

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Honorable , Circuit Court Judge

RECEIVED

DEC -6 2016

S.C. SUPREME COURT

TRAVARIS WALKER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001490

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

ALICIA OLIVE
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street
Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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1 (January 27, 2014.)

2 THE COURT: Are you Travaris D. Walker?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Mr. Walker, you're here today.

5 You got indicted for murder in indictment

6 2012-GS-10-5821. Murder carries a minimum sentence of 30

7 years in prison up to life without parole. I'm told you

8 want to plead guilty to this indictment for murder; is

9 that correct?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And you understand the sentence
12 you face is a minimum of 30 years?

13 MR. BUTLER: Judge, actually, he's pleading
14 to the reduced charge of manslaughter --

15 THE COURT: I'm sorry.

16 MR. BUTLER: -- for a negotiated 30.

17 THE COURT: I didn't see that part. I saw
18 the 30 years and I thought it was straight up to murder.

19 So you're not pleading to murder, but you're
20 pleading to voluntary manslaughter with a minimum two
21 years up to 30 years with a negotiated sentence of 30
22 years. So that makes you eligible for 15 percent off.

23 It's not a parole eligible sentence, but as
24 opposed to murder, which is day for day without parole,
25 you could -- you have to serve at least 85 percent of

1 this 30-year sentence.

2 Do you understand that?

3 MR. BUTLER: He's eligible for supervised
4 release after 85 percent. They don't call it parole. I
5 don't know why. I probably told him he's eligible for
6 parole after 85 percent, so when Your Honor says he's not
7 parole eligible --

8 THE COURT: You still have that 15 percent
9 hanging over your head, so it's not like it's just free
10 time, but it's a little something to give you incentive
11 to behave while you're in prison because you could get
12 out a little bit early if you're on good behavior.

13 Do you understand that.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Now, this charge
16 carries a couple of collateral consequences, the first of
17 which I've told you about just now; namely, it's not
18 eligible for parole.

19 The second thing is that it is a strike
20 offense. Your lawyer, I'm sure, has gone over this with
21 you, but I'm going to go over it with you so we all know
22 where we stand. Okay?

23 Now, you're familiar with the game of
24 baseball, correct?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And you've heard of the phrase
2 three strikes and you're out?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Well, we use that to describe
5 what a strike offense is in the criminal law, and, in
6 other words, if you get so many strikes, you're out. You
7 go to jail for the rest of your life. You're never
8 eligible to get out on parole. The only way you're out
9 is when they carry you out in a pine box; do you
10 understand that?

11 Now, in South Carolina, we have two types of
12 strike offenses. We have two strike offenses and three
13 strike offenses. Two strikes are called most serious.
14 You get two of those, you go to jail for the rest of your
15 life. You never get out.

16 Three strike offenses are called serious
17 offenses, and if you get three of those, you go to jail
18 for the rest of your life without the possibility of
19 parole. Voluntary manslaughter is one of the two strike
20 offenses, called most serious, and, as I explained, you
21 get two of those, you go to jail for the rest of your
22 life without the possibility of parole.

23 So after today, you'll have one strike
24 against you. If you ever get convicted of another strike
25 offense like this, you'll go to jail for the rest of your

1 life without the possibility of parole.

2 Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: And you still want to go ahead
5 and plead guilty? All right.

6 Now, let me go over some of the rights that
7 you have that you'll be giving up by pleading guilty
8 today; namely, the right to remain silent and the right
9 to a jury trial.

10 If you want a jury trial, you stop me. We
11 will arrange that for you. The State then has to present
12 enough evidence to convince 12 jurors that you're guilty
13 beyond a reasonable doubt. All 12 jurors have to agree
14 that you are guilty in order to convict you, and, if
15 convicted, you have the right to appeal. You can
16 challenge the State's evidence and put up evidence of
17 your own, testify if you want to, and if you don't want
18 to testify, the judge will instruct the jury not to hold
19 that against you while they are deliberating.

20 Do you understand those rights?

21 THE DEFENDANT: Yes.

22 THE COURT: Understanding those rights, do
23 you want to give those rights up and plead guilty to this
24 charge of voluntary manslaughter today?

25 THE DEFENDANT: Yes.

1 THE COURT: And are you pleading guilty to
2 this charge of voluntary manslaughter because you're
3 guilty of it?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Are you under the influence of
6 drugs or alcohol today?

7 THE DEFENDANT: No, sir.

8 THE COURT: Do you take any kind of
9 prescription medications?

10 THE DEFENDANT: No.

11 THE COURT: Do you have any sort of mental or
12 physical condition that keeps you from understanding what
13 you're doing?

14 THE DEFENDANT: No, sir.

15 THE COURT: All right. Now, you're standing
16 next to your lawyer, Mr. Butler. You had a chance to
17 meet with him before today, correct?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you need to spend any more
20 time with him?

21 THE DEFENDANT: No.

22 THE COURT: Are you satisfied with his
23 representation?

24 THE DEFENDANT: Yes.

25 THE COURT: Along the way, y'all have had a

1 chance to talk about going to trial or pleading guilty,
2 correct? So you talked about such things as putting up a
3 defense? And I'm just going to give you an example of
4 some things that lawyers usually discuss with their
5 client. I don't know if all of them apply to your case,
6 but I'll just give you an example of them.

7 For instance, sometimes people confess. When
8 you have a hearing, they say, Judge, we want to have you
9 suppress that confession.

10 Sometimes you have people that say, Oh, I saw
11 who did it, and it was that guy, the defendant.

12 You can have a hearing to try to suppress
13 that identification. Sometimes you might be able to
14 supply the names of people who were willing to say you
15 weren't there so it couldn't possibly have been you that
16 did it. Those are called alibi witnesses.

17 Those are the things that lawyers talk to
18 their clients about. Did y'all have a chance to talk
19 about things like that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You decided you didn't want to
22 have him file any of those motions for you?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And you decided you didn't want
25 to go to trial, correct?

1 THE DEFENDANT: Yes.

2 THE COURT: You don't want to tell the jury
3 your side of the story?

4 THE DEFENDANT: No, sir.

5 THE COURT: You don't want to put up any kind
6 of defense?

7 THE DEFENDANT: No.

8 THE COURT: You don't want to have Mr. Beatty
9 Butler call witnesses on your behalf?

10 THE DEFENDANT: No.

11 THE COURT: All right. Ultimately, it's your
12 decision as to whether or not to go to trial, not his.
13 It's yours. This is your decision and your decision
14 alone?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. How old are you?

