

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County

Honorable D. Craig Brown, Circuit Court Judge

BRICE DI'VON COLEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-0001759

APPENDIX

LARA M. CAUDY
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JESSICA KINARD
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

RECEIVED
FEB 10 2017
S.C. SUPREME COURT

INDEX

INDEX	i
GUILTY PLEA TRANSCRIPT (dated April 21, 2015)	1
APPLICATION FOR POST-CONVICTION RELIEF	35
RETURN	42
POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated July 14, 2016).....	48
ORDER OF DISMISSAL	93
INDICTMENT	105
SENTENCING SHEET	107

The State of South Carolina,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 Brice Coley,)
)
 Defendant.)
)
)

April 21, 2015
Columbia, South Carolina

B E F O R E:

The Honorable Alison Renee Lee, Judge

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

Margaret Fent Bodham, Esquire, Assistant Solicitor
Attorney for the State

Robert Louis Bank, Jr., Esquire
Attorney for the Defendant

Elizabeth B. Harris, CVR-M
Circuit Court Reporter

I N D E X

<u>Witness/Description</u>	<u>Page No.</u>
Brice Coley	
Examination by the Court.. . . .	8
Examination by the Court Resumes.. . . .	18
Sentence of the Court.. . . .	33
Certificate Page.	34

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Ev.</u>
C-1	Collection of Letters/Certificates.	7

1 THE COURT: I understand that there are some people
2 here who are offering to plead guilty to certain crimes
3 today. As I call your name, if you'd please stand and
4 remain standing. Brice Coley, Martin Suber, Pink Dinkens,
5 Chris Harvey, Kevin Geiger or Geiger, Chris Harvey, Malaya
6 Lang, Antonio Harrison, Allen Ashley.

7 Mr. Ashley, you may have a seat. Thank you.

8 Mark Vereen.

9 Ladies and gentlemen, as I've indicted, I understand
10 that some of you are here offering to plead guilty to
11 crimes that are pending against you. What I'd like to do
12 is explain to you your constitutional rights. Easier for
13 me to explain them to you as a group, and then that way I
14 don't have to repeat the same thing four or five, six,
15 seven, eight times.

16 Although you have been charged with certain crimes, as
17 you stand before me this morning, you are still innocent of
18 those charges, and you remain innocent unless and until the
19 state is able to convince a jury that you are guilty of the
20 charge or charges that are pending against you.

21 In connection with those charges, you do have certain
22 constitutional rights. First of all, if the charge or
23 charges not been presented to the grand jury, you have the
24 right to require the state to produce evidence of that
25 charge to a grand jury. The grand jury is made up of

1 eighteen people. Their function is to determine whether
2 there is reason to believe that a crime has been committed,
3 and whether it is reasonable that you committed that
4 particular crime.

5 What happens is that the solicitor's office will go
6 into the grand jury or the law enforcement agency will go
7 into the grand jury and will present evidence about that
8 particular charge. After hearing that evidence, then
9 twelve of those grand jurors would have to return a true
10 bill in order for you to be formally indicted. If they
11 return a true bill, then the criminal justice process
12 continues. However, if twelve of those eighteen people do
13 not agree, then they return a no bill or a no true bill.
14 In that circumstance, nothing further would become of those
15 allegations, and you would be free to go.

16 By coming here today and by offering to plead guilty
17 before the charge or charges have been presented to the
18 grand jury, you give up the opportunity to have the grand
19 jurors make the initial decision as to whether or not you
20 should be charged.

21 You also have the right to remain silent. That's
22 known as your right against self-incrimination. That's
23 your right not to say anything or do anything that would
24 give evidence against yourself. That means that you don't
25 have to talk to law enforcement officers about the charges;

1 you don't have to talk to anybody in the solicitor's office
2 about them. You don't have to discuss them with me. By
3 coming here today and by offering to plead guilty, you give
4 up your right to remain silent because you will be required
5 to make statements against your interest.

6 You also have the right to a jury trial; that's your
7 right to have twelve people decide your guilt or your
8 innocence. And just as I told you this morning that you're
9 innocent of those charges, the jury is told the same thing.
10 That is that you are innocent of those charges, and that
11 you remain innocent unless and until the state is able to
12 convince all twelve of those jurors that you are guilty.
13 And the jury is told that before they can find you guilty
14 of the charges, the state has to present enough evidence to
15 convince them that you are guilty beyond a reasonable
16 doubt.

17 Now with a jury trial, that's the time that you have
18 to put up a defense. That means that you can call
19 witnesses who would testify in your behalf. You can take
20 the witness stand and testify for yourself if that's what
21 you wish to do.

22 You also have the opportunity before the trial begins
23 to present any legal challenges to the charge or to the
24 evidence. So, for example, if you've made statements to
25 law enforcement officers, you could have a hearing to

1 determine whether those statements could be used against
2 you. You also -- or if you've been searched for whatever
3 reason, you could have a hearing to determine whether it
4 was a valid search, and whether the evidence that came
5 about as a result of that search can be used against you.

6 If there's any other reason that you and your attorney
7 believe that you have to challenge either the charge or the
8 evidence, the time that that's normally done is right
9 before the jury trial begins. So, by pleading guilty at
10 this particular time, not only are you giving up your right
11 to a jury trial, but you're also giving up your right to
12 challenge the charge or challenge the evidence.

13 You also have the right to confront your accusers.
14 That's known as your right to confrontation. That's your
15 right to require the state to bring in the witnesses who
16 would testify against you so you have the opportunity to
17 see who those individuals are and hear exactly what they
18 have to say.

19 Those witnesses are required to come to court. They
20 would be placed under oath, and they would give testimony
21 from the witness stand. Once they've done that, then you,
22 through your attorney, you'd have the right to
23 cross-examine those witnesses and ask them questions while
24 they're under oath. So, by pleading guilty at this
25 particular point, you are giving up your right to confront

1 your accusers and to hear and to see what they have to say
2 and who those individuals are.

3 You also have the right to appeal a guilty plea. An
4 appeal from a guilty plea is very limited in nature.
5 Because this is not a hearing in which all the evidence is
6 being presented, you do not have the opportunity to
7 challenge the evidence that the state has against you.
8 However, you still have the right to have an appeal. If
9 you wish to have an appeal, your appeal must be filed
10 within ten days from today's date if I accept your plea
11 today.

12 If you do not tell your attorney very clearly to file
13 an appeal on your behalf, then if that's not done within
14 the ten-day period, then you may lose the opportunity to
15 have an appeal from your guilty plea.

16 I'm going to ask if you all have understood the rights
17 as I've explained them to you. I'm going to ask that you
18 answer out loud so that I can hear you. Have you all
19 understood the rights that I've explained to you this
20 morning?

21 (DEFENDANTS RESPOND EN MASSE.)

22 THE COURT: Thank you. You may have a seat, and we'll
23 take up your matters individually.

24 (OFF THE RECORD.)

25 (COLLECTION OF LETTERS/CERTIFICATES MARKED AS COURT'S

B. COLEY - EXAMINATION BY THE COURT

8

1 EXHIBIT NUMBER 1.)

2 (WHEREUPON, THE DEFENDANT IS DULY SWORN.)

3 THE COURT: Yes, ma'am.

4 MS. BODMAN: Thank you, Your Honor. Standing before
5 you is the defendant, Brice Coley. He is charged with one
6 count of murder. He is here to plead straight up to that
7 charge, no recommendations or negotiations. He is
8 represented by Robert Bank of the public defender's office.

9 EXAMINATION BY THE COURT:

10 Q. Brice Coley, is that you, sir?

11 A. Yes, ma'am.

12 Q. You need to speak up a little bit louder.

13 A. Yes, ma'am.

14 Q. How old are you, sir?

15 A. Twenty.

16 Q. And how far did you go in school?

17 A. High school diploma.

18 Q. Before you were arrested, were you employed?

19 A. Yes, ma'am.

20 Q. Where did you work?

21 A. Food Lion on Harden Street.

22 Q. And how long did you work there?

23 A. Around ten months.

24 Q. Are you currently under the influence of any drugs or
25 alcohol or prescription medicines?

B. COLEY - EXAMINATION BY THE COURT

9

1 A. No, ma'am.

2 Q. Do you have any physical or mental conditions that
3 would prevent you from being able to understand a plea here
4 today?

5 A. No, ma'am.

6 Q. Mr. Coley, you understand that you've been charged
7 with murder, which carries a minimum of thirty years up to
8 life in prison. Do you understand that?

9 A. Yes, ma'am.

10 Q. You understand it's also considered to be a violent
11 offense. It's a no-parole offense, which means that you're
12 not eligible for parole, and that it is considered a
13 serious offense, which constitutes a strike?

14 A. Yes, ma'am.

15 Q. And you understand if you are subsequently convicted
16 of other charges that carry a serious or a most serious
17 designation, that the state could seek to serve you with
18 notice of sentence of life without the possibility of
19 parole? Do you understand that?

20 A. Yes, ma'am.

21 Q. And with the murder charge, you are currently facing
22 life without the possibility of parole. You understand
23 that?

24 A. Yes, ma'am.

25 Q. You are represented by Mr. Banks. Is that correct?

B. COLEY - EXAMINATION BY THE COURT

10

1 A. Yes, ma'am.

2 Q. Did he explain this charge to you?

3 A. Yes, ma'am.

4 Q. Did he explain to you the consequences and penalties
5 for a conviction?

6 A. Yes, ma'am.

7 Q. Did he also explain to you the evidence that the state
8 has against you on this charge?

9 A. Yes, ma'am.

10 Q. And did he explain to you in more detail your
11 constitutional rights?

12 A. Yes, ma'am.

13 THE COURT: Mr. Banks, you've heard your client
14 indicate that you've had those conversations with him. Is
15 that correct?

16 MR. BANK: That's correct, Your Honor.

17 THE COURT: And did you, in fact, discuss with Mr.
18 Coley this particular charge, as well as the possible
19 penalties and consequences?

20 MR. BANK: I did.

21 THE COURT: And did you explain to him the evidence
22 that the state has against him?

23 MR. BANK: I did.

24 THE COURT: Did you also explain to him in more detail
25 his constitutional rights?

B. COLEY - EXAMINATION BY THE COURT

11

1 MR. BANK: Yes, ma'am.

2 THE COURT: Do you believe that he understood all the
3 conversations that you had with him about this case?

4 MR. BANK: I do.

5 BY THE COURT:

6 Q. Mr. Coley, you were present earlier when I explained
7 to you your constitutional rights. Is that correct?

8 A. Yes, ma'am.

9 Q. Did you understand those rights as I explained them to
10 you?

11 A. Yes, ma'am.

12 Q. On the front of this indictment, there's a place that
13 says: Action of the grand jury. There's a true bill here
14 as well as the signature of the foreperson and the date.
15 That tells me the grand jury did have the opportunity to
16 consider this charge. It was presented to the grand jury,
17 and that they voted true bill in which you were -- they
18 decided that you should be formally charged. You
19 understand that?

