

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

Honorable Maite Murphy, Circuit Court Judge

RECEIVED

7-9 2017

S.C. SUPREME COURT

CARLOS J. KEMP,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001719

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF ORANGEBURG) FIRST JUDICIAL CIRCUIT

2012-GS-38-1819

Carlos J. Kemp,)	
)	
Plaintiff,)	
)	
v.)	Transcript of Record
)	
State of South Carolina)	
)	
Defendant.)	
)	
)	

January 13, 2014
Orangeburg, South Carolina

B E F O R E:

The Honorable Edgar W. Dickson, Judge

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

Don Sorenson, Esquire
Attorney for the State

Peggy Hinds, Esquire
Attorney for the Defendant

Hilda M. Jordan, CVR-M
Circuit Court Reporter

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I N D E X

WITNESS/DESCRIPTION

PAGE NO.

Plea

EXHIBITS:

NO EXHIBITS WERE MARKED TO THIS PROCEEDING

Certificate of Court Reporter 15

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1 MR. SORENSON: Please the Court, Your Honor.

2 THE COURT: Yes, sir.

3 MR. SORENSON: Before you is Carlos Jordan Kemp. We're
4 here on indictment 2012-GS-38-1819. Mr. Kemp is represented
5 by Ms. Peggy Hinds with the Public Defender's Office. He
6 is entering a guilty plea at this time to one court of
7 murder.

8 THE CLERK: Please raise your right hand.

9 (WHEREUPON, Carlos Jordan Kemp was
10 sworn to tell the truth.)

11 THE CLERK: Thank you.

12 THE COURT: All right. Mr. Kemp, you are 27 years old?

13 MR. KEMP: Yes, sir.

14 THE COURT: Okay. And, Mr. Kemp, before you were
15 arrested were you working some where?

16 MR. KEMP: Yes, sir.

17 THE COURT: Where?

18 MR. KEMP: I was cutting grass.

19 THE COURT: How long have you been doing that?

20 MR. KEMP: A little while.

21 THE COURT: Okay. How far did you go in school?

22 MR. KEMP: Eleventh grade.

23 THE COURT: And where were you going?

24 MR. KEMP: (Inaudible.)

25 THE COURT: Okay. Why did you stop?

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1 MR. KEMP: Start working.

2 THE COURT: Have you gotten any job training past the
3 eleventh grade?

4 MR. KEMP: I had brick mason training, sheet metal duct.

5 THE COURT: Okay. All right. Now, have you ever been
6 treated for any mental health issues?

7 MR. KEMP: Yes, sir.

8 THE COURT: What have you been treated for, if you don't
9 mind me asking?

10 MR. KEMP: I can't remember.

11 THE COURT: Okay. Are you supposed to be taking some
12 medication for it?

13 MR. KEMP: Yes, sir, I was on medication.

14 THE COURT: You're not on any medication now?

15 MR. KEMP: No, sir.

16 THE COURT: All right. Are you under the influence of
17 any alcohol or illegal drugs here today?

18 MR. KEMP: No, sir.

19 THE COURT: Okay. You're thinking clearly here today?

20 MR. KEMP: Yes, sir.

21 THE COURT: You know exactly what you're doing?

22 MR. KEMP: Yes, sir.

23 THE COURT: Okay. Ms. Hinds, you have been representing
24 Mr. Kemp?

25 MS. HINDS: From day one. Yes, sir.

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1 THE COURT: And you have met with him on numerous
2 occasions?

3 MS. HINDS: I have.

4 THE COURT: Okay. You have reviewed with him the
5 evidence the state has against him?

6 MS. HINDS: I have.

7 THE COURT: And the law that applies in this situation?

8 MS. HINDS: I have at length.

9 THE COURT: Okay. And the type of sentence he is facing
10 according to these charges?

11 MS. HINDS: We have discussed all of it.

12 THE COURT: Okay. All right. I know you've gone over
13 his constitutional rights with him?

14 MS. HINDS: Yes, sir.

15 THE COURT: Okay. Is it your opinion that he
16 understands what he is doing here today?

17 MS. HINDS: Absolutely. He has been able to talk to me
18 about the charges against him from day one.

19 THE COURT: Uh-huh. (Affirmative response.)

20 MS. HINDS: He asks very good questions. I do believe
21 he understands everything we have discussed.

22 THE COURT: Okay. After discussing everything with him
23 he indicated to you he wishes to plead guilty to this
24 charge?

25 MS. HINDS: He has.

1 THE COURT: And do you believe it's in his best interest
2 to do so?

3 MS. HINDS: I do.

4 THE COURT: Okay.

5 All right. Mr. Kemp, Ms. Hinds has indicated that she
6 has met with you and gone over the evidence the state has
7 against you on this charge; is that correct?

8 MR. KEMP: Yes, sir.

9 THE COURT: Additionally, she had explained to you the
10 charges that apply -- the charge that applies in this
11 situation; is that correct?

12 MR. KEMP: Yes, sir.

13 THE COURT: Along with the possible sentences you could
14 be facing?

15 MR. KEMP: Yes, sir.

16 THE COURT: Okay. She also went over and explained your
17 constitutional rights to you; is that correct?

18 MR. KEMP: Yes, sir.

19 THE COURT: Did you and do you understand everything
20 that she told you?

21 MR. KEMP: Yes, sir.

22 THE COURT: Are you satisfied with her services as your
23 attorney?

24 MR. KEMP: Yes, sir.

25 THE COURT: Do you need any more time to talk to her?

1 MR. KEMP: No, sir.

2 THE COURT: Okay. Do you want a jury trial on this
3 charge?

4 MR. KEMP: No, sir.

5 THE COURT: Do you want to go forward with this guilty
6 plea?

7 MR. KEMP: Yes, sir.

8 THE COURT: Mr. Sorenson, my sentencing sheet indicates
9 a recommendation by the state?

10 MR. SORENSON: Yes, sir. It would be 30 years, Your
11 Honor.

12 THE COURT: Okay. All right.

13 Mr. Kemp, my sentencing sheet indicates that you are
14 pleading guilty to murder and the state is recommending a
15 sentence of 30 years; is that your understanding?

16 MR. KEMP: Yes, sir.

17 THE COURT: Other than that recommendation has anybody
18 promised you anything, threatened you or forced you to get
19 you to plead guilty here today?

20 MR. KEMP: No, sir.

21 THE COURT: You're doing this freely and voluntarily?

22 MR. KEMP: Yes, sir.

23 THE COURT: All right, Mr. Sorenson, tell me what
24 happened?

25 MR. SORENSON: Thank you. Please the Court, Your Honor.

1 THE COURT: Yes, sir.

2 MR. SORENSON: The victim in this case is 28 year old
3 Ebony Bryant. Ms. Bryant's family is seated in the front
4 row on Your Honor's left are various relatives including her
5 father, who is seated third from the left, Your Honor.

6 She was in a relationship, I believe she has a child
7 with the defendant, Mr. Kemp. Back in 2012, her father, Mr.
8 Elton Bryant, ultimately contacted law enforcement at the
9 end of June of 2012, basically to indicate that he had not
10 heard from his daughter in well over a month, and that was
11 -- while she didn't live with him that was unusual that that
12 length of time would go by without having heard from her,
13 and without him being able to track her down.

14 At that point, in time a missing persons report was
15 filed. The Sheriff's Office, Detective Garrison with the
16 Sheriff's Office was assigned. The initial part of the
17 investigation he started trying to track down leads of when
18 she had last been seen. They did talk early on in the
19 investigation to Mr. Kemp. He basically had indicated that
20 the two of them had gotten into an argument and that she had
21 taken some money from him and disappeared and he thought she
22 had moved back -- gone back to Florida where she has
23 relatives down in Florida. In talking to Mr. Bryant, you
24 know, basically they could find nobody that she had made any
25 contact with down in Florida.

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1 They continued to look into the case and ultimately had
2 found some witnesses that had indicated that the victim may
3 have been assaulted by Mr. Kemp and had shown up with --
4 there were some injuries. And also they had talked to a
5 witness who indicated that he had made some threats to kill
6 her stemming out of some money issues.