17 THE DEFENDANT: Thirty-one.

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

19 THE DEFENDANT: GED.

20 THE COURT: Did you work before you got
21 arrested?

22 THE DEFENDANT: No, sir.

23 THE COURT: What did you do with your days?

24 THE DEFENDANT: Nothing.

25 THE COURT: Are you married?

1 THE DEFENDANT: No, sir.

2 THE COURT: Do you have children?

3 THE WITNESS: Yes, sir.

4 THE COURT: How many children you got?

5 THE DEFENDANT: Three.

6 THE COURT: And how old are they?

7 THE DEFENDANT: Six, three, and one.

8 THE COURT: Originally you got arrested for
9 murder, and, again, I told you that carried a minimum
10 30-year sentence. The State has agreed to allow you to
11 plead guilty to voluntary manslaughter, and I have before
12 me an indication that you have negotiated the plea to
13 this charge, so not only are you agreeing you'll plead to
14 voluntary manslaughter, you are agreeing that you want me
15 to impose a 30-year sentence; is that correct?

16 THE WITNESS: Yes, sir.

17 THE COURT: And you also would be allowed to
18 have credit for the time you have served while you were
19 awaiting trial.

20 Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. Other than the
23 reduction in charges and the negotiated sentence for --
24 or negotiated plea for a 30-year sentence with time
25 served credit, has anyone promised you anything or

1 threatened you to get you to plead guilty?

2 THE DEFENDANT: No, sir.

3 THE COURT: All right. Mr. Butler, in your
4 opinion, does this gentleman understand what he is doing
5 when he waives his right to a jury trial?

6 MR. BUTLER: He does.

7 THE COURT: Does he understand what he is
8 doing when he pleads guilty?

9 MR. BUTLER: He does.

10 THE COURT: Do you agree with his decision?

11 MR. BUTLER: Yes, sir.

12 THE COURT: I find his plea is freely,
13 voluntarily, and intelligently made. What would the
14 State like to tell me?

15 THE ASSISTANT SOLICITOR: Thank you, Judge.
16 This happened December 19 of 2011. Sheriff's office
17 responded to Lincolnton, Charleston County, found a
18 dead victim by some railroad tracks. A witness later
19 came forward and gave the statement indicating she had
20 observed Mr. Walker and others kidnap this victim prior
21 to taking him to Lincolnton.

22 The sheriff's office swore out kidnapping
23 warrants for Mr. Walker and the other defendants. One of
24 the codefendants turned himself in and gave a statement
25 telling the whole story, implicating Mr. Walker. What he

1 advised and what he had confirmed is that Mr. Walker and
2 others approached the victim. They were upset that the
3 victim had taken a gun and some property from Mr. Walker.

4 The victim admitted that he had taken the
5 property. That, of course, made Mr. Walker upset. They
6 drove around the east side of downtown Charleston,
7 looking to get property back but couldn't find it, so
8 what happened is the victim was taken to Lincolnville.
9 He was pulled out of the car, and it was Mr. Walker that
10 actually shot him. He was left there, died on the scene.

11 Mr. Walker was later incarcerated and was
12 placed in proximity to another individual, a cellmate,
13 who also came forward and said Mr. Walker had admitted to
14 him what he had done.

15 Mr. Walker has no prior record to speak of,
16 Judge. All I can see is a 2008 DUS, certainly limited
17 prior record. We do ask that you accept the negotiated
18 30 years. I have spoken with the victim's family several
19 times, Judge. They are not here. They don't want to be
20 here. They want me to call and let them know this has
21 been done and put it behind them.

22 THE COURT: Mr. Butler?

23 MR. BUTLER: Judge, I don't have much to add
24 except that given his age, he's going to get out, at the
25 earliest, in his 50's, which will give him some time to

1 still be a father to his kids. It's a substantial
2 penalty, and we ask the judge to impose the sentence as
3 negotiated.

4 THE COURT: How much time does he get credit
5 for?

6 MR. BUTLER: 651 days.

7 THE COURT: Mr. Walker, would you like to say
8 anything?

9 THE DEFENDANT: No, sir.

10 THE COURT: Sentence of the Court is 30 years
11 in the Department of Corrections. You'll get credit for
12 the 651 days that you've already served. Good luck.

13 MR. BUTLER: Thank you, Judge.

14 - - -
15 (Whereupon, the proceedings were concluded.)

16 - - -
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I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth 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 of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 27th of January 2014.

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

January 8, 2015

Circuit Court Reporter

MHN20120100020

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

2011020689B

ARREST WARRANT NUMBER

M605195

DATE OF ARREST

January 4, 2012

ACTION OF GRAND JURY

TRUE BILL

[Signature]

Foreperson of Grand Jury
Date:

OCT 01 2012

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS1005821

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

October Term 2012

THE STATE

vs.

TRAVARIS D WALKER

DOB: [REDACTED]

B/M

Indictment for

Murder

FILED

10/19/2012 11:30:53 AM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF CHARLESTON --)

At a Court of General Sessions, convened on October 8, 2012, the Grand Jurors of Charleston County present upon their oath:

Murder

That in Charleston County on or about December 19, 2011, with malice aforethought, TRAVARIS D WALKER while acting in concert with others, did kill and murder Marquis Richardson by means of shooting the victim in the head, and that Marquis Richardson did die in Charleston County as a proximate result thereof on December 19, 2011; in violation of Section 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.



MICHAEL O. NELSON
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
STATE VS.
Travaris D Walker
AKA:
Race: BLACK Sex: M Age: 31
DOB: SS#
Address: 38 Bull St
City, State, Zip: Charleston, SC 29401-1390
DL#: SID#: SC01842943

INDICTMENT/CASE#: 2012GS1005821
A/W#: M605195
Date of Offense: 12/19/2011
S.C. Code §: 16-03-0010, 0020
CDR Code #: 0116

SENTENCE SHEET

*CDI. Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Voluntary Manslaughter (2-30)

CONVICTED OF or PLEADS

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
WITEST: [Signature] 17241 SC Bar# [Signature] Defendant Attorney for Defendant [Signature] SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$: provided that upon the service of days/months/years and/or payment
of \$: plus costs and assessments as applicable*; the balance is suspended with probation for

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

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

PTUP
days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Recipient:

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 56-21-114 (DUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/cv, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$3.90, TOTAL \$133.90

Appointed PD or appointed other counsel.
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court Deputy Clerk: [Signature]
Court Reporter: [Signature]
SCCA/217 (03/2011)

Presiding Judge: [Signature]
Judge Code: 2139
Sentence Date: 1/22/14

FORM 5

STATE SOUTH CAROLINA)
County of Charleston)

2014-CP-10-6748
IN THE COURT OF COMMON PLEAS

Trevaris Walker # 358642)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

FILED
2014 OCT 31 PM 3:02
CLERK OF COURT
JULIE J. WATSON

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institute
2. Name and location of Court which imposed sentence Charleston County
3. Name(s) of co-defendant(s) (if any) Fredrick Sanders; LaTasha McCall; King Wilson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) M605142; M605195; M995552; M 9

- (b) M995554; M995574 - Murder; Poss. of Gun;
- (c) Kidnapping; Trafficking Cocaine; Poss. of Marijuana; Poss. by School

