

RECEIVED  
DEC -6 2016  
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Appeal from Orangeburg County

Honorable Maite Murphy, Circuit Court Judge

\_\_\_\_\_  
JAMES JONES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000716

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

JOHN H. STROM  
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

RUSTON NEELY  
Assistant Attorney General  
P. O. Box 11549  
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA )  
2 COUNTY OF ORANGEBURG ) COURT OF GENERAL SESSIONS  
No. 2011 GS 38 0154

3

4 STATE OF SOUTH CAROLINA )  
5 )

6 versus ) TRANSCRIPT OF RECORD

7

8 JAMES MICHAEL JONES )  
9 Defendant )

10 Orangeburg, South Carolina

11 July 23, 2012

12

B E F O R E :

13

HONORABLE EDGAR W. DICKSON, Judge

14

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

15

For the State:

Solicitor

16

For the Defendant:

MILLER, Esq.  
Public Defender Corporation

17

18

Reporter Present:

HARRY DOT WALKER

19

20

HARRIET P. BENNETT  
Reporter, S. C. Court Administration  
46 Regency Oaks Drive  
Summerville, S.C. 29485

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1           (The within matter came before the Court for hearing  
2 on July 23, 2012)

3           THE COURT: Who is next?

4           SOLICITOR: Do you want to do that hearing?

5           THE COURT: Oh, yes. Ladies and gentlemen, I've got a  
6 hearing to do where I can't have anybody present while I do  
7 it, so I need to just ask everybody to leave the Courtroom  
8 for a few minutes while I have this hearing out of the pres-  
9 ence of everybody.

10          Thank you.

11          (Courtroom cleared of persons for the following matter)

12          THE COURT: Is this Mr. Jones?

13          SOLICITOR: Yes, sir.

14          THE COURT: How are you, Mr. Jones?

15          DEFENDANT: I'm good.

16          SOLICITOR: This case was set for trial and was going to  
17 be tried tomorrow on murder. He wants a lawyer, and I'll  
18 let you hear from him.

19          THE COURT: All right, Mr. Jones. Let me hear you.

20          DEFENDANT: I just feel like he ain't been working for  
21 me like I need. My life ain't safe in his hands.

22          At first things were good, but about two months ago he  
23 -- about two or three months ago he comes to me with some  
24 things. I told him a couple of months back about some  
25 things in Charleston County that would help me out with my

1 case, and now we're not able to get that video tape.

2 So I just feel like he don't do what he should to try  
3 to free me up.

4 THE COURT: To try to what?

5 DEFENDANT: He ain't working for me like he should to  
6 help me in my case. You understand what I'm saying?

7 THE COURT: Yes, sir. Tell me about this videotape in  
8 Charleston County?

9 DEFENDANT: All right. Well, Lieutenant Shumpert is  
10 over my case and he come down there and investigate me,  
11 whether I was under the influence of alcohol and Xanax, and  
12 supposedly I had signed a statement or whatever.

13 And I just needed -- if we could have got that video-  
14 tape you would know that I was under the influence at that  
15 time I signed the statement and I wasn't in my right state  
16 of mind. It would have showed that.

17 You know, what I'm saying? I mean, he kept telling me  
18 the whole time there was no video during the confession, but  
19 the whole time there was.

20 THE COURT: Okay. Anything else?

21 DEFENDANT: No, sir.

22 THE COURT: Okay. Anything else?

23 DEFENDANT: No, sir.

24 THE COURT: Tell me about the video.

25 MR. MILLER: What happens is when North Charleston talks

1 to somebody -- he got arrested in North Charleston on a  
2 burglary charge.

3 THE COURT: Uh hm.

4 MR. MILLER: And what they do is kind of like the local  
5 police. They keep them for a hundred and eighty days or  
6 something. The incident happened on November 5th. I was  
7 appointed maybe February 7th, about three months later.

8 When I first met with him I got --- there were some  
9 things he wanted me to check on. It didn't have to do with  
10 a video but other things of that nature.

11 I got the investigator involved and he went out and he  
12 talked to the actual people that we were trying to get that  
13 might help him out, or that Mr. Jones said might help him.

14 THE COURT: Okay.

15 MR. MILLER: That was back in 2010.

16 THE COURT: Okay, this happened in 2010?

17 MR. MILLER: Correct.

18 THE COURT: I'm sorry.

19 MR. MILLER: Or 2011, and then I think this year is when  
20 he started talking about the video, and by that time it had  
21 been gone.

22 THE COURT: Okay.

23 MR. MILLER: Now, I will tell the Court that Mr. Luganis  
24 went and talked to the police officer who would have taken  
25 the video.

1 THE COURT: The policeman who . .

2 MR. MILLER: He did the interview.

3 THE COURT: You could have had him subpoenaed, if you had  
4 wanted to? You had his name?

5 MR. MILLER: If I had wanted.

6 THE COURT: You may or may not have wanted him?  
7 After you reviewed the statement you may not want him?

8 MR. MILLER: He would not be helpful.

9 THE COURT: Okay. All right, and so as far as -- af-  
10 ter you found out North Charleston only keeps these things  
11 for a hundred and eighty days . .

12 MR. MILLER: They just get rid of them or throw them  
13 away then.

14 THE COURT: Okay. So by the time the Investigator got  
15 him involved it was almost six months after?

16 MR. MILLER: Correct.

17 THE COURT: Okay. Anything else?

18 (No response)

19 THE COURT: All right, Mr. Jones. I've got to tell  
20 you I've been on the bench for three years. In case you do  
21 not know I'm one of the Resident Judges for this Circuit  
22 along with Judge Goodstein. I have the pleasure of having  
23 Mr. Miller and other members of the Public Defenders Office  
24 appear before me on a regular basis.

25 I have always been very pleased with their representation

1 and they work hard. Mr. Miller actually was involved for  
2 another suspect in a murder case before me two years ago,  
3 and I have talked to my law clerks about what a good job he  
4 has done. I'm a big fan.

5 He has told me why he has not been able to get the  
6 videotape, but he has talked with the policeman, and I under-  
7 stand you would like to have the video unfortunately they  
8 don't keep the videos forever.

9 You know, I guess that's a long way of saying that I am  
10 denying your request for a new attorney. I think you've got  
11 a good attorney.

12 So I'm going to deny your motion to get another  
13 attorney. Anything else I need to address?

14 SOLICITOR: No, sir.

15 THE COURT: Thank you, sir. Good luck to you.

16 -----END OF REQUESTED PORTION OF RECORD -----

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FORM 5

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

County of Orangeburg )

2013-CP-38-01202

James Michael Jones #351732 )

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

v. )

APPLICATION FOR

State of South Carolina )

POST-CONVICTION RELIEF

FILED FOR RECORDING  
WINNIE B. CLARK  
CLERK OF COURT  
ORANGEBURG, SC  
2013 OCT -4 PM 12:01

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention South Carolina Department of Corrections, Lieber Correctional Institution, PO Box 205, Cooper B-15 Ridgeville, S.C. 29479
2. Name and location of Court which imposed sentence Court of General Sessions, Orangeburg County, ~~1406 Amelia Street~~ 1406 Amelia Street Orangeburg, S.C. 29116
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) Voluntary Manslaughter. 2011-GS-38-154
  - (b) \_\_\_\_\_

- (c) \_\_\_\_\_
- 5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) 7/25/12, 25 Years
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty ✓
  - (b) after a plea of not guilty NO
  - (c) after a plea of nolo contendere NO
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
  - Yes
- 8. If you answered "yes" to (7), list:
  - (a) the name of each Court to which you appealed:
    - i. S.C. Court of Appeals, PO Box 11629 Columbia, SC 29211
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (b) the result in each such Court to which you appealed:
    - i. Denied
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (c) the date of each such result:
    - i. Don't Know
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:
    - i. UNKNOWN
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
- 9. If you answered "no" to (7), state your reasons for not so appealing:
  - (a) N/A
  - (b) N/A

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

(a) SEE Attached Sheets  
(b) )) )) ))  
(c) )) )) ))

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

(a) SEE Attached Sheets  
(b) )) )) ))  
(c) )) )) ))

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

(a) any petition in a State Court under South Carolina Law? YES  
(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NONE  
(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NONE  
(d) any other petitions, motions or applications in this or any other Court? NONE

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. An Appeal  
ii. \_\_\_\_\_  
iii. N/A  
iv. \_\_\_\_\_  
(b) the name and location of the Court in which each was filed:  
i. S.C. Court of Appeals, P.O. Box 11629 Columbia SC 29211  
ii. \_\_\_\_\_  
iii. N/A  
iv. N/A

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

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

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

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

NO

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

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

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

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

- (a) Applicant has just learned of his rights to redress,
- (b) the courts on these issues.
- (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? N/A
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

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

- (a) the name and address of each attorney who represented you:
  - i. Mr. Robert Douglas Mellard Esq. PO Box 1112, Orangeburg,  
S.C. 29116
  - ii. \_\_\_\_\_
  - iii. N/A
- (b) the proceedings at which each such attorney represented you:
  - i. Arraignment, Plea, Sentencing, And Appeal
  - ii. \_\_\_\_\_
  - iii. N/A

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

Statement - Vacate Conviction and Sentence,  
immediate release.

