

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

DARIUS L. GREEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000994

APPENDIX

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1 (February 25, 2013.)

2 THE COURT: We're going to do the plea first?

3 MS. SHEALY: Yes, Your Honor, if that's okay
4 with you.

5 This is the State versus Darius Green. He is
6 here before Your Honor to enter a plea to voluntary
7 manslaughter for a negotiated sentence of 25 years. If I
8 could begin by introducing who is present in the
9 courtroom on behalf of the deceased.

10 THE COURT: Certainly.

11 MS. SHEALY: Stanley Moultrie, his father, is
12 present; Carlton Williams, his uncle; Marian Gilliam, his
13 godmother; Desiree Moultrie, his sister; Shaquanna
14 Thomas, his sister; Cornesie Wilson, his aunt; Yvette
15 Wilson, his mother; Kathy Moultrie, his stepmother: Ann
16 Major, his aunt; Stanley Moultrie, Junior, his brother;
17 Thomas Smalls, his -- hold on just a second -- his uncle,
18 Cheryl Jefferson, an aunt; and Anthony Jefferson, an
19 uncle.

20 Your Honor, this matter involved the death of
21 David Moultrie. His friends called him D.J. He was only
22 20 years old at the time of his death, and the stabbing
23 occurred on September 28, 2011.

24 David was a graduate of Wando High School and
25 had worked at the new Wal-Mart in Mount Pleasant, the one

1 going out towards Awendaw, since 2010. He was a cart
2 pusher and with the volume that this Wal-Mart receives,
3 it was a very active job. His father, Stanley Moultrie,
4 also worked at Wal-Mart, and it delighted his father that
5 his son had joined him there. The Moultries are from
6 that area in Mount Pleasant, right near the Wal-Mart
7 area.

8 On September 28, David got to work about 7
9 a.m. that morning. His shift was to end at 4:00. We've
10 had the opportunity to interview many of the Wal-Mart
11 employees who indicate that David was polite, quiet,
12 hardworking, and respectful.

13 Wal-Mart also, I would like to note, Judge,
14 has a very strict policy against fighting. When we were
15 interviewing various Wal-Mart employees, they indicated
16 the policy is if you fight, you're fired.

17 Around 3:00 that day, a little before 3:00,
18 David was outside and was taking one of the breaks that
19 they allow them to take. His friend, who also worked
20 there, named Damian Noel was outside, as were some other
21 workers that kind of congregated for amusement during
22 their break. Damian Noel has been very cooperative with
23 the State and indicated he saw a Crown Vic drive up that
24 he was familiar with, and two brothers that work at
25 McDonald's, or they may be cousins with each other, the

1 names of Virgil and Jennarious Dessalon were driving into
2 the Wal-Mart parking lot, went by where D.J. and Damian
3 were. They were sitting on a bench at that point, and
4 that car continued in part to the employee parking lot,
5 which was not usual because the Dessalons worked at
6 McDonald's inside the Wal-Mart.

7 Accompanying those two gentlemen was the
8 defendant, Darius Green. He was in the vehicle with
9 them, so Damian Noel sees the guys drive up, Doesn't
10 think much about it because Darius Green frequently
11 accompanied those boys as they went to work at Wal-Mart,
12 and he would hang out at the Wal-Mart, so Damian has the
13 advantage of knowing that car passes by and D.J. sees
14 they're passing and he couldn't react in any fashion, not
15 expecting any type of trouble.

16 When Damian has to turn and go back into
17 Wal-Mart, he sees those three guys approaching and hears
18 him exchange with D.J. a hello. Now, we have the
19 advantage in this case of cooperative Wal-Mart employees
20 and cooperative patrons of Wal-Mart and videotape of
21 every area, except the area in question, where a fight
22 ultimately occurs, but the other videotape is very
23 insightful and telling, because it allows us to see the
24 timing of the events that occurred, and it allows us to
25 corroborate what our witnesses say happened.

1 So on videotape, we can see where Damian is
2 heading back towards the door to go in. As those three
3 men approached where David was, they would first pass by
4 the food center area, and I'm going to approach Your
5 Honor if it's okay. I've already shown this to
6 Mr. Smith.

7 THE COURT: Yeah, come on up.

8 MS. SHEALY: So the three guys that were
9 driving the car were approaching this way.

10 THE COURT: Okay.

11 MS. SHEALY: And Damian and D.J. had been
12 about here. Damian goes back into the grocery store's
13 other entrance. Instead of entering Wal-Mart, Darius
14 Green approaches D.J., and the area in question is going
15 to be the area near where the soft drink machine is.

16 THE COURT: Where the tree is on the photo,
17 kind of near the tree, behind the tree?

18 MS. SHEALY: Yes, Your Honor. It's kind of
19 deceiving how that photo is angled.

20 What our witnesses tell us is that Darius
21 Green equivocally was the first aggressor. D.J. had a
22 shopping buggy that he's in control of, as part of his
23 job, near him, and one of the witnesses indicate when
24 Darius Green comes up and starts the altercation that
25 D.J.'s actually trying to use the buggy to block the

1 problem. At some point the buggy no longer can assist in
2 that, and the witnesses tell us at some point D.J. can
3 hit back.

4 Witnesses also tell us that Darius Green puts
5 D.J. up against that brick wall, so he is punching him
6 and he has put him up against the wall. The witnesses,
7 interestingly, in describing -- one particularly in
8 describing the blows, is actually describing the stabbing
9 wounds, but he doesn't know it, because what Darius Green
10 has in his hand at some point during that altercation is
11 a knife.

12 And, ultimately, the knife breaks off, Judge.
13 I'm going to show you a picture of the blade, and the
14 blade is left at the scene along with a handle that is
15 found at a different location. At some point after
16 Mr. Green seeks out David and punches him, he also takes
17 off the outer shirt, throws it down, and the punching and
18 the stabbing continue.

19 One of our witnesses tell us that the last
20 thing they see D.J. doing is punch Darius Green in the
21 mouth. Photographs taken of Darius after this incident
22 would reflect an injury to the under part of his lip, but
23 no defensive wounds, no punches, no bruises, none of that
24 is apparent.

25 I can show you in this photograph these two

1 photographs where Mr. Moultrie was actually stabbed.
2 There are four stab wounds. One to his chest, one to his
3 side, one to his lower abdominal area, and one in the
4 back. I've mentioned the videotapes we have, and another
5 way that they're telling is they show us, because the
6 time is running along the tape as it goes with these
7 various camera locations, how very quickly this incident
8 occurred. It is a very quick altercation.

9 It also allows us to see where our
10 eyewitnesses are, because you can see some of them
11 looking back towards the scene as it is occurring.
12 Other -- one witness was in her vehicle, and we can point
13 out a videotape where her vehicle was in relationship to
14 the incident, so the videotape is telling that way.

15 It also tells us, Judge, when Stanley
16 Moultrie arrives at the scene, and what happens, and it's
17 haunting, is when you are looking at the videotape that
18 shows the outside of the building, you see that buggy
19 spilling away from the scene into the road, and you can
20 see David Moultrie running for shelter, running for his
21 life, into the vestibule right inside where it says food
22 center. He collapses there.

23 The employees at Wal-Mart, as well as some
24 patrons, begin to try to assist him. People are calling
25 911. On the 911 phone call that was kind of left open at

1 the scene, a passerby put out the phone so 911 could hear
2 everything that happened. At a certain point there is
3 yelling. The reason there is, is because Stanley
4 Moultrie, David's father, wants to get to his child. He
5 wants to see him; he wants to touch him. They try to
6 keep him back. David died at the scene. His heart and
7 lung were punctured.

8 Before he died, one of his co-workers, Kevin
9 Cromarty, is standing right over David, and David tells
10 him he got jumped, so we could have had a dying
11 declaration in the case. By contrast, the videotape can
12 show us what Darius Green is doing after the stabbing.
13 He puts his shirt back on. He starts using his cell
14 phone. He calls one of his aunts and asks her to come
15 pick him up. She refuses.

16 He sees an older gentleman named Ernell
17 Thompson there at the parking lot, and you can see him
18 speaking to him. Darius's family came from Awendaw.
19 Ernell Thompson's family lives in Awendaw.

20 THE COURT: If you'll come upper one minute.
21 (The following discussion was held at
22 sidebar):

23 The family members here, they want to see the
24 presentation, but I don't really need to know about all
25 the other extraneous people that came from various

1 places.

2 MS. SHEALY: I can cut it short, but I'm
3 almost at the end, for review later if something were to
4 come up about the factual -- what the factual recitation
5 was.

6 THE COURT: I think we got him stabbed in the
7 heart and the lung.

8 MS. SHEALY: We are also getting ready to
9 tell you about how he flees afterward. I can do it
10 really quickly.

11 THE COURT: Okay.

12 (End of sidebar.)

13 MS. SHEALY: So, Judge, as I was indicating,
14 Earnell Thompson comes out into the parking lot, and
15 Darius Green asks him for a ride back to Awendaw. All is
16 depicted on the videotape. He lingers in the parking lot
17 until the remainder of the Thompson's brother and nephew
18 come to drive him back to Awendaw.

19 They stop at the Food Lion, the videotapes
20 from the Food Lion, and Darius Green walks in, goes back
21 towards the bathroom, and leaves his undershirt that had
22 blood and it was torn in the trash can at the Food Lion.

23 Darius continues to make phone calls while he
24 is traveling with them and asks them to drop him off at
25 the Sewee Outpost, and we have videotapes showing him

1 arriving at the Outpost and getting in the car with
2 someone else.

3 Because of the aunt that was at the scene,
4 they were able to figure out where he went from the Sewee
5 Outpost location. Police arrived there; he was there; he
6 was taken into custody.

7 At first he was deceitful about how he had
8 arrived at Wal-Mart and would not acknowledge that he
9 brought the knife to Wal-Mart. Ultimately, after
10 interrogation, he admitted that he brought the knife
11 there and that he rode with the Dessalons, but he tried
12 to assert self-defense. So part of the reason I'm going
13 over some of these facts in detail, Judge, is just to
14 make sure we've explored whether or not this is a
15 self-defense case, and I will tell you from our
16 investigation nothing indicates that this was
17 self-defense.

18 Judge, both Michelle Bacon from Mount
19 Pleasant Police Department and Matt Smetana are here in
20 the courtroom today. Mount Pleasant did a nice job in
21 finding and talking to, interviewing all the witnesses
22 that were at the scene and in locating these various
23 videotapes.