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

- (a) January 27th 2014
- (b) Voluntary Manslaughter - 30 Years
- (c) _____

6. Check whether a finding of guilty was made:

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

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

No

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

- (a) the name of each Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____
- (b) the result in each such Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____
- (c) the date of each such result:
 - i. N/A
 - ii. _____
 - iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. _____
 - iii. _____

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

- (a) Wasn't Informed I could

(b) _____

(c) _____

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

(a) Trial Counsel Was Ineffective for losing evidence -

(b) Never going over my case with me and never -

(c) Erroneous advice as to my case were insufficient -

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

(a) My Lawyer somehow misplaced video surveillance -

(b) My Lawyer never gave me a copy of my Rule 5 -

(c) My Lawyer misled me saying that "All" of my -

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. N/A

ii. _____

iii. _____

10. (cont. a) in my case.
(cont. b) presenting me with a Rule 5.
(cont. c) to satisfy "prejudice" requirement of State v. Walker where I did not allege that had counsel informed me correctly about my case, I would not have Plead Guilty:
(cont. d) Not informing me of my right to Appeal.
11. (cont. a) of my whereabouts at the time of these crimes, he always told me he had them on file but never presented them to me.
(cont. b) and I don't recall us ever actually sitting down to go over my case, all I knew was what he told me.
(cont. c) co-defendants were testifying against me so I could take a plea. He also stated that if I go to Trial all we would do is sit there because we had no Defense, not once did he show me what evidence we had in my favor or the evidence that was against me! Basically forcing me into a Plea.
(cont. d) My Lawyer only told me how much time I would do off 30 years and that I'll be eligible for Parole, he never told me about my right to Appeal.

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

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

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

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

15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
 - i. _____ N/A
 - ii. _____
 - iii. _____
 - (b) the proceedings in which each ground was raised:
 - i. _____ N/A
 - ii. _____
 - iii. _____

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) N/A
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? _____
- (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. Beatie Butler (Public Defender)
Charleston County Public Defender Office
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Only during my Plea arrangement
 - ii. _____
 - iii. _____

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

I would like to be cleared on the charge I
am accused of.

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

N/A

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of Charleston)

VERIFICATION

I, Travaris Walker # 358642, 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.

Travaris Walker

SWORN to and subscribed before me this 27
day of Oct, 2014.

Debra Surber (L.S.)
Notary Public

My Commission Expires: 11-4-2015

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

I, Travaris Walker # 358642, 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.

Travaris Walker
Applicant

SWORN or affirmed to and subscribed before me this

27 day of Oct, 2014.

Dena Sines
Notary Public

My Commission Expires: 11-4-2015

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	NINTH JUDICIAL CIRCUIT
)	
)	
Travaris Walker, #358642,)	2014-CP-10-6748
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
)	

Respondent, making its Return to the application for post conviction relief (PCR) filed October 31, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted by the October 2012 term of the Charleston County Grand Jury for Murder (2012-GS-10-5821). Beattie Butler, Esquire represented the Applicant. On January 27, 2014, the Applicant pled guilty to the reduced charge of voluntary manslaughter. The Honorable Eugene C. Griffith, Jr. sentenced the Applicant, pursuant to the negotiated plea, to incarceration for thirty (30) years. The Applicant received credit for time served in the amount of six hundred and fifty one (651) days. The Applicant did not appeal his conviction and sentence.

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

II.

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

1. "Trial counsel was ineffective for:
 - a. Losing evidence
 - b. Never going over my case with me and never presenting me with a Rule 5
 - c. Erroneous advice as to my case were [sic] insufficient to satisfy 'prejudice' requirement of State v. Walker
 - d. Not informing me of my right to [a]ppeal"

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, SCRCP.

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, 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 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 on Applicant's allegations.

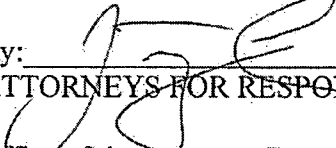
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

June 2, 2015.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

2014-CP-10-6748

TRAVARIS WALKER, #358642,)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

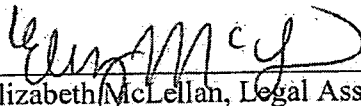
Respondent.)

AFFIDAVIT OF SERVICE BY MAIL

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

James K. Falk, Esq.
Bush Law Group, P.C.
3 Broad St.
Ste 450
Charleston, SC 29401

DATED this 2nd day of June, 2015.


 Elizabeth McLellan, Legal Assistant
 For Respondent

1	STATE OF SOUTH CAROLINA	COURT OF COMMON PLEAS
2	COUNTY OF CHARLESTON	NINTH JUDICIAL CIRCUIT
3		2014-CP-10-6748

7	TRAVARIS WALKER,)	TRANSCRIPT OF
8	APPLICANT,)	RECORD
9	VS.)	
10)	APRIL 20, 2016
11	THE STATE OF SOUTH)	CHARLESTON, SC
12	CAROLINA,)	
13	RESPONDENT.)	

B E F O R E:

HONORABLE DOYET A. EARLY

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

J. RUTLEDGE JOHNSON, ESQUIRE
Attorney for the Respondent

JAMES FALK, ESQUIRE
Attorney for the Applicant

* * * * *

Ruth C. Weese, RDR
Official Court Reporter
Ninth Judicial Circuit

I N D E X

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POST-CONVICTION RELIEF HEARING 3

WITNESS

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NO EXHIBITS INTRODUCED

1 (The following proceedings were held
2 April 20, 2016, Charleston County, South Carolina,
3 @ 10:17 a.m.)

4 THE COURT: Good morning. How are you?

5 THE APPLICANT: Fine.

6 THE COURT: Everything going well?

7 THE APPLICANT: Yes, sir.

8 MR. JOHNSON: May it please the Court,
9 Your Honor, this is Travaris Walker versus the
10 State of South Carolina, case number
11 2014-CP-10-6748. Mr. Walker was indicted by the
12 October 2012 term of the Charleston County grand
13 jury for murder. Beattie Butler represented him.
14 On January 27, 2104 he pled guilty to a reduced
15 charge of voluntary manslaughter. The Honorable
16 Eugene C. Griffith, Jr. sentenced him pursuant to a
17 negotiated plea to 30 years. He received credit
18 for time served. He did not appeal this conviction
19 or sentence; however, he filed this immediate
20 action October 31st, 2014. The State filed its
21 return on June 2nd, 2015. He is represented here
22 today by Mr. Jim Falk.