20 A. Yes, ma'am.

21 Q. Do you understand that by pleading guilty here today,
22 that you are giving up your right to remain silent, you're
23 giving up your right to confront your accusers, and you're
24 giving up your right to a jury trial?

25 A. Yes, ma'am.

B. COLEY - EXAMINATION BY THE COURT

12

1 Q. Has anyone promised you anything to come here and
2 plead guilty?

3 A. No, ma'am.

4 Q. Has anyone threatened you or coerced you to plead
5 guilty?

6 A. No, ma'am.

7 Q. Has there been any hope or promise of any reward or
8 any benefit to you to plead guilty?

9 A. No, ma'am.

10 Q. Then before I accept your plea, I will hear from the
11 state about the facts.

12 THE COURT: Yes, ma'am.

13 MS. BODMAN: Thank you, Your Honor. This occurred
14 back January the 15th of 2013. A 911 call came in
15 approximately 11:30 that there was an intoxicated person in
16 the middle of the street at and ; which
17 is out off Road. When police officers arrived,
18 they found that that was not, in fact, the case. The
19 victim, a young man by the name of Moses McKnight who was
20 eighteen years of age, was dead in the middle of the street
21 from a single gunshot wound to the back of his head.

22 Basically at that point, law enforcement just began
23 trying to talk to people in the neighborhood and trying to
24 get maybe phone records off the victim's phone to see what
25 contacts he had. There were a couple of people in the

1 neighborhood that indicated they saw the victim with a
2 couple of people in a Cadillac, but that eventually went
3 nowhere. Those people came in and gave statements, and we
4 were able to determine they were not involved in the
5 murder.

6 But essentially it is, I guess, law enforcement out
7 there talking on the street and investigating this. A
8 young man by the name of Kevin Grant showed up at the
9 police station with his parents at approximately 2:00 in
10 the morning a couple of days later. He gave the first of
11 two statements within about a twelve-hour period of time.
12 Kevin Grant indicated that he was out there with the
13 victim, Moses McKnight, and the defendant. So, he is the
14 one who gave us the defendant's name.

15 In his first two statements he denied being present at
16 the actual shooting, but essentially said that the
17 defendant came over to his house around 10:30 that night to
18 get a marijuana grinder, and the defendant showed him a
19 silver 9 mm Smith and Wesson pistol. They walked then to
20 the victim's house, to Moses McKnight's house, to see if he
21 had some weed. The victim took them to someone else's
22 house, but the defendant said he lost his money. So, they
23 went back to the victim's house to get basically a
24 flashlight so they could find this money.

25 When they went back outside, a gentleman by the name

1 of Slim walked up, and they asked him if he had some weed,
2 and he refused to sell it to them and he walked off.
3 Within a very short time later, Slim says -- we located
4 Slim, and he said that he heard a single gunshot.

5 Kevin Grant, this eyewitness, at that point said that
6 he actually left before the shot happened and that he was
7 out of sight when he heard the gun go off, and that he ran
8 home, and that the defendant called him later and said that
9 he had shot Moses McKnight.

10 About that period of time, after Kevin gives his
11 second statement, the defendant called law enforcement and
12 says that he is receiving harassing phone calls, and he
13 claims that he's receiving text messages that they know
14 that he killed the victim, and that they are going to
15 retaliate. So, he wanted to make a report as to harassing
16 phone calls. An officer called back to the headquarters,
17 the police station, and at this point, based on Kevin
18 Grant's eyewitness account of the murder, they took the
19 defendant into custody and brought him to headquarters to
20 arrest him for the murder.

21 Initially, the defendant admitted to going to Moses's
22 house to buy some weed but denied any involvement in the
23 shooting. While this interview with the defendant is going
24 on, a search warrant is being executed at the defendant's
25 home, where they find a 9 mm Smith and Wesson in his closet

1 in his bedroom wrapped up in some clothes in, I guess, an
2 attempt to hide it.

3 At that point, the defendant is confronted with the
4 fact that a 9 mm, a Smith and Wesson, has been found in his
5 room. There was actually a 9 mm casing next to the victim
6 on the roadway, a single casing. So, when he's confronted
7 with the fact that the weapon has been found in his closet,
8 he doesn't want to talk anymore. So, they take him down to
9 Alvin S. Glenn Detention Center to book him for the murder.

10 The defendant then spontaneously, while they're
11 waiting for the booking process to occur, the defendant
12 spontaneously says, he blurts out that he killed the
13 victim, and he says because he was plotting to rob me. The
14 officers asked him if he wanted to go back to headquarters
15 and give a full statement, and he said that he did.

16 They went and got him something to eat, brought him
17 back to headquarters, and the defendant gave a full
18 statement, basically saying that he feared being robbed by
19 the victim because he, quote, felt like the victim was
20 plotting to get him robbed. That he went to the victim's
21 house with Kevin Grant under the guise of asking to buy
22 some weed. He acted like he lost his money and went back
23 to the victim's house to get a flashlight. He acknowledged
24 that this gentleman by the name of Slim walked up and that
25 the victim tried to get him to sell them some weed, but

1 Slim refused.

2 Once Slim left, the defendant admits that he pulled
3 out the gun and said, quote: Shit is really getting real;
4 what did you think was going to happen. And the victim
5 said: I don't know. The defendant stepped back behind the
6 victim and shot him once in the back of the head. He
7 couldn't find the cartridge casing, and he and Kevin then
8 fled.

9 The cartridge casing recovered next to the victim's
10 body on the street was analyzed with the pistol, with the
11 Smith and Wesson, and it was, in fact, fired from that gun
12 that was recovered from his closet.

13 Then a third statement is gotten from Kevin Grant, and
14 at that point he does admit that he was only about fifteen
15 feet away when the defendant shot the victim in the back of
16 the head. We also got another statement from the gentleman
17 called Slim, and Slim identified both Kevin Grant and the
18 defendant as the two people that he saw standing out there
19 in the road with Moses McKnight.

20 The defendant has no prior history.

21 So, those are essentially the facts. At the
22 appropriate time when we get to punishment, I would like to
23 highlight some things. Ms. Carol Lybrand, the victim's
24 mother, is present. Candinia Lybrand, the victim's sister,
25 is present. Grant Young, the victim's stepfather, is

1 present, and a family friend is present. Carol Lybrand,
2 the victim's mother, would like to address the court at the
3 appropriate time, as well as Investigator Johnson, the lead
4 investigation standing with me, would like to address the
5 court.

6 THE COURT: I'll hear from the investigator at this
7 time.

8 INVESTIGATOR JOHNSON: Thank you, Your Honor.

9 During this case, as Ms. Bodman said, we certainly got
10 sufficient evidence to make the arrest. And any time we
11 interview anybody that has committed a crime, one of the
12 things we like to find out is the reason or the motive, you
13 know, to give the family some type of closure as to why
14 something like this occurred. As Ms. Bodman stated
15 earlier, the only reason that he could give or would give
16 was that he felt like Moses McKnight was going to someday
17 rob him.

18 Throughout this interview, his expression was what you
19 see right in front of you right now; his demeanor was what
20 you see in front of you right now. He showed no remorse,
21 no fear, no emotion of any kind. Two years ago when I
22 investigated this case, it was my opinion then that he just
23 had a gun and wanted to kill somebody, and that is still my
24 opinion today: that he just wanted to kill somebody, and
25 Moses McKnight just happened to be the victim.

B. COLEY - EXAMINATION BY THE COURT

18

1 He lured him down into a very dark, secluded area at
2 the corner of in where there's no
3 street light. Even went back a second time. Moses
4 McKnight offered to go get a flashlight to help this man
5 who ended up killing him look for some money that he had
6 apparently lost. So, after they go back and get a
7 flashlight and come back to the secluded area, he's even
8 bold enough and cold enough to ask the victim what do you
9 think is about to happen and then shoots him in the back of
10 the head.

11 Cold blooded, Your Honor. He took a life. He should
12 give one.

13 EXAMINATION BY THE COURT RESUMES:

14 Q. Mr. Coley, you've heard the facts as they have been
15 stated. Is there anything that you wish to add or change
16 or correct about what's been stated?

17 MR. BANK: Your Honor, maybe I can help. I think that
18 he might take some issue with some of the characterizations
19 that the lead investigator may have stated, but as to the
20 facts that Ms. Bodman stated might be a better way to...

21 A. I'm not going to -- no, ma'am, I would not change
22 anything.

23 Q. I'm sorry? You need to speak up.

24 A. I would not change anything.

25 Q. Thank you, and so you admit that in January of 2013,

B. COLEY - EXAMINATION BY THE COURT

19

1 that you intentionally killed the victim, Moses McKnight,
2 by means of a gunshot. Is that correct?

3 A. Yes, ma'am.

4 Q. Have you had enough time to discuss this matter with
5 your attorney?

6 A. Yes, ma'am.

7 Q. Have you cooperated with him so that he could prepare
8 a defense for you?

9 A. Yes, ma'am.

10 Q. Has he done everything that you've asked him to do in
11 connection with this particular charge?

12 A. Yes, ma'am.

13 Q. Mr. Coley, are you pleading guilty freely and
14 voluntarily?

15 A. Yes, ma'am.

16 Q. Are you pleading guilty to the murder because you are
17 guilty of that charge?

18 A. Yes, ma'am.

19 THE COURT: Then I will accept your plea. I find that
20 it's freely made and voluntarily made, and that you
21 understand that you're giving up your constitutional
22 rights, including your rights to a jury trial.

23 I will hear from the victim's mother at this time.

24 MS. BODMAN: Carol Lybrand.

25 THE COURT: Ms. Lybrand, if you would speak up loudly

1 so that I can hear you.

2 MS. LYBRAND: My name is Carol Lybrand. I'm Moses
3 McKnight's mother.

4 Your Honor, for the last two years, me and my family
5 have been going through hard times dealing with, with my
6 son's death, and I believe that Brice Coley should get
7 close to life or life. It's premeditated. Him and my son
8 had two altercations before this happened. He turned
9 around and killed my son for no reason. He had robbed my
10 son before, and I feel that justice should be served.

11 THE COURT: Thank you, ma'am.

12 Yes, sir, Mr. Bank.

13 MR. BANK: Thank you, Your Honor. May it please the
14 court? Your Honor, Mr. Coley is standing before you
15 pleading guilty to murder. He knows in doing that, that
16 this charge has a thirty-day minimum -- or, I mean, a
17 thirty-year minimum and that's day for day. He's doing so
18 without an offer. I want to make that statement for the
19 record so that's clear. I believe the state offered
20 something in the range of sixty to eighty. So, when I say
21 no offer, I mean no offer that wasn't de facto life.

22 And he knows he has a right to a trial. We're
23 scheduled for a trial in about two and a half weeks,
24 obviously in this county, but he stands here before --
25 doing his best to accept responsibility under not the best

1 circumstances as a lot of other folks are under.

2 Your Honor, this case is a murder. These cases are
3 the toughest we deal with just by the nature of what they
4 are. Brice knows today that your decision is going to
5 affect what happens with the rest of his life, but that
6 more importantly we have a life we can't take back, and
7 that's that of Moses McKnight.