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

NO

STATE OF SOUTH CAROLINA )

County of Orangeburg )

VERIFICATION

I, James Michael Jones, # 351732, 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.

James Jones

SWORN to and subscribed before me this 1<sup>st</sup>  
day of October, 2013.

Quidrean Bryant (L.S.)  
*Notary Public*

My Commission Expires: May 26, 2020

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

I, James Michael Jones #351732, 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.

James Jones  
Applicant

SWORN or affirmed to and subscribed before me this  
1<sup>st</sup> day of October, 2013.

Ludhuan Bryant  
Notary Public

My Commission Expires: May 26, 2020

2013 OCT -4 PM 12: 02  
FILED FOR RECORD  
WINNIE B. CLARK  
CLERK OF COURT  
ORANGEBURG, SC

## ATTACHMENT TO THE POST CONVICTION RELIEF APPLICATION

- (10a.) Whether plea Counsel was ineffective for failing to conduct an adequate investigation of the facts of the applicant's case.
- (10b.) Whether plea Counsel was ineffective for providing the applicant with erroneous advice pursuant to pleading guilty to Voluntary Manslaughter.
- (10c.) Whether plea Counsel was ineffective for failure to motion the Courts at the beginning of the plea hearing to quash the indictment/notice document, because of the violation of S.C. Code of Law (1976); Section: 14-9-210.

### Facts to Support the above Listed Issues

- (10a.) Plea Counsel was ineffective for failure to investigate the <sup>Surrounding</sup> facts of the applicant's case. After it was stated by Mr. John G. D. Roberts, forensic scientist of the South Carolina Law Enforcement Division (S.C. L.E.D.), that no analysis was performed of items of evidence (#2); one (GSR) kit from James Michael Jones. Stating that the samples were collected beyond the six (6) hour time frame in which probative evidence would be found, without any rules of criminal procedures or case law to substantiate/supporting his opinion.
- (10b.) Plea Counsel was ineffective for advising applicant to plead guilty to Voluntary manslaughter, when there was evidence clearly indicating that it was a struggle over the weapon; which brought about the proper charge of involuntary manslaughter had plea Counsel not misinformed an instructed the applicant to plea to Voluntary manslaughter. The applicant would have insisted on going to trial to let a jury decide his fate. Therefore this plea is unintelligent and involuntary.
- (10c.) Plea Counsel was ineffective for failing to motion the Courts at the beginning of the plea hearing to quash the indictment/notice document. Because of the violation of South Carolina Code of Law (1976) Section. 14-9-210, Reads: Indictment for County Court Cases by grand jury of Court of general Sessions. The County Solicitor shall prepare and through the presiding

Judge of the Court of general Sessions, Submit to the grand Jury while in attendance upon the Court of general Sessions, bill of indictments in all cases pending in the County Court in which the punishment may exceed a fine of one-hundred (\$100.00) dollars or imprisonment for thirty days (30-dys). When Such Cases have not been previously acted on by the grand Jury. The grand Jury shall act there on and report its action to the presiding Judge of the Court of general Sessions to report the same to the presiding Judge of the County Courts at its next ensuing term. All cases in which bill of indictment are so found shall stand for trial by the County Court as though found by the grand Jury while in attendance upon the County Court. When looking at the applicant indictment/notice document with a practical eye there is no endorsement signature of a presiding or an administrative judge for the purposes of conducting grand jury proceeding. Without an endorsing signature by a judge the indictment/notice document is invalid to confer jurisdiction upon the Orangeburg County Court of general Sessions, First (1<sup>st</sup>) Judicial Circuit.

### CONCLUSION

The applicant prays that this honorable Court will grant an evidentiary hearing, to adjudicate the above issues.

Applicant,

151

(P.S.) Please Send a Stamped filed Copy, For my files.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	FOR THE FIRST JUDICIAL CIRCUIT
	)	
James M. Jones, #351732,	)	2013-CP-38-1202
Applicant,	)	
	)	
v.	)	<b>RETURN</b>
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

---

Respondent, making its Return to the Application for post-conviction relief filed October 4, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant was indicted during the February 2011 term of the Orangeburg County Grand Jury for Murder (2011-GS-38-0154). Applicant was represented by Robert D. Mellard, Esquire. On July 23, 2012, Applicant appeared before the Honorable Edgar W. Dickson, where he pled guilty to the lesser included offense of voluntary manslaughter, sentencing was deferred. On July 25, 2012, Judge Dickson sentenced Applicant to twenty-five years imprisonment in accordance with negotiations between Applicant and the State.

Applicant filed a notice of appeal, which was dismissed by the South Carolina Court of Appeals for failure to establish any preserved issues pursuant to Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was sent on October 15, 2012.

Attached herewith and incorporated herein are the records of the Orangeburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the transcripts from Applicant's

guilty plea and sentencing proceedings<sup>1</sup>. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

In his Application, Applicant alleges that he is being held in custody based on a claim of ineffective assistance of counsel, asserting that:

1. "Counsel was ineffective for failing to conduct an adequate investigation of the facts of Applicant's case;"
2. "Counsel was ineffective for failing to provide the Applicant with erroneous advise pursuant to pleading guilty to voluntary manslaughter;" and
3. "Counsel was ineffective for failure to motion the courts at the beginning of the plea to quash the indictment/notice document because of the violation of S.C. Code of Law (1976): Section 14-9-210."

Any claims not specifically enumerated in the application or amendments filed by counsel of record will be opposed by Respondent at an evidentiary hearing, and Respondent 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.

Applicant has alleged ineffective assistance of counsel as his ground for relief. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be

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<sup>1</sup> Transcripts have been ordered and will be forwarded upon receipt.

relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

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

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

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel 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).

V.

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

VI.

WHEREFORE, having made its Return, Respondent 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

MEGAN E. HARRIGAN  
Assistant Attorney General

By: Megan E. Harrigan  
ATTORNEYS FOR RESPONDENT  
Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211

March 6, 2014.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF ORANGEBURG )  
 )  
 )  
 )  
 JAMES MICHAEL JONES, #351732 )  
 )  
 Applicant, )  
 )  
 vs. )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent. )

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IN THE COURT OF COMMON PLEAS


2013-CP-38-1202

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:

**Jonathan Waller, Esquire**  
**The Law Office of Jonathan Waller, LLC**  
**1720 Main Street**  
**Suite 104**  
**Columbia, South Carolina 29201**

DATED this 6<sup>th</sup> day of March, 2014.