23 THE COURT: Call your first witness.

24 MR. FALK: Call Mr. Walker to the
25 stand.

1 A. But they added the time before and the
2 time after that together.

3 Q. Because your sentence gave you 651 days
4 credit for time served?

5 A. Yeah.

6 Q. So that's about two years?

7 A. Yeah.

8 Q. So two years prior to the plea or two
9 and-a-half years prior to the plea had you met with
10 Mr. Butler?

11 A. Only once when I been in the county
12 jail.

13 Q. Okay. And when about was that relative
14 to the day that you pled?

15 A. Before I pled?

16 Q. A month, a day?

17 A. A week.

18 Q. Okay.

19 A. Probably that Thursday because I pled
20 out that Monday so it wasn't even a week.

21 Q. And had you told Mr. Butler about a
22 possible alibi?

23 A. I told Mr. Butler about an alibi
24 January of 2012.

25 Q. Okay. And so that was a couple years

1 before the plea?

2 A. That was a week after I had been
3 charged with the murder because at first I was only
4 charged with the kidnapping and then they brought
5 me back up on the murder and that's when I brought
6 the alibi to his attention.

7 Q. And what did you tell him about your
8 alibi?

9 A. That the video surveillance at the
10 liquor store showed that I was here at the time of
11 the shooting, that been on record saying at the
12 time of the shooting I was nowhere around this
13 person who said that I was with him. He's nowhere
14 on the camera. It's only me and another guy on
15 camera at the same time that they are saying all
16 this happened.

17 Q. And this was at the Total Wine?

18 A. Yes, sir.

19 Q. The one on West Ashley?

20 A. Yes, sir.

21 Q. Do you work there, were you just --

22 A. It was around Christmastime. I was
23 getting something out of there.

24 Q. Okay. Do you recall whether or not he
25 ever got this video surveillance?

1 A. He told me he hired a private eye to go
2 get it and then he told me that he did have it. So
3 when he visit me at the county jail and I asked him
4 about it so we could have went over it he was
5 fumbling through like he was looking for it saying
6 he left it at his office on file. So when I got
7 out on bond I called again and I asked him about,
8 you know, I want to come down and see it so I could
9 let him know who I been and who the other guy been,
10 you know what I'm saying? He kept giving me the
11 runaround saying he had it, it been on file, but he
12 never presented it to me. Nobody who was
13 concerning me, you know what I'm saying?

14 Q. So you never had -- never saw the
15 video?

16 A. No, I saw the video from the restaurant
17 -- I had two alibis. I saw the video from the
18 restaurant that night and because the manager wrote
19 a statement that we was in this place, but I never
20 saw the video surveillance from the Total Wine.
21 The most important one what I really needed him to
22 get.

23 Q. So there was another video, that was at
24 the pizza place?

25 A. Norm's Pizza, downtown, yes.

1 Q. And that was from your understanding
2 the night before the --

3 A. The same night, all this took place the
4 same day.

5 Q. Okay. And then the video then you were
6 at Total Wine?

7 A. Before Norm's Pizza.

8 Q. I am sorry. Okay. And you had told --
9 so you made clear to Mr. Butler there were two
10 videos to be --

11 A. Yeah. That's why I don't understand
12 why he went and got the Norm's Pizza video and
13 statement and not the Total Wine because the Total
14 Wine was the first issue. That was the only issue
15 I brought up to him at first. Go to Total Wine,
16 get the video surveillance from Total Wine. And
17 then I told him about the Norm's Pizza, but that
18 was after the fact, you know what I'm saying? I
19 told him specifically the first -- the Total Wine
20 video between 6:30 and 8:30, you know what I'm
21 saying? That's the video I wanted. That's the
22 video I kept pressing about.

23 Q. So then on January 27th, 2014, you went
24 in there and pled?

25 A. Yes.

1 Q. Okay. At some point during the plea
2 I'm sure that Judge Young asked about whether or
3 not you were happy with your lawyer?

4 A. Basically he put me in a situation
5 where I really -- he basically told me I didn't
6 have a choice. He basically told me that if we
7 went to trial that I would just come in here and
8 sit down and we would look crazy because everybody
9 was testifying against me. This is what he telling
10 me. None of this is -- he never showed me none of
11 this, it's only what he telling me. But this is my
12 lawyer so I am trusting his word. So if he telling
13 me to do this that's what I am going to do. This
14 is my attorney. He representing me. But never
15 once did he show me any paperwork dealing with
16 these people who supposed to be testifying against
17 me or this type of paperwork was supposed to be
18 dealing with this. He never -- it was always his
19 words.

20 So the day of my plea he sitting me
21 down to tell me so I said well, I wanted to go to
22 trial. He done want to talk to my parents,
23 sugarcoat some story to my mama having her calling
24 me crying trying to make me take a plea. I had
25 already told him I was going to take it to trial,

1 but he called my family and made up some old sad
2 story to them so they come visit me and crying to
3 me, you know what I'm saying, saying that he done
4 told them I don't got no choice, we going to come
5 in the courtroom and sit down and look crazy
6 because we ain't got no defense. All kind of crazy
7 stuff.

8 I only did it for my momma and my kids.
9 I never did it for him. I only said that because
10 he told me that's what I need to say to come in
11 here to get the plea and get out of the way, you
12 know what I'm saying? Once I got to where I was
13 going and did my studying and learned that he
14 really railroaded me, he really told me a sad story
15 to make me come in here and plead guilty to
16 30 years because he made me feel like I ain't have
17 no other choice. Like this the only choice I had
18 when my mind had already been made on going to
19 trial before he even approached my parents or my
20 family.

21 THE COURT: Why didn't you tell the
22 judge that when you pled?

23 THE APPLICANT: Because he told me not
24 to speak. He told me that -- five or ten minutes
25 before we even came in the courtroom he broke me

1 down everything that I need to say when I come in
2 here and nothing more. He said it's what you need
3 to say when you come in here, you don't need to say
4 nothing more. I never been through the system or
5 nothing like that so I don't understand how it go.
6 I am trusting my lawyer word. If he tell me to
7 come in here and say this is what I'm going to come
8 here and say because this is my lawyer and that's
9 what he told me to say.

10 It ain't like I had time to look into
11 what he was telling me. It was actually 15 minutes
12 before I had walked in the courtroom to plea it
13 out. It ain't like I could have went and talked to
14 somebody and say well, he told me this, what you
15 think? I never had the chance to do nothing.
16 Fifteen minutes of me talking to him I came
17 straight in here and did exactly what he told me to
18 do.

19 BY MR. FALK:

20 Q. Okay. Judge Young asked you whether or
21 not you are pleading guilty because you are guilty?

22 A. No.

23 THE COURT: I am looking at like page 6
24 of the transcript, Judge Young says are you
25 pleading guilty to this charge of voluntary

1 manslaughter because you are guilty of it? You
2 said yes, sir.

3 THE APPLICANT: Because that's what my
4 attorney told me to say.

5 MR. FALK: Okay. I have no further
6 questions.

7 THE COURT: Cross?

8 MR. JOHNSON: Briefly, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. JOHNSON:

11 Q. Mr. Walker, I understand what you are
12 saying is that you answered all of the questions
13 how your attorney told you to say them, right?