8 With that said, Your Honor, we have a range here,
9 which is not less than thirty and as much as life, and the
10 whole point of being here at this point is to determine
11 where on that scale he's going to fall. There's a couple
12 points that I want to address and things to look at that
13 might help explain why we're going to ask where we fall on
14 that.

15 I think the first place to start is probably the
16 statute, which is 16-3-5 and 10, which is obviously the
17 malice aforethought statute, and then we have the
18 aggravating and mitigating circumstances statute, which
19 obviously applies to death penalty cases and submitting to
20 juries. And we aren't in that circumstance, but I still
21 think it gives guidance in what the legislature thinks is
22 important in terms of making this type of crime that's
23 already as bad as it can be worse, and what might explain
24 some of the things.

25 When you look at the aggravating circumstances laid

1 out in that statute, we don't fall under any. This wasn't
2 done in the commission of a crime like a robbery or a
3 sexual assault or anything like that. This wasn't a
4 situation where anybody else was hurt, or we were in a
5 situation where he put anybody in a situation where they
6 were at risk of being hurt, and I won't go through all the
7 aggravating circumstances, but we don't fall under any.

8 When we look at the mitigating circumstances, we see a
9 couple things. The first thing is no criminal history. He
10 is young, but that's -- as far as we know, no juvenile
11 record, no criminal record. The second thing we look at is
12 his age, his youth. His birthday is , so at
13 the time of this incident, he was eighteen years and five
14 months old. And then we look to his culpability, and when
15 I say culpability, I don't mean necessarily his criminal
16 responsibility but his maturity level, his ability to
17 appreciate crimes and conduct in the situation he's dealing
18 with in the same way that an adult might deal with, and
19 again I want to touch on that a little bit more in just a
20 little bit.

21 I think it's also important for the court to
22 understand his family background. Brice is not from
23 Columbia. His mother died in 2000; he essentially grew up
24 without a mother. I believe he was six years old when she
25 passed away. He never met his father. I don't know that

1 he actually has a home that he's from. He bounced, bounced
2 around from family member to family member until he was a
3 teenager, at which point he ended up with his grandmother
4 in Atlanta who, by all accounts that we have been able to
5 find, wanted him there for the government check.

6 When he was turning seventeen and about -- that check
7 was, I believe, about to run out, he was then sent to
8 Columbia. In being sent to Columbia, he was being sent to
9 an uncle who, on the outset -- he's a truck driver. You
10 wouldn't think that maybe with his past, with Brice's past,
11 that somebody that's not going to be home a lot is going to
12 be very good support for him. But his uncle's wife, Ms.
13 Wright -- and both of them are in the courtroom today --
14 was there, and that -- she was actually able, I think, to
15 provide the closest thing to support he ever had. She
16 helped make sure that he got through high school. That he
17 actually walked at graduate, not a GED, but actually
18 walked.

19 We've actually gotten in touch with some of those
20 teachers. My investigator is here today, and we've gotten
21 a couple of letters. I've given them to Ms. Bodman. I've
22 made them exhibits; I'm going to hand them up in just a
23 minute.

24 But it was at this time in about this six-month phase
25 of seventeen turning to eighteen that he's finally got

1 stability. He's working. After he graduated, he starts at
2 Midlands Tech that fall. He's working at Food Lion, as he
3 mentioned.

4 And I know that you're familiar with Columbia, Judge
5 Lee. He actually lived on or right off of
6 and walked to Food Lion, which I think you
7 can understand is about -- over, over an hour's walk every
8 day that he was going. I spoke to one of his managers who
9 still works there, Ms. Crystal Vereen, who said a lot of
10 the things that a lot of other people we said -- that we
11 met said, and that was that he was quiet, that he was
12 respectful. He did what he was asked to do for Ms. Vereen.
13 That he showed up on time despite his long walk, and then
14 again what everybody else said: that when they heard about
15 this or when they read it in the papers, they were just as
16 shocked as anybody else. They hadn't seen those aggressive
17 behaviors or anything like that.

18 So, again, you know, I think that gives an idea of a
19 hard beginning but starting to get right, and then in the
20 last few months before this incident we start to see a
21 regression again. From what we've been able to see,
22 anywhere from about two months to six months before this
23 January incident, Brice's mood begins to change. His
24 friends and social life begin to change; he begins to lose
25 weight. We suspect it's from either the beginning of drug

1 use at least increased drug use.

2 We actually had him evaluated by Dr. Carol McKnight --
3 Dr. Carol Knight, and we're not offering a report at any
4 point. She found him to be criminally responsible and
5 competent. But she did note that he did seem to have a
6 paranoia associated with what's likely marijuana use that
7 was tied to a fear of people either following him or trying
8 to harm him. And, and we've gotten that through talking to
9 him, through talking to Ms. Wright and her husband, and
10 some of the things that were going on at that time. Either
11 way we look at it, during this time and right around this
12 incident, there is a societal, social shift with Brice, and
13 there was also some type of drug shift or change with Brice
14 as well.

15 Now at the time of this incident, as we're kind of
16 coming in to this, obviously the solicitor's already stated
17 this, but Moses McKnight was a person that Brice knew. It
18 doesn't appear that they necessarily got along for whatever
19 reasons that might be, but correct or not, and whether, you
20 know, the solicitor's office or the police department feel
21 that's sufficient or not, Brice felt like in some way Moses
22 McKnight was a person that would harm him. It wasn't in an
23 imminent way. It wasn't in a way that gives any type of
24 justifiable legal reason to be in the situation and, and
25 cause the act that occurred that day, but it appears to be

1 consistent, and we found that in all of our time with him.

2 Your Honor, with that said, I don't believe that this
3 incident was created by some type of irreversible character
4 trait that, that we just can't fix. I think it's more
5 likely attributable to his social upbringing, to his age,
6 and specifically his age is kind of what I want to talk
7 about last.

8 I know you're familiar, Your Honor, with two recent
9 cases that aren't completely applicable here, but I think
10 that they again give us some guidance. It's *Alabama vs.*
11 *Miller*, case site 132 Supreme Court 2455, and then
12 obviously the corresponding South Carolina case, which is
13 *Aiken vs. Byars*, and I don't believe it has a case cite
14 yet. I have an appellate case number for it, which is
15 2012-213-286.

16 And as I mentioned, I understand these aren't
17 completely applicable in the sense that we're not in a
18 mandatory life sentence situation. I mean, that's the
19 whole reason we're having this hearing. And also he's five
20 months from being eighteen years old. These cases apply
21 to, to kids under eighteen, but I can still think in the
22 same way that the statute provide us some guidance, I think
23 these cases provide us some guidance in how the United
24 States Supreme Court and South Carolina Supreme Court look
25 at youth and the factors that are inherent in youth -- with

1 him being that young -- when we're in this type of
2 sentencing situation.

3 I just have, I think, two quotes I want to point out
4 to, to this court from the South Carolina case, which was
5 majority, semi majority written by Judge -- Justice Hearn,
6 and without the case cites it's difficult for me to do a
7 page number, but on mine it's page 4. She writes:

8 A sentence must be allowed to consider that youth
9 is more than a chronological fact and carries
10 with it immaturity, irresponsibility,
11 impetuousness, and recklessness, factors as
12 transient as youth itself.

13 And, Your Honor, a little further down she quotes the
14 *Miller* case and saying specifically the court, the court
15 being the Supreme Court:

16 Noted, noted juveniles differ from adults in
17 their general lack of maturity and underdeveloped
18 sense of responsibility, vulnerability to
19 negative influence and outside pressures,
20 including family and peers, and still evolving
21 character and personality traits.

22 And then finally she has a very short quote, and it
23 wasn't quoted from the United States Supreme Court. It's
24 her own language. She states, and I, and I think it sums
25 up the cases: Youth has constitutional significance. And,

1 Your Honor, I think that applies here.

2 Obviously a lot of the courts have been trying to
3 figure out what to do with these cases. They lay out some
4 factors in the case, or at least Justice Hearn's opinion
5 does. Those factors, which again I'm sure you're familiar
6 with, are:

7 One, the chronological age of the offender and
8 the hallmark features of youth, including
9 immaturity and failure to appreciate the risks
10 and consequences; two, the family and home
11 environment; three, the circumstances of the
12 homicide offense; four, the incompetencies
13 associated with youth, including the offender's
14 ability to deal with police officers; and five,
15 the possibility of rehabilitation.

16 I, I believe that all five of those factors can be
17 applied to, to Brice, but I think the most important are
18 one, two, and five, the first being, and as I stated at the
19 beginning of this, that I don't believe that he necessarily
20 appreciated the results of what was going to happen that
21 night in the same way that an adult would. I don't think
22 it's any stretch of the imagination to, to say that this is
23 probably the first time he'd pulled a trigger, and if it's
24 not, it's certainly the first time he pulled it while he
25 was aiming at something.

1 The second factor we have, which is the social
2 upbringing, we don't have one. Until about six months in,
3 this, this is the only family we have. My investigator,
4 Dr. Carol Knight have tried to get in touch with numerous
5 people in different states. Either can't give somebody, or
6 they won't call back. Really it's, it's, it's these folks
7 and then his teachers, and I think that that's very telling
8 of where we are with him.

9 The final factor that I wanted -- that the court
10 mentions that I want to highlight is rehabilitation. First
11 of all, he's taking responsibility. He knows he can go to
12 trial in three weeks. He knows he's not guaranteed any
13 sentence here today. He's pleading guilty to the crime.
14 And also in his -- and we'll call it a short time for most.
15 I guess it's not, but in the -- in respect to the time that
16 we're going to be talking about, in his short time at Alvin
17 S. Glenn of about two years -- and I've got these also
18 marked as exhibits. He has several certificates for
19 classes that he's taken, from anger management to
20 faith-based to reentry into society, which he understands
21 isn't any time soon but it's still an effort that he made
22 in the last two years. And I actually I have some letters
23 from two of the teachers -- again, I've already made court
24 exhibits -- and I'll hand up in just a moment.

25 Your Honor, I, I can guess that there's been a lot of

1 murders in front of you. I know that there have, whether
2 they be pleas or whether they be trials. Much like in
3 those, the question here that we end with is where does he
4 fall on this range of not less than thirty and as much as
5 life. And, Judge, I think when you take into consideration
6 his age, his social background, his lack of criminal
7 history, his ability to accept responsibility as he's doing
8 here today, and his signs of being able to work towards
9 rehabilitation, we believe that he falls on the lower end
10 of that scale, and that's where we respectfully ask you to
11 sentence, sentence us today.

12 At this time -- like I said, I've got -- these were
13 all handed to the solicitor's office beforehand. I've got
14 a court exhibit stabled with everything together and can
15 hand that up when it's appropriate. Brice has also written
16 a very short statement that at the appropriate time he'd
17 like to read to the court.

18 THE COURT: Yes, sir.

19 You need to speak up so that the court reporter can
20 hear you as well.

21 DEFENDANT: Today on this occasion, I wish to take
22 full responsibility for my actions. My selfishness has
23 caused a lot of pain and grief, not only for the victim's
24 family but for their friends, too.