7 He was subsequently then in September questioned,
8 September 2012, questioned on multiple occasions. One of
9 those interviews, I believe, was on September 7, led to Mr.
10 Kemp giving a statement to the Sheriff's Office to striking
11 Ms. Bryant, she fell and hit her head after he assaulted
12 her. Ultimately the two of them had gone to bed and when he
13 woke up the following morning she was not breathing. He did
14 indicate he had taken and basically had buried her body in
15 the woods, kind of under some debris. As a result of that
16 he took them and they did find her decomposed body at that
17 point in time.

18 That would basically be the facts, Your Honor.

19 THE COURT: All right. Mr. Kemp, you've heard what the
20 Solicitor has told me about the circumstances that led to
21 your arrest on this charge?

22 MR. KEMP: Yes, sir.

23 THE COURT: Do you generally agree with what I was told?

24 MR. KEMP: Yes, sir.

25 THE COURT: Okay. The indictment that I have, Mr. Kemp,

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1 Indictment Number 2012-GS-38-1819, true billed by the Grand
2 Jury on October 9, 2013. It is for murder, and the
3 allegations are that you did in Orangeburg County on or
4 about May 1, 2012, with malice aforethought did kill one
5 Ebony Bryant by means unknown trauma and that Ms. Bryant
6 died as a proximate result thereof. All these acts in
7 violation of the laws of this state.

8 All right. Do you understand these allegations?

9 MR. KEMP: Yes, sir.

10 THE COURT: All right, sir, how do you plead to the
11 charge of murder?

12 MR. KEMP: Guilty.

13 THE COURT: All right. Mr. Kemp, you understand that if
14 I accept your plea to murder it will be a conviction on your
15 record; you understand that?

16 MR. KEMP: Yes, sir.

17 THE COURT: You understand it qualifies as a violent and
18 a most serious offense?

19 MR. KEMP: Yes, sir.

20 THE COURT: Your attorney had talked to you about that;
21 is that correct?

22 MR. KEMP: Yes, sir.

23 THE COURT: And you understood what she told you about
24 those strikes?

25 MR. KEMP: Yes, sir.

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1 THE COURT: You understand the sentence that the state
2 is requesting?

3 MR. KEMP: Yes, sir.

4 THE COURT: You understand you've got 10 days to appeal
5 my decision?

6 MR. KEMP: Yes, sir.

7 THE COURT: Do you want me to accept your guilty plea?

8 MR. KEMP: Yes, sir.

9 THE COURT: Mr. Kemp, I find that your decision to plead
10 guilty to this charge is freely, voluntarily and
11 intelligently made. I find you've had the advice and
12 counsel of a competent attorney. I find you're satisfied
13 with the services of your attorney. I find there is a
14 factual basis for you to plead guilty to this charge and I
15 will accept your guilty plea.

16 Ms. Hinds, I asked him about it, but you did explain
17 violent and most serious to him?

18 MS. HINDS: We've talked that issue numerous times --

19 THE COURT: Okay.

20 MS. HINDS: -- at length. We've also talked regarding
21 the fact that murder, unlike most other charges, is a day
22 for day sentence. In other words, it's not 85 percent, it's
23 day for day. He understands that also.

24 THE COURT: Okay. Anything else you want to tell me?

25 MS. HINDS: Your Honor, he's 27 years old. I will tell

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1 you he has a young son that he loves very much. I would not
2 disagree with the solicitor that initially he misled in some
3 statements that he made, but ultimately he gave a very long
4 and detailed statement to the police. He has gone into
5 very, very much detail about what had happened, ultimately
6 did lead them to where the body was buried so that Ms.
7 Bryant could be properly buried.

8 I will tell you that he has his mother standing here
9 behind him. She is the one that is caring for his son, now.
10 Carlos has always been very forthright with me from day one.
11 If anybody wanted this to not have happened more than him or
12 if he could go back to that day and do things over he would
13 do that in a heartbeat. I do believe he cared for Ms.
14 Bryant. Obviously, this was a situation that got out of
15 hand and he should have been forthright with law enforcement
16 from the very beginning, but ultimately he did do the right
17 thing. He's accepting responsibility. His only -- his wish
18 is to hopefully have the family forgive him ultimately if
19 they can see that in their hearts and for him to know --
20 he's comforted by the fact that he knows his son will be
21 raised in part by his mom, and ultimately he hopes at some
22 point knowing that he'll be grown, but to establish a
23 relationship. He's defiantly here taking responsibility. I
24 don't -- I believe his mom might wish to speak briefly.

25 THE COURT: Yes, ma'am. If you don't mind standing.

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1 What's your name, please, ma'am?

2 MS. KEMP: Glenda Kemp.

3 THE COURT: okay, Ms. Kemp, please let me hear from you.

4 MS. KEMP: Sir, their relationship, they had nice
5 relationship and I feel that, you know, that he really
6 didn't mean to do this. It just happen out of the ordinary
7 and I'm apologizing to the family. It hurts me for them and
8 for him. The only thing I can say is I'm sorry it happened
9 and I think you should face your responsibility and do what
10 you have to do that's necessary.

11 THE COURT: Thank you, ma'am.

12 MS. KEMP: Okay.

13 THE COURT: Anything else, Ms. Hinds?

14 MS. HINDS: I don't think I have anything further. Other
15 than that he has been incarcerated since September 9, 2012.
16 We would, of course, ask for credit for that -- September 7?

17 MR. SORENSON: I think the warrant wasn't served on him
18 until the 9.

19 MS. HINDS: Okay. September 7.

20 THE COURT: All right. Mr. Kemp, I'm going to go along
21 with the recommendation of the state. Sentence of this
22 Court is you are committed to the State Department of
23 Corrections for a period of 30 years. I'll give you credit
24 for the time you've served since September 7, 2012. Good
25 luck to you.

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MS. HINDS: Thank Your Honor.
(This proceeding was concluded.)

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C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE HEARING IN THE CAPTIONED CAUSE, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 13 DAY OF JANUARY, 2014.

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


Hilda M. Jordan, CVR-M

December 5, 2014

FORM 5

2014-CP-38-01158

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 CARLOS J. KEMP #305605,)
 Full name and prison number (if any) of Applicant.)
)
 v.)
)
 State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

FILED FOR THE CLERK OF COURT
 CLERK OF COURT
 ORANGEBURG COUNTY
 SOUTH CAROLINA
 2014 SEP 16 AM 11:11
 CW

APPLICATION FOR POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution
2. Name and location of Court which imposed sentence Orangeburg General Sessions Court, 190 Gibson Street, Orangeburg, South Carolina.
3. Name(s) of co-defendant(s) (if any) n/a
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-GS-38-1819
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) January 13, 2014, applicant was sentenced to the South Carolina Department of

17

Corrections for a determinate term of thirty (30) years.

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty X

(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?

The Applicant did not file an appeal from the judgment of conviction or the imposition of sentence.

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

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

i. n/a

ii. _____

iii. _____

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

i. n/a

ii. _____

iii. _____

(c) the date of each such result:

i. n/a

ii. _____

iii. _____

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

i. n/a

ii. _____

iii. _____

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

(a) The Attorney for the Applicant failed to inform and explain to the Applicant of his right to appeal.

(b) The Attorney for the Applicant failed to ask the Applicant if he wished to file an appeal and failed to inform the Applicant that she would not file an appeal on his behalf.

(c) _____

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

(a) Ineffective assistance of counsel.

(b) _____

(c) _____

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

(a) Defense counsel failed to: (1) investigate witnesses; (2) request a competency evaluation for the Defendant; (3) inform the Defendant of a defense; and (4) to obtain all of the information under Rule 5/Brady.

(b) Defense counsel failed to request that the Court obtain an expert witness to specify how the victim died and determine the cause of death.

(c) Defense counsel failed to inform the Defendant of: (1) various defenses, if any; (2) the lesser included offenses; (3) clear ramifications of a guilty plea; and (4) his right to appeal.