24 Just for the record, Mr. Smith has had
25 Mr. Green evaluated for competency, and there were no

1 lingering questions regarding competency. He does not
2 have a very high intellectual functioning; however, there
3 are no competency issues. When he was a very young --
4 either young teen or late middle school aged child, his
5 mother died, and she had a medical condition that caused
6 her to not be able to breathe and, in essence, choked and
7 he witnessed that, but in addition to that tragedy
8 occurring to him, he also exhibited a lot of anger, a lot
9 of threatening behavior, and likely violent tendencies.
10 It caused him problems in school.

11 He was expelled from school. He was sent to
12 a wilderness program. He was sent to an alternative
13 school, and then ultimately he was sent to the STAR
14 program at the institute of psychiatry and was also
15 terminated from that program.

16 The young man who picked him up from Sewee,
17 in addition to other members of the community that we
18 spoke with, were aware that he was very quick tempered,
19 and if somebody wasn't there to talk him down, he could
20 get himself in trouble. He was only 17 when this
21 occurred. He does have a prior juvenile record,
22 threatening a teacher, disturbing schools, and petty
23 larceny.

24 At the appropriate time, Your Honor, Stanley
25 Moultrie, Mr. Moultrie's father, would like to address

1 the Court briefly.

2 THE COURT: All right. Why don't we go ahead
3 and swear the defendant and go through a few things, and
4 then we'll be happy to hear from Mr. Moultrie and
5 anything else you would like to tell me.

6 I understand this is a negotiated plea, and
7 Mr. Green is pleading to voluntary manslaughter; is that
8 correct?

9 MR. SMITH: That is correct.

10 THE COURT: Do you agree with his decision to
11 enter that plea?

12 MR. SMITH: I do, Your Honor.

13 THE COURT: And does he understand all of the
14 consequences of entering that plea as well as the
15 significant rights that he gives up when he does so?

16 MR. SMITH: He does, Your Honor.

17 THE COURT: And y'all discussed all that?

18 MR. SMITH: We have, Your Honor.

19 THE COURT: Sir, I'm going to get you to
20 raise your right hand for me, if you would.

21 (Defendant duly sworn.)

22 THE COURT: I'm going to ask you some
23 questions. I need to make sure that any plea that you
24 choose to enter today, any plea you choose to give the
25 Court, is given freely and voluntarily of your own part,

1 okay?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Whenever I take a guilty plea, I
4 need to make sure that it's intelligent, knowing, and
5 that you're competent to give the plea. Okay, sir? I'm
6 going to get you to answer out loud for me because she's
7 typing down everything you say, all right?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: How old are you, sir?

10 THE DEFENDANT: Nineteen.

11 THE COURT: You're 19? And are you still in
12 school or not?

13 THE DEFENDANT: No.

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

15 THE DEFENDANT: Like, eighth grade.

16 THE COURT: Eighth grade. Where did you go
17 to school?

18 THE DEFENDANT: Last through Givhans
19 Alternative School.

20 THE COURT: Givhans Alternative School?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Have you been working anywhere,
23 sir?

24 THE DEFENDANT: Yeah. I used to work at
25 Wendy's at one point in time.

1 THE COURT: Which Wendy's, the one in Mount
2 Pleasant?

3 THE DEFENDANT: Yes, on Johnny Dodds.

4 THE COURT: And are you taking any medication
5 today?

6 THE DEFENDANT: Yeah. I don't remember the
7 name.

8 THE COURT: Okay. What do you take the
9 medication for?

10 THE DEFENDANT: One is an antidepressant, and
11 I don't know the other one.

12 THE COURT: Okay. Well, let me ask it this
13 way: Do any of those make you feel fuzzy or make it hard
14 for to you understand what's going on around you?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: So you feel well enough today to
17 go forward?

18 THE DEFENDANT: No, I ain't take it today.

19 THE COURT: Well, you look like you feel well
20 enough today. I just need to make sure I'm comfortable
21 with that, all right, sir?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Have you had anything, are you
24 under the influence of anything that would interfere with
25 your ability to understand what we're doing here in

1 court?

2 THE DEFENDANT: No, ma'am.

3 THE COURT: And I ask everybody these
4 questions. Have you ever been treated for any kind of
5 drug or alcohol problem?

6 THE DEFENDANT: No, ma'am.

7 THE COURT: Okay. And the next question I
8 always ask is whether or not you've been treated for any
9 kind of mental illness. I think you told me you're
10 taking an antidepressant, correct?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And it's for depression. You've
13 been diagnosed with depression?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: And I can get Mr. Smith and Ms.
16 Ehrlich to give me some more information about that in a
17 minute. All right.

18 Mr. Green, I've got you here on indictment
19 2012-0422, and this was an indictment for murder. It
20 alleges in Charleston County on or about September 28th,
21 2011 with malice aforethought, Darius Green killed and
22 murdered David Moultrie by stabbing him and that David
23 Moultrie died in Charleston County as a proximate result
24 of the stabbing on December 28th, 2011.

25 Sir, is that your understanding of the facts

1 that bring you here today?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And you understand that that
4 normally voluntary manslaughter, which is what I'm told
5 you're going to plead to, the State is going to let you
6 plead to the lesser included offense of voluntary
7 manslaughter, carries a penalty of 2 to 30 years, but
8 what they've given me is called a negotiated plea, and I
9 believe y'all said it was 25 years?

10 MS. SHEALY: Yes, Your Honor.

11 THE COURT: What that means is I can take or
12 leave that amount. I can't change it any way. Do you
13 understand that?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Entering this guilty plea today,
16 if I accept the plea, you'll be sentenced to 25 years.
17 Do you understand that?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Do you understand all the facts
20 that the solicitor was telling me about?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Are those the facts that you
23 understand?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Is that how you heard and how you

1 recall everything happened?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And how do you wish to plead to
4 this charge?

5 THE DEFENDANT: Guilty.

6 THE COURT: Is that because you are guilty?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: And in addition to the sentence
9 that you'll receive if I accept the plea, it will also be
10 noted that voluntary manslaughter is a violent offense,
11 and it's also a most serious offense, otherwise known as
12 a strike. If you were to get another most serious
13 offense when you get out, you could be facing a sentence
14 of life without parole.

15 I'm not suggesting that will happen, I just
16 need to make sure you understand all that.

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: You understand that classifying
19 it as a violent offense can affect how SCDC calculates
20 the time you serve?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And you've talked about that with
23 Mr. Smith and Ms. Ehrlich?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: And you understand all that?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Let me hear something from your
3 lawyers, and then we'll come back and talk some more
4 about your constitutional rights, okay, sir?

5 Yes, sir?

6 MR. SMITH: Thank you. Judge, would you like
7 me to proceed with mitigation?

8 THE COURT: Go ahead if you would, but I
9 understand it is a negotiated plea.

10 MR. SMITH: I'll be fairly brief in what I
11 have. I would like to point out to the Court that his
12 aunt and his grandmother are here in the front row. They
13 care a great deal about him. He has been in jail since
14 this occurred, so 506 days.

15 Judge, what I can tell you about Darius is
16 that he has dealt with quite a bit of turmoil and tragedy
17 for someone so young, and we don't say that as an excuse
18 as to what happened in this situation, but it is
19 important to know, as the solicitor indicated, that he
20 was there and he witnessed his mother die at an early
21 age.

22 He hasn't had the benefit of having a very
23 involved father. His father lives in Florida. He has
24 visited a time or two and has on occasion talked to him
25 on the phone. He also hasn't had a relationship with his

1 sibling. His brother lives in Florida with his father.

2 After the tragedy occurred with his mother,
3 he tried to live with his grandmother and continued to
4 live with her. There is no question that he had some
5 problems while in school. He's got issue that he will
6 probably need to address with counseling in the future.
7 There is no question about that.

8 What I can tell you about his statement, Your
9 Honor, as the solicitor indicated, there were some things
10 that didn't add up in the beginning, but he was fully
11 cooperative at the end. We have spent a lot of time in
12 preparation for this case and kind of parsing through
13 that statement, and we think as a result of the
14 negotiations we've reached today that this is a very good
15 conclusion and in his best interest to take this plea.

16 I'm not sure if Ms. Ehrlich would like to add
17 anything. I'll give her an opportunity if she would like
18 to.

19 THE COURT: Yes, ma'am.

20 MS. EHRLICH: Thank you, Your Honor. I've
21 known Darius, and the solicitor mentioned some of his
22 troubles as a juvenile. I was involved with him at that
23 point, and when Darius first got arrested on this case, I
24 saw him and, you know, I had a bond with him and I
25 represented him before and that continued today, and I do

1 think that the trauma from his childhood kind of impacted
2 how his life has turned out. And also the combination of
3 mental illness and the lower IQ I think explain how some
4 of his behavior and acting out -- I think it's more of a
5 defense mechanism for him. I'm not excusing his
6 behavior, but I think that's where some of that comes
7 from.

8 THE COURT: Was there a diagnosis other than
9 depression?

10 MS. EHRLICH: My understanding is his only
11 diagnosis right now is depression. I think he's on two
12 medications. One might be to help him sleep, but as a
13 child, I think they concentrated mostly on ADHD issues
14 and never really addressed the trauma of what happened to
15 his mom.

16 THE COURT: Okay. Thank you for explaining
17 that. That's helpful.

18 Anything further before I hear back from the
19 State?

20 MR. SMITH: No, Your Honor.

21 THE COURT: Yes, ma'am?

22 MS. SHEALY: Thank you, Your Honor. If we
23 could hear from Stanley Moultrie.

24 THE COURT: Yes, sir, Mr. Moultrie. I'll be
25 happy to hear from you.

1 THE WITNESS: My name is Stanley Moultrie.
2 I'm the father of David Moultrie. I'm addressing the
3 Court today because I lost my best friend all of because
4 of what happened, and it's because these kids come up
5 with these problems and people let them out and we on the
6 outside got to finish the problem with them.

7 I watched Darius for three months inside walk
8 past me. Even this night, I talked to Darius, no
9 problem, not ever, you know what I mean, but that night
10 he didn't want to say something to me on the 27th of
11 December, and, like I said, what is the problem?

12 If I had known him and my son had a beef and
13 he would kill my son, I would have either didn't let him
14 come to work or keep him away from him, but it's like I
15 want to know why, why he did what he did. I still
16 haven't seen the answer. Still inside my heart it hurt,
17 why he killed my son, why, and what for.

