Rashad Brown,
S.C.D.C. No. 322838

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS

) TENTH JUDICIAL CIRCUIT

) C.A. No. 2015-CP-04-0117

) ORDER OF DISMISSAL
(with prejudice)

COMMON PLEAS AND
GENERAL SESSIONS

2016 MAY 23 PM 1:45

FILED-CLERKS OFFICE
ANDERSON, SC

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on January 15, 2015. Respondent's responsive pleadings followed. An evidentiary hearing into the matter was convened on September 2, 2015 at the Anderson County Courthouse. Applicant was present at the hearing and was represented by Hugh Welborn, Esq. Respondent was represented by Walt Whitnire, Esq., of the Office of the Attorney General.

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. Applicant was indicted by the September 2012 term of the Anderson County Grand Jury for murder (2012-GS-04-1929). Applicant was represented by Scott Robinson, Esq. On May 29, 2014, the Applicant pled guilty to the lesser included offense of voluntary manslaughter. The Honorable Alexander Macaulay sentenced Applicant to a term of twelve (12) years imprisonment. Applicant did not appeal his conviction or sentence.

At the PCR hearing, Applicant alleged that he is being held in custody unlawfully for the following reasons:

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A TRUE COPY
MAY 23 2016
Richard M. King
CLERK OF COURT

- (a) Ineffective assistance of counsel for failing to move to quash the indictment that was not true billed during a term of General Sessions;
- (b) Ineffective assistance of counsel for failing to investigate and interview eye witnesses Xavier Johnson and Donald Starks;
- (c) Ineffective assistance of counsel for failing to investigate purportedly inculpatory GSR reports.

SUMMARY OF TESTIMONY

At the PCR hearing, Applicant testified to his impressions of counsel and to his concerns on the competency of representation that he received. Applicant proclaimed that the Anderson County General Sessions Court was not in session when the grand jury true billed his murder indictment. However, Applicant also testified that counsel met with him on over four occasions prior to his guilty plea and that he was certainly aware the State intended to prosecute a murder charge against him.

Applicant also took issue with counsel's purported failure to investigate and interview eyewitnesses. According to Applicant and Applicant alone, a man named Xavier Starks gave a beneficial statement to Applicant's cause. According to Applicant, Xavier Johnson did not see Applicant shoot and kill the victim; he only saw Applicant armed with a firearm at the scene of the offense. Also, and again according to Applicant and Applicant alone, a man named Donald Starks Jr., gave a statement in a "false name." Applicant explained that Donald Starks Jr. nominated himself as Donald Starks, III. in his statement. Otherwise, Applicant did not dispute the veracity of the witnesses' statement.

Last, Applicant took issue with counsel's purported failure to investigate inculpatory forensic evidence: his GSR kit. Applicant, and Applicant alone, contended that his GSR report was inconclusive. Applicant testified that there was a third person present at the scene who was also armed; he was not sure who ultimately delivered the fatal shot. Applicant testified that he confessed his guilt to police.

Counsel testified to his course of conduct during the representation. Counsel testified to his experience and background as a criminal defense attorney. Applicant's family retained counsel after Applicant's arrest. Counsel met with Applicant numerous times during the representation where he discussed the case at length with the client. He further utilized a private investigator on Applicant's case. Counsel gave his impression of the State's case against Applicant. The State's evidence that Applicant brutally shot and killed the victim with malice was overwhelming. He addressed Applicant's post-hoc concerns as trivial. Counsel began negotiating a favorable plea bargain in the early stages of the case. He explained that Applicant was fully aware of the implications of pleading guilty and that he gladly made his own decision to accept the State's offer.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

As a matter of general impression, this Court notes that even in a light most favorable to Applicant, his complaints of counsel's deficient performance were of miniscule importance; he simply fails to see the forest for the trees. This Court finds that the State's evidence of malice was overwhelming. Yet, despite facing an almost impossible obstacle on a murder charge, counsel and his defense team's diligent effort resulted in the State offering Applicant a most beneficial ~~and amply~~ plea bargain. Simply, Applicant received his full allotment of effective representation ^{AM} and then some.

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INEFFECTIVE ASSISTANCE OF COUNSEL

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

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

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

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U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985). After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action.

A.

Applicant's allegation (a) Ineffective assistance of counsel for failing to move to quash the indictment that was not true billed during a term of General Sessions is entirely without merit.

The United States Supreme Court, in United States v. Cotton, 535 U.S. 625, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002), held that a defective indictment does not deprive a court of jurisdiction. "Turning to South Carolina jurisprudence, we note this Court has held that subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong." State v. Gentry, 610 S.E.2d 494, 498, 363 S.C. 93, 100 (2005).