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

(a) any petition in a State Court under South Carolina Law? n/a

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? n/a

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? n/a

(d) any other petitions, motions or applications in this or any other Court? n/a

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

(a) the specific nature thereof:

i. _____

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) See Response to # 11
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? No (arraignment): Yes (plea)
- (b) your trial, if any? n/a
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? n/a
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? n/a
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. Margaret Hinds, Esquire, 190 Gibson Street, Post Office Box 1112, Orangeburg, SC 29116 (Plea & Sentencing)
- ii. _____
- 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:
- A declaration from the Court that the guilty plea was not freely and voluntarily entered into and as a result I should have the guilty plea declared no good.

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

No

STATE OF SOUTH CAROLINA)
)
County of Orangeburg)

VERIFICATION

I, Carlos Jordan Kemp # 305605; 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.

Carlos Kemp

SWORN to and subscribed before me this 2
day of Sept, 2014.

Debra Sines (L.S.)
Notary Public

My Commission Expires: 11-4-2015

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

I, Carlos Jordan Kemp #305605, 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.

Carlos Kemp
Applicant

SWORN or affirmed to and subscribed before me this
2 day of Sept., 2014.

Dema Series
Notary Public

My Commission Expires: 11-4-2015

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Carlos J. Kemp, #305605,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2014-CP-38-1158

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed September 16, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. Applicant was indicted at the April 2014 term of the Court of General Sessions for Orangeburg County for Murder (2012-GS-38-1819). Applicant was represented by Margaret Hinds, Esq. On January 13, 2014, Applicant pled guilty as indicted. The Honorable Edgar W. Dickson sentenced Applicant to thirty (30) years' imprisonment. Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein by reference are the records of the Orangeburg County Clerk of Court regarding the subject conviction(s), the transcript from Applicant's guilty plea, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

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

1. Ineffective Assistance Counsel, in that;
 - a. Counsel "failed to (1) investigate witnesses, (2) request a competency evaluation for the Defendant, (3) inform the Defendant of a defense, and (4) to obtain all of the information under Rule 5/Brady",
 - b. Counsel "failed to request that the Court obtain an expert witness to specify how the victim died and determine the cause of death",
 - c. Counsel "failed to inform the defendant of (1) various defenses, in any, (2) the lesser included offenses, (3) clear ramifications of a guilty plea, and (4) his rights to appeal.

III.

Applicant's claim is an allegation of ineffective assistance of plea counsel. Respondent contends that Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

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

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

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 cannot be conclusively refuted by the record. 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.

Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VI.

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

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VII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held solely on the claims of ineffective assistance of counsel.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

J. CLAYTON MITCHELL
Assistant Attorney General

By: 

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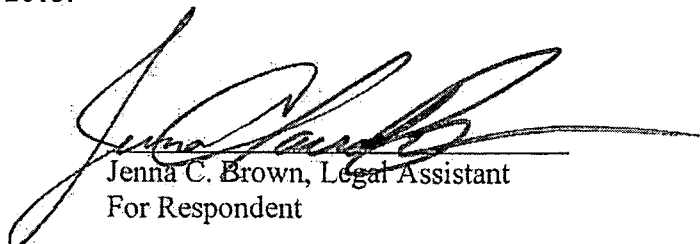
9/17, 2015

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG)	
)	
)	2014-CP-38-01158
)	
CARLOS J. KEMPT, #305605)	
)	
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** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Glen Walters, Esquire
Po Box 1346
Orangeburg, SC 29116-1349

DATED this 17th day of September, 2015.


 Jenna C. Brown, Legal Assistant
 For Respondent

1	STATE OF SOUTH CAROLINA	COURT OF COMMON PLEAS
2	COUNTY OF ORANGEBURG	FIRST JUDICIAL CIRCUIT
3		2014-CP-38-1158

7	CARLOS KEMP,)	TRANSCRIPT OF
8	APPLICANT,)	RECORD
9	VS.)	
10)	FEBRUARY 25, 2016
11	THE STATE OF SOUTH)	ST. GEORGE SC
12	CAROLINA,)	
	RESPONDENT.)	

B E F O R E:

HONORABLE MAITE MURPHY

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

CLAY MITCHELL, ESQUIRE
Attorney for the Respondent

GLENN WALTERS, ESQUIRE
Attorney for the Applicant

* * * * *

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

I N D E X

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POST-CONVICTION RELIEF HEARING 3

WITNESS

Carlos Kemp DIRECT BY MR. WALTERS 5
CROSS BY MR. MITCHELL 21

Linda Kemp DIRECT BY MR. WALTERS 27

Margaret Hinds DIRECT BY MR. MITCHELL 30

CERTIFICATE OF REPORTER 41

NO EXHIBITS INTRODUCED

1 (The following proceedings were held
2 February 25, 2016, Dorchester County, South
3 Carolina.)

4 MR. MITCHELL: May it please the Court,
5 Mr. Carlos Kemp versus the State of South Carolina.
6 Case number 2014-CP-38-1158. He was indicted April
7 of 2014 Orangeburg County for murder, represented
8 on the charges by Ms. Margaret Hinds. Pled January
9 -- he was indicted in April of 2012, sorry about
10 that, pled January 2014. He was sentenced to the
11 minimum 30 years imprisonment. There was no appeal
12 taken. This application was timely filed
13 September 2014. Mr. Kemp has made a few
14 allegations of ineffective assistance of counsel.
15 I know Mr. Kemp is represented by Mr. Glenn Walters
16 and that he is present here today. I will turn it
17 over to him.

18 THE COURT: Mr. Walters.

19 MR. WALTERS: May it please the Court,
20 Your Honor, at this time we will call Mr. Carlos
21 Kemp.

22 THE COURT: Before he comes to testify,
23 go ahead and swear him in.

24 THE CLERK: State your full name for
25 the record.

1 THE APPLICANT: Carlos
2 Kemp.

3 CARLOS KEMP

4 having been duly sworn, testifies as follows:

5 THE COURT: Mr. Walters, have you
6 discussed that if this PCR is granted that he would
7 be looking at a potential life sentence?

8 MR. WALTER: Yes, ma'am. I have
9 visited him at the county jail. We talked about
10 it, discussed it. His mother has also been
11 actively involved. So we are all aware of what's
12 going on today.

13 THE COURT: Is that correct, Mr. Kemp?

14 THE APPLICANT: Yes, ma'am.

15 THE COURT: So you fully understand the
16 potential consequences of if and when your PRC is
17 granted?

18 THE APPLICANT: Yes, ma'am.

19 THE COURT: That you could start back
20 over and you could be looking at a potential life
21 sentence instead of a 30-year sentence, do you
22 understand that?

23 THE APPLICANT: Yes, ma'am.

24 THE COURT: Do you have any other
25 questions about that? You need to talk to your

1 attorney about that?

2 THE APPLICANT: No, ma'am.

3 THE COURT: All right. Come on up and
4 take the witness stand. Your witness.

5 DIRECT EXAMINATION

6 BY MR. WALTERS:

7 Q. May it please the Court, Mr. Kemp, you
8 hired me to handle your PCR. I met with you at the
9 jail; is that correct?

10 A. Yes, sir.

11 Q. And we sat down and talked about your
12 case. And there are various allegations that you
13 have made against your attorney that represented
14 you and I believe that was Attorney Hinds; is that
15 correct?

16 A. Yes, sir.

17 Q. All right. I want to go through each
18 of the allegations that you made against her. I
19 want you to take your time and discuss those
20 allegations and why you believe there was
21 ineffective assistance of counsel, okay?

22 A. Okay.

23 Q. The first allegation that you made was
24 that Ms. Hinds failed to investigate the witnesses
25 in your case; is that correct?

1 A. Yes.

2 Q. Please tell us why you believe she
3 failed to do so.

4 A. Because --

5 THE COURT: Can you speak up a little
6 bit or pull that microphone closer to you.

7 A. Because at my motion for discovery, I
8 didn't get nothing and when I asked her about it
9 she never said nothing more about it.