  
 \_\_\_\_\_  
 Kelly Oppenheimer, Legal Assistant  
 For Respondent

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STATE OF SOUTH CAROLINA  
COUNTY OF ORANGEBURG

COURT OF COMMON PLEAS  
2013-CP-38-01202

JAMES JONES )  
 )  
VS. )  
 )  
STATE OF SOUTH CAROLINA )

TRANSCRIPT OF RECORD  
  
MAY 20, 2015  
ORANGEBURG, SC

B E F O R E :

HONORABLE MAITÉ MURPHY

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

J. CLAYTON MITCHELL, ESQUIRE  
Attorney for the State

JONATHAN D. WALLER, ESQUIRE  
Attorney for the Defendant

Ruth L. Mott, RPR, CRR  
Certified Court Reporter

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## I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
JAMES JONES				
MR. WALLER	4			
MR. MITCHELL		14		
ROBERT DOUGLAS MELLARD				
MR. MITCHELL	21		34	
MR. WALLER		27		
CERTIFICATE OF REPORTER	36			

## E X H I B I T S

NO.	DESCRIPTION	ID	EVD
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(NONE MARKED)

1 MR. MITCHELL: This is James Jones versus State of South  
2 Carolina 2013-CP-38-1202. Mr. Jones was indicted in February  
3 of 2011 for murder. He was represented on that charge by Mr.  
4 Doug Mellard. He appeared before Judge Dickson on July 23rd,  
5 2012, where he plead guilty to a lesser included offense of  
6 voluntary manslaughter. Sentencing was deferred two days to  
7 the 25th of July, where he was sentenced to 25 years  
8 imprisonment pursuant to negotiations between the State and  
9 the Applicant. He filed a notice of appeal in that case  
10 which was dismissed by the Court of Appeals. Mr. Jones filed  
11 this application for post-conviction relief on October 4,  
12 2013, where he's alleged various aspects of ineffective  
13 assistance of counsel. Your Honor, this is another one of  
14 those cases where we do not have a transcript of the plea  
15 hearing, so we'll attempt to do a bit of a reconstruction of  
16 the plea through the witnesses as they're called throughout  
17 the hearing.

18 THE COURT: All right.

19 MR. MITCHELL: Mr. Jones is present and represented by  
20 Mr. Jonathan Waller and I'll turn it over to him at this  
21 time.

22 THE COURT: Mr. Waller.

23 MR. WALLER: Thank you, Your Honor. I would call James  
24 Michael Jones.

25 THE COURT: Mr. Jones, if you'd please come around to

1 the witness stand.

2 JAMES JONES,

3 being first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. WALLER:

5 Q. Mr. Jones, how are you this afternoon?

6 A. I'm doing all right.

7 Q. Mr. Jones, where are you originally from?

8 A. Down here in Eutawville.

9 Q. Okay. And have you lived there all your life?

10 A. No, sir. A good part of it, though. I moved to North  
11 Carolina in 2004 and then come back down here in 2007.

12 Q. Okay. How old are you?

13 A. 28.

14 Q. I want to back up a little bit to November 5th, 2010.

15 Do you recall that night?

16 A. Yes, sir, I do.

17 Q. Were you arrested that night?

18 A. It was either that night or either the 6th. I want to  
19 say it was the 6th when Charleston County got me because I  
20 know it was about 2:00 or 3:00 in the morning.

21 Q. That brings me to my next question. You were originally  
22 arrested in Charleston; is that right?

23 A. Yes, sir.

24 Q. Okay. And why were you arrested in Charleston?

25 A. They arrested me for a burglary charge, trying to say I

1 broke in my dad's house; but I was just going in there  
2 because my cousin had left me after the crime had happened  
3 that night, him and -- I think the girl's name was April  
4 Johnson or something like that. I really didn't know her.  
5 They had left me at the gas station, so I walked to  
6 Pepperhill. I did break in and, you know what I'm saying, go  
7 in the house. Then I seen a vehicle pull up. And I was on  
8 Xanax at the time and drinking, so I didn't know who it was;  
9 so I got up ran out the back door. Then when the police got  
10 me, they said my dad was like, no, that, you know what I'm  
11 saying, that's my son. He really didn't want to press  
12 charges. That's why the charges was dropped, but they was  
13 like, they was taking me, holding me for a homicide that had  
14 happened earlier in Eutawville in Orangeburg County.

15 Q. So you were arrested in Charleston, and they were aware  
16 that there had been an incident up here?

17 A. Yes, sir.

18 Q. Okay. Did you actually give a statement in Charleston?

19 A. Well, at the time I didn't remember giving a statement,  
20 but it was in my motion that I did give a statement.

21 Q. Okay. I want to -- we'll get back to that statement in  
22 just a second. The charges that you were arrested for in  
23 Orangeburg, okay, who was your attorney?

24 A. Doug Mellard.

25 Q. How did he come to be your attorney?

1 A. When I went there, I think he was appointed to me  
2 sometime in February of 2011 because Charleston County held  
3 me all the way up until, I think it was January 19th, 2011,  
4 Orangeburg County had served me the warrant, come and got me;  
5 and then I went in front of, I think it was Judge Dickson,  
6 and he appointed him to me. I think it was sometime in  
7 February. I ain't sure the exact date or whatever.

8 Q. Okay. How long were you actually locked up before you  
9 plead guilty?

10 A. Close to two years. It was about 22 months.

11 Q. In that amount of time how many times did you have a  
12 chance to meet with Doug Mellard?

13 A. I probably seen Doug Mellard four, five times.

14 Q. During those meetings did you all discuss the charges  
15 against you?

16 A. Yes, sir, we did.

17 Q. Okay. You were originally charged with murder; is that  
18 right?

19 A. Yes, sir.

20 Q. Did you all discuss the elements of the murder charge?

21 A. No, we -- it was like every time I seen Doug the only  
22 thing that he would tell me, when I told him I wanted to go  
23 to trial, he would tell me that the statement -- the two  
24 statements my cousin had wrote on me was gon' get me 45 or 50  
25 and trying to force me into taking a plea, when I told him I

1 wanted to go to trial; and every time I tried to tell him I  
2 wanted to go to trial, he would get red and mad in the face  
3 and walk out. My mom was there several times, my mom stayed,  
4 you know, and Peggy Hinds, she was a witness to that too; but  
5 he never tried come up with any defenses, anything. If it  
6 wasn't like me saying that I wanted to signing 25 year plea,  
7 he really didn't have nothing to say.

8 Q. Okay. And I'm going to back you up again. Did you all  
9 discuss the penalties that the murder charge faced?

10 A. Yes, sir, he -- Doug Mellard told me that if I was found  
11 guilty, that it's possible I could get a life sentence.

12 Q. Did you all discuss the evidence that the State had that  
13 they would attempt to use to prove you guilty?

14 A. Doug Mellard, what he told me, the only thing that they  
15 was gon' use against me, they was gon' try to use the  
16 statement that my cousin William Yocum had wrote on me and  
17 then the statement I signed; but in my statement, from  
18 reviewing it, it says that there was a struggle over the gun.  
19 The gun went off; they fell back. And then there was a  
20 couple other questions. They asked me did I shoot the gun.  
21 I said, no, I never shot the gun.

22 There was a struggle over the weapon, and the gun went  
23 off; and then there was like a couple other questions they  
24 asked me. Then it got to like the last one, and they was  
25 like, well, tell me how Devon got shot. Did you ever shoot

1 the gun? I said no. In my own handwriting I said, no, I  
2 never shot the gun.

3 Q. Okay. During the course of this case, while you were  
4 represented by Mr. Mellard, was a private investigator hired?

5 A. Yes, sir, it was.

6 Q. Okay. Who hired the private investigator?

7 A. I think -- I think he was appointed by Orangeburg County  
8 to work for Doug.

9 Q. Okay. Did you have an opportunity to speak with that  
10 private investigator?

11 A. Yes, sir, I did.

12 Q. Okay. Were you able to give him some information about  
13 what happened that night?

14 A. Yes, sir, I did.

15 Q. Okay. Were you able to go over and review what he had  
16 found in his own investigation?

17 A. No, sir, I didn't.

18 Q. Okay. How many times do you think you met with the  
19 private investigator?

20 A. I think the same amount of times that when Doug come to  
21 see me, but there was two or three times he come and pull me  
22 out the county jail and come to see me by myself and told me  
23 that I needed to pretty much, you know what I'm saying, see  
24 if my family could hire a lawyer, he said. Because he said,  
25 I'm not saying that you shouldn't be in jail or you not in

1 handcuffs, he said, but from the way I investigate it, he  
2 said, your cousin should be right here with you, he said,  
3 because they don't have this and they don't have that, no  
4 physical evidence, you know. And my cousin was just, you  
5 know, trying to put it all off on me like I did it, you know  
6 what I'm saying, just, I don't know. From day one I even, I  
7 think it was January 23rd, matter of fact, it was the 23rd of  
8 July, 2012, I been trying get over to the Courthouse.