18 I live with this pain every night. I can't
19 sleep because of this, and I want to know why he took my
20 son, my best friend. I want him to tell me why he did
21 it, and was it worth it. Why? And I talked to him every
22 day he come in too. He right there, look at me, Hey,
23 Mr. Moultrie. How you doing? How are you doing?

24 And that particular night, he asked me on the
25 27th, is D.J. your son? I said yeah. That's the last

1 thing he ever talked to me. I said why?

2 He turned his back and walk away from me, the
3 27th of December, and I got a call 1:30, 2 o'clock,
4 something happened to my son in Wal-Mart, not thinking it
5 was this gentleman did it. He seemed like a polite boy
6 when I talked to him. He didn't seem mean. Why?

7 THE COURT: Thank you, sir. And I'm sorry
8 for your loss. Anything further?

9 MS. SHEALY: We have nothing further.

10 THE COURT: All right. Mr. Green, stand up
11 for me, if you would. When you enter this plea, you give
12 up important constitutional rights, and I know your
13 attorneys have explained this to you, but I need to go
14 through it a little bit more and make sure I'm
15 comfortable that you understand what you're giving up
16 when you enter a guilty plea. Okay?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: You give up your right to remain
19 silent, you give up your right to a jury trial, and
20 that's a significant constitutional right.

21 If you wanted to exercise your right to a
22 jury trial, Ms. Shealy would have to put up evidence and
23 prove you guilty beyond a reasonable doubt. Do you
24 understand that?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Your attorneys, Mr. Smith and Ms.
2 Ehrlich, would be able to challenge her evidence,
3 cross-examine and confront the witnesses that the State
4 puts up. You give all that up when you plead guilty.

5 Do you understand that?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: They would be able to work with
8 you to decide whether or not you wanted to testify or
9 not, and nobody could make you testify because that's
10 your right to remain silent. It's a protected
11 constitutional right.

12 Do you understand that?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Any judge that heard your trial
15 would explain to the jury that they couldn't consider
16 it -- if you chose not to testify, they couldn't talk
17 about it in the jury room, couldn't mention it, couldn't
18 consider it whatsoever. You waive all that when you
19 plead guilty.

20 Do you understand that.

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: All right. Twelve jurors would
23 have to unanimously agree to find you guilty of the
24 charge, and even then you would have an opportunity to
25 appeal and make further filings if necessary to challenge

1 any conviction.

2 You give those up when you plead guilty. Do
3 you understand that?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Okay. Has anybody promised you
6 anything or done anything to try to force you to plead
7 guilty?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: Are you pleading of your own
10 choice?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Okay. And I -- you've heard the
13 victim's father, D.J.'s father. Were you all friends
14 growing up? Did y'all know each other?

15 THE DEFENDANT: No. We doing art.

16 THE COURT: What was the beef?

17 THE DEFENDANT: I ain't nothing to say about
18 it. I don't have anything to say about it, ma'am.

19 THE COURT: Well, I mean, these folks are
20 struggling with the why of it. What happened? I need to
21 make sure you're pleading guilty to the facts that the
22 solicitor is giving me and any other facts I need to know
23 about to make me comfortable with the plea.

24 THE DEFENDANT: Ma'am, I ain't got nothing to
25 say about it.

1 THE COURT: Y'all come up.

2 (The following discussion was held at
3 sidebar):

4 THE COURT: He started it. I need him to
5 answer my question about why he started it.

6 MR. SMITH: There was some talk about a girl.

7 MS. SHEALY: It's like a hearsay over hearsay
8 over hearsay.

9 THE COURT: That would be helpful. I just
10 need to understand about how things started. All right.

11 (End of sidebar.)

12 Mr. Smith, or Mr. Ehrlich?

13 MR. SMITH: Judge, I will just tell you,
14 hopefully to answer your question specifically about how
15 this began is there was kind of an ongoing beef about a
16 girl and some rumors that had been started, and the issue
17 arose and got to a point where it was back and forth on
18 the telephone, and it progressed to a fight that occurred
19 at Wal-Mart on that day.

20 THE COURT: And we're referring to the fight
21 that occurred. I need to be comfortable with the fact
22 that they rolled up on the Wal-Mart and started it.
23 That's my understanding of the facts that will support
24 this plea that resulted in this young gentleman's death.

25 MR. SMITH: We believe the situation with

1 Darius coming to Wal-Mart -- there were two cousins that
2 actually worked there, so they were coming. Darius was
3 coming with them, but I believe that the witnesses, and
4 Ms. Shealy has referred to throughout her facts, would
5 confer or would say that Darius was the aggressor in this
6 situation. Darius was the person who stabbed
7 Mr. Moultrie as a result of that.

8 THE COURT: Is that correct, Mr. Green?
9 That's what happened?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Okay. Those are the facts, that
12 you had the knife and had stabbed the victim?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And that he didn't start it?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: You started it?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: You'll have ten days from today's
19 date to appeal if you wish to so, and I think I've asked
20 you this before, but just to be sure, are you pleading of
21 your own choice today?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Of your own free will?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Nobody is forcing you to plead?

1 THE DEFENDANT: No, ma'am.

2 THE COURT: Other than allowing you to plead
3 to a lesser charge of voluntary manslaughter, has anybody
4 promised you anything to try to get you to plead?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Are you happy with both of your
7 attorneys, with their work for you?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Do you have any questions for
10 them?

11 THE DEFENDANT: No. I just appreciate it.

12 THE COURT: Well, I'm glad to hear that. I
13 will accept the negotiate plead. I do find that the
14 defendant is competent and clearly understands what's
15 going on around him, and I'm comfortable with my
16 conversation that I've had with him.

17 The plea is knowingly, intelligently, and
18 voluntarily made with an understanding of all the
19 consequences, including the time that he'll be serving
20 and how the offense is classified as a most serious
21 offense.

22 I'll accept the negotiated term of 25 years,
23 and that will be the order of the Court.

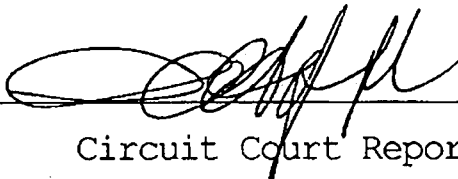
24 - - -

25 (Whereupon, the proceedings were concluded.)

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 25th of February 2013.

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

October 4, 2013



Circuit Court Reporter

FORM 5

2013 CP 10-4153

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA)

County of Chas-)

Darius Green)

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

v.)

State of South Carolina)

FILED
2013 JUL 16 PM 12:14
JULIE ARMSTRONG
CLERK OF COURT

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

- X 1. Place of detention ~~_____~~ CC Corr. Inst.
990 Wisacky Highway Bishopville, S.C 29010
- 2. Name and location of Court which imposed sentence Charleston County
- 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) M-613969

- (b) _____
- (c) _____

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

- (a) Feb 25. 13
- (b) Voluntary manslaughter
- (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. _____
 - ii. _____
 - iii. _____
- (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
- (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____

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

- (a) _____

(b) _____

(c) _____

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

(a) Ineffective Assistance of Counsel

(b) Failure of advisement of right to appeal

(c) RENDERED INVOLUNTARY ERRONEOUS ADVICE

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

(a) DEFENDANT GUILTY PLEA WAS RENDERED

(b) INVOLUNTARY ERRONEOUS ADVICE OF

(c) COUNSEL. POSSIBLE REDUCTION IN SENTENCE.

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

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

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

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

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

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

- (a) COUNSEL FAILING TO ADVISE ME OF
- (b) RIGHT TO AN APPEAL.
- (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? YES
- (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. Yed Smith
 - 9.9 Wallace County Office BLDG
 - ii. 101 Meeting Street, 5th Floor Charleston, SC
 - 29401-2214
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____

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

Vacate of sentence / time reduction

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)
)
County of _____)

VERIFICATION

I, _____, 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.

David L. Green

SWORN to and subscribed before me this 12
day of July 2013
Debra Doss (L.S.)
Notary Public

My Commission Expires: 11-4-2015

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

I, Darius L Green, 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.

Darius L Green

Applicant

SWORN or affirmed to and subscribed before me this

12 day of July, 2013.

Debra Smith
Notary Public

My Commission Expires: 11-4-2015

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	
)	
)	2013-CP-10-4153
)	
Darius Green, #354407,)	
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed July 16, 2013, 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 at the February 2012 term of the Charleston County Grand Jury for murder (2012-GS-10-0422). The Applicant was represented by Ted Smith, Esquire, and Megan Ehrlich, Esquire.

On February 25, 2013, the Applicant pled guilty to the lesser included offense of voluntary manslaughter. The Honorable Stephanie P. McDonald sentenced the Applicant to confinement for a negotiated period of twenty five (25) years. The Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina

Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel.
 - a. Counsel failed to advise of the right to appeal.
2. Involuntary guilty plea.
 - a. Applicant's guilty plea was rendered involuntary.
 - b. Erroneous advice of counsel.

III.

In this application, the Applicant alleges ineffective assistance of counsel. 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. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was

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

The Respondent submits that the 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, the 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.

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

The Respondent submits the transcript reflects that the pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Boykin, supra; Dover, supra. Further, because a guilty plea is a solemn, judicial admission of the

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

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

V.

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

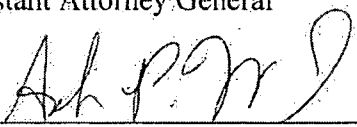
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

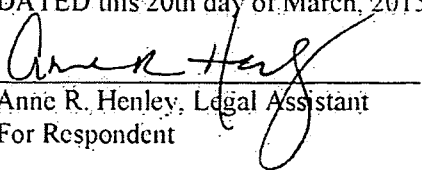
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

March 20, 2015

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	
)	
)	2013-CP-10-4153
)	
DARIUS GREEN, #354407)	
)	
Applicant,)	
)	
vs)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	
_____)	

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

Darius Green, #354407
 Lieber Correctional Institution
 PO Box 205
 Ridgeville, SC 29472

DATED this 20th day of March, 2015


 Anne R. Henley, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
 2 COUNTY OF CHARLESTON) CASE NO. 2013-CP-10-04153
 3
 4 DARIUS L. GREEN,)
)
 5 Plaintiff,) Transcript of Record
)
 6 vs.)
)
 7 THE STATE OF SOUTH) Date: December 14, 2015
 8 CAROLINA,)
)
 9 Defendant.