14 A. Yes, sir.

15 Q. And your biggest gripe is he never
16 showed you the videos, never showed you any of the
17 statements of your co-defendants, correct?

18 A. Yes, sir, nothing at all.

19 Q. But did you or did you not tell the
20 judge that you had talked to your attorney about
21 these motions to file and the evidence against you?

22 A. Yes, I did.

23 Q. And so that you didn't want him to file
24 those motions, correct, is what your answer was?

25 A. Could you break that -- because I don't

1 understand what you're saying.

2 Q. May I approach, Your Honor?

3 THE COURT: You may.

4 MR. JOHNSON: I am looking at page 7 of
5 the transcript down at the bottom.

6 BY MR. JOHNSON:

7 Q. Mr. Walker, show you this. Do you
8 agree with me that's a copy of your transcript?

9 A. Yes.

10 Q. I'm going to flip to page 7 for you.
11 Where I am looking at is down here where it says
12 call witnesses and file motions and you told him
13 that you had discussed that with your attorney,
14 correct? And that you did not want him to file
15 anything and your answer is yes.

16 A. What would be filing the motion for?

17 Q. To see all the evidence and --

18 A. What evidence? This is 2014. All that
19 supposed to be brought about 2012. The motions and
20 the evidence and all that supposed to be brought to
21 me when the case got -- when I got charged, not
22 when I am about to plea.

23 Q. Okay.

24 THE COURT: Why did you plead guilty?

25 THE APPLICANT: Because he told me I

1 had no choice. He told me -- he told me I had
2 three or four, five people coming to take the stand
3 on me saying all kind of bullshit really.

4 THE COURT: So all this stuff you told
5 the judge is not true?

6 THE APPLICANT: Exactly not. It is not
7 on me.

8 THE COURT: What do you mean?

9 THE APPLICANT: I was a puppet. He was
10 pulling my strings. He told me what to say.

11 THE COURT: So you stood before this
12 judge and went through 12 pages of transcript and
13 everything that you told the judge was not true.

14 THE APPLICANT: No, because I went over
15 everything with my lawyer before I came in here on
16 what I need to say.

17 BY MR. JOHNSON:

18 Q. So I think what the judge is asking you
19 is everything you said at this guilty plea is a
20 lie?

21 A. Not everything.

22 Q. Tell me what's not a lie.

23 A. I need to go over it. I can tell you
24 whether it is a lie.

25 Q. Your Honor, may I approach again?

1 THE COURT: Well, he just asked you are
2 you pleading guilty because you comitted the
3 offense and you told him you were.

4 THE APPLICANT: Because my attorney
5 told me to.

6 THE COURT: So that's a lie. Is that a
7 lie?

8 THE APPLICANT: On my behalf or on the
9 attorney's behalf?

10 THE COURT: On your behalf?

11 THE APPLICANT: No, it's on my attorney
12 behalf. He representing me.

13 THE COURT: Your attorney didn't answer
14 the question. You answered the question.

15 THE APPLICANT: He told me to answer
16 it.

17 THE COURT: Why would your attorney
18 make you do this?

19 THE APPLICANT: Because he did. He
20 representing me.

21 THE COURT: Anything else?

22 MR. JOHNSON: Nothing from the State,
23 Your Honor.

24 THE COURT: Anything on redirect?

25

REDIRECT EXAMINATION

1 BY MR. FALK:

2 Q. This is the first time that you have
3 ever pled guilty?

4 A. Yes, sir.

5 Q. Did you understand what the judge was
6 asking you about?

7 A. Yes, sir.

8 Q. When he said motions? Did you
9 understand that question?

10 A. No, not really, but I done heard it
11 before.

12 Q. And you are just following the script
13 that your attorney gave you?

14 A. Yes, sir.

15 MR. FALK: No further questions.

16 THE COURT: You may step down. Got a
17 copy of the script he gave you to read from or talk
18 about? Sir, you got a copy of what he gave you to
19 read?

20 THE APPLICANT: Yes, sir, right here.

21 THE COURT: That's what was said in the
22 trial. You said your lawyer gave you something
23 before you went before the judge. You got what he
24 gave you?

25 THE APPLICANT: That's it right here,

1 the transcript.

2 THE COURT: Thank you. Have a seat.
3 Next witness.

4 MR. FALK: We will call Mr. Butler.

5 BEATTIE BUTLER

6 who, after being first duly sworn, testified as
7 follows:

8 THE CLERK: State your full name and
9 spell your last name for the record.

10 THE WITNESS: Beattie Butler,
11 B-U-T-L-E-R.

12 DIRECT EXAMINATION

13 BY MR. FALK:

14 Q. Mr. Butler, had you -- when you -- do
15 you recall the day that my client pled in this
16 case?

17 A. I do not.

18 Q. Okay. I mean generally the time of the
19 year or how many years ago it was?

20 A. I know it was several years ago. I
21 know what I have heard in court today. You and I
22 reviewed the transcript of the plea. I remember
23 the facts of his case very well.

24 Q. Okay. When did you -- so you just --
25 let's say the plea was today. How many years,

1 months, days before do you think that you first
2 spoke with him?

3 A. I would have seen him shortly after he
4 was arrested. That's how I knew to go -- track
5 down the videos. We got the video from Norm's
6 Pizza shortly after he was arrested.

7 Q. What did that show?

8 A. It showed him and some others going in,
9 but it did not give him an alibi for the murder.

10 Q. How did it not give him an alibi if he
11 was at Norm's Pizza?

12 A. Because it wasn't at the same time.
13 Was the same night, but not the same time.

14 Q. How far away was Norm's Pizza from
15 where the incident occurred?

16 A. Norm's Pizza is downtown Charleston and
17 the murder was in Lincolnville.

18 Q. So that's 20 or 30 minutes up the road?

19 A. I don't know. I have never been to
20 Lincolnville in my life even though I have lived
21 here for 30 years. I think it's up 26.

22 Q. Up 26 towards Ladson, that way. So
23 it's up aways?

24 A. Yes.

25 Q. But it did show that my client was at

1 Norm's Pizza?

2 A. It did.

3 Q. And it shows who he was with at the
4 time?

5 A. I don't know if I could have identified
6 who he was with, but it showed that he was with
7 other people.

8 Q. When did you show him the video?

9 A. I don't recall.

10 Q. Is it possible that you never showed
11 him the video?

12 A. It is possible, yes, because I would
13 have had to have -- once he made bond I don't
14 remember talking to him again until he got picked
15 back up, but I would have had to have taken a
16 laptop or something down to the jail to show him
17 and I don't recall that I did. I don't recall not
18 doing it either. I can't say one way or the other.

19 Q. Okay.

20 THE COURT: What was he picked back up
21 for?

22 THE WITNESS: He made bond and then he
23 was on a monitor I believe and it wasn't a new
24 crime.

25 THE COURT: Violate bond conditions?

1 THE WITNESS: Yes, sir.

2 BY MR. FALK:

3 Q. Do you recall any conversations with
4 him after he was on bond about possibly if he could
5 help on another case that was pending?