10 Q. Let's back up.

11 A. She said --

12 Q. Let's back up. You rambled through
13 that. Break that into pieces and tell us exactly
14 what your allegation is.

15 A. Okay. My allegation is that I wanted
16 to have her investigate, but she didn't.

17 Q. Specifically what did you want her to
18 investigate, sir?

19 A. To go out and talk with them,
20 investigate.

21 Q. I don't want to put words in your
22 mouth. You're saying go out and talk to the
23 witnesses?

24 A. Yeah, and investigate, yeah.

25 Q. And did she do that in this particular

1 case?

2 A. No.

3 Q. And how do you know she didn't do it?

4 A. Because I asked her. I didn't see it
5 in my motion for discovery and stuff.

6 Q. All right. So you went through your
7 motion of discovery. Did you see any notes or any
8 type of information where she talked to the
9 witnesses?

10 A. No.

11 Q. And so you drew from that assumption
12 that she never talked to the witnesses?

13 A. Yes.

14 Q. And specifically which witnesses do you
15 believe she should have talked about to?

16 A. I have got Barbara -- I don't know the
17 full name. First name Barbara.

18 Q. Who else, sir?

19 A. Her boyfriend.

20 Q. Okay. And who else?

21 A. Erwin.

22 Q. Is there anyone else?

23 A. I think that's the names of all the
24 witnesses.

25 Q. But you believe those witnesses should

1 have had a conversation with your lawyer about the
2 events and what occurred; is that right?

3 A. Yes.

4 Q. The second allegation that you made in
5 this particular case is there was no request for a
6 competency evaluation for you.

7 A. No, there wasn't.

8 Q. Tell me why you believe there should
9 have been a competency evaluation?

10 A. Because again I don't have no school
11 and I should have been evaluated.

12 Q. Would you tell us how much education
13 you have?

14 A. Quit school in the eighth grade.

15 Q. And you never completed the ninth
16 grade, sir?

17 A. Um-hmm.

18 Q. Were you receiving any type of services
19 from the school while you were in school, special
20 services?

21 A. No, not from the school, but I was
22 going to the other.

23 Q. Excuse me?

24 A. Not from school, but I was going to the
25 other.

1 Q. You were going to mental health, the
2 Department of Mental Health. Did you inform your
3 lawyer that you were going to the Department of
4 Mental Health?

5 A. I told her I had a mental record.

6 Q. Excuse me?

7 A. I told her I had a mental record.

8 Q. And specifically do you recall what you
9 were being treated for?

10 A. I know part of it was anger management.
11 I don't remember what the guy said. I can't
12 remember.

13 Q. Were you on medication?

14 A. Yes, I was.

15 Q. And was that going on while you were in
16 high school?

17 A. Yes, it was.

18 Q. And you and your mother would go to the
19 Department of Mental Health?

20 A. Yes, we would.

21 Q. You know your mother is here in the
22 courtroom, she would take you to the Department of
23 Mental Health?

24 A. Yes, she would.

25 Q. And how long were you going to the

1 Department of Mental Health?

2 A. Since I was like 12.

3 Q. And your mother is the one that
4 initiated this and said you need some help?

5 A. Yes, and school.

6 Q. And the school also. Was Ms. Hinds
7 aware of this?

8 A. Yes, she should have been, yeah.

9 Q. Did you discuss this with her?

10 A. I mean for the short time we had. I
11 mean she keep going over the same thing over and
12 over so we didn't really have to talk about it.

13 Q. Let's talk about that. You said the
14 short time that we had. Exactly how long did you
15 counsel with your lawyer and did you have a full
16 and fair opportunity to thoroughly discuss what was
17 going on?

18 A. No, I didn't. Probably every time I
19 seen her probably be like 15 minutes. But at the
20 same time, any time I wanted to she started going
21 over the same over and over. Nothing new. Nothing
22 new.

23 Q. Was there an inquiry ever made that
24 said are you -- did you ever go to the Department
25 of Mental Health, were you ever on medication

1 during your life? Did you have that discussion
2 with her?

3 A. No, I don't recall.

4 Q. And was your mother actively involved
5 in this process?

6 A. Yes, she was.

7 Q. And at any time was there a discussion
8 with your mother with regards to your mental status
9 and the medication you were taking?

10 A. Yeah, I mean.

11 Q. Was that ever discussed with Ms. Hinds?

12 A. Yeah, I know my mom should have been.

13 Q. So it was brought to her attention?

14 A. Yeah.

15 Q. And did anyone ever subpoena the
16 records from mental health to determine exactly
17 what you were being treated for?

18 A. No, not that I know of. They should
19 have been. Not that I know of.

20 Q. Okay. And during the time of this
21 particular event in your life when this death
22 occurred were you taking your medication?

23 A. No, sir.

24 Q. Were you seeing mental health?

25 A. No, sir, because when I was going I

1 couldn't get medicated. I had to pay for the meds
2 out of my pocket.

3 Q. Was this issue explored by your lawyers
4 to determine if you were competent to stand for
5 trial?

6 A. What?

7 Q. Did your lawyer ever make the motion to
8 have you evaluated to determine if you could stand
9 for trial?

10 A. No, sir.

11 Q. And do you believe she failed to do
12 that and should have done it?

13 A. Yes, sir.

14 Q. And did your mother discuss this with
15 her?

16 A. I'm pretty sure she did.

17 Q. And discussing this issue with Ms.
18 Hinds you said there was a short period of time.
19 How long did you talk to your lawyer? How long did
20 you counsel with your lawyer when you would meet
21 with her?

22 A. Like I told you, probably like no more
23 than 10 or 15 minutes at a time.

24 Q. Okay. And how many times did you meet
25 with Ms. Hinds?

1 A. Like no more than three times.

2 Q. No more than three times and it was 10
3 to 15 minutes each time?

4 A. Yeah.

5 Q. And then how did you come to a decision
6 that all of a sudden I'm in trouble here, I'm going
7 to make a decision as to whether to go to trial or
8 whether to plead with regards to a murder case?

9 A. What now?

10 Q. You stated it was 10 to 15 minutes each
11 time?

12 A. Um-hmm.

13 Q. And if you met on three different
14 occasions that comes out to about 45 minutes total
15 that you met with regards to your case; is that
16 correct?

17 A. Yeah.

18 Q. So are you telling us that you were
19 prepared for your -- this murder case and you only
20 met with your lawyer for 45 minutes?

21 A. Was I prepared?

22 Q. Excuse me?

23 A. You say was I prepared?

24 Q. My question is is that you were telling
25 me that sum total of the entire time you met with

1 your lawyer with regards to this murder case was
2 only 45 minutes?

3 A. Yes. At that time, yes, sir.

4 Q. And do you believe that it was
5 sufficient time in order to prepare you?

6 A. No.

7 Q. And to explore exactly your mental
8 status with regards to this case?

9 A. No, sir.

10 Q. Now, the third allegation that you have
11 made with regard to your lawyer said informed the
12 Defendant of a defense. In other words, you said
13 that she failed to inform you of possible defenses
14 that were available to you. Is that your
15 allegation?

16 A. Yes, sir.

17 Q. And explore that further. Explain to
18 the judge exactly what you're talking about.

19 A. Okay. Well, she never prepared me or
20 told me anything, any defense, you know. She told
21 me, you know, that I was charged with murder, that
22 I was looking at 30 years, 60 years, something like
23 that, but she ain't never prepared me for a
24 defense, you know? So only thing I thought to
25 plead. I didn't see no other way.

1 Q. And when you say that there were no
2 defenses that were prepared, I want to elude back
3 to the allegation prior to this one. Was there
4 ever a discussion with regards to your not only
5 competency to stand trial, but the criminal
6 responsibility itself, whether you understood what
7 you were doing?

8 A. No, sir. You talking about when I was
9 pleading?

10 Q. No, sir, before that, in your
11 45 minutes and meeting with your attorney to
12 prepare for your murder case?

13 A. No, sir.

14 Q. Now, you also stated another allegation
15 was there was a failure on the part of the attorney
16 to obtain all the information under Rule 5 under
17 the Brady motion where your discovery is obtained.
18 Why do you believe she failed to do the proper
19 things at that time?