9 * * * * *

10

11

B E F O R E:

12

The Honorable DEADRA JEFFERSON

13

14

15

16 * * * * *

17

18

Denise J. Lauder, RPR

19

Ninth Judicial Circuit

20

21

22

23

24

25

1 A P P E A R A N C E S

2

3 REPRESENTING THE APPELLANT:

4 CHRISTOPHER L. MURPHY, ESQUIRE

5 Murphy Law Offices, LLC

6 Post Office Box 2008

7 Mt. Pleasant, SC 29465

8

9 REPRESENTING THE STATE OF SOUTH CAROLINA:

10 J. RUTLEDGE JOHNSON; ESQUIRE

11 Rembert Dennis Building

12 1000 Assembly Street, Room 519

13 Columbia, SC 29201

14

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	I N D E X	
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3	WITNESS/EXAMINATION	
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14	(No exhibits were offered or marked for	
15	identification.)	
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1 (The following proceedings were had
2 December 14, 2015, Charleston County Circuit Court,
3 3:05 p.m.)

4 THE COURT: This is Darius Green versus
5 the State, 2013-CP-10-4153. This is before the
6 Court on an Application for Postconviction Relief.
7 The applicant filed his application, bear with me
8 one moment, on July 16th of 2013. He is
9 represented by Mr. Christopher Murphy, the State is
10 represented by Mr. Johnson. The Return was filed
11 on March 25th of 2015.

12 Is the applicant ready to proceed?

13 MR. MURPHY: Yes, Your Honor. I do
14 have a couple of motions on behalf of --

15 THE COURT: Bear with me just one
16 second. I neglected to put something on the
17 record, I apologies. He was -- he pled guilty to
18 the lesser included offence of voluntary
19 manslaughter from a charge of murder
20 2012-GS-10-422. At that time he was represented by
21 Ted Smith and Megan Ehrlich, Mr. Smith sat first
22 chair, and he pled guilty before Judge McDonald and
23 received a negotiated plea of 25 years from which
24 he did not appeal.

25 His allegation is ineffective

1 assistance, counsel failed to advise him of his
2 right of appeal, involuntary guilty plea, and his
3 plea was an involuntary erroneous advice of
4 counsel.

5 Yes, sir, Mr. Murphy.

6 MR. MURPHY: I just wanted the Court to
7 know that there was -- this wasn't actually a
8 negotiated plea. Also, I have spoken with
9 Mr. Green; he would like a continuance and would
10 like to have me relieved as counsel.

11 THE COURT: Why does he want a
12 continuance?

13 MR. MURPHY: Because he wants to get
14 additional -- he's asked for his Brady 5, his Rule
15 5 discovery which I have not given him. I'm told
16 by the --

17 THE COURT: You don't want that
18 floating around. Have you gone over it with him?

19 MR. MURPHY: I have talked to his
20 attorney, Ted Smith, about the case, I read the
21 transcript, I've talked to him about the case. I'm
22 in a position where I can't find any error that
23 would pass the Strickland, Your Honor, however, I
24 have talked to him --

25 THE COURT: Have you talked to him

1 about the fact that the Court would just be able to
2 give him a new trial and he would be facing life
3 and he's young and life in South Carolina means
4 life.

5 MR. MURPHY: I have talked to him about
6 that and I have written I don't know how many
7 letters about his case to him. He still indicates
8 he wishes to go forward with his PCR Application.

9 THE COURT: Okay. Well, I haven't
10 heard anything that would justify a continuance.

11 MR. MURPHY: I'm prepared to go
12 forward.

13 THE COURT: What's the State's position
14 on the request for continuance?

15 MR. JOHNSON: We would ask that it go
16 forward, Your Honor.

17 THE COURT: And it's an old case; this
18 is a 2013. It's two years old. Yeah. We need to
19 dispose of it. I haven't heard anything that would
20 justify a continuance.

21 (Off-the-record conference in another
22 matter.)

23 THE COURT: The State says they are
24 opposed to the motion of continuance.

25 MR. JOHNSON: Yes, Your Honor.

1 THE COURT: Motion for continuance is
2 denied. I have not heard anything that would
3 justify continuing the case.

4 Ready to proceed.

5 MR. MURPHY: Yes, Your Honor. We would
6 call Mr. Darius Green to the stand.

7 DARIUS GREEN,
8 being first duly sworn, testified as follows:

9 THE APPLICANT: Yes.

10 THE COURT: You can put your right hand
11 down.

12 Sir, state your full name.

13 THE APPLICANT: Darius Green.

14 THE COURT: Mr. Green, do you have a
15 middle name?

16 THE APPLICANT: Larze, L-A-R-Z-E.

17 THE COURT: You may take your seat.
18 And, Mr. Murphy, you may proceed with questioning
19 your client when you're ready.

20 MR. MURPHY: Thank you, Your Honor.

21 THE COURT: You're welcome.

22 MR. MURPHY: May it please the Court.

23 THE COURT: Yes, sir.

24 DIRECT EXAMINATION

25 BY MR. MURPHY:

1 Q. Mr. Green, you were charged with murder
2 in Charleston County; is that correct?

3 A. Yes.

4 Q. And you were represented by Mr. Ted
5 Smith?

6 A. Yes, sir.

7 Q. And did you discuss the murder charge
8 with Mr. Smith?

9 A. No, sir.

10 Q. Okay. Did you -- did he ever -- were
11 you held on bond or did you make bond in this case?

12 A. I never made bond. He never sent me up
13 for a bond reduction.

14 Q. Okay. Did he ever talk to you about
15 the elements of the murder charge?

16 A. No, sir.

17 Q. Did he ever send you a letter
18 describing or explaining the elements of murder?

19 A. No, sir.

20 Q. Did he ever talk to you about the
21 defenses that you had with these possible charges?

22 A. Somewhat.

23 Q. And how did he talk about the defenses
24 with you?

25 A. Well, he just said that -- when I was

1 in the process of going to trial, he said it would
2 be best for me to take a plea, because being that I
3 made statements saying that I took this person's
4 life, that it would affect me on going to trial and
5 it would be difficult for me to prove self defense,
6 that I did this by accident.

7 Q. Following up on that, with the murder
8 charge, did you understand the possible sentences
9 that you faced under a murder charge?

10 A. Yes, sir.

11 Q. Okay. And did your attorney explain
12 those to you?

13 A. Somewhat.

14 Q. Okay. And when you say, somewhat, what
15 do you mean?

16 A. I mean, he explained that if I go to
17 trial, I can get 80 years or a life sentence.

18 Q. You mean 30 years to a life sentence?

19 A. Correct, 30 years to a life sentence.

20 Q. And you talked about when -- you said
21 that he talked to you about this. Where did he
22 talk to you about this?

23 A. In the county jail.

24 Q. And do you know how many times you
25 discussed this issue with him?

1 A. Twice. The second time I discussed it
2 with him it was down here.

3 Q. It would have been the day of the plea?

4 A. The day of my plea.

5 Q. Let's talk about the meetings in the
6 jail. How long did that last; do you recall?

7 A. Fifteen minutes, 20 minutes at the
8 most.

9 Q. And then the day of the plea, how long
10 did you talk to him beforehand?

11 A. I talked to him for almost an hour.

12 Q. And other than those two meetings, did
13 you ever meet face to face to discuss the case?

14 A. Yes; once in the county jail.

15 Q. How long did that last?

16 A. It lasted for an hour because he was
17 showing me pictures.

18 Q. And that would have been the evidence
19 against you?

20 A. Yes.

21 Q. Now, you mentioned that you pled guilty
22 to voluntary manslaughter, correct?

23 A. Correct.

24 Q. And did you discuss the elements of
25 voluntary manslaughter with Mr. Smith?

1 A. Not really.

2 Q. Did you discuss the possible sentence
3 that you could receive based on that charge?

4 A. Yes. He told me if I take the plea, I
5 would just be doing 19 years.

6 Q. All right. And then when he talked to
7 you about that plea, getting 19 years, was anybody
8 present with you?

9 A. No.

10 Q. And how long did that meeting last?

11 A. It lasted for an hour, because I was
12 telling him that I didn't want to take no plea. I
13 wanted to go further and I insisted on going to
14 trial.

15 Q. Let's talk about the plea and really
16 get into that. Did you discuss any defenses you
17 had to voluntary manslaughter?

18 A. Yes.

19 Q. What defenses were you talking to him
20 about?

21 A. That I told him that it was self
22 defense, I panicked, and I was scared, and I didn't
23 mean to take the victim's life.

24 Q. Now, you talked about -- you mentioned
25 self defense. Did you discuss self defense with

1 Mr. Smith at all?

2 A. Yes.

3 Q. Did you discuss it in any of those
4 three meetings that you had with him?

5 A. Yes, sir.

6 Q. Tell me how those discussions went.

7 Did you tell him you had a self defense -- a valid
8 self defense claim?

9 A. Yes. He said he would look into it and
10 then, all of a sudden, when I went to -- when I
11 went to my trial docket, he just changed his mind.
12 Like he just came to me with a plea. And I told
13 him I didn't want to take a plea, but he insists
14 that I take a plea.

15 Q. How many times did you tell him you did
16 not want to plead?

17 A. I'd say about five -- five or six
18 times.

19 Q. Do you recall any offers that the State
20 made to you about these charges?

21 A. Yes, sir.

22 Q. What were those offers?

23 A. The first plea was 0 to 20 on voluntary
24 manslaughter.

25 Q. All right. And did you accept that?

1 A. No, sir.

2 Q. All right. And why did you not accept
3 that?

4 A. Because I wanted to insist on going to
5 trial.

6 Q. And you wanted to face the murder
7 charge?

8 A. Yes.

9 Q. Because you thought the self defense
10 would defeat that charge?

11 A. Yes, sir.

12 Q. Now, did -- ultimately you didn't
13 accept that 0 to 20 years. Was there a second
14 offer that was made to you?

15 A. Yes, sir.

16 Q. And what was that?

17 A. 25 years.

18 Q. And that was -- was that a negotiated
19 sentence?

20 A. Yes, sir.

21 Q. And you ultimately pled to that,
22 correct?

23 A. Yes, sir.

24 Q. All right. Now, did you tell your
25 attorney your version of what happened that night?

1 A. Yes, sir.

2 Q. And this was basically a fight that got
3 out of hand, correct?

4 A. Correct.

5 Q. And what was your version of what
6 happened?

7 A. My version was that the -- the
8 defendant -- I mean, Mr. Moultrie approached me.
9 We had an argument and he approached me and we
10 started fussing, started fussing, and he -- he
11 stole off, meaning that he struck me. And I admit
12 that he struck me. When we was fighting, you know,
13 he was getting the best of me and I panicked and I
14 was scared. I had to get him up off of me so I
15 stabbed him.