25 At this time in my life, I desire to begin the process

1 of true change. This change cannot be possible without
2 openness and honesty. The time for me -- the time for
3 rationalization and excuses is over.

4 While being detained at Alvin S, Glenn these past
5 twenty-seven months, I have utilized this time to delve
6 into the true motivation behind my poor choices by
7 involving myself in any and all programs and classes. This
8 newfound knowledge that I have gained has been instrumental
9 in me beginning to think new and better thoughts and has
10 given me hope for a better life. So with that being said,
11 I want to extend my deepest, most heartfelt apologies for
12 any and all pain that I have caused.

13 MR. BANK: And, Your Honor, if I can approach with the
14 letters? For the record, I believe it's two letters from
15 teachers at Olympia, two letters from counselors at Alvin
16 S. Glenn, and then five separate certificates.

17 (A PAUSE.)

18 THE COURT: Is there anything further from anyone?

19 MS. BODMAN: Yes, Your Honor. I apologize. After the
20 victim's mother spoke, the victim's sister, Candinia
21 Lybrand, requested to also address the court.

22 THE COURT: Yes, ma'am.

23 MS. CANDINIA LYBRAND: My name is Candinia Lybrand,
24 and despite what Brice Coley might say, I believe he ---

25 THE COURT: I'm sorry. I can barely understand you.

1 MS. CANDINIA LYBRAND: Despite what Brice Coley might
2 say, I believe that he killed my brother over jealousy and
3 envy. And I believe that he should serve life in jail
4 because he and my brother was the same age, and my brother
5 will never have a life to live, while he's living his life.
6 So, I think and believe that he should pay for his sins
7 with his life. That is, I ask the judge to not be lenient
8 with him and let him serve time for the rest of his life in
9 jail for killing my brother, Moses.

10 THE COURT: Thank you.

11 MS. BODMAN: Your Honor, I took a look at the *Aiken*
12 *vs. Byars*. The cite is 765 S.E. 2d 572. Number one, the
13 case doesn't apply because it directly addresses juveniles.
14 He's not a juvenile and it directly addresses under the age
15 of eighteen, and he was eighteen and five months. So, the
16 case doesn't apply at all. But if the court does want to
17 look at some of the factors that they laid out, the ones
18 that Mr. Bank brought up are impetuous, recklessness, and
19 the circumstances of the homicide.

20 This was not an impetuous act; he planned it out. He
21 admitted that he purchased the gun on the street that day
22 from someone that he did not exchange names with. He
23 planned out to go over there. He brought that gun. He was
24 the one that brought up the guise of buying some marijuana.
25 He lied about losing his money so he could get the victim

1 to the end of that street. It was dark.

2 It wasn't reckless. He didn't pull out that gun and
3 just start randomly shooting towards the victim in order to
4 scare him. He executed him with a single shot to the back
5 of the head: It was cold, calculated execution of a young
6 eighteen-year-old, and we think the circumstances of this
7 are far from the minimum sentence. Thank you.

8 (A PAUSE.)

9 SENTENCE OF THE COURT:

10 THE COURT: I've heard all the facts. I've heard the
11 comments that were made. I've heard the mitigation as
12 well, and after considering all of the information, Mr.
13 Coley, I'm going to sentence you to the Department of
14 Corrections for a period of fifty years. Good luck to you,
15 sir.

16 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
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 HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 21ST DAY OF APRIL, 2015.

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

S/ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

MAY 11TH, 2015

FORM 5

2015 CP 4006252

STATE OF SOUTH CAROLINA

County of RichlandBrice Di'von Coley 363771
Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION RELIEFRICHLAND COUNTY
FILED
2015 OCT 15 PM 4:02
JEANETTE HODGINS
C.C.P. S.S.**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 Alvin S. Glenn Detention Center
2. Name and location of Court which imposed sentence Fifth Judicial Circuit
1701 Main Street Columbia SC 29202
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013GS4004237 Murder
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 21, 2015 50 years in SCDC Day for day no
- (b) parole
- (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 I did not
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) My lawyer did not file it for me. I was unable
- (b) to call him do to me being on Rans/E/Kirkland

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Plea Counsel & ~~the~~ Counsel
 - (b) Unduly Harsh Sentence
 - (c) Failure to Psychiatric examination
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Was given new lawyer without notification, no time to prepare for plea/trial
 - (b) Immaturity, incompetencies associated with youth, negative influence
 - (c) Failure to investigate Psychiatric report, investigate medical examiner's report
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) Did not know what procedure to take to file anything
 (b) Didn't have proper ~~an~~ counseling/advice
 (c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
 i. Robert "Bobby" Banks Jr. P.O. Box 192 1701 Main Street Columbia, SC 29202
 ii. Joanna Delany 1701 main street Columbia, SC 29202
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. At General Session Court to take plea deal.
 ii. To talk to me when I was detained to try and prepare for court
 iii. _____

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

To hopefully get a new plea deal to wear I have a
chance to rehabilitate myself and maybe get a lighter
sentence

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

NO

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

I, Brice Coley, 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.

Brice Coley BC

SWORN to and subscribed before me this 9th
 da of October, 2015.

Janet Diggins (L.S.)
 Notary Public

My Commission Expires: 11-05-2019

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

I, Brice Coley, 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.

Brice Coley BC
Applicant

SWORN or affirmed to and subscribed before me this
9th day of October, 2015.

Janet J. Duggers
Notary Public

My Commission Expires: 11-05-2019

RICHLAND COUNTY
 FILED
 2015 OCT 15 PM 4:03
 JEANETTE W. McBRIDE
 C.C.P. & G.S.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Brice Di'Von Coley, #363771,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2015-CP-40-06253

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed October 15, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was indicted at the July 2013 term of the Court of General Sessions for Richland County for murder (2013-GS-40-04237). Applicant was represented by Robert L. Bank, Jr., Esq. and Joanna K. Delany, Esq. Applicant pleaded guilty on April 21, 2015 as indicted. The Honorable Alison R. Lee sentenced Applicant to fifty (50) years' imprisonment. Applicant did not appeal his plea or sentence.

Attached herewith and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject conviction, the transcript from Applicant's plea hearing, 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, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel, in that;
 - a. "was given new lawyer without notification, no time to prepare for plea/trial"
2. "Unduly harsh sentence", in that;
 - a. "immaturity, incompetencies associated with youth, negative influence"
3. "Failure to psychiatric examination", in that;
 - a. "Failure to investigate psychiatric report, investigate medical examiner report."

III.

Respondent submits Applicant's allegation of ineffective assistance of plea counsel is without merit. Respondent interprets Applicant's third allegation of "failure to psychiatric evaluation" as ineffective assistance of counsel as well. 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, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea 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." 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).

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

IV.

A trial court has broad discretion in imposing criminal sentences within the limits prescribed by law. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976); Clark v. State, 259 S.C. 378, 192 S.E.2d 209 (1972). The courts normally have no discretion to correct a sentence given within statutory limits. To be entitled to relief, the Applicant must prove that the alleged excessive sentence was the result of partiality, prejudice, oppression or corrupt motive, or that the sentence constitutes cruel and unusual punishment per se. Clark, Id.; State v. Cogdell, 272 S.C. 563, 257 S.E.2d 748 (1979). The Applicant has failed to show his sentence was a result of

any of these factors. Accordingly, this Court should summarily dismiss with allegation as being without merit.

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.

VII.

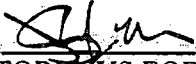
WHEREFORE, having made its Return, Respondent requests that a hearing be held solely on the claim of ineffective assistance of counsel.

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: 
ATTORNEYS FOR RESPONDENT

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

2/17, 2016

STATE OF SOUTH CAROLINA
COUNT OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

BRICE DI'VON COLEY, #363771

2015-CP-40-06253

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

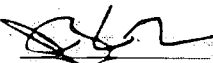
STATE OF SOUTH CAROLINA,

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:

David K. Allen, Esquire
The Allen Law Firm, P.A.
PO Box 3241
West Columbia, SC 29171

DATED this 16th day of February, 2016.



Jenna C. Brown, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
County of Richland	)	2015-CP-40-06253
	)	
BRICE DI'VON COLEY,	)	
	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
RESPONDENT,	)	

July 14, 2016
Columbia, South Carolina

BEFORE:

THE HONORABLE D. CRAIG BROWN, JUDGE.

APPEARANCES:

DAVID ALLEN, ESQ.
Attorney for the Applicant

JOHNNY JAMES, ASSISTANT ATTORNEY GENERAL
Attorney for the State

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S
INDEX OF WITNESSES:

BRICE COLEY

Direct By Mr. Allen 4

Cross By Mr. James 16

Redirect By Mr. Allen 18

ROBERT BANK

Direct By Mr. Allen 19

Cross By Mr. James 28

Redirect By Mr. Allen 33

JOANNA DELANEY

Direct By Mr. Allen 34

Cross By Mr. James 36

> > > < < <

(no exhibits were introduced)

CERTIFICATE OF REPORTER 45

1 THE COURT: Yes, sir, go ahead.

2 MR. JAMES: Just to offer a brief procedural history,
3 Your Honor, the Application is presently confined in the
4 South Carolina Department of Corrections.

5 Applicant was indicted at the July 2013 term for the
6 Court of General Sessions for Richland County for murder.
7 The Applicant was represented first by Joanna K. Delaney,
8 Esquire, and thereafter by Robert L. Bank, Jr. Esquire.

9 Mr. Coley pled guilty on April 21st, 2015 as
10 indicted. The Honorable Alison R. Lee sentenced him to 50
11 years imprisonment. He did not appeal.

12 He is present here today and is represented by
13 Mr. David Allen, Esquire. He filed his PCR application
14 October 15th, 2015. Your Honor, the State is ready.

15 THE COURT: All right. Mr. Allen?

16 MR. ALLEN: Thank you, Your Honor. No issues with
17 the recitation of procedural background. I'm prepared to
18 call my first witness.

19 THE COURT: Please do so.

20 MR. ALLEN: Thank you, Your Honor. I'd call Brice
21 Coley.

22 BRICE COLEY, after being duly sworn,
23 testified as follows:

24 THE COURT: All right. If you would have a seat.
25 State your name for the record. Spell your last, please.

1 THE WITNESS: Brice Coley, C-O-L-E-Y.

2 THE COURT: Thank you.

3 DIRECT EXAMINATION:

4 BY MR. ALLEN:

5 Q Good morning, Mr. Coley.

6 A Good morning.

7 Q Just very briefly by way of background, just tell the
8 Court where you're from.

9 A I was originally born in Ruston, Louisiana, moved to
10 Houston; Atlanta; moved down here to South Carolina
11 in 2015 -- I mean 2012.