20 A. Because I supposed to have everything
21 that goes on in the case, right?

22 Q. Let me ask you this: First of all,
23 were you ever given a copy of your file?

24 A. Yes. That's it right there on the
25 table there.

1 Q. But you got it now for the PCR. Were
2 you ever given a copy of your file with regards to
3 your case before you entered into a decision with
4 regards to the murder case?

5 A. Yeah, I did, but I don't think
6 everything ain't in it though.

7 Q. Now, when you reviewed the file did you
8 understand it?

9 A. Yeah, I understand part of it.

10 Q. And did your mother help you in
11 attempting to do so?

12 A. No.

13 Q. Another allegation that you have made
14 with regards for PCR is counsel failed to request
15 the Court obtain an expert witness to specify how
16 the victim died and to determine the cause of
17 death. Let's talk about the first issue. Why do
18 you believe there was a failure on the part of your
19 lawyer to obtain an expert? Why do you believe you
20 need an expert?

21 A. Because for them to testify saying
22 inclusive so you need an expert for that, right?

23 Q. Let's make sure we are clear about the
24 facts. This young lady was in the bed with you; is
25 that correct?

1 A. Yes, sir.

2 Q. And you got up that morning or when you
3 got up she was dead; is that correct?

4 A. Yes, sir.

5 Q. And is it your allegation that there
6 should have been some expert brought in to
7 determine when she died, how she died and things of
8 that nature?

9 A. Yes.

10 Q. And did you request that from your
11 attorney?

12 A. I thought that was automatic, you know?
13 I thought that was something that an attorney would
14 do.

15 Q. So you assumed that it was being done
16 and did you ever inquire and say where is the
17 expert that's going to talk about the cause of
18 death, the proximate cause, causation itself and
19 how this young lady died?

20 A. No, sir. I didn't know.

21 Q. You didn't know?

22 A. I didn't know how to go about it.

23 Q. Were you on medication at that time?
24 Could you pay for it?

25 A. No, sir.

1 Q. And were you going to mental health?

2 A. No, sir.

3 Q. Was your mother still actively involved
4 in your case?

5 A. Yes, sir.

6 Q. Now, was this brought to your lawyers's
7 attention, your status and what was going on and
8 your belief that you need an expert?

9 A. No, sir.

10 Q. Did you bring the issue up with her?
11 Did you say I need an expert?

12 A. No, I didn't know. I thought she would
13 handle the whole thing. She a lawyer, right?

14 Q. And of course you go on to allege that
15 this expert should specify how the victim died and
16 determine the cause of death; is that right?

17 A. Yes, sir.

18 Q. Was it ever a mystery as to cause of
19 death?

20 A. What you mean mystery?

21 Q. Was there ever a question as to how she
22 died?

23 A. Yes, I would assume so, yeah.

24 Q. And of course you relied on your lawyer
25 to address that issue; is that right?

1 A. Yes, sir.

2 Q. Now, in addition to that you have also
3 alleged that she failed to inform the Defendant of
4 various defenses and lesser included offenses.
5 Let's talk about that. What exactly are you
6 eluding to there?

7 A. By defenses? A lesser crime, I mean
8 the murder because I mean my situation, I didn't
9 murder her honestly.

10 Q. You also allege you wanted to know the
11 clear ramifications of a guilty plea. Did you
12 understand what you were doing when you entered
13 into the guilty plea?

14 A. I would say partly yeah, partly no.

15 Q. What's the no part?

16 A. I didn't know I was giving up all my
17 rights and stuff like that.

18 Q. Did your lawyer sit down and explain to
19 you what the implications are of a guilty plea,
20 that you give up all of your rights?

21 A. I can't remember all.

22 Q. As far as your right to appeal, you
23 have alleged that as a grounds with regards to this
24 case because you're alleging that that was not
25 explained to you how to appeal and the process that

1 you need to go through?

2 A. Um-hmm, yes, sir.

3 Q. Was that explained to you?

4 A. Yeah. I can't remember, sir, trying to
5 think now.

6 Q. Now, since you have been incarcerated
7 have you received any type of care with regards to
8 the issues that were being addressed by the
9 Department of Mental Health since you were 12 years
10 old?

11 A. No, sir.

12 Q. And are you on any medication at this
13 time?

14 A. No, sir.

15 Q. And do you believe that to a degree you
16 have been impaired because you did not receive
17 proper care?

18 A. Yes.

19 Q. And is it your contention that your
20 lawyer should have addressed that and somehow that
21 could have helped you under the circumstances?

22 A. Yes, sir.

23 Q. And but for the allegations that you
24 allege here that could have been addressed you
25 wouldn't be incarcerated?

1 A. Yes, sir.

2 Q. Okay. Now, we have had an opportunity
3 to talk in the jail. Your mother has been by my
4 office. Is there any other issue that we have not
5 addressed that you believe is significant that's
6 important that should have been addressed that you
7 want addressed in your PCR?

8 A. No, sir.

9 Q. I know it was sort of abrupt and you
10 said what are we doing? I said I'm going to walk
11 you through it. Are you sure we have talked about
12 everything you believe that's important?

13 A. Yes, sir.

14 Q. Okay.

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

17 THE COURT: Cross-examination?

18 CROSS-EXAMINATION

19 BY MR. MITCHELL:

20 Q. Good morning, Mr. Kemp.

21 A. Hi.

22 Q. So you were charged with murdering your
23 girlfriend?

24 A. Yes.

25 Q. You pled guilty, right?

1 A. Yes, sir.

2 Q. And that was with a recommendation of
3 30 years, correct?

4 A. Correct.

5 Q. And that's the minimum, right?

6 A. Correct.

7 Q. You knew that going in?

8 A. Correct.

9 Q. So you knew that you were going to
10 likely get the lowest sentence you can get; is that
11 right?

12 A. Lowest sentence I can get?

13 Q. Lowest sentence with murder, of a
14 murder case?

15 A. Yes, sir.

16 Q. You talked about your competency a
17 little bit. But you understood what was going on
18 at the guilty plea hearing, didn't you?

19 A. I mean parts of it.

20 Q. I mean you understood you were pleading
21 guilty, you were admitting that you murdered your
22 girlfriend, right?

23 A. Okay.

24 Q. Is that right?

25 A. All right.

1 Q. So you understood what was going on?
2 You understood there was a minimum sentence. You
3 understood you were there to admit what you did,
4 right?

5 A. Okay. I admit the murder, but I didn't
6 do it. I had no choice I mean.

7 Q. You said you admitted to it?

8 A. I didn't do it. I mean so I take a
9 life sentence.

10 Q. So you pled guilty to avoid a longer
11 sentence at trial?

12 A. Yeah.

13 Q. If you were going to trial you thought
14 if you were convicted you may get more than
15 30 years, right?

16 A. Yeah. I mean I couldn't go to trial
17 with her.

18 Q. You couldn't go to trial with Ms.
19 Hinds?

20 A. No.

21 Q. Now, you gave a statement to law
22 enforcement; isn't that right?

23 A. Yes, sir.

24 Q. And that's a pretty lengthy confession;
25 isn't that right?

1 A. I wouldn't say it's a confession. I
2 told them what happened. I didn't tell them I
3 killed her.

4 Q. You didn't confess to killing?

5 A. No, I told what happened. That's not a
6 confession, sir.

7 Q. You said you hit her and then she fell?

8 A. Yes, she got up back. She was still
9 living. If I killed someone she would have died.
10 She was alive when I went to sleep. She was still
11 moving and so if I would have known that it was
12 that, she would have died, I would have called an
13 ambulance or something like that. She was fine.
14 We were both drinking. So she was fine.