9 THE COURT: Mr. Jones, you need to slow down a little  
10 bit, okay.

11 THE WITNESS: I was trying to get over to the Courthouse  
12 to fire Mr. Mellard, but he would never get me over there; so  
13 when I did get in front of Judge Dickson to try to fire him,  
14 Judge Dickson said he didn't see nothing wrong with his  
15 representation, plus he was a big fan of Mr. Mellard. So  
16 they turned my motion down to try to get rid of him off my  
17 case.

18 Q. Okay. I want to back up again just a little bit to when  
19 you were first arrested in Charleston. You gave a statement  
20 that night; is that right?

21 A. Yes, sir.

22 Q. Okay. You testified earlier that you did not remember  
23 giving a statement.

24 A. No, sir, I do not.

25 Q. But you have come to understand that you did give a

1 statement; is that right?

2 A. Yes, sir. It's in black and white.

3 Q. Did you and Mr. Mellard discuss the statement that you  
4 gave?

5 A. Yes, sir, we did.

6 Q. What -- what did you all talk about about your  
7 statement?

8 A. Doug just told me that if the statement my cousin had  
9 wrote on me didn't -- wasn't gon' convict me, the statement I  
10 give was gon' convict me.

11 Q. Okay. And you just mentioned your cousin's statement.  
12 Did you and Mr. Mellard discuss statements given by other  
13 witnesses in this case?

14 A. Yes, we did, the statements that he wrote; and I even  
15 brought up where he was lying and failed a lie detector test  
16 and all that. He said that it didn't matter. The Court was  
17 gon' allow what statement they wanted to come in, and I don't  
18 know. This right here is all new to me. I ain't never been  
19 through this, so I really don't know how it works, you know.

20 Q. Were you aware that your cousin had given multiple  
21 statements?

22 A. I was. I seen it in the motion.

23 Q. Did you and Mr. Mellard discuss going to trial?

24 A. I did but he -- it's like every time I would talk to him  
25 about going to trial, he never wanted to go to trial. He

1 didn't have no defenses prepared or none of that. He always  
2 wanted me to sign the plea. If I didn't sign the plea, he  
3 would just get up and get mad and leave; and then like two or  
4 three months before I was about to go to trial, they put  
5 another attorney on my case named Peggy Hinds. And therefore  
6 when I went to trial, and I even tried to tell her, this is  
7 what I go through right here with this man every time.  
8 That's why I don't want him on my case, and I tried to fire  
9 him and all.

10 Q. You mentioned defenses. Did you feel that you had  
11 defenses to these charges?

12 A. Yes, sir, I did.

13 Q. Can you elaborate a little bit?

14 A. Well, the defenses I had was him saying this and saying  
15 that like with, you know what I'm saying, at first I went  
16 there and, you know, he tried to say that he wasn't on the  
17 scene of the crime but I had said I shot -- that I had shot  
18 Devon. And then just like, if you read the police report,  
19 it's like the cops coerced him into saying -- changing the  
20 story. I guess they told him they was gon' charge him with  
21 it too, like the hand of one, the hand of all.

22 It's like they was coercing him into, you know what I'm  
23 saying, going along with, you know what I'm saying, the stuff  
24 they wanted him to say. And just like I told Doug, I said,  
25 you all ain't got no fingerprints of mine, no gunshot

1 residue, none of that. Just even saying that there was a  
2 struggle with the weapon. I never shot it. It's three of us  
3 there. One's dead. You know what I'm saying, there's me, my  
4 cousin and him; and, you know what I'm saying, he's sitting  
5 there writing several different statements and changing his  
6 story up, and it's like you all believe him from day one.  
7 They never swabbed his hand for gun residue or none of that.  
8 It's like when he just put it all off on me, they just  
9 attacked me like I was the killer, like I was the one who did  
10 it.

11 Q. Okay. Mr. Jones, you've got to try to slow down just a  
12 little bit.

13 A. I'm sorry. I'm just a little -- I'm nervous.

14 Q. That's okay. When you were just discussing statements  
15 just a second ago, were you referring to the statements your  
16 cousin gave?

17 A. Yes, sir.

18 Q. Okay. Ultimately you decided to plead guilty under  
19 North Carolina v. Alford or plead under North Carolina v.  
20 Alford; is that right?

21 A. Yes, sir.

22 Q. Okay. What made you come to that decision?

23 A. Well, the reason, Peggy Hinds was the one because I told  
24 Peggy Hinds that I didn't want to plead guilty to something I  
25 didn't do, and she told me about that plea. She said pretty

1 much this right here is saying that you're innocent, well,  
2 it's like you're saying you're innocent, but with the  
3 evidence they got against you, that they would be able to  
4 convict you. So that's the only reason why I took that plea  
5 right there. Doug was trying to get me to plea straight up,  
6 and Peggy told me about the North Carolina v. Alford plea, so  
7 that's why I ended up taking that. At the time I really  
8 didn't even know what it was, but I got some stuff on it, so  
9 I know a little bit about it and why the dude took that plea.

10 Q. Okay. Did you feel ready to go to trial?

11 A. I did but not really because Doug -- me and Doug really  
12 never talked about nothing, no arguments to going to trial,  
13 no defenses, none of that; so that right there is the reason  
14 why I pled because I felt like he was gon' sell me out at  
15 trial like he was doing the whole time. I mean, I'm sitting  
16 in the county almost two years, I got a murder charge, and  
17 this man sees me four or five times.

18 Q. Is that why you plead guilty is because you were not  
19 comfortable with him as your lawyer?

20 A. Yes, sir.

21 Q. Okay. You pled under a negotiated plea, is that right,  
22 it was a negotiated range?

23 A. I don't remember.

24 Q. Okay. Mr. Jones, if Mr. Mellard had not given you the  
25 advice he did, would you have plead guilty still?

1 A. No, sir, I wouldn't.

2 Q. What would you have done?

3 A. Went to trial.

4 Q. Mr. Jones, I've asked all the questions that I have. Is  
5 there anything that you think I've left out or forgotten to  
6 bring to the Court that you need the Court to be aware of  
7 about Mr. Mellard's representation of you?

8 A. No, sir, I think you pretty much covered it all.

9 MR. WALLER: Okay. No further questions. Please answer  
10 any questions Mr. Mitchell has.

11 THE COURT: Mr. Mitchell.

12 CROSS-EXAMINATION BY MR. MITCHELL:

13 Q. Good afternoon, Mr. Jones.

14 A. How you doing.

15 Q. Good, good.

16 Let's see here, you plead guilty in front of Judge  
17 Dickson; is that right?

18 A. Yes, sir.

19 Q. We don't have a transcript from that hearing, are you  
20 aware of that?

21 A. Yes, sir.

22 Q. Okay. I'm going to ask you some questions about what  
23 Judge Dickson asked you at the hearing, and just answer  
24 whether you remember answering those questions, okay?

25 Did Judge Dickson read the charges in the indictment?

1 A. Yes, he -- yes, Judge Dickson read that to me.

2 Q. So he went over what you were charged with?

3 A. Yes, sir.

4 Q. Did he go over the maximum possible punishment?

5 A. Yes, sir, he told me about that.

6 Q. Okay. Did he advise you that you have a right to go to  
7 trial?

8 A. Yes, sir, he told me that.

9 Q. And that you would waive that right by going -- by  
10 pleading guilty, is that right?

11 A. Yes, sir.

12 Q. And you would give up your right to remain silent where  
13 you would have to speak at the plea hearing, is that right?

14 A. No, he didn't never tell me that.

15 Q. He didn't tell you about right to remain silent?

16 A. No, sir.

17 Q. Okay.

18 A. I don't recall that anyway.

19 Q. Okay. How about did he go over your rights about you  
20 could put up a defense if you wanted to go to trial and you  
21 waive that right by pleading guilty?

22 A. Yes, sir.

23 Q. Okay. And that you could have put up witnesses, is that  
24 right?

25 A. Could have put up witnesses like -- like what kind of

1 witnesses, what, to speak on my behalf?