12 Q Okay. Do me a favor, speak up just a little bit. At
13 the end of that, you moved to Columbia in 2012?

14 A Yes, sir, January.

15 Q Okay. January of 2012, you moved here. How long
16 before you were arrested for these charges?

17 A A year later, January 17th, 2013.

18 Q What charges were you arrested on?

19 A Murder.

20 Q Anything else?

21 A No, sir.

22 Q Were you given a bond for that murder charge?

23 A No, sir.

24 Q Have you been in jail or prison since January 17,
25 2013?

1 A No, sir.

2 Q When were you out?

3 A I was never out.

4 Q You've been in jail or prison ever since
5 January 17th, 2013?

6 A Yes, sir.

7 Q At some point after you were charged with murder,
8 were you appointed an attorney?

9 A Yes, sir.

10 Q Who was that?

11 A My first attorney was Joanna Delaney. Then I guess
12 she resigned, and I got Robert Banks.

13 Q Okay. But starting the Joanna Delaney, that's a
14 Richland Public Defender?

15 A Yes, sir.

16 Q How long after you were charged did you first meet
17 Ms. Delaney?

18 A I would say about two -- a week or two, not that
19 long.

20 Q Okay. At that point, did -- did she discuss the
21 charges against you?

22 A Yes, sir.

23 Q Did she have the discovery to go over with you at
24 that time?

25 A It took some time to get it, but yes, sir, I got it.

1 Q How long would you say it took before you got it?

2 A About 60 days, two months.

3 Q Did Ms. Delaney visit you to go over that discovery?

4 A Yes, sir.

5 Q What was her opinion of the State's case against you?

6 A Very strong.

7 Q Okay. Did you discuss your opinion of that, as well?

8 A I did but I really couldn't fight it. Like I say,
9 the evidence was very strong against me.

10 Q I know you had attorney Robert Bank appointed later
11 on, but did you get to the point with Ms. Delaney where
12 you discussed going to trial, doing a plea? Did that come
13 up?

14 A I was trying to get a plea, but the plea that she
15 told me was, if I'm not mistaken, for 60 or 80. Then she
16 resigned, and I was appointed Robert Bank.

17 Q But she did tell you there was a plea offer?

18 A Uh-huh.

19 Q And one more time, what was that offer?

20 A Sixty to 80.

21 Q Sixty to 80 years?

22 A Yes, sir.

23 Q Did she hire an investigator for you?

24 A I believe she did, yes, sir.

25 Q Did you meet with that person?

1 A One time, once.

2 Q Do you remember his or her name?

3 A No.

4 Q Do you remember anything about the conversation with
5 the investigator?

6 A He was very helpful. He wanted to do his best to
7 help me out, but other than that, I just met him one time.
8 I believe -- I believe he came to the courtroom a couple
9 more times. I'm not sure. I don't remember.

10 Q Did you give him any leads to follow up on or
11 witnesses to speak with?

12 A I did but I'm not sure he was able to respond to
13 that.

14 Q Who did you tell him to speak with?

15 A The person that made the statement against me and the
16 people that wrote statements on me that didn't know
17 anything about the case.

18 Q Okay. Did Ms. Delaney fail to look into anything or
19 the investigator fail to look into anything that you
20 thought was important?

21 A My mental health.

22 Q Okay. Have you gotten some mental health treatment
23 in the past?

24 A Yeah, years back and then I stopped going. I took a
25 little bit of medicine in the county but I stopped.

1 Q You said years back. You mean since you were a
2 child?

3 A Yeah, when I was a child.

4 Q How old were you when you were charged with this?

5 A Eighteen.

6 Q Did you see a counselor growing up or a psychiatrist?

7 A Both.

8 Q Do you know what you were diagnosed with?

9 A No, sir, I don't.

10 Q Do you know if you were ever prescribed medication?

11 A I was but the medication -- I can't remember. My
12 mother was over all of that. She kind of kept me in the
13 dark with those things.

14 Q Where were you living when you were taking that
15 medication?

16 A In Houston and when I was in Atlanta.

17 Q Houston and Atlanta?

18 A Uh-huh.

19 Q Well, did you ever do inpatient treatment?

20 A I was in the mental health facility in Houston, Texas
21 for like a couple of months, and she took me out. People
22 wanted me to stay in there, but she -- somehow she got me
23 out of the mental health facility.

24 Q So the people at the facility wanted you to stay even
25 longer?

1 A Yeah.

2 Q But eventually, you did get out after how long?

3 A Two months.

4 Q Two months. Do you have an understanding of why you
5 were in there?

6 A Mental health issues and behavioral issues.

7 Q So you don't know specifically what diagnosis they
8 say they were treating there?

9 A No, I was a kid. That stuff really didn't matter.

10 Q Roughly how old were you at that time?

11 A Six going on seven.

12 Q At some point did Ms. Delaney stop representing you?

13 A When she resigned.

14 Q Do you know why she resigned?

15 A No.

16 Q But nevertheless, another attorney at the Richland
17 County Public Defender's Office took over?

18 A Uh-huh.

19 Q And that was, you said already, Robert Bank?

20 A Yeah, we called him Bobby but...

21 Q Bobby Bank?

22 A Uh-huh.

23 Q How long once Mr. Bank took over, or how much time
24 was it, until you had a trial date?

25 A I got appointed to him in January. I went to court

1 in April, so about four -- a few months or so, like a
2 couple of months before.

3 Q So now we're in January 2014, Robert Bank is
4 appointed?

5 A Uh-huh.

6 Q So Ms. Delaney had represented you for two years?

7 A Uh-huh.

8 Q And now Mr. Bank is appointed?

9 A Yes, sir.

10 Q Did you have a trial date set at that time?

11 A I was told we was going to have to go to trial, but
12 instead we took a plea in April.

13 Q Did Mr. Bank review the discovery with you, as well?

14 A He went over a little bit but not like -- not in
15 detail like Joanna did.

16 Q Do you recall how many visits you had with him?

17 A A few, so about like two or three.

18 Q Did you discuss going to trial with Mr. Bank?

19 A I did but we agreed on the plea because the judge was
20 a little lenient. If I'm not mistaken, Ms. Lee, she was a
21 little lenient, so we could decided to do a plea with her.

22 Q Why do you say Judge Lee was lenient? Is that based
23 on your experience?

24 A No, from what was told to me by him and other
25 inmates, but he was like, she is like a little lenient.

1 What he asked for, she gave us a little less than that --

2 Q And that --

3 A -- or not what he asked for.

4 Q The judge orders less than what he actually asks for?

5 A Or not less but a reasonable amount of time that time
6 he asked for, so that time, less.

7 Q Okay. Was your understanding -- was your
8 understanding that Mr. Bank was experienced in murder
9 cases?

10 A I was his first murder case, so to me, no. He was
11 not experienced. I was his first.

12 Q Did that impact your decision as to whether or not to
13 go to trial or to take a plea?

14 A Oh, a little bit because I wasn't sure with the law
15 and stuff like that, would he do just assistance.

16 Q Okay. Did Mr. Bank tell you that he had -- that you
17 had some things going for you in a plea setting as opposed
18 to going to trial?

19 A Nothing that the judge was lenient to go to plea, to
20 take the plea.

21 Q But you were -- you didn't accept the 60 to 80 plea
22 offer --

23 A No.

24 Q -- correct? So was your plea a straight-up plea?

25 A Thirty, I had an open plea for 30 to life.

1 Q Thirty to life. When you went into your plea date of
2 April 21st, 2015, did you understand that you were
3 pleading guilty to murder?

4 A Yes.

5 Q Did you have any understanding that there is a chance
6 that the judge would knock your charge down?

7 A From my understanding, that's the only time you can
8 get your charge knocked down is in General Sessions.
9 That's why I took the open plea, you know what I'm saying,
10 hoping that she would knock it down seeing that it was my
11 first time with no criminal background. I mean that...

12 Q What did you hope she would knock it down to?

13 A Voluntary, voluntary manslaughter, hope to get 20,
14 25.

15 Q So you walked into court on April 21st, 2015 thinking
16 there was a possibility that Judge Lee would change your
17 plea from murder to voluntary manslaughter?

18 A Yeah.

19 Q Did you and Mr. Bank discuss the crucial elements of
20 your murder charge?

21 A That murder carried 30 to life.

22 Q So that's the sentence. Did you discuss what the
23 State had to prove to find you guilty of murder?

24 A Yeah.

25 Q I'm sorry?

1 A Yes, sir.

2 Q Yes?

3 A (Nods in the affirmative.)

4 Q Okay. Did he tell you that when you go and plead
5 guilty, you are waiving certain rights afforded to you by
6 the Constitution?

7 A Yes, sir, but I really wasn't sure about that. So I
8 just put most of the stuff in his hands. It wouldn't
9 matter.

10 Q When you say you weren't sure about that, what do you
11 mean?

12 A Some of the rights. I know about my right to remain
13 silent and stuff like that, but I wasn't sure like the
14 plea. I know you can't really speak up when you want to
15 like you can at trial. I went with him with what he said.

16 Q Did Mr. Bank go over in detail with you the nature of
17 those Constitutional Rights you were waiving, or did he
18 just tell you you've waiving this right, that right?

19 A He did but I didn't understand. I was too nervous.

20 Q Did he go over those with you the day of your plea or
21 prior to that?

22 A Both.

23 Q I do want to go back, briefly back to when
24 Ms. Delaney was representing you. At some point did
25 Ms. Delaney find it necessary to send you for an

1 evaluation?

2 A Yes.

3 Q So you went for an evaluation?

4 A They came to me, actually.

5 Q Okay. Do you recall the doctor or counselor that you
6 spoke with?

7 A No.

8 Q What did you understand you were there for?

9 A Some type of evaluation.

10 Q Do you remember any of the questions that she asked
11 you?

12 A No.

13 Q Were you taking these medications that you spoke of
14 earlier up until the time you were arrested?

15 A No, sir. I stopped around the time my mother passed.

16 Q Do you -- have you ever -- can you tell the Court
17 your personal experience feeling some of the symptoms of
18 your mental health?

19 A Sometimes I blank out and usually sleep, sleeping
20 problems, none yet.

21 Q When you blank out, what happens?

22 A I don't remember it all until somebody tells me what
23 I did.

24 Q Somebody tells you what you did?

25 A Yeah.

1 Q So you're not asleep during a blank out?

2 A No.

3 Q What is one example of somebody telling us you
4 something you did while you blanked out?

5 A Say I beat somebody up. I might not know I did it
6 until after the fact, somebody tell me.

7 Q How often does that happen?

8 A Once in a blue moon, might be every six months, might
9 be every month things happen.

10 Q Is there anything in particular that makes it happen
11 more often?

12 A Stress.

13 Q Prior to your arrest in January 2013, were you using
14 any kind of medications, substances, illegal or not?

15 A Illegal.

16 Q Okay. What were you using?

17 A Marijuana, that's about it.

18 Q Did you find that to be a contributing factor to your
19 blank outs?

20 A Sometimes. It kept me calm a little bit. It was
21 mainly just school and stuff that would stress me out,
22 getting probation and whatnot.

23 Q You feel like stress led to blank outs?

24 A Yeah.

25 Q Anything that we haven't discussed that you think was

1 ineffective on the part of Mr. Bank or Ms. Delaney?