15 Q. You admitted to hitting her, right?

16 A. Yes, she hit me, too.

17 Q. So you testified you only met with Ms.
18 Hinds for about 45 minutes total?

19 A. I know that three, four times, about
20 three times. We sit and talk 15 minutes apiece.

21 Q. You talked about your statement though,
22 didn't you?

23 A. My statement a few times, yeah.

24 Q. You talked about the charges, the
25 charge, right, murder?

1 A. Um-hmm.

2 Q. That it carried life?

3 A. Yes.

4 Q. You probably knew that, right?

5 A. Um-hmm.

6 Q. You went through a plea sheet with Ms.
7 Hinds; is that right?

8 A. Who?

9 Q. A plea sheet where she went through and
10 you initialled certain points of a document. Did
11 you do that with her?

12 A. I can't remember, sir.

13 Q. That would have been before the plea?
14 Do you recall that?

15 A. I signed some paper. I didn't know
16 what it was. I ain't read it. I signed some
17 papers though.

18 Q. You just signed kind of each spot
19 saying you understood what was going on, but you're
20 saying you didn't?

21 A. I signed. I didn't read them.

22 Q. You just signed it to get through the
23 process?

24 A. Yeah.

25 Q. Judge Dixon asked you a bunch of

1 questions at the guilty plea; isn't that right?

2 A. I can't remember that far back, sir.

3 Q. You talked to him, you spoke at the
4 guilty plea, he asked you questions, correct?

5 A. Yes, sir.

6 Q. You told him that you understood what
7 was going on, right?

8 A. Yes, sir.

9 Q. And you told him that you were
10 satisfied with Ms. Hinds, right?

11 A. I mean ain't like they were going to
12 change it. I mean that's how I was looking at it.
13 I mean that was best route at the time. I mean she
14 wasn't going to help me.

15 Q. You thought that was your best route at
16 the time to plead guilty?

17 A. Yeah, because she wasn't doing nothing.
18 I didn't feel comfortable going to trial with no
19 lawyer like that.

20 MR. MITCHELL: I don't have any further
21 questions. Thank you.

22 THE COURT: Any redirect?

23 MR. WALTERS: I have no questions, Your
24 Honor.

25 THE COURT: You may step down, sir.

1 Thank you. You may call your next witness.

2 MR. WALTERS: Your Honor, at this time
3 we call Ms. Linda Kemp.

4 THE CLERK: State your full name for
5 the record.

6 THE WITNESS: Linda Jean Kemp.

7 LINDA KEMP

8 who, after being first duly sworn, testified as
9 follows:

10 THE COURT: Your witness.

11 DIRECT EXAMINATION

12 BY MR. WALTERS:

13 Q. May it please the Court. Ms. Kemp, you
14 are the mother of Carlos Kemp?

15 A. Yes, sir.

16 Q. And I believe that when you found out
17 he was charged with this serious crime you were
18 actively involved in his defense; is that right?

19 A. Yes, sir.

20 Q. And did you have an opportunity to
21 speak to his defense counsel, Ms. Hinds?

22 A. Yes, sir.

23 Q. What did you discuss with her?

24 A. Well, I called and discussed with her,
25 you know, what would be the outcome of this case.

1 She only said to me that he was looking at a life
2 to 30 years. Every time I called, I go down there,
3 she would tell me the same thing, that he's in a
4 bunch of trouble, he is looking at life to
5 30 years.

6 Q. Did you ever --

7 A. That was all she would tell me every
8 time I went down or call the office and I have been
9 there I know about 14 or 15 times. I just keep
10 going, keep going back thinking that she could
11 come, you know, and tell me something different
12 and, you know, in his defense. The only thing she
13 said well, you know, he's in a lot of trouble and
14 she never said that I'm going to go out and talk to
15 anyone, you know, about the case. The only thing I
16 could get out of her was to life sentence or
17 30 years.

18 Q. Let me ask you this: Did you ever
19 attempt to discuss with her the mental status of
20 your son?

21 A. I told her that he was going to mental
22 health and he got off his medication and then he
23 started back on it one time, give him an injection
24 like to last him time for 30 days and he was going
25 to voc rehab.

1 Q. He stated that he had been going since
2 he was about 12 years old?

3 A. Yes, he was. Yes, sir.

4 Q. What prompted you to make this trip to
5 mental health and receive treatment?

6 A. When he was small we noticed that, you
7 know, the way that he was acting like imaginary
8 friend, like he was talking to him so they put him
9 in the room. They were asking him some questions
10 and he would like break out into like angry mood
11 and then, you know, he calm right back down like
12 that, like they was saying like he was
13 schizophrenia at the time.

14 Q. Did you explain this to Ms. Hinds?

15 A. No. I didn't get to explain. I told
16 her that he was going to the mental health. I
17 supposed that she would check into it and find out,
18 you know, the reason why, you know, he was going
19 there.

20 Q. You brought this to her attention?

21 A. Yes, I did.

22 MR. WALTERS: I have no further
23 questions.

24 THE COURT: Cross-examination.

25 MR. MITCHELL: I don't have any

1 questions for this witness.

2 THE COURT: You may step down.

3 MR. WALTERS: That's our case, Your
4 Honor.

5 THE COURT: Mr. Mitchell.

6 MR. MITCHELL: Your Honor, the State
7 calls Ms. Margaret Hinds.

8 THE CLERK: State your name for the
9 record.

10 THE WITNESS: Margaret Hinds.

11 MARGARET HINDS

12 who, after being first duly sworn, testified as
13 follows:

14 THE COURT: Your witness.

15 DIRECT EXAMINATION

16 BY MR. MITCHELL:

17 Q. Good morning, Ms. Hinds.

18 A. Good morning.

19 Q. Thanks for being here today. Where are
20 you currently employed?

21 A. Orangeburg, the public defender's
22 office.

23 Q. How long have you been employed there?

24 A. Almost 19 years, be 19 years beginning
25 of May.

1 Q. What is your role there now?

2 A. Deputy.

3 Q. You're a bit of a supervisor there?

4 A. I am.

5 Q. How did you become involved in Mr.
6 Kemp's case?

7 A. I was appointed to Mr. Kemp's case on
8 September 18th, 2012, by the clerk of court.

9 Q. When you first met Mr. Kemp did you go
10 through kind of the usual advisement of the charges
11 and -- of his rights at that point?

12 A. My first meeting with Mr. Kemp would
13 have been on October 31st. I met with him at the
14 courthouse and it was a fairly lengthy meeting
15 because we had to do the kind of housekeeping
16 questions, that kind of thing and start going into
17 discovery. I don't believe we finished that day,
18 but on subsequent visits we talked in more depth
19 about the discovery. The initial meeting would
20 have been background, education, those kind of
21 things, an explanation of the elements, what he was
22 charged with, potential consequences, those kind of
23 things.

24 Q. So you mentioned some discovery at that
25 point. What discovery -- what did that discovery

1 consist of?

2 A. The police reports, the witness
3 statements, the investigators notes, all those
4 kinds of things.

5 Q. Okay. Would that have included his
6 statement?

7 A. Correct.

8 Q. Can you give us a brief summation of
9 his version of events?

10 A. Which one?

11 Q. Well, I guess maybe his initial one in
12 the statement.

13 A. The initial statement best of my
14 recollection was basically that she had stolen some
15 money from him. I will give you some background
16 because I think it's important to understand why he
17 would have been upset. They had a child in common.
18 There was some DSS involvement and part of their
19 requirements for them to get the child back in
20 their custody was a stable living place. I believe
21 his mother was helping him out with some money so
22 that they could rent a decent place to get the
23 child back. The allegation is that the girlfriend
24 took the money and took off. So that was his
25 initial statement.

1 He told the officers I think that was
2 the last he had seen her, maybe she had gone to New
3 York or possibly Florida, but other than that he
4 hadn't seen or heard anything from her. Second
5 statement was considerably different. The second
6 statement involved he and her getting into an
7 argument that started verbal, but ended up being
8 physical. I will say that, too, from what I
9 remember of the case there was a history on both
10 sides of domestic violence.

11 But on the particular day in question
12 that they had gotten into it, he ended up punching
13 her several times. She fell to the ground where he
14 punched her again several times. Ultimately he did
15 say that she was alive at that time. They went to
16 bed and when he woke up in the morning she was not
17 breathing.