6 A. I don't recall that.

7 Q. Do you recall anything about the
8 Darnell Seagers case?

9 A. I don't recall that. That name doesn't
10 ring a bell with me at all.

11 Q. Okay. So how many -- the plea happened
12 in 2014. About how many cases were you handling at
13 the time?

14 A. Can you give me the month?

15 Q. January.

16 A. January I couldn't tell you.

17 THE COURT: Were you a public defender
18 at the time?

19 THE WITNESS: I was a public defender
20 at that time.

21 THE COURT: Then your normal case load?

22 THE WITNESS: Normal case load. I was
23 the chief litigator, so I had a little bit of a
24 reduced case load, but almost all of them would
25 have been homicides, criminal sexual conduct,

1 nothing lower than an armed robbery.

2 BY MR. FALK:

3 Q. Why did you not go to Total Wines for
4 the surveillance?

5 A. He is wrong about that. Here is what I
6 am having trouble recalling. Part of the problem,
7 Judge, is I don't have the file. I don't work at
8 the PD's office anymore. But I can tell you that
9 what I recall is that we tried to get evidence from
10 Total Wine. I can't recall whether we got the
11 video or not. What I recall is his frustration
12 that we couldn't get what he said he had to sign
13 something and show his ID when he went in. I don't
14 know if that was Total Wines procedure for
15 verifying that they had sold somebody who was of
16 age or not.

17 But my recollection is that that never
18 panned out. That my investigator, she wasn't a
19 private investigator, she was my investigator,
20 Cecilia Wilson, subpoenaed documents and that they
21 said no such thing existed or something like that.
22 Whether there was a video or not, I cannot
23 independently recall right now whether there was.

24 Q. But you do recall conversation about
25 the Total Wine?

1 A. I definitely remember -- hearing him
2 testify, yes. Now I do. I didn't before, but I do
3 and he thought that he had signed some log and that
4 they had made a copy of his driver's license. I
5 don't recall the video, but there may have been a
6 video as well. I don't remember.

7 Q. Okay. And do you recall relative to
8 Norm's Pizza when he was at Total Wine, supposedly
9 before or after?

10 A. I do not. I am sorry. I do not recall
11 the sequence. If I had my notes I could probably
12 tell you.

13 Q. That was all during the same time
14 period?

15 A. It was all the same evening, Total Wine
16 and Norm's Pizza.

17 Q. You are from Charleston. Total Wine is
18 west of the Ashley?

19 A. That's correct.

20 Q. Whatever the road is?

21 A. I don't know the road, but it's a strip
22 mall in West Ashley.

23 Q. That's still farther away from
24 Lincolnville, is that right, I mean it's not
25 next-door to Lincolnville?

1 A. No, Lincolnville, it's not next-door to
2 Lincolnville.

3 Q. If he was at the Total Wine then he
4 can't be at Lincolnville at the same time?

5 A. That would be true, yes.

6 Q. And it would also include the time it
7 would take to get there?

8 A. Yes.

9 Q. What kind of conversations did you have
10 with the solicitor's office about a plea in this
11 case?

12 A. I do not recall what they were. My
13 best recollection of this case is that Mr. Walker
14 wanted to plea. And I don't recall -- once the
15 Norm's Pizza video didn't line up and once his
16 co-defendants were cooperating against him I don't
17 recall there being much discussion about a trial at
18 all.

19 Q. Did you have a conversation with him
20 about his co-defendants testifying against him?

21 A. I don't independently recall, but I
22 can't imagine that I would not have said so and so
23 is giving a statement against you. I believe that
24 some of them gave statements against him leading to
25 his arrest. And whether or not somebody -- some of

1 the others who didn't initially then cooperate with
2 the solicitor's office I can't say, but I know that
3 there was more than one witness that was prepared
4 to testify against Mr. Walker at trial.

5 Q. But you don't recall if you ever told
6 him that name?

7 A. I don't recall that I did, but I can't
8 imagine that I would not have.

9 Q. Okay. And you don't recall sharing
10 with him the Rule 5 materials?

11 A. I don't recall, but again, I can't
12 imagine that I would not have. I had been a
13 criminal defense attorney handling murder cases at
14 that point for probably 15 years. I can't imagine
15 that I wouldn't have gone over the evidence against
16 him before a plea or any other big decisions were
17 made.

18 THE COURT: Hold on one second. Take a
19 moment and talk to your client.

20 THE APPLICANT: I apologize.

21 THE COURT: No problem. Just talk to
22 him.

23 (Attorney confers with client.)

24 BY MR. FALK:

25 Q. So this is -- but you were walking in

1 with the plea deal for 30 years?

2 A. If that was what the transcript says.
3 I recall only from reading -- I know what I know
4 only from reading the transcript, looked like it
5 was negotiated 30 years. But 30 years on
6 manslaughter you do 25. Thirty years on murder
7 it's day for day.

8 Q. Do you recall if the witnesses placed
9 him at the scene or actually placed him as the
10 shooter?

11 A. There were two separate scenes and two
12 separate sets of witnesses. The allegations as I
13 recall them were that the victim in the case had
14 stolen drugs or guns or either or both from Mr.
15 Walker. Mr. Walker was angry. Found the victim's
16 apartment or somebody's apartment and put him in a
17 car and essentially kidnapped him, drove him out to
18 Lincolnville and shot him. There were witnesses at
19 the scene of the abduction and there were witnesses
20 at the shooting. But I couldn't tell you how many
21 or who they were.

22 Q. Okay. And in April of -- sometime
23 during 2014 you were on limited status?

24 A. I was diagnosed with cancer April 7th,
25 2014.

1 Q. Okay. Had you been symptomatic prior
2 to that?

3 A. I was not actually. I tried a murder
4 case the week before.

5 Q. One moment, please.

6 (Attorney confers with client.)

7 MR. FALK: No further questions.

8 MR. JOHNSON: Just briefly, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. JOHNSON:

11 Q. Good morning, Mr. Butler. Appreciate
12 you being here. Just a few questions. Is it your
13 common practice to explain all of the Rule 5, all
14 the evidence, all the co-defendant's statements
15 prior to a client pleading guilty?

16 A. Not only prior to them pleading guilty,
17 but far in advance. Usually shortly after I get
18 it.

19 Q. And then once you relayed that to Mr.
20 Walker was he resistant to taking a plea deal?

21 A. I do not recall any resistance from
22 Mr. Walker.

23 Q. Did you ever tell him how to answer the
24 judge's questions?

25 A. Not in the sense that he I am assuming

1 means by that. Sometimes you'll have a client that
2 will want and need for the plea to go forward and
3 they will answer a question in a way that makes the
4 plea fall apart. So for example, I might tell a
5 client if you get up here and say I want to plea
6 guilty and then you say you didn't do it, the judge
7 isn't going to take your plea. But I will follow
8 that up with and if you didn't do it then we don't
9 need to go up there and plead guilty. We will have
10 a trial.