16 Q. Did you mean to -- did you have any
17 plans to kill him when you --

18 A. No, I never had no intention to kill
19 him because me and him were cool. We did music
20 together, we did art and we was tight. We just had
21 a little disagreement.

22 Q. And in terms of the knife, did you
23 intend to pull out the knife to stab him?

24 A. No, sir.

25 Q. And did you tell your attorney this?

1 A. Yes, sir.

2 Q. Did you discuss this as a possible
3 defense in the murder charges?

4 A. Yes, sir.

5 Q. And prior to trial when you were
6 looking at trial, did you talk to your attorney
7 about your chances of acquittal?

8 A. What do you mean?

9 Q. That you'd be found not guilty.

10 A. Yes.

11 Q. And what did you discuss?

12 A. I mean, he said that it was -- he said
13 if we go to trial that it's a 50/50 chance that I
14 would be proven myself, that I would be granted
15 self defense. So he was saying that it would be
16 best for me to take a 25-year plea and I would only
17 have to do 19 years off, which I really had to do
18 21 years.

19 Q. And you're talking about the 85 percent
20 parole eligibility, correct?

21 A. Yes, sir.

22 Q. Now, did you discuss the evidence
23 against you prior to going to trial?

24 A. Yes. He said that -- yes. Yes. He
25 said I have a few people that was testifying

1 against me. One of them name was Virgil DeLesline
2 (phonetic) my cousin, but Virgil DeLesline never
3 said that he was going to testify against me. He
4 said --

5 MR. JOHNSON: Objection to hearsay,
6 Your Honor.

7 THE COURT: Sustained, hearsay.

8 BY MR. MURPHY:

9 Q. Virgil DeLesline, he was one of the
10 witnesses that you understood would have testified
11 against you?

12 A. Yes. And Damon Knolls.

13 Q. And Damon Knolls was another witness
14 that could have possibly testified against you,
15 correct?

16 A. Correct.

17 Q. Are you saying those were reasons why
18 you decided to plead guilty rather than go to
19 trial?

20 A. Yes, sir.

21 Q. Did you find out later that they were
22 not going to testify against you?

23 A. I found out that Virgil DeLesline
24 wasn't going to testify against me.

25 Q. All right. Now, let's talk about the

1 plea. Did you feel prepared to go forward with
2 your plea before Judge McDonald?

3 A. No, but Mr. -- Mr. Smith kept on
4 insisting that I could take the plea and disagree
5 with everything the Solicitor said, so that's what
6 I did.

7 Q. Did you feel that your attorney was
8 prepared adequately for that plea?

9 A. No.

10 Q. Do you feel that your attorney
11 explained to you all of the consequences of
12 pleading guilty to the voluntary manslaughter
13 charge?

14 A. No.

15 Q. Now, did you feel when you went before
16 Judge McDonald that you had a choice as to whether
17 or not to plead guilty?

18 A. No.

19 Q. And why did you plead guilty then?

20 A. Because Mr. Smith kept on insisting to
21 me and my grandmother and my Aunt Love that it's
22 the best thing for me to do, to take this plea,
23 which I really didn't want to take the plea. And
24 he kept on pressuring me and saying that it's the
25 best thing for me to do, take the plea, Mr. Green,

1 take the plea, which I didn't want to take the plea
2 from the start.

3 Q. And you understand that you had -- you
4 could have faced a possible life sentence if you
5 were convicted of murder?

6 A. Yes.

7 Q. And in your mind is there any
8 difference between a life sentence and a 25-year
9 sentence?

10 A. No.

11 Q. Why not?

12 A. Because a life sentence and a 25-year
13 sentence is like when you -- when you're back
14 inside the penitentiary, anything's liable to
15 happen. You're liable to get in a situation,
16 somebody might want to rob you for your shoes or --

17 MR. JOHNSON: Objection to relevance.

18 THE APPELLANT: -- or your Cantina --

19 THE COURT: None of this is relevant,
20 sir. There is a difference -- in terms of the law
21 there's a difference; one is parole eligible and
22 one is -- I mean, one you can max out and one you
23 can't. If you want to ask him in his mind if there
24 is a difference, that's fine, but the rest of it is
25 not relevant and it's stricken. The first part of

1 his answer will remain as responsive.

2 You may continue.

3 MR. JOHNSON: Thank you.

4 By MR. MURPHY:

5 Q. After you were sentenced, did you
6 discuss the right of appeal to Mr. Smith?

7 A. No. I never know I could appeal or go
8 back for a reconsideration or anything.

9 Q. And did you want to have a motion for
10 reconsideration filed?

11 A. Yes. Had I known it, I would have -- I
12 would have proceeded with that.

13 Q. And did you talk with Mr. Smith about
14 that motion for reconsideration at all?

15 A. No; because once I wrote him he never
16 responded back.

17 Q. And then let's talk about an appeal.
18 Did you talk to Mr. Smith about your right to file
19 an appeal?

20 A. No; because I didn't know anything
21 about the appeal.

22 Q. Did you want Mr. Smith to file an
23 appeal for you?

24 A. Yes.

25 MR. MURPHY: That's all I have, Your

1 Honor.

2 THE COURT: Would you like to question
3 the witness?

4 MR. JOHNSON: Please.

5 CROSS-EXAMINATION

6 BY MR. JOHNSON:

7 Q. Mr. Green, would you agree with me that
8 the Solicitor presented facts at this guilty plea
9 hearing?

10 A. No.

11 Q. Didn't she present her version of the
12 facts?

13 A. She presented some things, but I
14 disagree to it because that was what Mr. Smith
15 wanted me to do. He said I didn't have to explain
16 myself, just agree with everything that the
17 Solicitor said.

18 Q. Okay. And so at the guilty plea you
19 were sworn under oath, correct?

20 A. Correct.

21 Q. Just like you have been here today,
22 correct?

23 A. Correct.

24 Q. Okay. And the Court on page 16 of your
25 transcript states:

1 Do you understand all the facts that
2 the Solicitor was telling me about? To which you
3 relied, yes, ma'am.

4 Is that correct?

5 A. I did say yes, ma'am.

6 Q. Okay. Under oath?

7 A. Under oath.

8 Q. And then she followed up:

9 Are the facts -- are those the facts
10 that you understand? Which you stated, yes, ma'am.

11 Is that correct?

12 A. Yes. The only reason why I said what I
13 said is because I felt like if I listened to my
14 attorney, everything would work out in my favor.

15 Q. Then, Mr. Green, I will ask you to
16 point me to anywhere in the transcript where you
17 stopped the judge and tell her that?

18 A. No, I didn't stop the judge and tell
19 her that because Mr. Smith said I didn't have to
20 say anything. All I had to do was agree with the
21 judge and the Solicitor and I would be all right.

22 Q. But you never stopped the judge -- you
23 were facing 25 years in prison, correct?

24 A. Correct.

25 Q. Mr. Smith is not going to prison, is

1 he? He's not facing 25 years in prison on this
2 charge, is he?

3 A. No, but that's my -- that was my legal
4 attorney so I listen to everything that he said.

5 Q. And does your legal attorney have the
6 power to sentence you to prison for 25 years?

7 A. I mean -- I guess so when they have
8 your life in their hands.

9 Q. He doesn't have that power to sentence
10 you to 25 years, does he?

11 A. No.

12 Q. It's the lady or the gentleman in the
13 black robe, correct?

14 A. Correct.

15 Q. And so you never told the judge that
16 you were pleading guilty because Mr. Smith told you
17 to, did you?

18 A. He didn't want me to say that.

19 Q. As a matter of fact, you testified that
20 you were pleading guilty because you are guilty of
21 this case -- or this charge, correct?

22 A. Yes. That's what he told me to agree
23 with.

24 Q. And once again, you never told the
25 judge that, did you?

1 A. No, sir.

2 MR. JOHNSON: Court's indulgence?

3 THE COURT: Uh-huh.

4 BY MR. JOHNSON:

5 Q. The Solicitor stated that the victim in
6 this case was working at Wal-Mart, correct?

7 A. Correct.

8 Q. Do you work at Wal-Mart? Or were you
9 working at Wal-Mart?

10 A. No, but I be there every day.

11 Q. Okay. So he was just doing his job,
12 that's what the Solicitor stated.

13 A. I mean, he was working.

14 Q. You're the one that came to the scene,
15 correct? You drove up with two co-defendants to
16 the scene of the crime?

17 A. Yeah, they worked there with him.

18 Q. Okay. So they were working there at
19 that time?

20 A. They were working that day.

21 Q. The whole point is, Mr. Green, the
22 Solicitor stated that the victim did not start this
23 fight, he had the right to be where he was and that
24 this was not a case of self defense; isn't that
25 what the Solicitor portrayed to the judge at your

1 plea hearing?

2 A. To my knowledge, yes, she did said
3 that.

4 Q. And those were the facts to which you
5 agreed at this plea hearing under oath, correct?

6 A. I mean, I agreed only because Mr. Smith
7 told me just to agree to everything that the
8 Solicitor and judge said.

9 Q. And the last question, once again, you
10 never stopped the judge and explained that?

11 A. Had I known I could do that, I would
12 have did that.

13 Q. So you're willing to face 30 years to
14 life on this murder charge, correct?

15 A. Correct.

16 MR. JOHNSON: No further questions,
17 Your Honor.

18 THE COURT: Any redirect?

19 MR. MURPHY: Very briefly.

20 REDIRECT EXAMINATION

21 BY MR. MURPHY:

22 Q. How old were you when you pled guilty?

23 A. I was 19.

24 Q. Okay. And describe your emotions.

25 Were you scared, nervous, anxious?

1 A. I was scared, I was nervous, I didn't
2 -- I didn't know what to say. I was just going off
3 Mr. Smith, my attorney, because he knew -- he knew
4 what to do and what not to do. I don't know
5 nothing about the lawsuit.