18 Ultimately then he panicked. He took
19 the body out back into the woods or into some brush
20 or whatever and basically buried her.

21 Q. So in his talks with investigators they
22 had not -- didn't have the body at that point?
23 There was a missing person case sort of?

24 A. Correct.

25 Q. Very early on; is that right?

1 A. Yes. The dad had -- her dad had -- was
2 concerned that nobody had seen or heard from her in
3 about a month and that was not usual.

4 Q. The body was recovered because of the
5 statement that Mr. Kemp gave?

6 A. Exactly where he said it would be.

7 Q. Exactly where he said it would be?

8 A. Yes.

9 Q. Were you present for his testimony just
10 previously?

11 A. I was.

12 Q. How long would you meet with Mr. Kemp
13 when you met with him or when you did meet with
14 him?

15 A. I met with him nine times. Ten if you
16 include the day of the plea. Most of our meetings
17 were indeed lengthy because of the nature of the
18 crime, because of the nature of what was being
19 alleged. I met with him let's see, November 16th
20 we went over all the written statements. At that
21 point he requested a copy of the discovery. I
22 subsequently gave him his own copy on the 20th of
23 November. But on the 16th we went over again
24 elements of what he was being charged with. I
25 think we had had some brief discussion about

1 manslaughter and so my notes reflect that at the
2 time I had made a note to print out the statutes
3 for him and I believe I gave that to him when I
4 gave the discovery.

5 I would say most of the meetings had to
6 have been at least a half hour; some of them were
7 considerably longer. I did also meet with his
8 mother. I met with her twice at my office and then
9 I believe a third time on the date of the plea
10 before we went through with it.

11 Q. Did you have any issues with the
12 discovery that was turned over?

13 A. In terms of?

14 Q. Did you think anything was missing?

15 A. Not really.

16 Q. If you thought something was missing
17 would you have contacted the solicitor and asked
18 for that?

19 A. Yes, I would have.

20 Q. You didn't have any reason to do that
21 here?

22 A. I don't believe so.

23 Q. You said you met with his mother. Did
24 you discuss his mental health with his mother?

25 A. The only thing that I was told that I

1 have heard here today was about the anger
2 management classes. I was told when I asked about
3 counseling, that kind of thing. He said he had
4 taken anger management classes. I didn't know
5 anything about imaginary friends and being in a
6 room talking to himself. That's the first I have
7 heard of this.

8 Q. The anger management, was that as part
9 of a diversion program or anything with a prior?

10 A. I can't tell from my notes. I think I
11 just -- I had asked him. He said that he did --
12 the counseling, that he had anger management, that
13 he had had anger issues.

14 Q. Did you have any questions as to his
15 competency?

16 A. I really did not. I mean he requested
17 the discovery. In my meetings with him once he had
18 his own copy he pointed out things in the
19 discovery, asked me questions about things. In my
20 opinion he understood.

21 Q. He was able to interact with you and
22 ask you different questions and help in his defense
23 as much as he could?

24 A. Yes. I would say one of the early
25 discussions we had before I had even met with him,

1 I had gotten a letter from him where he was asking
2 me to get him a plea to involuntary. So I knew at
3 the very first meeting we needed to -- I needed for
4 him to understand what the different degrees and
5 what the elements were for murder, voluntary
6 manslaughter, involuntary. Because clearly I
7 didn't believe he understood at that point in time.

8 So I made it a point to make sure we
9 went over that and that was not the only time we
10 did because I had many negotiations with Don
11 Sorenson. I had hoped to be able perhaps to work
12 something out in the voluntary range; however, the
13 solicitor's office was just not open to that. They
14 had -- sheriff's department had spent considerable
15 resources sending people to New York and Florida to
16 look for this girl. And I think they just didn't
17 -- he was not open to anything less than murder.

18 Q. How were you able to get the
19 recommendation of 30 years?

20 A. The initial recommendation was 30 to
21 35. We just kept negotiating back and forth until
22 finally I think it was -- may have been the day of
23 the plea I finally got him to go to the minimum.

24 Q. Did you have any issues with the
25 victim's cause of death?

1 A. The problem with that -- the problem
2 would have been his version clearly was that there
3 was an altercation, that he had hit her, that she
4 went to the ground and hit her head. The problem
5 was when they recovered the body, the skull was
6 missing. They found the rest of the body, but not
7 the skull. Therefore, it wasn't going to help us
8 and from an emotional point of view I think it hurt
9 us. Perhaps was suggested that maybe he had
10 intentionally put the skull some place separate. I
11 don't know. We never discussed that. But I didn't
12 think it was an avenue that he was going to have
13 good results.

14 Q. Mr. Kemp seems to have an issue that
15 there were no available defenses. Did you run
16 through any possible scenarios that if it went to
17 trial how the case would be defended?

18 A. We did.

19 Q. What kind of strategy would you have
20 employed?

21 A. Well, it would have been playing on
22 obviously with his version what happened that it
23 wasn't certainly a premeditated murder. Certainly
24 could have been stretched to perhaps involuntary,
25 that being an accident probably. The problem was

1 is that in the statements of Mr. Kemp himself and
2 the various other witnesses who basically had him
3 saying he was so mad when he caught up with her he
4 was going to kill her because of the money that she
5 had taken, that kind of thing. And the two, like I
6 said, had a history of violence in the past. We
7 did discuss what could be, but I didn't feel that
8 it was a very -- I didn't feel the outcome was
9 probably in his best interest and in terms of
10 probabilities of the outcome.

11 Q. Did you interview potential witnesses
12 as part of your investigation?

13 A. He did not give me any witnesses and
14 the witnesses that he was talking about had all
15 given statements to the state.

16 Q. And they were I assume not helpful to
17 his case?

18 A. They were harmful.

19 MR. MITCHELL: I don't have any further
20 questions for you. Please answer anything Mr.
21 Walters has.

22 THE COURT: Cross-examination?

23 MR. WALTERS: Your Honor, I have no
24 questions.

25 THE COURT: You may step down, Ms.

1 Hinds. Thank you. You may call your next witness.

2 MR. MITCHELL: State has no further
3 witnesses, Your Honor. We would rest.

4 THE COURT: Any submission from either
5 side?

6 MR. WALTERS: Your Honor, we will rest
7 on what's been presented.

8 THE COURT: I will take the time to
9 review the record and notify you of an opinion.

10 MR. WALTERS: Thank you.

11 (These proceedings were concluded at
12 11:05 a.m., February 25, 2016, Dorchester County,
13 South Carolina.)

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3 CERTIFICATE OF REPORTER

4 I, Ruth C. Weese, Registered Diplomate
5 Reporter for the State of South Carolina at Large,
6 do hereby certify that the foregoing transcript is
7 a true, accurate, and complete record.

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

11 Witness my hand, I have hereunto affixed my
12 official seal this 27th day of September, 2016 at
13 Charleston, Charleston County, South Carolina.

14 *Ruth C. Weese*

15 _____
16 Ruth C. Weese

17 Registered Diplomate

18 Reporter
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STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Carlos J. Kemp, #305605,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2014-CP-38-1158

ATTEST: TRUE COPY
ORDER OF DISMISSAL

Winnys B. Clark
CLERK OF COURT

ORANGEBURG COUNTY, SOUTH CAROLINA

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed September 16, 2014. Respondent made its Return on September 21, 2015, requesting an evidentiary hearing be convened. Glenn Walters, Sr., Esquire, represented Applicant. An evidentiary hearing was held on February 25, 2016, at the Dorchester County Courthouse. Applicant was present. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, Margaret E. Hinds, Esquire, and Applicant's mother, Linda Kemp. This Court had before it the Orangeburg County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the guilty plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. Applicant was indicted at the April 2014 term of the Court of General Sessions for Orangeburg County for Murder (2012-GS-38-1819). Applicant was represented by Margaret Hinds, Esq. On January 13, 2014,

Applicant pled guilty as indicted. The Honorable Edgar W. Dickson sentenced Applicant to thirty (30) years' imprisonment. Applicant did not appeal his conviction or sentence.