2 Q. That you could have put up witnesses to speak on your  
3 behalf at the trial, yes?

4 A. No, he didn't tell me nothing about that. It's like  
5 when I signed the plea, I don't know, I just signed it and  
6 they got me out of there.

7 Q. This is Judge Dickson now, so he would have asked you a  
8 number of questions back and forth, right?

9 A. Yes.

10 Q. He asked you if you wanted to plead guilty, is that  
11 right?

12 A. No, sir, he never asked me that. He just accepted the  
13 plea.

14 Q. He didn't ask you whether you were guilty?

15 A. Whether I was guilty? No, he didn't ask me that.

16 Q. He never asked you if you were guilty?

17 A. I don't recall him asking me that.

18 Q. Okay. Did he ask you whether you were promised anything  
19 to plead guilty?

20 A. No, sir, he never asked me that either.

21 Q. Did he ask you if you were threatened to plead guilty?

22 A. I don't remember him saying that either.

23 Q. Or if you were forced to plead guilty?

24 A. No, sir, I don't remember it.

25 Q. Okay. Did he ask whether you were under the influence

1 of drugs or alcohol during the plea?

2 A. I don't recall him asking that either.

3 Q. Did he ask you if you had any mental illnesses?

4 A. No, sir, he never asked me that either.

5 Q. He didn't ask about your mental history?

6 A. No, sir.

7 Q. Did he ask you if you were satisfied with Mr. Mellard?

8 A. He did ask me that and I told him I wasn't satisfied  
9 with his representation, and he even knows I tried to fire  
10 him at the beginning, you know what I'm saying, before I even  
11 took the plea. That right there is the reason why I feel  
12 that they lost my transcript because all these problems was  
13 in there and would have proved that.

14 Q. We have the transcript of the motion to relieve counsel  
15 hearing.

16 Did Judge Dickson ask you about the negotiation?

17 A. Negotiation, what, the plea?

18 Q. The plea deal, did he ask you about that?

19 A. He didn't say nothing. Only thing they brought me, I  
20 signed the paper, and that was it; and I remember they put it  
21 off, and I come back, I think it was like a day or two later,  
22 and that's when he, you know what I'm saying, sentenced me to  
23 the Department of Corrections.

24 Q. Right. But before that sentencing part he would have  
25 gone through and asked you questions, right?

1 A. He was asking me, like the questions you asked me --

2 Q. Right.

3 A. -- and I said yes, yeah, he asked me those.

4 Q. Okay. So he did ask you some of these questions?

5 A. Yes, some of them.

6 Q. You remember that he asked some of them.

7 A. Yes, sir.

8 Q. Did he ask you about the statements made by your cousin  
9 and that those could be challenged if you went to trial?

10 A. No, sir. He never said anything about that.

11 Q. He didn't say anything about challenging the evidence?

12 A. No, sir.

13 Q. And you were waiving that right by challenging the  
14 evidence, did he ask you that?

15 A. No, sir.

16 Q. Turning to your allegations here today, this was a  
17 negotiated plea under Alford; is that correct?

18 A. Yes, sir.

19 Q. So you understood what Alford was, is that right?

20 A. No, sir, at the time I didn't understand.

21 Q. Okay. You just explained it earlier, though, in your  
22 testimony, though, didn't you; kind of that you -- the State  
23 could prove that you did it, even if you don't agree with  
24 everything they're saying, is that right?

25 A. Yes. That's how Peggy was breaking me down to it, but

1 it's more than that, though. In Henry Alford's case it's  
2 more than that, what they was trying to use on me in my  
3 situation.

4 Q. That's why you pled under Alford because you didn't  
5 agree with what the State was trying to prove, is that right?

6 A. Yes, sir.

7 Q. Now, Mr. Mellard represented you from the beginning, is  
8 that right?

9 A. Yes, sir.

10 Q. And then Ms. Hinds got involved because you all maybe  
11 had some difficulties, is that right?

12 A. I don't know how it works. I know everybody, at the  
13 time when I was in Orangeburg County, people with, you know,  
14 charges like that, they was giving them like two public  
15 defender's or whatever if you was going to trial. Peggy  
16 Hinds was only on my case for like two or three months close  
17 to the end when we was trying go to trial.

18 Q. Did she try to help you and Mr. Mellard's relationship?

19 A. I guess. I guess you can call it that.

20 Q. And you gave a statement in this case, is that right?

21 A. Yes, sir, I did.

22 Q. And in that statement you implicate yourself in the  
23 crime, is that right?

24 A. Yes, sir, being there.

25 Q. And there's also a statement from your cousin

1 implicating you, is that right?

2 A. It's several statements from my cousin.

3 Q. You talked about that earlier. They were somewhat  
4 inconsistent.

5 A. Yes.

6 Q. They weren't all the same story, is that right?

7 A. And there's a polygraph test that he failed. There's  
8 all that in there.

9 Q. Right. You were aware that you were initially facing a  
10 life sentence, is that right?

11 A. Yes, sir.

12 Q. And that under -- pursuant to the plea negotiations you  
13 were able to plead to this negotiated sentence here, is that  
14 right?

15 A. Yes, sir.

16 Q. You talked about that private investigator. He did meet  
17 with you and talk to you?

18 A. Yes, sir.

19 Q. And you told him kind of your side of the story, is that  
20 right?

21 A. Yes, sir.

22 MR. MITCHELL: No further questions. Thank you.

23 THE COURT: Anything further?

24 MR. WALLER: Nothing further, Your Honor.

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

1 Any other witnesses?

2 MR. WALLER: No further witnesses.

3 THE COURT: Any witnesses from the State?

4 MR. MITCHELL: Your Honor, the State calls Mr. Doug  
5 Mellard.

6 ROBERT DOUGLAS MELLARD,  
7 being first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. MITCHELL:

9 Q. Good afternoon, Mr. Mellard.

10 A. Good afternoon.

11 Q. Thank you for being here with us today again.

12 Very briefly, can you describe your background for the  
13 record, please?

14 A. Been an attorney since '97, been with the public  
15 defender's office since 2005.

16 Q. Have you handled a number of murder cases?

17 A. Quite a few.

18 Q. Have you handled a number of voluntary manslaughter  
19 cases?

20 A. Quite a few.

21 Q. And your office is in Orangeburg County, is that right?

22 A. Correct.

23 Q. And the resident judge there is Judge Dickson, is that  
24 right?

25 A. That's correct.

1 Q. Now, this plea was before Judge Dickson.

2 A. Yes.

3 Q. And are you familiar with his normal plea colloquy?

4 A. He does the same thing every time.

5 Q. Okay. So he's fairly predictable in the questions that  
6 he's going to ask a defendant at that point, is that right?

7 A. He has a set of, I don't know how many, but generally --  
8 and most judges are the same way. They all have their -- I  
9 don't know if it's checklist, but they all do the same  
10 questions pretty much every time.

11 Q. And Mr. Mellard or, excuse me, Judge Dickson normally  
12 asks you questions of whether you've advised the defendant of  
13 his constitutional rights?

14 A. Correct.

15 Q. Do you remember if he did so in this case?

16 A. I did. We also did a plea checklist which I had him  
17 sign, and that's kind of part of it.

18 Q. Okay. So in that would Judge Dickson have gone over the  
19 maximum penalties that he was facing?

20 A. He would have gone over that. He would have gone over  
21 what an Alford plea is. He would have done all of this.

22 Q. Okay. Can you expound upon that a bit, just for the  
23 record, since we do not have a transcript, of what you  
24 believe Judge Dickson went over specifically in this case?

25 A. He would have probably said something to the effect that

1 he was charged with murder, he would have read the  
2 indictment, said how do you plead with the understanding  
3 you're pleading to voluntary manslaughter, not murder. He  
4 would have asked him how he pled. He would have said guilty  
5 to voluntary manslaughter. He would have said guilty under  
6 North Carolina versus Alford. Judge Dickson would have  
7 said -- or Judge Dickson probably would have said, and this  
8 plea is under North Carolina v. Alford, and you understand  
9 that you're getting a benefit of a bargain. And he would  
10 have kind of explained that kind of stuff to him, probably  
11 briefly, but he would have explained it to him, what North  
12 Carolina versus Alford was.