6 Q. Did you feel like you had any choice or
7 the option to disagree with anything he said at the
8 plea?

9 A. No.

10 MR. MURPHY: That's all I have, Your
11 Honor.

12 THE COURT: You may call your next
13 witness.

14 MR. MURPHY: That would be our case.
15 We would rest.

16 THE COURT: State may proceed.

17 MR. JOHNSON: We would call Ted Smith
18 to the stand.

19 THE COURT: Mr. Smith, come forward to
20 be sworn.

21 TED SMITH,
22 being first duly sworn, testified as follows:

23 THE CLERK: Once seated, if you could
24 state your first and last name and spell out your
25 last name please.

1 THE WITNESS: Ted Smith, S-M-I-T-H.

2 THE COURT: You may proceed.

3 MR. JOHNSON: Thank you. May it please
4 the Court.

5 THE COURT: Yes, sir.

6 DIRECT EXAMINATION

7 BY MR. JOHNSON:

8 Q. Mr. Smith, good afternoon.

9 A. Good afternoon.

10 Q. Please tell the Court how long you have
11 been practicing law.

12 A. I've been practicing 13 years.

13 Q. And how long have you been with the
14 Public Defender's Office?

15 A. 13 years.

16 Q. And when did you get appointed to
17 represent Mr. Green in this case?

18 A. I was appointed to represent him on
19 September 29th -- or September 30th, 2011.

20 Q. And did you file for Rule 5 and Brady
21 materials?

22 A. We did.

23 Q. And did you receive that?

24 A. We did receive those and forwarded
25 those immediately to Mr. Green.

1 Q. And about how many times did you meet
2 with Mr. Green?

3 A. If you will give me just one moment,
4 I'm going to make sure that I have all of them
5 down. About 14 times at different points at the
6 jail. In addition to that there were -- during the
7 week we were preparing to move forward with the
8 plea, Ms. Ehrlich and I saw him an additional three
9 times. Yeah, three times.

10 Q. And at these meetings, did you discuss
11 the charges with him?

12 A. We did. We discussed both the charge
13 of murder and voluntary manslaughter.

14 Q. And the elements of those charges?

15 A. We did.

16 Q. And the sentences they would have
17 carried respectively?

18 A. Yes. And with regard to the last few
19 meetings, we discussed specifically what the
20 State's offer had been to him.

21 Q. And the first offer was 0 to 20 to
22 voluntary manslaughter?

23 A. No. It was actually -- I think it
24 would have been a straight up plea to voluntary
25 manslaughter.

1 Q. That range being anywhere from 2 to 30?

2 A. That's correct.

3 Q. And he rejected that, correct?

4 A. That's correct.

5 Q. But he ultimately pled guilty to a
6 negotiated 25 years, correct?

7 A. That's correct.

8 Q. And based on the information Mr. Green
9 gave you, did you formulate any defenses in this
10 case?

11 A. At the very beginning we did talk, and
12 we talked even later on in the case, about whether
13 or not self defense would be a viable option in the
14 case. After reviewing the evidence and talking to
15 several of the witnesses that were in the parking
16 lot that saw various portions of the fight, we did
17 not believe self defense was a valid defense in
18 this case.

19 Q. Did you explain that to Mr. Green?

20 A. I did.

21 Q. Did he seem to understand that?

22 A. He did, and that's one of the reasons
23 that we talked about the plea to the reduced charge
24 of voluntary manslaughter.

25 Q. Was he onboard with pleading?

1 A. He was.

2 Q. Did you ever threaten him to plead
3 guilty?

4 A. I did not.

5 Q. Did you ever promise him anything?

6 A. I did not. Beyond the negotiation.

7 Q. Whose decision was it to plead guilty
8 in this case?

9 A. It was his decision.

10 Q. And he realized he was going to forego
11 the right to a jury trial?

12 A. That's correct.

13 Q. The right to confront his witnesses?

14 A. He understood that.

15 Q. And the right to remain silent?

16 A. He did understand that.

17 Q. And he understood he was waiving those?

18 A. He did.

19 MR. JOHNSON: Court's indulgence.

20 THE COURT: Yes, sir.

21 BY MR. JOHNSON:

22 Q. Were you fully prepared for a trial in
23 this case?

24 A. Yes. His case was actually docketed
25 probably about a month prior to his plea date. At

1 that time, he had disclosed some mental health
2 issues and so we had an evaluation done. I didn't
3 have any belief that he was not competent, but out
4 of an abundance of caution, I did that. We had the
5 trial date continued and before we got started and
6 ramped up for the second trial, that's when he made
7 the decision to plead guilty.

8 Q. And did you agree with that decision?

9 A. I do.

10 Q. Did you ever discuss the right to
11 appeal the guilty plea?

12 A. I generally do. I can't tell you
13 specifically if I did or not with Mr. Green, but I
14 usually advise all clients when they're entering a
15 plea that they have the right to appeal the
16 decision of the Court, but they have to let me know
17 in writing within ten days, or tell me at that
18 time.

19 Q. Did he ever tell you that he wanted to
20 appeal this case?

21 A. He did not.

22 Q. Did you see any appealable issues in
23 this case?

24 A. I did not.

25 Q. Did he ever ask you for a motion for

1 reconsideration?

2 A. He did not.

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

4 THE COURT: Thank you.

5 Any questions for the witness?

6 MR. MURPHY: Yes, Your Honor.

7 THE COURT: You may proceed.

8 CROSS-EXAMINATION

9 BY MR. MURPHY:

10 Q. Mr. Smith, just basic skeleton facts,
11 this was a fight that got out of control between
12 Mr. Green and the victim?

13 A. That's correct. There's some question
14 as to who started the fight.

15 Q. And I was going to get to that, but in
16 your mind representing him, did you have any belief
17 that he intended to go to this place to kill the
18 victim?

19 A. There was certainly the theory that
20 that was the reason he was going there.

21 Q. And that would have been the State's
22 theory?

23 A. State's theory, yes.

24 Q. All right. In the course of
25 representing him and talking to him and going

1 through the evidence, did you have any question
2 about what his intent was going to the scene?

3 A. Not in talking to him.

4 Q. This fight, as I understand it, was
5 over a girl?

6 A. That was what he indicated to me.

7 Q. And you talked to him about whether or
8 not he was remorseful about the victim being killed
9 in this case?

10 A. Yes, we talked about that.

11 Q. And you discussed -- you've already
12 mentioned there was some question about who started
13 the altercation, correct?

14 A. That's correct.

15 Q. And that would have given him a
16 possible defense in this case?

17 A. Could have been a possible self
18 defense.

19 Q. And you heard Mr. Green testify that he
20 said you stated there was a 50/50 chance going to
21 trial; do you recall that?

22 A. I don't. I mean, I guess that's
23 probably accurate, either you're found guilty or
24 not guilty.

25 Q. Would that be something that you would

1 say in representing a defendant that is going to
2 trial?

3 A. I don't recall saying that, but it's
4 possible.

5 Q. And at the time of the plea, he was
6 19 years old?

7 A. That's correct.

8 Q. And did he seem scared to you at all or
9 nervous?

10 A. He did seem nervous. That's one of the
11 reasons I asked Ms. Ehrlich from my office to help
12 with the representation. She had represented him
13 in juvenile court and knew him from that time
14 period, and I thought that she would be good as a
15 second chair if we got to a trial situation.

16 Q. All right. Did he ever tell you that
17 he did not want the plea and he wanted to go to
18 trial?

19 A. At the very beginning we had talked
20 about going to trial on the murder charge, and he
21 indicated that he would. As we began to prepare
22 and get closer to trial, and as we interviewed
23 particular witnesses and were not able to interview
24 some witnesses, that's when things changed and he
25 made the decision to plead guilty.

1 Q. Did he ever -- after the offer for the
2 voluntary manslaughter was made, did he ever tell
3 you that he wanted to contest that charge and go
4 forward with the trial?

5 A. To contest the --

6 Q. Let me ask you this: You have murder
7 and -- would it have been your strategy, if you had
8 to go to trial for a murder charge, that you would
9 have asked for lesser included charges?

10 A. Obviously, depending on what the
11 evidence was, that could have been a possibility.

12 Q. Based on your understanding of the
13 facts, what would be your understanding as to
14 whether or not he would have been entitled to that
15 charge?

16 A. Well, you know, it certainly could fit
17 under the heat of passion required by voluntary
18 manslaughter. The State had an alternative theory,
19 and so it would have been up to a jury to determine
20 between those two.

21 Q. Did you discuss his lesser included
22 charges with him prior to going to trial?

23 A. We did. We discussed specifically
24 voluntary manslaughter.

25 Q. Did he -- in your opinion, did he ever

1 feel like he did not have a choice with the guilty
2 plea?

3 A. No, because I was prepared to go to
4 trial if he had not accepted the plea.

5 Q. And you have a box of papers up there.
6 Is that your file in this case?

7 A. It is.

8 Q. Is there anything missing or is that
9 the complete --

10 A. That's the complete file.

11 Q. Now, after he was sentenced -- this was
12 a negotiated plea, correct?

13 A. It was.

14 Q. Did you discuss what a negotiated plea
15 meant in terms of what sentence he would receive?

16 A. I did. We discussed the number and the
17 fact that the judge could only accept or reject the
18 negotiation.

19 Q. And afterwards, did you discuss with
20 him the right to appeal that sentence?

21 A. I generally discuss that before any
22 plea. I always tell everyone before they sign any
23 plea paperwork that they have the right to appeal
24 any decision the Court makes.

25 Q. And I believe your testimony is you

1 don't recall that specific conversation with Mr.
2 Green?

3 A. I don't.

4 MR. MURPHY: One moment, Your Honor.

5 THE COURT: Yes, sir.

6 MR. MURPHY: That would be all I have.

7 Thank you.

8 THE COURT: Any redirect?

9 MR. JOHNSON: No, Your Honor.

10 THE COURT: Any objection to Mr. Smith
11 being excused?

12 MR. JOHNSON: No, Your Honor.

13 MR. MURPHY: No, Your Honor.

14 THE COURT: Thank you, Mr. Smith. Have
15 a good day.

16 THE WITNESS: Thank you.

17 THE COURT: Anything further from the
18 State?

19 MR. JOHNSON: Nothing, Your Honor.

20 THE COURT: Anything further from the
21 Applicant?

22 MR. MURPHY: Nothing further.

23 THE COURT: All right. Is there a need
24 for closing argument?

25 MR. MURPHY: No, Your Honor.

1 THE COURT: From the State?

2 MR. JOHNSON: No, Your Honor. I think
3 the record and testimony speaks for itself.

4 THE COURT: This is a very thorough
5 guilty plea record and I do not find any basis for
6 the relief that's being requested. Although in a
7 somewhat backwards order, whether Mr. Smith
8 discussed with him his right to appeal or not, it's
9 not whether he discussed it with him, it's whether
10 he would have prevailed upon it. Based on this
11 record, it is unlikely that he would have prevailed
12 on an appeal under any circumstances even if it had
13 been discussed with him.