2 A Trying to get my mental health records could have
3 helped me out so I could be able to tell you what
4 medicines I was taking.

5 Q And that was never offered to the Court in your plea?

6 A No.

7 MR. ALLEN: Thank you.

8 THE COURT: Cross-examination?

9 MR. JAMES: Thank you, Your Honor.

10 CROSS-EXAMINATION:

11 BY MR. JAMES:

12 Q Mr. Coley?

13 A Yes, sir.

14 Q You remember the plea proceeding, correct?

15 A Just about, yes, sir.

16 Q Do you recall waiving your Constitutional Rights such
17 as your right to a jury trial, present witnesses on your
18 behalf, your right to remain silent?

19 A Yes, sir.

20 Q Do you recall the plea judge explaining to you the
21 charge of murder and the minimum sentence associated with
22 it, 30 years?

23 A Yes, sir.

24 Q And the maximum was up to life in prison?

25 A Uh-huh.

1 Q Do you recall telling the plea judge that Mr. Bank
2 explained to you the charges, the consequences of
3 conviction, and the evidence the State had against you?

4 A Yeah.

5 Q Do you recall telling the plea judge that Mr. Bank
6 explained to you your Constitutional Rights in detail?

7 A Yeah.

8 Q Do you recall offering any complaints to the plea
9 judge about your counsel's performance?

10 A No, sir, I didn't.

11 Q Do you recall telling the judge that you had enough
12 time discuss the case with your attorney?

13 A Yes, sir, I did.

14 Q All right. And you cooperated with him to prepare
15 and that he did everything you told him to do?

16 A Yes, sir, I do.

17 Q Do you recall telling the judge that no one was
18 promising or threatening you in order for you to plead
19 guilty?

20 A Yes, sir.

21 Q Do you recall telling the plea judge that you wished
22 to plead guilty freely and voluntarily?

23 A Yes, sir.

24 Q And that you were, in fact, guilty of the charge?

25 A Yes, sir.

1 If I may beg the Court's indulgence just a moment.

2 (Pause.)

3 No further questions, Your Honor.

4 THE COURT: Any redirect?

5 MR. ALLEN: Just a little bit, Your Honor. May it
6 please the Court.

7 REDIRECT EXAMINATION:

8 BY MR. ALLEN:

9 Q Brice, you just said that you -- you do recall
10 telling the judge that Mr. Bank went over the elements of
11 your charge. Do you really remember that, or do you just
12 assume that happened?

13 A I just assumed. I kind of went with it because I
14 didn't want to tell the judge some of the stuff. He told
15 me I didn't understand because I wanted him to help me to
16 the best of his ability.

17 Q Okay. So you don't remember any specific
18 conversation about the elements of the charge?

19 A It was very serious, a very serious charge, and my
20 life was on the line.

21 MR. ALLEN: Thank you.

22 THE COURT: Anything further from the State?

23 MR. JAMES: No, Your Honor.

24 THE COURT: Sir, you may step down. Thank you.

25 MR. ALLEN: May it please the Court, Your Honor. The

1 Applicant calls attorney Bobby Bank.

2 THE COURT: Sir.

3 ROBERT BANK, after being duly sworn,
4 testified as follows:

5 THE COURT: Come around. Be seated in the witness
6 stand. State your full name for the record, spelling your
7 last, please.

8 THE WITNESS: Yes, sir, Robert Bank, B-A-N-K.

9 DIRECT EXAMINATION:

10 BY MR. ALLEN:

11 Q Good morning, sir. Please tell the Court when you
12 began your representation of Mr. Coley?

13 A Sure. I began January of 2015, late January, I
14 believe. Ms. Delaney had represented him for the first
15 two years. She had accepted a new position at another job
16 in Columbia, so all of her cases were reassigned to
17 various attorneys in the Public Defender's Office.

18 Mr. Coley's case came to me, and like I said, that
19 would have been mid-to-late January. I believe the first
20 time I saw him at Alvin S. Glenn was the very end of
21 January.

22 Q Did it take you a long time to get up to speed on
23 this case?

24 A There was an enormous -- a pretty good amount of
25 discovery to go through. There was going through all

1 Ms. Delaney's notes. Speaking with Ms. Delaney, she made
2 herself available to me. So it took more time than a
3 typical case to get up to speed, yes, sir.

4 Q And you hadn't been second chairing her leading up to
5 her leaving, had you?

6 A No, sir. I had no -- I didn't know anything about
7 the case until it was assigned to me.

8 Q Had you had a lot of experience with murder cases
9 before?

10 A No, sir. Well, I, of course, worked on some second
11 or third chairs, but this was my first murder chair or
12 case that I was first chair on that I was the lead
13 attorney on.

14 Q Did you have a second chair?

15 A Yes. We had someone available to help if it, indeed,
16 went to trial. I believe Tracy Pinnock in our office said
17 that she could be available if the case had gone to trial.

18 Q Did she do any work since it never did go to trial?

19 A No, sir.

20 Q Okay. Did you speak with -- who was the prosecutor
21 on the case?

22 A Margaret Bodman.

23 Q Did you ever speak with her about a plea offer or
24 anything?

25 A Yes, sir.

1 Q What was the result of those conversations?

2 A Kind of a stalemate. We couldn't -- I couldn't get
3 any traction. I don't believe Ms. Delaney could get any
4 traction. She had offered some, a plea offer of I believe
5 60 to 80 years, or obviously, we could a plead straight up
6 to the charge.

7 I don't believe Ms. Delaney was very successful in
8 getting any movement away from that, and I wasn't
9 successful in getting any movement to a more beneficial
10 deal for Mr. Coley.

11 Q All right. So did you advise Brice to accept the
12 plea or go to trial, or did you leave it up to him?

13 A Sure. Well, it was -- I mean, Mr. Coley had two
14 not-so-great choices. We had the option of a trial which
15 neither of us felt very strongly of our chances at or to
16 prepare for basically a plea where we could focus on
17 mitigation and try to have a hearing in which he accepted
18 responsibility.

19 We were able to present some type of mitigation case
20 to a judge and essentially ask for a lower minimum
21 sentence on the charge of murder. We went through both
22 options. I told him, you know, both options were -- the
23 choice was his, but I did feel he had a better chance of
24 receiving a lower sentence at a mitigation hearing rather
25 than our chances of being successful at trial.

1 Q So is it fair to say that you eventually decided
2 mutually to put all of your eggs in a mitigation basket?

3 A Yes, sir.

4 Q Did you have a trial date set when y'all pled?

5 A Well, there was actually a trial date set for
6 February when I first received the case which, obviously,
7 was way too soon for us to be able to prepare for trial.
8 So we had a status conference early February, myself and
9 Ms. Bodman and the Chief Administrative Judge at the time,
10 Judge Hood, and the trial was scheduled for I believe
11 May 11th. Another alternative the following week which
12 was, I believe, May 18th.

13 Q So when you pled in April, you were a couple weeks,
14 maybe a month away from trial?

15 A Yeah. I was looking back at it. I believe we had
16 one more -- well, the next week would have been a no court
17 week. Then the week after that would have been one more
18 open week before the trial.

19 Q Okay. Did you ever discuss with Joanna Delaney the
20 fact that she had sent Brice for an evaluation?

21 A Yes. I forget if we talked about that specifically
22 or if I relied on her notes, but I was aware that she had.

23 Q Did you ever get a report from whoever did that
24 evaluation?

25 A Not an official report, no, sir.

1 Q Do you recall who did the evaluation, the name of the
2 person?

3 A It was Dr. Carol Knight or -- and I always mix up the
4 first name. It may be Susan. I just, Dr. Knight,
5 K-N-I-G-H-T.

6 Q Okay. And where does Dr. Knight work?

7 A At the time that Ms. Delaney used her, I believe she
8 was at MUSC in Charleston.

9 Q Why did you not insist on -- strike that.

10 You may have spoken to this a little bit already, but
11 why -- why accept the plea straight up? What's the down
12 side to going to trial if all you have is a de facto
13 straight-up plea?

14 A Sure. I mean, that's -- that was a hard -- it's a
15 hard question. Like I said, I don't think there was a
16 great answer or great route either way, but we felt that
17 being able to present some remorse, some acceptance of
18 responsibility on the front end rather than going through
19 a trial was more beneficial to getting a lower sentence,
20 but it -- that was a very hard call for me to even decide
21 and I know for Brice to decide.

22 Q Okay. Was Brice able to assist you in his defense?

23 A Yes.

24 Q Did you know until a moment ago that he felt that he
25 was going into a plea with a possibly of having the judge

1 reduce his charge to manslaughter?

2 A I was not aware of that until I heard him say that.

3 Q Were you comfortable with Judge Lee taking this plea?

4 A I was.

5 Q Did you bring any witnesses at the plea to testify in
6 a mitigation setting?

7 A Not to testify, no, sir.

8 Q You did have an investigator on this leading up to
9 the plea?

10 A Yes, sir, Joseph Best.

11 Q What types of things did he look into?

12 A Well, at the time that I got the case in January,
13 we -- I spoke with Mr. Coley several times. I got
14 Mr. Best back up to date on the case. He had already been
15 on the case when Ms. Delaney had it, so he was familiar
16 with it already.

17 It seemed pretty apparent that Mr. Coley was leaning
18 more towards a plea, so we focused -- Mr. Best focused on
19 finding mitigation witnesses, so trying to find some
20 teachers down in Georgia that he wasn't ever able to find
21 that Mr. Coley wanted us to find.

22 He was able to find some prior teachers in Olympia
23 here in Columbia where he went to high school, so
24 basically just trying to find anybody that knew anything
25 about Brice.

1 Brice didn't have much of a paper trail behind him.
2 He had been moved around so much as a child, it was
3 difficult to find, you know, where he had came from, I
4 mean, obviously besides what he remembered, but there --
5 part of the problem was there was a real lack of a paper
6 trail.

7 Q Since he did speak to those teachers, did you think
8 at any point about bringing him to the plea to offer some
9 mitigation on behalf of the teachers? Was that ever an
10 option that you considered?

11 A Well, I asked Mr. Best to see if the teachers that he
12 spoke to would feel comfortable coming to the plea or
13 whether they would be at least willing to write some type
14 of affidavit or letter.

15 He reported back to me that the teachers did not feel
16 comfortable coming, but they'd rather write a letter. So
17 I believe we had two teachers who wrote letters that were
18 provided to Judge Lee, and we had Mr. Best in the
19 courtroom, as well, although he wasn't called to testify.

20 Q What about Dr. Knight? Wouldn't it have been helpful
21 to bring her and offer whatever her observations of Brice
22 were?

23 A Sure. I don't think it would have hurt anything for
24 sure. I actually had trouble finding Dr. Knight by the
25 time I got the case.

1 MUSC told me that, you know, she didn't work there
2 anymore, and we just -- we weren't able to locate her.

3 Q Okay.

4 A And we didn't have, you know, most ample amount of
5 time either.

6 Q But given that -- I'm sorry.

7 A But we just -- you know, we weren't able to locate
8 her.

9 Q Given that you were, you know, putting all of your
10 eggs in this mitigation basket, you couldn't have go and
11 asked for a continuance to try and go locate her and get
12 some extra time?