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

1. Involuntary and unintelligent guilty plea;
2. Ineffective assistance of counsel in:
 - a. Failing to investigate potential witnesses and the victim's cause of death
 - b. Failing to request a competency evaluation,
 - c. Failing to craft a defense strategy,
 - d. Failing to obtain all information pursuant to Rule 5¹/Brady²,
 - e. Failing to file a notice of appeal.

III. APPLICABLE LAW

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

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was

¹ Rule 5, SCRCrimP.

² Brady v. Maryland, 373 U.S. 83 (1963).

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

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

Involuntary and Unintelligent Guilty Plea

Applicant alleges he did not plead guilty knowingly and voluntarily. Applicant argues he did not understand the advice given to him by Counsel. This Court finds Applicant's guilty plea

was ~~entered~~^{MM} freely and voluntarily entered. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Applicant claims he did not plead guilty voluntarily because he did not understand the charges and procedure of his case. He testified Counsel did not advise him correctly and that their meetings were very brief. He explained that he was only told that he was charged with murder and was facing a sentence of thirty years to life imprisonment. This Court finds these contentions meritless. This Court finds the record reflects Applicant was fully advised that he was pleading guilty and waived all challenges to the evidence against him. The plea court's thorough colloquy with Applicant demonstrates that he understood the consequences of pleading guilty. This Court finds Applicant's testimony not credible. Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing. This

Court finds very credible Counsel's testimony regarding her preparation and advice concerning the case. Counsel detailed numerous meetings where she reviewed his statements and the other evidence the State planned to use against him. Counsel's testimony that she did not have any difficulty communicating with Applicant is also persuasive. The record further reflects Applicant fully admitted his guilt to the plea court. Applicant also told Judge Dickson that he understood the charges and the consequences of pleading guilty. (Plea Tr. p. 6, lines 16-21). Therefore, this Court finds the plea judge correctly found Applicant's plea was freely, ^{voluntarily} ~~voluntary~~, and intelligently made.

Ineffective Assistance of Counsel

Applicant also makes a number of allegations of ineffective assistance of counsel. The Court will discuss each in turn.

Failing to Investigate Potential Witnesses and Victim's Cause of Death

Applicant claims that Counsel was ineffective for failing to investigate potential witnesses for his defense and in failing to retain an expert to challenge the victim's cause of death. Applicant testified he wanted Counsel to talk to Barbara and her boyfriend, Irvin. Applicant did not know their last names. Applicant testified that he had an altercation with his child's mother (the victim) and struck her. He testified that they both went to bed and when they woke up the next morning she was dead.

"Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted).

This Court finds Applicant failed to meet his burden of proof. Applicant was unable to even give last names for the witnesses he wanted Counsel to investigate. Counsel credibly testified that there were no viable defenses to the murder charge, ^{MM} which made a further investigation of witnesses unnecessary. Counsel also testified that the cause of death was not in dispute. Statements were given to investigators that Applicant threatened to kill the victim previously. Applicant also gave multiple statements and eventually gave a long and detailed confession. The State was going to be able to use that statement to show that Applicant buried the victim's body in the woods. Counsel was not ineffective in failing to investigate and challenge the cause of death or for not investigating potential witnesses.

Further, Applicant has failed to present the Court with any testimony from any potential witnesses. Applicant has also failed to present any evidence challenging the victim's cause of death. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result."). The allegation rests entirely on speculation. Applicant is therefore unable to show any prejudice. This allegation is denied and dismissed with prejudice.

Failure to Request Competency Evaluation

Next, Applicant alleges Counsel was ineffective for failing to request that a competency evaluation be done. In light of Counsel's credible testimony that Applicant was able to effectively communicate with her, Applicant has produced no reliable testimony that would diminish his culpability on the charges. Counsel noted that Applicant sent her a letter discussing various issues in the case that demonstrated his understanding of the facts and charges. Applicant's testimony regarding his competency and understanding is not credible as it is refuted

by the testimony given at the hearing and by the guilty plea transcript. Also, Applicant failed to show how he was prejudiced because no credible records were presented to the Court. This allegation is denied and dismissed.

Failing to Craft Defense Strategy

Applicant alleges Counsel was ineffective for failing to form a defense strategy to the murder charge. Applicant testified that Counsel did not offer any type of strategy to the charges and only told him that he was facing thirty years to life. To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). This Court finds Applicant has failed to meet his burden in proving prejudice. The evidence against Applicant was very strong which made Counsel's job much more difficult. Counsel testified that if the case did go to trial that she would assert that Applicant lacked the requisite intent and argue that the incident was an accident. Counsel qualified this and noted that his confession was inconsistent with that strategy, which would make it likely he would be convicted. This was certainly reasonable under the circumstances of the case. Applicant has not presented any alternative defense or strategy that would have been stronger. Counsel cannot be held ineffective just because the State had a very strong case against Applicant. Furthermore, Applicant pleaded guilty and cannot now assert new defenses to the charge. This allegation is denied and dismissed.

Failure to Obtain Information Pursuant to Rule 5 and Brady

Applicant further alleges Counsel was ineffective in failing to obtain all information pursuant to Rule 5, SCRCrimP, and Brady. Applicant vaguely testified that certain files were missing from the State's disclosures. Counsel testified that she did not believe there to be any

issues with discovery. Counsel's testimony is much more credible than Applicant's on the issue. Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). Applicant has failed to present the Court with any evidence to show that any documents or information was withheld from him by the State. This Court finds that this allegation must be denied and dismissed with prejudice.

Failure to File a Notice of Appeal

Finally, Applicant alleges Counsel was ineffective for failing to file a notice of appeal. Applicant testified he was not advised that he could appeal from his guilty plea. This testimony is not credible. 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 (2000). This Court finds Applicant failed to present any evidence that he demonstrated to counsel his desire to appeal. Notably Judge Dickson advised Applicant that he would have ten (10) days to file an appeal, so he was certainly aware of his right to appeal. (Plea Tr. p. 11, lines 7-8). Furthermore, upon a full review of the record, the Court finds that no grounds existed for an appeal, so any appeal would have been futile. This allegation is denied and dismissed with prejudice.

All Other Allegations

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

V. CONCLUSION

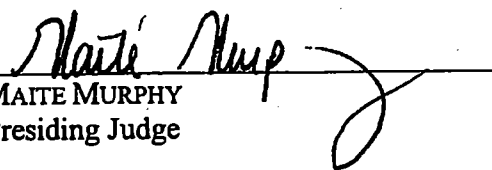
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate ^{counsel's MM} ~~counsel's~~ performance was unreasonable under prevailing professional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

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this 23 day of May, 2016.


 MAITE MURPHY
 Presiding Judge

St. George, South Carolina

WITNESSES

LORI GARRISON

Orangeburg County Sheriff

ARREST WARRANT NUMBER
2012A3810200095

Arrested: September 9, 2012

TRUE BILL
ACTION OF GRAND JURY
[Signature]
Date OCT 09 2013

Foreperson of Grand Jury
Date: October 9, 2013

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS38-1819

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

October 21, 2013 TERM

THE STATE
vs.

Carlos Jordan Kemp

Indictment for

MURDER
ATTEST: TRUE COPY
Winnifia B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 16-3-10

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

Defendant

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

Defendant

Witness:

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

FILED FOR RECORD
WINNIFIA B. CLARK
CLERK OF COURT
ORANGEBURG COUNTY, SC
[Signature]

2013 OCT -9 AM 10:21

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STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2012GS38-1819

At a Court of General Sessions, convened on October 21, 2013 the Grand Jurors of Orangeburg County present upon their oath:

MURDER

That in Orangeburg County on or about May 1, 2012, with malice aforethought, the defendant, Carlos Jordan Kemp did kill one Ebony Bryant by means of unknown trauma. The victim did die as a proximate result thereof. This offense being in violation of the Common Law and Section 16-3-10, of the South Carolina Code of Laws, as amended.

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


Donald N. Sorenson, Solicitor