14 And it has become the norm of late that
15 most defense attorneys don't discuss the right to
16 appeal with their clients of guilty pleas because
17 they know they're not going to prevail because, in
18 essence, you waive all of those rights when you
19 plead guilty. So it is unlikely that you are going
20 to prevail on an appeal from a guilty plea.

21 So it's not whether he discussed it
22 with him, it's whether he would have prevailed on
23 it, and I can't see anything in the record that
24 would support that.

25 In addition, I do find Mr. Smith's

1 testimony credible regarding him being in practice
2 with the Public Defender's Office for 13 years, it
3 being his general practice that he would have
4 discussed it with him, and of the timetable within
5 which he would have been made aware of it, and that
6 Mr. Green never brought that to his attention or he
7 would have filed it, and he never asked for it and
8 he didn't.

9 Now, as regards to motion for
10 reconsideration, likewise it's not whether one
11 should have been discussed or it should have been
12 filed, it's whether he would have prevailed. This
13 was a negotiated plea. The only thing the judge
14 can do on a negotiated plea is accept or reject it.
15 So there's nothing she could have done on a motion
16 for reconsideration. She couldn't change the
17 sentence, she could not have reduced it, she could
18 not have granted him a new trial. The only thing
19 she could have done at the time, which she
20 explained that thoroughly in the record to him, is
21 either I can accept your plea or I can reject your
22 plea, but I don't have any discretion in
23 sentencing.

24 And you usually file a motion for
25 reconsideration for sentence so the sentence could

1 be modified, could be lowered, and under a
2 negotiated plea the judge doesn't have any
3 authority to lower a sentence on a motion for
4 reconsideration. So even if he had wanted to file
5 one, it is unlikely that he would have prevailed so
6 that is not ineffective assistance either.

7 The State goes to great lengths at the
8 beginning of this plea transcript, which took place
9 on February 25, 2013, to go into the facts of this
10 case. And it is quite telling -- and I'm just
11 really going to cut to the chase in it because they
12 talk about this Wal-Mart, and they're correct,
13 Wal-Mart tapes everything, but for whatever reason,
14 they didn't tape this particular angle where this
15 actually took place, but they do have video of
16 everything else that surrounded it which, according
17 to these facts, corroborates the fact that the
18 State would have produced them at trial.

19 And, in a nutshell, this gentleman, the
20 victim, was outside on a break from work and he was
21 attacked. And he was attacked for no reason. He
22 tried to use a -- I guess it could be argued that a
23 girl is the reason to get into a fight, or words
24 could be a reason to get into a fight, it happens
25 everyday in this court, it's not for me to judge

1 whether that's a valid reason to get into a fight
2 or not.

3 The bottom line is that the evidence
4 would show, and the evidence that the State would
5 produce at trial, is this gentleman tried to use a
6 shopping cart to fend off the blows. And there
7 several eyewitnesses that Mr. Green was the
8 aggressor, that this was not a fight that went
9 wrong, that when the witnesses were observing this,
10 they thought he was punching him, but they found
11 out later that it was a knife and that he stabbed
12 him with such ferocity that the knife broke off
13 while he was stabbing him.

14 Then he fled the scene basically,
15 trying to get somebody to take him home, saw
16 somebody there who assisted him. His aunt would
17 not come pick him up.

18 I think we all know what the rest of
19 the facts would be. And all of these people were
20 ready and willing to come forward and testify. And
21 I think, quite frankly, based on the State's
22 presentation would have been quite compelling.

23 And it just -- I guess backing up a
24 little bit, when we start talking about defenses,
25 one of the first elements of self defense is you

1 have to be without fault in bringing about the
2 difficulty. He would not have been able to
3 establish that at trial, and so I have to look at
4 whether he really would have insisted on going to
5 trial, and I don't see any evidence in the record
6 that supports that.

7 Judge McDonald was thorough in her
8 questioning of him. Again, the facts go on from
9 page 1 of the transcript, all the way to page --
10 let's see here -- and there's also a videotape that
11 corroborates him disposing of his bloody clothing
12 at the Food Lion, and then statements he made to
13 the police subsequently, and also talks about his
14 competency evaluation, and that goes all the way
15 through page 11 of the transcript.

16 The judge then swears the Applicant at
17 page 12 and asked him; do you understand the
18 consequences of your plea? Where he acknowledges
19 that he does. And that she is going to ask him
20 some questions. She very clearly articulates for
21 him that she needs to make sure that his plea is
22 intelligent and knowing, that he's competent to
23 give his plea.

24 And, again, as I've indicated, there
25 was a mention of his competence in the allocution

1 of the facts and that he was evaluated, and I can
2 only assume that that evaluation was made a part of
3 the record and that there were no concerns
4 regarding his ability to go forward or his ability
5 to understand the proceedings against him.

6 There is also some indication in the
7 allocution of the facts that the State would have
8 had a witness regarding, my words -- well, I'll use
9 their words, that -- and that's at page 11, line
10 16, the young man who picked him up from Seewee, in
11 addition to other community members that we spoke
12 with, were aware that he was very quick tempered
13 and if somebody wasn't there to talk him down, he
14 could get himself in trouble.

15 He was only 17 when this occurred. He
16 does have a prior juvenile record threatening a
17 teacher, disturbing school, and petit larceny. And
18 then there's some reference to the victim wanting
19 to be heard, which of course is not appropriate
20 until the plea has been qualified, and the judge
21 indicates that at page 12.

22 She also then explained to him at
23 page 11 that it is a negotiated plea, that it is
24 voluntary manslaughter and Mr. Smith agrees. And
25 then she goes through the whole colloquy that we go

1 through with the attorney which is, have you
2 explained to your client the charges, do you
3 believe they understand the charges, do they wish
4 to plead guilty or not guilty, do you agree with
5 that. That's at page 12.

6 She then proceeds to question the
7 Applicant starting at page 12, going on to page 13.
8 And she explains to him very clearly, I need to
9 make sure that this plea is intelligent, that it's
10 knowing and that you're competent; and she goes to
11 great length to make sure that he's comfortable, to
12 make sure he's not overwrought, that he's not
13 overly excited. And she asked him all these
14 questions during the plea colloquy.

15 She asked how old he is, how far he
16 went in school, where he had went -- his work
17 history, going on to page 14. And he then
18 indicates to her that he has had a diagnosis of
19 depression, that he takes an antidepressant. And
20 she asked him very clearly, does this make you feel
21 fuzzy or make it hard for you to understand what's
22 going on; he says no. And she says, so do you feel
23 well enough today to go forward? No, I ain't take
24 it today. Well, you look like you feel well enough
25 today. I just need to make sure I'm comfortable

1 with that. All right, sir? Yes, ma'am.

2 Have you had anything? Are you under the influence
3 of anything that would interfere with your ability
4 to understand what we're doing here in court? And
5 he says, no, ma'am. And she then reiterates, I ask
6 everybody these questions.

7 She then goes on to page 15 to ask him
8 if he's been treated for mental illness, he
9 indicates for depression. And then Mr. Smith and
10 Ms. Ehrlich gives the Court more information about
11 that.

12 And then she talks about the facts of
13 the case going on to page 16. And she asked him
14 very clearly, do you understand what you're
15 pleading guilty to, which is the lesser included
16 offense of murder, voluntary manslaughter, and the
17 range of penalty, that it is a negotiated plea.
18 And she says to him, what that means is I can take
19 or leave that amount. I can't change it in any
20 way. Do you understand that? And he indicates
21 that he does.

22 She asks -- entering this plea today,
23 if I accept the plea, you will be sentenced to
24 25 years. Do you understand that? Yes, ma'am. Do
25 you understand all the facts that the Solicitor was

1 telling me about? Yes, ma'am. Are those the facts
2 that you understand? Yes, ma'am. Is that how you
3 heard and how you recall everything happened? Yes,
4 ma'am. And how do you wish to plead to the charge?
5 That's going on to page 17. Guilty. Is that
6 because you are guilty? Yes, ma'am.

7 And she then explains to him the
8 enhancements, which is the two and three strikes
9 law. He acknowledges that he understands that as
10 well as the calculation of time because of the
11 classification. And then going over to page 18 --
12 basically, mitigation is argued at page 18, 19, 20.
13 Then she hears from the victims; that goes on to
14 page 21.

15 And then she goes on at page 22 to deal
16 with his constitutional rights starting mid page at
17 line 10, and goes through all of those. And he
18 indicates that he understands those and he
19 understands that he's waiving them, including
20 challenging evidence, his lawyers going through
21 with him the ability to -- all of his trial rights,
22 to confront witnesses, to present defenses, his
23 right to testify, and that's all of page 23.

24 Then on page 24, he understands that
25 he's giving up those rights at lines 1 through 4;

1 and he indicates yes. Has anyone promised you
2 anything? No. Are you pleading of your own
3 choice? Yes. And that's at page 24.

4 And then there is some discussion about
5 the judge being comfortable with him admitting to
6 the facts of the case and exactly what happened on
7 that evening -- or in that incident. And then he
8 acknowledges the facts at page 26. She -- the
9 judge also explained to him, you have ten days from
10 today's date to appeal if you wish. And he
11 indicates that he understands that, the plea is of
12 his own free will, that no one is forcing him.

13 Going over to page 27, whether there
14 are any other deals or negotiations? He indicates
15 no. He indicates that he's satisfied with his
16 lawyers. And then the Court qualifies the plea.

17 The record is the most telling. It is
18 a contemporaneous record of the -- of this incident
19 and I do not find any merit to the argument that he
20 could have -- well, you could have argued the
21 accident, you could have argued self defense, but
22 -- under the facts of this case you could have
23 argued it, but it does not appear from the
24 presentation of the facts that it would have been
25 successful.