This Court finds Applicant was certainly on notice that the State was prosecuting him for murder. Furthermore, Applicant's argument that the Grand Jury was not scheduled to convene when his indictments were signed is without merit. While terms of court are technically prescribed by statute, this Court notes general sessions matters may be transacted during common pleas terms of court and vice versa. See S.C. Code Ann. §§ 14-5-410, -420 (Supp. 2003). A grand jury may meet at any time ordered by a circuit judge. See S.C. Code Ann. §§ 14-5-910 to -940 (allowing for terms of court not provided for by law); see also Order No. 2011-02-04-01 (S.C. Sup. Ct. Order dated Feb. 4, 2011) (authorizing chief judge for administrative purposes to "determine the dates for the convening of the grand jury in the various counties within the judicial circuit"). Accordingly, a grand jury is not unlawfully impaneled simply because it does not meet during a term of court as provided for in sections 14-5-620 to -820. See

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State v. Jeffcoat, 26 S.C. 114, 1 S.E. 440, 441 (1887) (“[M]erely changing the time for holding the court did not make the grand jury illegal.”). Notably, a presumption of regularity attaches to proceedings in the Court of General Sessions. Pringle v. State, 287 S.C. 409, 411, 339 S.E.2d 127, 128 (1986) (citing State v. Britt, 235 S.C. 395, 111 S.E.2d 669 (1959); State v. Jones, 211 S.C. 319, 45 S.E.2d 29 (1947); State v. Waring, 109 S.C. 52, 95 S.E. 143 (1918)). Absent evidence to the contrary, the court must presume that a properly returned indictment is valid. State v. James, 321 S.C. 75, 472 S.E.2d 38, 40 (Ct. App. 1996) (citations omitted). Applicant’s indictment is valid on its face because it states all the necessary elements of the crime, the date of the offense, and the name of the accused. Id. at 75, 472 S.E.2d at 40. Likewise, the indictment is stamped “True Billed” and signed by the foreman. Pringle, 287 S.C. at 410, 339 S.E.2d at 128. Thus, Applicant’s indictment appears to have been lawfully obtained. Therefore, the allegation is denied and dismissed with prejudice.

B.

This Court finds that Applicant has abandoned his burden of production to prove his remaining two allegations: (b) Ineffective assistance of counsel for failing to investigate and interview eye witnesses Xavier Johnson and Donald Starks; (c) Ineffective assistance of counsel for failing to investigate purportedly inculpatory GSR reports.

“The burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

In light of counsel’s convincing testimony on the matter, Applicant has produced no credible evidence to corroborate his incredible testimony that counsel’s performance was deficient for failing to investigate purported witnesses and forensic evidence. . See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (“failure to conduct an independent investigation

does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result"). Regardless, and for reasons announced above, the purported inconclusive GSR evidence and the purported witness accounts in question held little value to diminish the conclusive evidence of Applicant's guilt. Therefore, these allegations are denied and dismissed with prejudice.

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.

CONCLUSION

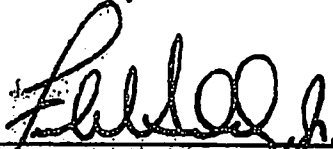
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 25th day of Sept, 2015.



HONORABLE FRANK R. ABDY, JR.
Presiding Judge
Eleventh Judicial Circuit

Sumner, South Carolina

FILED-CLERK'S OFFICE
ANDERSON, SC
2016 MAY 23 PM 1:45
COMMON PLEAS AND
GENERAL SESSIONS

A TRUE COPY
MAY 23 2016
Robert King
CLERK OF COURT

DOCKET NO. 2012GS04 01929

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS

SEP 18 2012

Term

THE STATE

vs.

Jamal Rashad Brown

COMMITMENT

5-29-14/RI

KWR

Indictment for

Murder / Murder

SC Code: 16-03-0010, 0020
CDR Code: 0116

Possession of weapon during violent crime, if
not also sentenced to life without parole or
death

SC Code: 16-23-490
CDR Code: 0549

WITNESSES

Carla Oglesby, Anderson Police Dept.

1-23-14 - TLC, Copcut #2
KSP: R

ENTERED

ARREST WARRANT NUMBER

N190399

N190400 KWR

ACTION OF GRAND JURY
TRUE BILL

SEP 18 2012

Foreperson of Grand Jury
Date:

VERDICT

A TRUE COPY

Foreperson of Petit Jury
Date:

JAN 15 2015

Richard D. Bailey
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Anderson)

INDICTMENT

At a Court of General Sessions, convened on SEP 18 2012 the Grand Jurors of Anderson County present upon their oath:

Murder / Murder

That **Jamal Rashad Brown** did in Anderson County, on or about **June 27, 2012**, unlawfully and with malice aforethought kill Kameron Morris by means of, shooting with a handgun, and that, Kameron Morris died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

Possession of a Weapon During Violent Crime, if not also sentenced to life without parole or death

That **Jamal Rashad Brown**, did in Anderson County on or about **June 27, 2012**, while committing the crime of murder, a crime of violence, have in his possession a silver .38 handgun, all in violation of Section 16-23-490, 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.


 ASSISTANT SOLICITOR