13 Q. What were the negotiations in this case?

14 A. I believe it was 25 years, voluntary manslaughter.

15 Q. Is that something that Judge Dickson would have gone  
16 over?

17 A. Yes, he would have.

18 Q. Would he have advised him of his constitutional rights  
19 that he was waiving at that point by pleading guilty?

20 A. He would have done that.

21 Q. And those rights would have included his right to a  
22 trial, right to remain silent, right to confront and  
23 challenge the State's case?

24 A. Yes.

25 Q. And he also would have had a right to put up his own

1 case?

2 A. Yes.

3 Q. Call witnesses on his own behalf?

4 A. Yes.

5 Q. Challenge any statements that he would have made?

6 A. Yes.

7 Q. And to the best of your recollection did that happen in  
8 this case?

9 A. Yes.

10 Q. If that did not happen, would you have requested that he  
11 did instruct the applicant on that or advise the applicant of  
12 that or --

13 A. If Judge Dickson didn't go over his standard questions,  
14 it would have totally shocked me to the point of wanting to  
15 know why he didn't go over his standard questions.

16 Q. So that would have raised a red flag with you --

17 A. Yes.

18 Q. -- if he deviated from his standard questions?

19 A. Yes.

20 Q. Okay. And in this case he did not deviate from his  
21 standard?

22 A. Not to my knowledge.

23 Q. Okay. Can you give us just a very brief factual  
24 background of what happened or what the State hoped to prove  
25 if the case went to trial?

1 A. Briefly what the State was gonna hope to prove, I  
2 believe that the decedent was named Devon Dietiker. He was  
3 shot with a Kel-Tec. There were three people that drove to a  
4 dirt road, presumably to shoot this Kel-Tec. At some point  
5 the State was going to try to prove that the defendant got  
6 the gun and shot Devon Dietiker with the gun.

7 Q. There were statements in this case made by the defendant  
8 and his cousin, who was also present?

9 A. He was -- he was a witness, yes.

10 Q. So his statement was not helpful to his defense, is  
11 that --

12 A. Correct.

13 Q. -- fair?

14 In his statement what did he say specifically to what  
15 the events of -- what was his version of the facts?

16 A. Well, in his statement he said that they were tussling  
17 over the weapon and the weapon went off. That's what he said  
18 in his statement. What we were -- what he told us was that  
19 his cousin was the one that actually shot him at some point,  
20 so we were dealing with both those issues, whether it was  
21 somebody else shot him or whether he was just -- it was a  
22 tussle.

23 Q. Can you go over how the negotiated 25 years came about?

24 A. We had -- during our investigation we had gotten ahold  
25 of Danny McDaniel, who is the person that does our -- I've

1 known him for years. So we had sent him out to try and  
2 figure out what happened, see if his cousin had maybe made  
3 any statements that he had shot the person or he had actually  
4 shot the person or not -- you know, whether his cousin made  
5 any admissions. And so we tried to find anybody and talk to  
6 anybody we could that could possibly know something about  
7 that. At some point we ended up talking with the victim's  
8 parents and also the victim's wife, and what we were trying  
9 to find out there was -- you know, they were of the  
10 impression that maybe something else had happened. They  
11 wanted to know the full story. So we thought, well, if they  
12 want to know the full story, maybe they know something we  
13 don't. So we went out there and started talking to them, and  
14 we didn't find out anything helpful; but what it did was it  
15 created a -- I don't want to call it a schism between the  
16 victim's family and the solicitor's office, or whatever, but  
17 they were kind of butting heads. So, you know, based on  
18 everything that we found in our investigation, based on  
19 just -- it all came together that we would plead to voluntary  
20 manslaughter.

21 Q. Okay. So the facts the solicitor -- I'll withdraw that.  
22 Excuse me.

23 So the solicitor offered him to plead guilty under  
24 Alford and under lesser included voluntary?

25 A. Correct.

1 Q. Did you advise him of what pleading guilty under Alford  
2 entailed?

3 A. I believe he said Peggy Hinds did.

4 Q. And why was she brought in as a co-counsel in this case?

5 A. Whenever we're getting ready to go to trial -- it's kind  
6 of what he said. Whenever we're getting ready to go to  
7 trial, we always try it with two people; so if he's headed  
8 for a trial, we're going to get another person on board.

9 Q. Did you explain the negotiations in this case to him  
10 before the guilty plea?

11 A. I did.

12 Q. So he would have been fully aware of the sentence he was  
13 going to receive --

14 A. Correct.

15 Q. -- at that point?

16 MR. MITCHELL: I have no further questions. Thank you.  
17 Please answer anything Mr. Waller has.

18 THE COURT: Mr. Waller.

19 MR. WALLER: Thank you, Your Honor.

20 CROSS-EXAMINATION BY MR. WALLER:

21 Q. Mr. Mellard, you just mentioned you hired Danny McDaniel  
22 as a private investigator in this case, right?

23 A. Right.

24 Q. Is it safe to say there were some gaps in details in  
25 this whole factual scenario?

1 A. I don't know if you'd call it gaps, but we were trying  
2 to figure out the entire story, trying to figure out if there  
3 was more than what was there, so I'm not really sure what you  
4 mean as far as gaps.

5 Q. That's exactly what I mean, so that's how you would  
6 characterize, there was holes in the story.

7 A. We didn't know whether there were holes in the story.  
8 If there were holes, we wanted to try to see if we could find  
9 those holes.

10 Q. How up to speed were you throughout Mr. McDaniel's  
11 investigation, how aware were you of what he found?

12 A. Generally, he would either send us updates, or he would  
13 come by and talk to me.

14 Q. Okay. Were you aware that Mr. Jones had been in trouble  
15 before in North Carolina?

16 A. I believe so if -- you're talking -- let's see. I know  
17 we were aware about what his -- are you talking about his  
18 father or him?

19 Q. Him.

20 A. Okay. I can't tell you off the top of my head. I can  
21 look at my notes and find out if you want me to look, unless  
22 you have something to refresh my recollection.

23 Q. Please look at your notes. If you'll bear with me one  
24 second.

25 A. Are you talking about a prior conviction?

1 Q. Yes, sir.

2 A. If it's in the discovery, then I would have known about  
3 it.

4 Q. Well, did you have an opportunity to review investigator  
5 McDaniel's file?

6 A. His entire file?

7 Q. Yes, sir, his findings.

8 A. What he would do is he would send me updates and come  
9 and talk to me. If there's something specific about it -- if  
10 he put it in his notes, then he probably talked to me about  
11 it, and I wouldn't have written down everything that we  
12 talked about.

13 Q. Were you aware that Mr. Jones had been in trouble in  
14 North Carolina?

15 A. I can't recall whether I knew that.

16 Q. During the course of Mr. McDaniel's investigation was he  
17 able to develop some possible alternative motives for other  
18 people?

19 A. He tried to. One of the things we wanted to do was try  
20 to see if there were somehow other people that could help  
21 out. I don't think we found anybody that could help out.  
22 There were only three people there at the time, and I don't  
23 think we found anybody that could help out. There were only  
24 three witnesses.

25 Q. Do you recall him developing a possible motive for Mr.

1 Yocum, the cousin?

2 A. I know we talked about it, but I can't tell you  
3 specifically what it is.

4 Q. Do you recall him developing a potential motive for a  
5 gentlemen by the name of Ricardo Brown?

6 A. That I don't.

7 Q. How often do you think you met with Danny McDaniel over  
8 the course of this case?

9 A. Let me see, well, I met with him on April 8th of 2011, I  
10 met with him on September 9th, 2011, I met with him on  
11 October 28th, 2011. He called me on October 28, 2011, met  
12 with him again January 30th, 2012, met with him again March  
13 21st, 2012. I think we called him on June the 5th, 2012. We  
14 met on June the 8th, 2012, and then I think June the 27th,  
15 2012, and I think that's about it. That's when we actually  
16 met, and I'll say some of those meetings were with the  
17 defendant.

18 Q. During all those meetings, and it was quite a few, did  
19 you -- do you have any notes from those meetings as to what  
20 was discussed?