11 That's not the same thing as telling
12 him hey, I know you didn't do it, but you are going
13 to take this plea.

14 Q. You never forced, threatened or coerced
15 him to plead guilty?

16 A. No.

17 MR. JOHNSON: That's all I have.

18 THE COURT: Redirect?

19 REDIRECT EXAMINATION

20 BY MR. FALK:

21 Q. You don't recall having a conversation
22 with Mr. Walker?

23 A. I do not.

24 THE COURT: You may step down. Thank
25 you and you are excused. Thank you. Any

1 additional witnesses?

2 MR. FALK: Recall my witness.

3 THE COURT: You may.

4 MR. FALK: Mr. Walker, take the stand.

5 THE COURT: You are still under oath.

6 You may proceed.

7 BY MR. FALK:

8 Q. Mr. Butler testified that he couldn't
9 recall, but he believed he gave you the Rule 5
10 materials?

11 A. He never gave me the Rule 5 materials.

12 Q. Okay.

13 A. I got it in -- basically at the kiosk
14 at the county jail. Three or four or five times, I
15 constantly asked him for that. I never got it. I
16 never received it. To this day I don't know who is
17 a witness in my case. To this day today I don't
18 know who is a witness in my case. Only what he
19 told me. He still never gave me any names or told
20 me nothing. He just said a lot people. He never
21 told me who, never gave me paperwork saying who it
22 was. He never did none of that. And I'm not
23 sitting here saying I don't remember, I don't
24 recall or none of that. This stuff I know
25 directly. I remember this.

1 Q. He had -- Mr. Butler had no
2 recollection of you coming in and talking about
3 another case?

4 A. Listen, there was the Darnell Seagers
5 murder trial --

6 Q. What name are you saying?

7 A. Darnell Seagers. The victim was Travis
8 Anderson. This happened in 2010 or something
9 around that time, but I had some information on the
10 case and he called me. Mr. Butler specifically
11 called me on behalf of Darnell Seager's public
12 defender to come down and speak to Darnell Seager's
13 public defender. He escorted me to Darnell
14 Seager's public defender office. And when I was
15 done I went directly to his office. I remember.
16 This is not something I recall or I don't remember.
17 This is something I remember. I remember this.

18 Q. This is after you had made bond?

19 A. This was when I was out on bond on
20 house arrest.

21 Q. Okay.

22 A. It will show -- if you can pull up the
23 house arrest it will show that I been in the public
24 defender's office this day when he saying he ain't
25 saw me none while I was out on bond. I remember

1 this. This is not something I don't recall.

2 Q. And it's your testimony he never gave
3 you the names of the witness?

4 A. Never gave me nothing. What really --
5 really got me frustrated is because why would your
6 private eye go to Norm's Pizza and they give him
7 all the information he need, but when he go to
8 Total Wine they don't give him all the information
9 he need when Total Wine is the most important alibi
10 that's for me. This Total Wine alibi is really
11 showing that I wasn't around these people around
12 this time. But you can get this from Norm's Pizza,
13 but you can't get this for Total Wine the same time
14 that you supposed to go get this?

15 That's what got me really frustrated
16 right now because I don't understand. How could
17 you get what's not helpful and not get what's
18 helpful? I don't understand that. I don't
19 understand why they would tell you that they can't
20 let you even review the videos, let alone not take
21 them. If they don't let you take them I'm quite
22 sure they would let you review them.

23 Q. He testified --

24 A. I don't understand that.

25 Q. He testified that he talked to you

1 about the results of the investigation at Total
2 Wine?

3 A. No, he did not. He always told me he
4 had it. He told me he had the DVD. He had a DVD
5 stack and told me Total Wine DVD was in there
6 somewhere. That's what he always told me.

7 Q. He had testified that he frequently or
8 it is possible that he says that he will tell a
9 client that if the judge asked you whether or not
10 you're guilty --

11 A. He can recall. But the important stuff
12 he can't for me recall.

13 MR. JOHNSON: Your Honor, he is --

14 THE COURT: Hold on.

15 THE WITNESS: That's what I don't
16 understand.

17 THE COURT: Hold on, everybody. Hold
18 on. Let him finish his question before you answer.

19 THE APPLICANT: My lawyer?

20 THE COURT: Yes. He was in the middle
21 of a question and you started spouting.

22 THE APPLICANT: He just jumped up --

23 THE COURT: Hey, let me finish my
24 question now. I have been very pleasant with you.
25 I will let you have your say, but we have to do it

1 in an orderly way. Let your lawyer finish his
2 question, you answer. If the other side has a
3 objection, while he's objecting please remain quiet
4 and I will rule on the objection and then you can
5 continue. So let's start over. Rephrase the
6 question or reask the question.

7 BY MR. FALK:

8 Q. Mr. Butler testified that at times he
9 would tell criminal Defendants who are taking a
10 plea that if the judge asked you whether or not you
11 did it and you say you didn't do it he is not going
12 to take the plea. Did you recall a similar
13 conversation he might have had with you?

14 A. He didn't. He didn't have that
15 conversation with me.

16 Q. Okay.

17 A. That's what I don't understand why he
18 can actually remember this, but he can recall or
19 not remember everything else. That's -- go ahead,
20 sir. I am sorry.

21 MR. JOHNSON: I object. This is
22 pitting witnesses and I move to strike that from
23 the record.

24 THE COURT: Well, I'm going to let him
25 have his say. Overruled. You may continue.

1 THE WITNESS: That's what I don't
2 understand. He can forget the stuff that he need
3 to remember, but he can remember the stuff that he
4 don't -- that won't make him look like he's lying,
5 that would make him look like he wasn't doing his
6 job. He will remember that, but he won't remember
7 the stuff that make me look like -- that will make
8 him look like he ain't doing his job. I don't
9 understand that. Why your memory always going bad
10 when it comes to something that make you look like
11 you ain't doing your job?

12 But when it come to make you look like
13 you doing your job, your memory perfectly fine.
14 You remember this. You remember that. But when
15 they asked about this and that, you don't recall.
16 You don't remember. I don't understand that.
17 That's --

18 Q. I have no further questions.

19 THE COURT: Thank you.

20 MR. JOHNSON: Just two questions follow
21 up, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. JOHNSON:

24 Q. Mr. Walker, I know your big gripe is
25 about the Norm's Pizza and the Total Wine videos,

1 correct?