13 A I could have.

14 Q You said in your mitigation argument to Judge Lee at
15 the plea that -- that Brice was competent even though he
16 had seen Dr. Knight. You couldn't make that determination
17 yourself, right?

18 A That's correct.

19 Q You don't have those qualifications to have that
20 expertise?

21 A That's accurate.

22 Q Did you request a motion to reconsider after Brice
23 got 50 years?

24 A I did.

25 Q What was the basis of that motion?

1 A Oh, I think the technical basis was that during the
2 original plea in front of Judge Lee that the McKnight
3 family, the victim in the case, they had said something to
4 Judge Lee about Mr. Coley having a prior incident where he
5 robbed Mr. McKnight.

6 During the plea, I didn't -- I don't know if I was
7 talking to Mr. Coley or if I was distracted. See, I
8 didn't hear that. After the sentence, I went down to talk
9 to Mr. Coley in holding, and he brought that up that there
10 was this information about how he had apparently
11 supposedly robbed Mr. McKnight at a prior occasion.

12 That was real troubling to hear because our big issue
13 with -- that we were trying to present to Judge Lee was
14 not only how young Mr. Coley was but also that he had no
15 criminal record. He wasn't a kid that got in trouble.

16 So we filed a motion to reconsider so that I could
17 bring to the Court's attention that we had never heard
18 that information before, but we disputed that information;
19 that I wanted to make sure that Judge Lee didn't use that
20 information as a reason to give him a higher sentence.

21 Q If you had heard that during the plea, do you think
22 you might have done anything differently?

23 A I would have -- I would have addressed it,
24 absolutely.

25 Q Do you think there is a chance you would have asked

1 Judge Lee to let you stand down and re-evaluate, perhaps
2 enter the plea again with a judge that wasn't tainted by
3 that comment?

4 A Oh, potentially. It -- it's hard to say in hindsight
5 what I would have done, but that certainly would have been
6 an option in my head, yes, sir.

7 Q You mentioned that Brice was so young, and that was a
8 big part of your mitigation. Do you believe Dr. Knight
9 would have been able to shed some light on the brain
10 development of people of that age? Is that something you
11 would have understood to be within her field of expertise?

12 A Yes, sir. She was a forensic psychologist, and
13 generally a forensic psychologist would have been able to
14 speak to that.

15 MR. ALLEN: Thank you, Mr. Bank.

16 THE COURT: Cross-examination?

17 CROSS-EXAMINATION:

18 BY MR. JAMES:

19 Q Mr. Bank.

20 A Yes, sir.

21 Q You couldn't locate Dr. Knight for the mitigation,
22 correct?

23 A That's correct.

24 Q All right. And you didn't actually have a report to
25 hand in to the Court, correct?

1 A That's correct.

2 Q But you did communicate her findings to the Court
3 during mitigation, correct?

4 A What I understood them to be, yes, sir.

5 Q All right. Do you recall what those findings were?

6 A On a general level that he was competent and
7 criminally responsible.

8 Q All right. Do you recall if she made any other
9 findings about his mental health?

10 A I believe that she stated that -- or conveyed to
11 Ms. Delaney that the -- one of the concerns she had was
12 paranoia that was induced by marijuana use around this
13 time, at the time of the incident.

14 Q And you used that information during the plea to try
15 to mitigate his sentence?

16 A I believe I mentioned it, yes, sir.

17 Q When Ms. Delaney departed from the Public Defender's
18 Office and you took over the representation of Mr. Coley,
19 did you have an opportunity to explain to Mr. Coley the
20 reason for the change in representation?

21 A Yes, sir.

22 Q And what did you tell him?

23 A I don't remember exactly what I said, but generally
24 when -- if somebody leaves the office, I try to assure the
25 person that the case is switching not because the previous

1 lawyer had any problem with them but because they left the
2 office, and the case just needed to be reassigned.

3 Q Did he express any concerns to you at that time about
4 the change in representation? Any complaints that you
5 recall?

6 A Not that -- that I recall. There may have been a
7 concern, but you know, obviously when I went to see him,
8 there had tentatively been a trial scheduled in February.
9 So I mean, I think there was probably a concern with that.

10 Q There has been some off-and-on discussion that the
11 strength of the State's case can only be described as
12 strong. If you could, Mr. Bank, could you please just
13 give us a brief overview of what the State's case against
14 Mr. Coley was?

15 A I'll do my best. Mr. McKnight was a young man that
16 lived in the same neighborhood as Mr. Coley. There was
17 some ongoing -- I don't want -- I don't know if I want to
18 characterize it as a dispute between Mr. Coley and
19 Mr. McKnight but some things that concerned Mr. Coley
20 about Mr. McKnight and potentially Mr. McKnight at some
21 point wanting to harm Mr. Coley.

22 At some point, Mr. Coley and Mr. McKnight were
23 walking together through, I believe a cut in the
24 neighborhood.

25 When Mr. McKnight was a couple steps ahead of

1 Mr. Coley, Mr. Coley presented a handgun and fired a
2 single -- I believe a single bullet in the back of the
3 head of Mr. McKnight, and I believe there was a third
4 person that was present that was also friends with
5 Mr. Coley that witnessed it.

6 The -- eventually, the biggest pieces of evidence
7 that the government were able to obtain were a witness
8 statement from the other young man that was there, the
9 third party that witnessed the shooting and identified
10 Mr. Coley as the shooter.

11 They also found the firearm at Mr. Coley's house.
12 That house he resided at was his aunt and uncle's house,
13 and the sheriff's department also obtained a signed
14 confession from Mr. Coley.

15 Q So Mr. Coley confessed in writing to the crime?

16 A Yes, sir. That was the State's position.

17 Q What defenses, if any, were you aware of for
18 Mr. Coley if this case went to trial?

19 A Myself and Mr. Coley discussed an issue regarding his
20 statement. He had talked to the Richland County Sheriff's
21 Department investigator for a period of time and then
22 asked for an attorney at which point the investigator
23 writes in his notes that he ceased the communications, and
24 this was before Mr. Coley made any admission to the crime.

25 The conversation was later -- according the

1 investigator, Mr. Coley later reinitiated the conversation
2 when he was at the jail, and according the investigator's
3 report at that point was taken back to the sheriff's
4 department and at that time provided the statement
5 confessing to the crime.

6 So there was potentially an issue with this
7 re-initiation after he had asked for counsel, and you
8 know, other than that potential defense, I didn't see
9 anything that I can recall at this time that would have
10 been favorable to him.

11 Q So his chances of prevailing at trial were slim?

12 A I believe they were low, yes, sir.

13 Q Did you ever discuss with Mr. Coley the prospect of
14 voluntary manslaughter as previously indicated?

15 A In terms of the availability of Ms. Lee -- of Judge
16 Lee to be able to reduce it in plea, no. I never
17 discussed that with him.

18 Q Mr. Bank, whose decision was to it plead guilty?

19 A It was Mr. Coley's.

20 Q Do you believe that that decision was in his best
21 interest?

22 A I do.

23 Q Do you believe that that straight plea was the best
24 deal that you could have gotten for your client?

25 A Yes, sir.

1 MR. JAMES: All right. I have no further questions.

2 THE COURT: Anything further?

3 MR. ALLEN: Yes, sir. Thank you, Your Honor.

4 REDIRECT EXAMINATION:

5 BY MR. ALLEN:

6 Q Mr. Bank, the attorney asked you if you reported the
7 findings of Dr. Knight to the Court even though you had no
8 written report.

9 You stated in the mitigation that she found him to be
10 competent, but the reason -- couldn't she have offered
11 something, you know, not to say that he is incompetent
12 because I don't think there is a question there, but
13 wouldn't she have been helpful in purely a mitigation
14 facet?

15 A Sure. I think -- I think so. I think anybody that
16 could have shed -- helped shed light on the fact that --
17 you know, he was 18 and five months old at the time of the
18 shooting which was a big concern for both Ms. Delaney and
19 myself, anybody in our office that we talked about it,
20 very young.

21 I believe I tried to talk about that a lot in the
22 plea, so I don't think any extra information to Judge Lee
23 about that would have hurt anything by any means.

24 Q And having a doctor there could have been just a more
25 impressive voice to that same argument, fair?

1 A That's fair.

2 MR. ALLEN: Thank you.

3 THE COURT: Anything further from the State?

4 MR. JAMES: No. No, Your Honor.

5 THE COURT: Sir, you may step down.

6 THE WITNESS: Thank you, Judge.

7 THE COURT: Mr. Allen, while he is stepping down,
8 anything by way of argument?

9 MR. ALLEN: Well, Your Honor, I would like to call
10 Joanna Delaney.

11 THE COURT: I'm sorry, go ahead and call her then.

12 MR. ALLEN: Thank you, Your Honor.

13 Joanna Delaney.

14 THE COURT: Ma'am, come around. Have a seat in the
15 witness stand. State your name for the record, spell your
16 last, please.

17 THE WITNESS: Joanna Delaney, D-E-L-A-N-E-Y.

18 JOANNA DELANEY, after being duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION:

21 BY MR. ALLEN:

22 Q Good morning, Ms. Delaney.

23 A Good morning.

24 Q Just to short circuit everything, you have heard the
25 testimony of both Mr. Bank and Mr. Coley, correct?

1 A I have.

2 Q Why did you send Brice for that mental evaluation?

3 A Looking through the case, it appeared that Brice was
4 fearful of the victim but wasn't really able to articulate
5 why, and the investigation didn't really reveal why, and
6 so I thought that we should have a psychologist evaluate
7 him to determine if that was something internal or
8 biological that caused that.

9 Q Did it reveal anything?

10 A Yeah, it did. She -- it was Dr. Susan Knight. She
11 was with MUSC at the time. She was a forensic
12 psychologist. She met with Brice, and she felt that he
13 was suffering from marijuana-induced paranoia at the time.
14 That related to a long-term use, and that was
15 corroborated, I believe, by his aunt, Ms. Wright, who
16 noted that he was just very paranoid in the home in the
17 months leading up to this.

18 He would see cars driving by and think that they were
19 after him; that their shed had been broken into; that
20 there were some events that he interpreted in a very
21 threatening manner that seemed unusual.

22 Q Would it have been helpful in a mitigation setting to
23 have Dr. Knight there to describe that to the judge?

24 A I believe it could have given some context to his
25 actions, and I think that was -- that was an issue with

1 this case. Of course, the judge wants to know why someone
2 did what they did, and I think that could have given -- I
3 could have -- it could have given an explanation and
4 Dr. Knight is -- has testified in Richland County in
5 mitigation hearings previously. She has a very impeccable
6 background and is a -- is a very professional witness.