1 And I find credible Mr. Smith's
2 testimony that he did not pressure him, that he did
3 not force him, that he did not threaten him and
4 that the desire to plead guilty was of his own free
5 will, that they were prepared for trial, they were
6 ready for trial if he insisted on going to trial.

7 I just think it's probably in hindsight
8 a very bitter pill to swallow at his age. Again;
9 with not having been able to have any other
10 alternatives available to him regarding the nature
11 of this incident, which very quickly escalated and
12 got out of hand over something so trivial as an
13 argument, but, nonetheless, there is no evidence in
14 the record to support a finding of postconviction
15 relief or that his counsel was ineffective in any
16 way, and the motion is denied.

17 The State will provide a proposed Order
18 to the Court within 20 days of today. Provide
19 Mr. Murphy with a copy of that Order.

20 MR. JOHNSON: Thank you, Your Honor.

21 THE COURT: Thank you very much.

22 (The deposition was concluded at 3:50
23 p.m.)

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CERTIFICATE OF REPORTER

I, Carol Denise Lauder, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

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

Witness my hand, I have hereunto affixed my official seal this 25th day of June, 2016 at Charleston, Charleston County, South Carolina.

/s Denise Lauder
Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
August 2, 2017

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
)
)
 Darius L. Green, #354407,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT

2013-CP-10-4153

ORDER OF DISMISSAL

FILED
 2016 APR 22 PM 1:50
 JULIE J. ALMENDINGER
 CLERK OF COURT

Presiding Judge:	Hon. Deadra L. Jefferson
Applicant's Attorney:	Christopher Murphy, Esquire
Respondent's Attorney:	J. Rutledge Johnson, Esquire
Trial Counsel:	W. Ted Smith
Date of Hearing:	December 14, 2015
Court Reporter:	Denise Lauder

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 16, 2013. Respondent made its Return on March 20, 2015. An evidentiary hearing into the matter was convened on December 14, 2015 at the Charleston County Courthouse. Christopher L. Murphy, 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. Ted Smith, Esquire also testified. This Court had before it 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

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indicted at the February, 2012 term of the Charleston County Grand Jury for murder¹ (2012-GS-10-0422). The Applicant was represented by Ted Smith, Esquire, and Megan Ehrlich, Esquire.

On February 25, 2013, the Applicant pled guilty to the lesser included offense of voluntary manslaughter.² The Honorable Stephanie P. McDonald sentenced the Applicant to confinement for a negotiated period of twenty five (25) years. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. Counsel failed to advise of the right to appeal.
2. Involuntary guilty plea.
 - a. Applicant's guilty plea was rendered involuntary.
 - b. Erroneous advice of counsel.

At the hearing, the Applicant proceeded on his claims of ineffective assistance of plea counsel.

¹ "A person who is convicted of or pleads guilty to murder must be punished by death, by imprisonment for life or by a mandatory minimum term of imprisonment for thirty [(30)] years.... For purposes of this section, "life imprisonment" means until death of the offender without the possibility of parole... No person sentenced to life imprisonment pursuant to this section is eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory life imprisonment required by this section. No person sentenced to a mandatory minimum term of imprisonment for thirty years [(30)] pursuant to this section is eligible for parole or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory minimum term of imprisonment for thirty [(30)] years required by the is section." S.C. CODE ANN. §16-3-20 (2008). Murder is a violent most serious felony. S.C. CODE ANN. §17-24-45 (2008); S.C. CODE ANN. §16-1-60 (2008).

² "A person convicted of manslaughter, or the unlawful killing of another without malice, express or implied, must be imprisoned not more than thirty years or less than two years." S.C. CODE ANN. § 16-3-50 (2011).



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).

SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified that he was charged with murder, but did not discuss the charge with Counsel, did not make bond, and never got a bond reduction. Applicant also stated he did discuss the elements of the charge, but only somewhat discussed a defense. Applicant testified it was best to take the plea because he made statements to law enforcement and because it was difficult to prove self-defense or accident. Applicant admitted he understood the sentencing range for murder was 30 years to life. Applicant testified he met with Counsel twice; once for 15 to 20 minutes at the County jail and the other for an hour at court before the guilty plea. Applicant also stated he met with Counsel for an hour at the jail and was shown some pictures as evidence against him.

Applicant stated he pled to voluntary manslaughter, but did not really discuss the voluntary manslaughter elements with Counsel. Applicant stated he wanted to pursue a trial and discuss some defenses with Counsel, namely self-defense. Applicant claimed he did not intend to take Victim's life. When Applicant and Counsel discussed self-defense, Counsel said he would investigate it. Applicant claims he told counsel five different times he did not wish to plead guilty. Applicant stated

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there was an offer of 0 to 20 years, which he rejected and insisted on a trial because he claimed self-defense. The next offer was 25 years negotiated, which he accepted. Applicant claimed the victim hit him while fighting and because Victim was getting the best of him in the fight, Applicant panicked and pulled out a knife. Applicant stated Counsel explained a trial would be a 50/50 chance. Applicant also stated Counsel discussed the evidence against him and the witnesses the State would call at trial. Applicant claimed he pled guilty, but did not feel prepared for a plea and did not feel Counsel was prepared for trial; he felt like he had no choice. Applicant claimed he pled because of his Counsel. Applicant also stated Counsel never discussed his right to appeal, even though he wanted to appeal and wanted a motion for reconsideration.

On cross-examination, Applicant agreed to the facts as presented by the Solicitor. Applicant also stated he pled guilty because he is guilty and on the advice of his attorney. Applicant admitted he knew the victim had a right to be at the Walmart where he was an employee. Applicant stated he is willing to face the potential of a life sentence on retrial.

Counsel testified he has been practicing for 13 years and was appointed to this case September 30, 2011. Counsel stated he filed for discovery and forwarded a copy to Applicant. Counsel stated he met with Applicant 14 different times and was prepared to move forward with the plea. Counsel stated he discussed the charges, elements and range of penalty with Applicant. Counsel testified Applicant rejected the straight up plea to manslaughter, but accepted the negotiated 25 year plea offer. As far as defenses were concerned, Counsel testified that between the witnesses and the evidence, self-defense was not viable. Counsel explained this to Applicant and Applicant understood; Applicant was on board with the plea. Counsel stated he neither threatened nor promised Applicant to induce him to plead guilty, and that it was Applicant's decision to plead guilty. Counsel



then stated Applicant understood he was waiving his constitutional rights and that Counsel was fully prepared for trial. Counsel stated although he had no concerns he had the Applicant mentally evaluated out of an abundance of caution. Counsel testified he agreed with the plea decision. Counsel stated Applicant never told him to appeal and that he does not think there were appealable issues in this case. He lastly testified Applicant did not ask for a motion for reconsideration.

Counsel testified this incident stemmed from a fight over a girl. Counsel stated the State's theory was that Applicant went to go kill Victim, but there was a question as to who started the fight. Applicant was 19 years old at the guilty plea and seemed nervous; however, Applicant was the one who made the decision to plea. Counsel stated he would have asked for lesser included offenses at trial if the evidence supported the charges. Counsel testified that he does not recall telling the applicant that trial was a 50/50 prospect.

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), SCRCP). 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. See Strickland at 690, 104 S. Ct. at 2066. Courts presume that counsel rendered adequate assistance and made all significant decisions in the

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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 has been a practicing attorney for thirteen (13) years. Counsel met with him fourteen (14) times at the jail. In addition, Counsel requested Ms. Ehrlich meet with the Applicant as well and she did so three (3) times before the plea. Counsel advised Applicant of all of the charges and the range of penalty for each charge. Counsel negotiated with the State in Applicant's best interest. Applicant testified he pled because he thought he had no other choice; this Court does not find this allegation credible, as Applicant certainly could have pursued a trial and defended against the murder charges. The Defendant was informed of the charges against him, the range of penalty, the negotiation of twenty-five (25) years, and that the Court could only accept or reject the negotiated plea. (Tr. 16: 3-25). The Applicant allocated to the facts as they were presented. (Tr. 16:19-25; 17: 1-2). The Applicant was



informed of the violent and most serious/strike classification of the voluntary manslaughter charge. (Tr. 17: 8-25; 18: 1). This Court finds the Applicant knowingly and intelligently waived his right to a jury trial and his constitutional rights. (Tr. 22:10-25; 23: 1-25; 24: 1-4). This Court also finds no one threatened the Applicant to plead guilty, nor were there promises other than the negotiations to entice him to plead guilty (Tr. 24: 4-11). In addition to allocating to the facts presented by the Solicitor, the Applicant admitted he was the aggressor and not the victim (Tr. 26: 8-17). Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone else (Tr. 26: 18-25; 27: 1-5). Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty (Tr. 24: 5-11).

This Court also finds Counsel would have discussed the right to an appeal. Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (U.S. 2000.) This Court finds the plea colloquy is dispositive in this case, as it is a contemporaneous record. The plea colloquy clearly shows that the plea judge advised Applicant of his right to an appeal; however, Applicant did not request one (Tr. 26: 18-22). This Court further finds in light of the negotiated sentence in this case it is unlikely that Applicant would have prevailed on a motion for reconsideration. Therefore, this allegation is denied.

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

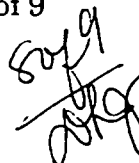
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice. This Court also finds as to all other allegations that Applicant failed to present evidence of such claims and thus, this Court deems them abandoned.

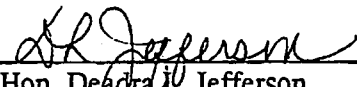
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel’s assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, 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. Applicant’s 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!

A handwritten signature in black ink, appearing to be "S. J. G.", is written over the page number.



Hon. Debra L. Jefferson
Presiding Circuit Court Judge
Ninth Judicial Circuit

April ¹⁰, 2016
Charleston, South Carolina

9029


SEL20110906618

WITNESSES

Mt. Pleasant Police Department

AGENCY CASE NUMBER

2011P12098

ARREST WARRANT NUMBER

M613969

DATE OF ARREST

September 28, 2011

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: 10/14/2012

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS1000422

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

February Term 2012

THE STATE

vs.

DARIUS L. GREEN

DOB: [REDACTED]
B/M

Indictment for

Murder

FILED

2/22/2012 4:10:57 PM
JULIE J. ARMSTRONG
CLERK OF COURT