2 A. That's my freedom, yes, sir.

3 Q. Do you have those videos today to show
4 the Court, yes or no?

5 A. How would I get them videos, sir?

6 Q. Is that a no?

7 A. How would I get these videos?

8 Q. Answer my question.

9 A. Hold on. No.

10 THE COURT: Obviously it's a no.

11 MR. JOHNSON: Thank you, Your Honor.

12 THE COURT: Anything else? Thank you,
13 Mr. Walker, you may step down.

14 MR. FALK: We have no further
15 witnesses.

16 MR. JOHNSON: State has no witnesses.
17 Your Honor.

18 THE COURT: Mr. Walker, I will take it
19 under advisement and I will review all the files in
20 the case, the transcript and I will issue an
21 opinion within a reasonable period. Thank you very
22 much.

23 (These proceedings were concluded at
24 10:56 a.m., April 20, 2015, Charleston County,
25 South Carolina.)

1
2
3 CERTIFICATE OF REPORTER4 I, Ruth C. Weese, Registered Diplomate
5 Reporter for the State of South Carolina at Large,
6 do hereby certify that the foregoing transcript is
7 a true, accurate, and complete record.8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.11 Witness my hand, I have hereunto affixed my
12 official seal this 4th day of August 2016 at
13 Charleston, Charleston County, South Carolina.14 *Ruth C. Weese*15
16 _____
17 Ruth C. Weese

18 Registered Diplomate

19 Reporter
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
)
)
 Travaris Walker, #358642,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT

2014-CP-10-6748

ORDER OF DISMISSAL

FILED
 2016 JUL -5 PM 2:02
 JUDGE CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 31, 2014. Respondent made its Return on June 2, 2015. An evidentiary hearing into the matter was convened on April 20, 2016 at the Charleston County Courthouse. James K. Falk, Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Beattie Butler, Esquire also testified. This Court had before it a copy of the records of the Charleston County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return and the guilty plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted by the October, 2012, term of the Charleston County Grand Jury for Murder (2012-GS-10-5821). Beattie Butler, Esquire represented the Applicant. On January 27, 2014, the Applicant pled

guilty to the reduced charge of voluntary manslaughter. The Honorable Roger M. Young, Sr., sentenced the Applicant, pursuant to the negotiated plea, to incarceration for thirty (30) years. The Applicant received credit for time served in the amount of six hundred and fifty one (651) days. The Applicant did not appeal his conviction and sentence.

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

1. "Trial counsel was ineffective for:
 - a. Losing evidence
 - b. Never going over my case with me and never presenting me with a Rule 5
 - c. Erroneous advice as to my case were [sic] insufficient to satisfy 'prejudice' requirement of State v. Walker
 - d. Not informing me of my right to [a]ppeal"

SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified that Counsel represented him at his plea and met one week prior to the plea. Applicant then testified he told Counsel about possible alibi witnesses a week after he was charged with murder. Applicant claimed he wanted to see the surveillance video from Total Wine because it was Christmas time, and he was shopping at the time of the murder. Counsel apparently told Applicant he had received a copy of this video tape, but left it in his office and never presented this tape to Applicant. Applicant said he saw the surveillance video from Norm's Pizza, but he was at Total Wine before Norm's. Applicant could not understand why Counsel got a copy of the Norm's video, but not Total Wine. Applicant claims he was at Total Wine from 6:30 pm to 8:30 pm on the evening of the murder.

At the guilty plea, Applicant testified he was satisfied with Counsel. Applicant claimed Counsel told him he did not have a choice but to plead guilty because other witnesses were going to testify against Applicant. Applicant then testified he always trusted Counsel's word and did not have a choice because a trial would make him look crazy. He also pled guilty for his mother and his children. Applicant stated counsel advised him not to speak at the plea.

Applicant claimed he was "a puppet and counsel was pulling his strings." Applicant claimed that everything he said was what his counsel told him to say. Applicant also claimed he followed the script that counsel gave him.

Counsel testified he remembered the facts very well and met Applicant shortly after his arrest. Counsel stated that he received the video from Norm's pizza, but this video did not give Applicant an alibi for that night because it did not occur at the same time. Counsel stated it was possible that he did not show the video to Applicant and does not remember talking to Applicant until after he was off bond. Counsel also stated Applicant violated his bond conditions. Counsel testified he does not recall the Darnell Segar's case. Additionally, Counsel testified he tried to obtain the Total Wine surveillance video and that his private investigator subpoenaed some documents, but nothing ever panned out. Counsel stated that Applicant could not be a Total Wine and Lincolnville at the same time. Counsel then testified that Applicant wanted to plea because his codefendants were going to testify against him; Applicant stated he never wanted a trial. Counsel then stated he could not imagine that he did not share the discovery and Rule 5 materials with Applicant. Counsel testified that the plea was to a negotiated 30 years. Counsel said this is a difficult case as there were two separate incident scenes and sets of witnesses. The underlying facts the case were that the victim

had stolen drugs or guns from Applicant and Applicant was angry; Applicant thereafter found victim in an apartment, kidnapped him and drove him to Lincolnton and shot him.

On cross-examination, Counsel testified he always discusses the Rule 5 material and codefendants' statements with his clients. Counsel could not recall any resistance from Applicant to plead guilty. Counsel also stated he never told Applicant how to answer the judge's questions. Lastly Counsel testified he did not force, threaten or coerce Applicant to plead guilty. Counsel stated it was ultimately Applicant's choice to plead guilty.

Upon being recalled to the stand, Applicant testified he was never given his Rule 5 materials and was never told the names of the people who testified against him. Applicant stated he was called on the half of Darnell Segars when he was out on bond. Applicant also claimed he did understand why Counsel obtained the Norm's Pizza tape but not the Total Wine tape. Applicant also complained that Counsel could remember certain things but not some of the important things. On cross-examination, Applicant admitted that he did not have possession of these videos, nor did any of his witnesses testify at the PCR hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he 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) (citing Rule 71.1(e), SCRPC). 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, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 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, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible.

This Court also finds Counsel provided effective assistance of counsel in this case. Counsel advised Applicant the charges and the sentences the charges carried. Counsel negotiated with the State in Applicant's best interest, namely that Counsel negotiated for the lesser included offense of voluntary manslaughter instead of murder. Applicant testified he pled because he did not want to put his mother and children through a trial. Applicant admitted nobody threatened him to plead guilty, and there were no promises other than the negotiations to entice him to plead guilty. This Court finds Applicant made the decision to plead guilty on his own accord with the help of learned, prepared counsel. Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone else. Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty.

This Court also finds the guilty plea transcript dispositive of this case as it is a contemporaneous recording of the proceedings. This Court finds the Applicant waived his rights to a jury trial.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his

burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

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 also finds as to all other allegations that Applicant failed to present evidence of such claims and thus, this Court deems them abandoned.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) 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 PCR. Rule 71.1(g), SCRCPP, provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention 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!



Doyet A. Early, III
Presiding Circuit Court Judge
Ninth Judicial Circuit

June 15, 2016

Bamberg, South Carolina

2014-CP-10-6748