21 A. Let's see, the April 8th, 2011, we met with the  
22 defendant and Investigator McDaniel and myself. At that  
23 point the defendant gave the investigator his version of  
24 events which at that point was Yocum shot the victim, not me.  
25 That's what was discussed then. September 9, 2011, I met

1 with the defendant and Investigator McDaniel about contacting  
2 David Dietiker and Gill Yocum. Defendant told the  
3 investigator his story, how to locate witnesses, what these  
4 witnesses are supposed to say. They weren't present, but  
5 they were supposed to say that William Yocum was telling them  
6 that he was the one that shot the gun.

7 Let's see, October 28, 2011, again I met with  
8 Investigator McDaniel and the defendant. Let's see, at that  
9 time Investigator McDaniel called the defendant's mom, trying  
10 get some calls to her, find some witnesses. The 28th of  
11 October 2011 Investigator McDaniel called me, and he spoke to  
12 the grandmother, which I believe is Virginia Jones. She  
13 doesn't recall Allen ever coming out and saying he was the  
14 shooter. That was one of the people we were trying to see if  
15 he had made any admissions to.

16 Let's see, I met with the defendant and Investigator  
17 McDaniel on January 30th, 2012. We discussed a letter from  
18 Heyward Dempsey. I believe that was his father.

19 March 21st, 2012, I met with the defendant and  
20 Investigator McDaniel. Let's see, we talked about trial will  
21 be probably in -- in a little bit. 90 days I put in there.  
22 He's going to let me know next week what he wants to do.  
23 That's the defendant.

24 June the 8th, 2012, I met with the defendant, Attorney  
25 Hinds, Investigator McDaniel. We discussed meeting with

1 Devon Dietiker's family, discussed the status of the  
2 investigation in the case.

3 June the 15th, I believe I talked to Danny. He had  
4 talked to the North Charleston cop who had arrested Mr.  
5 Jones. According to the cop the defendant was not highly  
6 intoxicated at the time his confession was given. We were  
7 trying to get the, I believe, the videotapes and stuff of his  
8 arrest. We couldn't do that, so we spoke to the cop about  
9 whether he remembered him being highly intoxicated, which he  
10 said he wasn't.

11 I met with Investigator McDaniel June 27, 2012. He was  
12 going to try to contact April Johnson and find out if the gun  
13 was in the car when the defendant was dropped off. June 27,  
14 2012, I met with the defendant, Attorney Hinds, and  
15 Investigator McDaniel. He says his mom -- the defendant said  
16 his mom's getting a private attorney. He said he didn't know  
17 the name of the attorney. Talked about April Johnson again.

18 Let's see, I think that should about cover it.

19 Q. Okay. Do you recall seeing a copy of a DEA interview of  
20 a Terionita Harris?

21 A. I don't recall that.

22 Q. Back to Mr. Yocum, the cousin, for a minute, he gave  
23 multiple statements; is that correct?

24 A. I think he gave -- yes, one I think he said he wasn't  
25 there, one I think he says he was there.

1 Q. And took two polygraphs, is that right?

2 A. See, I don't remember him taking -- the cousin taking a  
3 polygraph. I remember the defendant taking a polygraph.

4 Q. You don't remember the cousin taking a polygraph at all?

5 A. I don't -- it might be in the discovery, but off the top  
6 of my head, I set up a polygraph for the defendant, so that's  
7 the one I remember.

8 Q. Do you recall the cousin giving multiple statements,  
9 though?

10 A. I do remember that.

11 Q. Do you recall the second statement being different than  
12 the first statement?

13 A. I do recall that.

14 Q. Do you recall the differences?

15 A. I believe one statement -- I can look at them if you  
16 want, but off the top of my head, I believe in one statement  
17 the cousin says he was not there, and the second statement he  
18 says that he was there at the time of the shooting.

19 Q. Okay. And that he was the only witness present.

20 A. Correct.

21 Q. And he has multiple statements.

22 A. Correct.

23 Q. Was there any motive actually determined through law  
24 enforcement's investigation?

25 A. I don't think there was -- I know there were drugs

1 involved, but as far as an actual motive, I can't say anybody  
2 could really pinpoint it, even the victim's father couldn't  
3 pinpoint it.

4 MR. WALLER: Beg the Court's indulgence, please.

5 Q. You testified that Ms. Hinds kind of joined you on this  
6 case, is that right?

7 A. Right.

8 Q. How long had you represented Mr. Jones prior to Ms.  
9 Hinds being appointed to help you on the case?

10 A. I don't know off the top of my head. I know definitely  
11 I have notes in June of 2012. I know she was there when we  
12 went to the victim's family's house. I know she was there  
13 for that. Let's see, probably if I got the case -- if I met  
14 with him in February of 2011, probably a year, give it a year  
15 before she came on.

16 Q. It was testified earlier that she was brought in to kind  
17 of ease you and Mr. Jones' relationship; is that accurate?

18 A. She was brought in because it looked like we were headed  
19 for trial, and so that's kind of -- you know, we always want  
20 two people when you've got a case like this, so that's why  
21 she was brought in.

22 MR. WALLER: No further questions, Your Honor.

23 THE COURT: Anything further?

24 REDIRECT EXAMINATION BY MR. MITCHELL:

25 Q. Were the results of Mr. Jones' polygraph helpful to the

1 case?

2 A. What I told Mr. Jones was that if they were helpful, we  
3 would take the results to the solicitor's office; if they  
4 were not helpful, we would just not say anything about it. I  
5 sent him a letter March 18th, 2011, that we would not be  
6 taking those results to the solicitor's office.

7 MR. MITCHELL: Thank you. No further questions.

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

9 MR. MITCHELL: No further witnesses from the State.

10 THE COURT: The Court will take the matter under  
11 advisement and notify you of the ruling.

12 MR. WALLER: Thank you, Your Honor.

13 MR. MITCHELL: Thank you, Your Honor.

14 --- END OF TRANSCRIPT OF RECORD ---

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1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA

3 COUNTY OF ORANGEBURG

4

5 I, the undersigned Ruth L. Mott, Official Court Reporter  
6 for the State of South Carolina, do hereby certify that the  
7 foregoing is a true, accurate and complete transcript of  
8 record of all the proceedings had and evidence introduced in  
9 the matter of the above-captioned case, relative to appeal,  
10 in the 1st Judicial Circuit Court for Orangeburg County,  
11 South Carolina, on the 20th of May, 2015.

12 I further certify that I am neither related to nor  
13 counsel for any party to the cause pending or interested in  
14 the events thereof.

15 July 14, 2016

16

17 *Ruth L. Mott*

18 Certified Court Reporter

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA  
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

James M. Jones, #351732,

2013-CP-38-01202

Applicant,

AT

ST. JAMES CDPY

ORDER OF DISMISSAL

v.

State of South Carolina,

*Winnifred Clark*  
CLERK OF COURT

Respondent.

ORANGEBURG

COUNTY, SOUTH CAROLINA

FILED FOR RECORD  
WINNIFRED CLARK  
CLERK OF COURT  
ORANGEBURG, S.C.  
2015 AUG 26 1 A 12:02

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed October 4, 2013. Respondent made its Return on March 7, 2014, requesting an evidentiary hearing be convened. Johnathan D. Waller, Esquire, was appointed by the Orangeburg County Clerk of Court.

South Carolina Court Administration informed Respondent by written letter dated August 20, 2014, that a transcript of Applicant's guilty plea hearing could not be produced. Respondent made three (3) requests for the transcript to be produced.

An evidentiary hearing was held on May 20, 2015, at the Dorchester County Courthouse. Applicant and Counsel Waller were present. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent. Applicant testified on his own behalf at the PCR hearing. Also testifying was Applicant's plea counsel, R. Douglas Mellard, Esquire. The Court had before it the Orangeburg County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the appellate records.

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant was indicted

during the February 2011 term of the Orangeburg County Grand Jury for Murder (2011-GS-38-0154). Applicant was represented by Counsel Mellard. On July 23, 2012, Applicant appeared before the Honorable Edgar W. Dickson, where he pled guilty to the lesser included offense of voluntary manslaughter pursuant to North Carolina v. Alford<sup>1</sup>. Sentencing was deferred until July 25, 2012, where Judge Dickson sentenced Applicant to twenty-five (25) years' imprisonment in accordance with negotiations between Applicant and the State.

Applicant filed a notice of appeal, which was dismissed by the South Carolina Court of Appeals for failure to establish any preserved issues pursuant to Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was sent on October 15, 2012.

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

1. Involuntary and coerced guilty plea.

## **II. SUMMARY AND EVIDENCE PRESENTED AT THE PCR HEARING**

### **Applicant's Testimony**

At the PCR hearing, Applicant testified that he was arrested on burglary and homicide charges. He acknowledged that he gave a statement admitting his involvement to law enforcement but explained he was on Xanax at the time. He testified Counsel was appointed to represent him and that they met about four (4) or five (5) times. He testified he was charged with murder and that Counsel reviewed the charges but did not review the elements that the State must prove in order to convict him. He understood that he was facing a maximum of a life sentence. He knew his cousin had given multiple statements that implicated him in the killing.

Applicant testified a private investigator was hired by Counsel and that he met with him two (2) or three (3) times. He alleged that Counsel did not review the investigator's findings with

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<sup>1</sup> 400 U.S. 25, 91 S. Ct. 160 (1970).

him. Applicant testified he moved to have Counsel relieved and that a hearing on the issue was convened before Judge Dickson. This motion was denied and Counsel remained on the case. Applicant testified that he wanted to proceed to trial, but Counsel advised him to plead guilty. Applicant did not believe the State had sufficient evidence to convict him, even under a hand of one, hand of all theory of liability. He testified he and Counsel had not talked about defenses. He believed Counsel would "sell him out" if he took the case to trial. He testified he pled guilty pursuant to Alford because he was not comfortable going forward with Counsel as his attorney.

Applicant acknowledged that Judge Dickson was the presiding judge at his plea hearing. He testified he read the charges contained in the indictments and the facts that supported them. He did not recall the specific questions asked of him but conceded that he was asked some questions by Judge Dickson.

#### **Counsel Douglas R. Mellard's Testimony**

Counsel testified that he was appointed to represent Applicant through his position with the Orangeburg County Public Defender's office. He testified that Applicant pleaded guilty to a negotiated twenty-five (25) year sentence to the lesser included offense of voluntary manslaughter. He testified Applicant gave a statement that there was a tussle over a weapon and that it went off and the victim was killed.

Counsel testified he hired a private investigator to look into Applicant's cousin's statements. He testified he needed to get the full story from the victim's parents and other family members. He testified that the investigator did not uncover anything helpful to his defense. Counsel testified there were holes in Applicant's version of the facts and that he attempted to investigate the inconsistencies.

Counsel, while referring to notes from his case file, noted that he met with Applicant around eight (8) separate times. Counsel testified he met with Applicant in April 2011 along with the investigator where Applicant narrated his version of events where he claimed his cousin was responsible and not him. They met again in September 2011 where they discussed contacting the victim's family to get more information. Counsel testified they spoke on the phone in October 2011, along with the investigator, where they discussed the investigator's interview with Applicant's grandmother. Counsel, the investigator, and Applicant met again in January 2012, and two more times in June 2012 leading up to Applicant's guilty plea. Counsel noted that Applicant had failed a polygraph exam administered by law enforcement.

As to any issues with the plea transcript, Counsel testified that he reviewed with Applicant the various rights he would waive by pleading guilty. He stated his PCR testimony was not impacted by the lack of a plea transcript and emphasized that Judge Dickson is a resident judge who has presiding over a number of Counsel's client's guilty pleas. Counsel testified he is very familiar with Judge Dickson's typical plea colloquy and emphasized that he asks nearly the same questions at every guilty plea hearing. Counsel testified that he could not recall exactly what Judge Dickson asked Applicant during the colloquy, but did agree that in his experience it was Judge Dickson's normal practice to review: indictment(s), potential sentence and collateral consequences, whether the defendant was promised or threatened to plead guilty, whether defendant was pleading guilty freely and voluntarily, Constitutional rights that must be waived, the defendant's prior record, the State's recitation of the facts, and any mitigation offered by a defendant. Counsel testified that if he believed there were any problems with the plea proceeding, he would have objected or made a motion to withdraw the plea. He stated that was not the case here and that Applicant knew what rights he was waiving by pleading guilty. He also

testified that Judge Dickson would not have accepted the plea or allowed the plea to go forward if any issues arose.

### III. APPLICABLE LAW

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he

would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, Applicant's appellate records, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

#### **Plea Transcript**

This Court finds that although a transcript of the guilty plea proceeding was not available for review, it is not necessary to its determinations and ruling. See Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008) (In determining guilty plea issues in a PCR proceeding, it is proper to consider the plea transcript *as well* as evidence at the PCR hearing.) (emphasis added). 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)). It is incumbent upon one who challenges a proceeding to prove his

claims. See Tate v. State, 345 S.C. 577, 549 S.E.2d 601 (2001). This Court finds the record was adequately reconstructed at the PCR hearing. It is important to note that Applicant pled guilty before Judge Dickson, the resident Orangeburg circuit court judge, with whom Counsel has appeared before numerous times. Counsel is familiar with the structure of Judge Dickson's normal plea proceedings and testified that there is no reason to think Applicant's plea deviated from those practices. Applicant's testimony supports this finding. Applicant testified that he was asked a number of questions at the plea hearing including whether he wished to waive his Constitutional rights, and whether he agreed with the solicitor's recitations of the facts. Therefore, this Court finds that the plea transcript is not necessary to its ruling and that the record was adequately reconstructed.

#### **Involuntary and Coerced Guilty Plea**

Applicant argues he did not plead guilty knowingly and voluntarily because he was forced to plead guilty. This Court finds otherwise and concludes that Applicant's guilty plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing

Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Applicant claims he did not plead guilty knowingly and voluntarily. This Court finds this contention without merit. This Court finds the record reflects Applicant was advised of the waiver of his constitutional rights by the plea court. This Court finds very credible Counsel's testimony regarding his preparation and advice concerning the case and the amount of time he met with Applicant. This Court finds Applicant's testimony not credible. This Court finds that Applicant presented *no* evidence that he was coerced or forced to plead guilty. This Court finds Applicant's intent to plead guilty was made clear to the plea judge. Applicant was fully informed of the nature and consequences of his plea by his attorney and was advised further by the plea court. This Court finds Counsel's testimony credible and persuasive on the issue. Applicant knew he was pleading guilty but explained that he felt forced because Counsel advised him he was likely to be convicted if he chose to go to trial. This Court notes Applicant pled guilty to a negotiated plea offer. This Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made. This allegation is denied and dismissed with prejudice.

#### **All Other Allegations**

As to any and all allegations that were raised in the application 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.

#### **V. CONCLUSION**

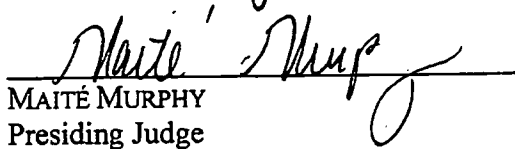
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsel's performance was unreasonable under prevailing professional norms or that the outcome of his plea would have been different had counsel performed differently. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 18 day of Aug., 2015.

  
 MAITÉ MURPHY  
 Presiding Judge

St. George, South Carolina

DOCKET NO. 2011GS38-0154

After being fully advised as to my legal rights, I hereby waive presentation to the Grand Jury.

O O

**The State of South Carolina**  
**County of ORANGEBURG**

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST: TRUE COPY  
W. H. H. H.  
CLERK OF COURT  
ORANGEBURG COUNTY, SC

**WITNESSES**

Marty Carrigg

Orangeburg County Sheriff

2010013708

**ARREST WARRANT NUMBER**  
M195507

Arrested: November 30, 2010

**ACTIONABLE JURY**

FEB 09 2011

Diane Blaine  
Date

Foreperson of Grand Jury

Date: February 9, 2011

**VERDICT**

ATTEST: TRUE COPY

W. H. H. H.  
CLERK OF COURT

ORANGEBURG COUNTY, SC

Foreperson of Petit Jury  
Date:

SC Code: 16-3-10

February 7, 2011 TERM

**COURT OF GENERAL SESSIONS**

**THE STATE**  
vs.

James Michael Jones

Indictment for

MURDER