7 Q Would you have had her there if you had still been on
8 the case for the plea?

9 A I think so.

10 MR. ALLEN: Thank you.

11 THE COURT: Cross-examination?

12 CROSS-EXAMINATION:

13 BY MR. JAMES:

14 Q Ms. Delaney, how long have you been practicing law?

15 A Since 2007.

16 Q All right. Where are you presently employed?

17 A The Children's Law Center at USC.

18 Q Okay. And prior to that, you were employed at the
19 Public Defender's Office, correct?

20 A I was.

21 Q All right. Is there any efforts that you can recall
22 from your representation of Mr. Coley -- if I may stop a
23 moment to rephrase that.

24 (Pause.)

25 Is there anything that you would add to the testimony

1 that's been offered thus far regarding your own efforts in
2 representing Mr. Coley, anything that has not been
3 mentioned by Mr. Bank or by Mr. Coley himself?

4 A I'm not sure I understand the question.

5 Q You met with Mr. Coley on numerous occasions to go
6 over the evidence, correct?

7 A I did.

8 Q Do you recall how many times you met with him?

9 A I believe I met with him nine times.

10 Q All right. And you reviewed the State's evidence
11 against him?

12 A I did. I gave him a copy of his discovery which was
13 I think supplemented later, and we talked about it. We
14 talked about the case. We talked about investigating any
15 possible -- again, why was he fearful? Was there other
16 things going on, investigating other events. We did. We
17 went through the discovery and talked about the case.

18 Q All right. And you went over the strengths and
19 weaknesses of his case?

20 A I believe so.

21 Q All right. Would you agree that the State had a
22 strong case against him?

23 A Yes. They had a -- served a search warrant and found
24 a gun that was matched to the shell casing underneath the
25 victim's body, and they had a confession from Mr. Coley

1 and an eyewitness.

2 The sort of gray area there was that the eyewitness
3 gave three different statements about what happened. So
4 that was an issue, but again, they had the statement, and
5 they had the murder weapon.

6 Q When it became apparent to you that you would be
7 departing the Public Defender's Office, do you recall what
8 efforts you may have taken to prepare the other attorneys
9 in the office to take over your cases?

10 A I went through the files and kind of updated them. I
11 tried to meet with each attorney that got cases from me
12 and talk to them about those cases. I don't recall if I
13 did that on this specific case with Mr. Bank.

14 Q Okay. In addition to the State's evidence, did you
15 have any opportunity to investigate the findings of
16 Dr. Knight I believe it was?

17 A I spoke with Dr. Knight on the phone --

18 Q Okay.

19 A -- about her evaluation of him, and she did say that
20 she found that he was competent and criminally
21 responsible. She did think that the drug-induced paranoia
22 contributed to it but not to an extent that it negated
23 criminal intent.

24 MR. JAMES: Okay. No further questions.

25 THE COURT: Anything further, sir?

1 MR. ALLEN: Nothing further, Your Honor.

2 THE COURT: You may step down.

3 Okay, Mr. Allen.

4 MR. ALLEN: Nothing further from the Applicant, Your
5 Honor.

6 THE COURT: All right. Anything from the State?

7 MR. JAMES: The State has no witnesses to call, Your
8 Honor.

9 THE COURT: Anything by way of argument?

10 MR. ALLEN: Just briefly, Your Honor, if it please
11 the Court. Obviously, I think our big issue, Your Honor,
12 is ineffective counsel in not having a mitigation expert,
13 Dr. Knight, there to explain to Judge Lee possible mental
14 incompetencies of the defendant, now Applicant, at the
15 time.

16 Ms. Delaney who had represented Mr. Coley for two
17 years told you right here that she would have had that
18 done. She thinks that would have made a difference.

19 Obviously, none of us can say with certainty what
20 Judge Lee would have done with that new information, but I
21 think it's a substantial likelihood that that information
22 would have been crucial, an expert type witness, a doctor,
23 someone with a degree offering some explanation other than
24 just -- just a coldblooded act, and that is the
25 characterization that came from the State's investigator

1 at the time. You'll see his testimony there in the
2 transcript.

3 Even Mr. Bank after having some more murders under
4 his belt now, that being his first one testified today
5 that that's something that he would have done if he could
6 do it over again. I think that sums up his testimony
7 fairly.

8 Then the other two issues, Your Honor, that we think
9 go to ineffective assistance of counsel is that Mr. Coley
10 landed that plea apparently believing that he could get
11 voluntary manslaughter on the date of his plea.

12 The case of Pittman vs. State makes it clear that
13 becoming aware of the Constitutional Rights you are
14 waiving is something that must be accomplished before
15 anyone can enter a guilty plea intelligently, and I've got
16 a copy of those cases I'll hand up in just a minute.
17 That, as well as knowing the crucial elements of the
18 offense, I think even as he sits here today, I don't think
19 Mr. Coley could tell you what the crucial elements of his
20 offense were.

21 Now, he did say in the plea here that he had gone
22 over that with his trial attorney, but the issue, the
23 Constitutional issues, are not in the transcript, Judge.

24 There is nothing in the record saying that he was
25 made aware of the nature of the crucial elements of the

1 offense. So while the Constitutional issue, I don't
2 believe he does knowingly -- it might have been cleared up
3 with the judge with her questioning -- I don't believe
4 it's in there regarding the crucial elements of the
5 offense.

6 That's our argument, Your Honor. If it pleases the
7 Court, I'll hand up that case for everyone to look at.

8 THE COURT: Do you have -- does he have a copy?

9 MR. ALLEN: Yes, sir; yes, sir.

10 THE COURT: All right. Anything from the State?

11 MR. JAMES: Briefly, Your Honor. The standard is --
12 for ineffective assistance of counsel is deficient
13 performance and prejudice.

14 There is no evidence introduced in the record that
15 not having Dr. Knight there on the day of his plea was
16 either deficiency or prejudiced him in any.

17 Mr. Bank very concisely and intelligently
18 communicated the findings of Dr. Knight to the Court on
19 the day of the plea, and it is the State's position that
20 that was satisfactory.

21 Mr. Coley by his own reasoning meeting with two
22 attorneys wisely determined it was better to admit guilt
23 and a straight plea in a hope of leniency from Judge Lee
24 who he understood to be a lenient judge.

25 I would direct the Court's attention to page 18 of

1 the guilty plea transcript lines 17 to 24 after the
2 recitation of the facts by the State. Mr. Bank attempts
3 to reframe them and is stopped short by Mr. Coley who
4 says, quote, I would not change anything.

5 I don't know if Mr. Coley thought that would help
6 him. I'm sure he thought it would help him. I don't know
7 if it helped him or hurt him, but reading back over it, I
8 appreciate the honest candor of it: I would not change
9 anything.

10 I don't doubt that he hoped for a better sentence
11 than 50 years incarceration, but a long sentence alone is
12 not in and of itself evidence of prejudice or deficient
13 performance by its counsel.

14 Mr. Coley repeatedly on the record to the Court
15 stated that he understood his rights; that his rights had
16 been explained to him, and that he was knowingly and
17 intelligently waiving those rights. I respectfully ask
18 this Court to not change anything and dismiss the
19 application for PCR.

20 THE COURT: All right. All right. The law requires
21 the Applicant show that counsel's performance was
22 deficient. In other words, that his performance fell
23 below reasonably effective assistance under the prevailing
24 professional norms.

25 The Court finds that by not having a mitigation

1 expert or doctor who performed an evaluation on the
2 defendant, that in and of itself does not fall below the
3 prevailing professional norms. There is no requirement
4 that those individuals be present for sentencing or for a
5 guilty plea.

6 Furthermore, it's arguably safe assuming such
7 requirement was necessary, the Court does not find that
8 the defendant has met a second prong of prejudice. In
9 other words, to show prejudice at a guilty plea, the
10 defendant must establish there is a reasonable probability
11 that but for plea counsel's errors, he would not have pled
12 guilty and would have insisted on going to trial.

13 The defendant has not shown any evidence of such, and
14 therefore, has not shown any form of prejudice.
15 Furthermore, the Court finds the defendant knowingly,
16 intelligently, freely and voluntarily entered this plea.

17 While Mr. Allen, his attorney here today, has argued
18 that there was a defense such that could be or would be
19 reduced to voluntary manslaughter.

20 The trial transcript is abundantly clear what he is
21 pleading guilty to, the potential penalty of the offense
22 for which he is pleading. Therefore, the Court
23 respectfully denies the defendant's application for post
24 conviction relief.

25 Thank you. If you'll get me an order, please, sir.

1 MR. ALLEN: Thank you, Your Honor.

2 MR. JAMES: Yes, Your Honor.

3 THE COURT: All right. We'll stand down for just a
4 minute.

5 MR. JAMES: Thank you, Your Honor.

6 (Whereupon, the proceedings were concluded.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the
5th 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 proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Richland County, South Carolina, on the 14th day of July,
2016.

October 27, 2016

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	2015-CP-40-06253
Brice Di'Von Coley,	)	
S.C.D.C. No. 363771	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina	)	
	)	
Defendant.	)	

This matter comes before the Court by way of an application for post-conviction relief filed October 15, 2015 ("the Application"). Respondent made its return on or about February 17, 2016. The Court convened an evidentiary hearing into the matter on July 14, 2016, at the Richland County Courthouse. Applicant was present at the hearing and represented by David Kellum Allen, Esquire. Johnny E. James Jr., Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's counsel, Joanna Delany, Esquire and Robert Bank, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Richland County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. On January 18, 2013, the Richland County Sheriff's Department sought and obtained an arrest warrant against Applicant for the crime of Murder (2013 A40 10200201). In July 2013, the Richland County Grand Jury

indicted Applicant for the same (2013-GS-40-04237). Joanna Delaney ("Delaney"), Esquire, initially represented Applicant, but resigned from the Richland County Public Defender's Office prior to the resolution of Applicant's charges. Robert Bank, Esquire ("Bank") thereafter represented Applicant. On April 21, 2015, Applicant entered a straight plea of guilty to the charge as indicted. The Honorable Alison Renee Lee sentenced Applicant to a term of fifty (50) years of incarceration. Applicant did not appeal.

Present Allegations

In his application for post-conviction relief, Applicant alleges he is being held unlawfully for the following reasons:

1. "Ineffective Assistance of Plea Counsel & Counsel"
 - a. "Was given new lawyer without notification"
 - b. "[N]o time to prepare for plea/trial"
2. "Unduly Harsh Sentence"
 - a. "Immaturity, incompetencies associated with youth, negative influence"
3. "Failure to Psychiatric examination"
 - a. "Failure to investigate Psychiatric report, investigate medical examiners report"

II. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual, and an applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Therefore, statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985)).

DCB
f. 201 12

An applicant "who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial 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, 20, 546 S.E.2d 417, 419 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993) (Applicant must show advice received from plea counsel was not within the range of competence demanded of attorneys in criminal cases). The Applicant must prove that the "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 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, 118, 386 S.E.2d 624, 625 (1989).

III. 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's records regarding the subject convictions, the trial 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.

DCB
P. 3 of 12

As a matter of general impression, this Court finds the testimony of Delaney and Bank to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Counsel Failed to Adequately Investigate Applicant's Mental Health

Applicant alleges that Delaney and Bank were ineffective for failing to adequately investigate his mental health history and records. A criminal defense attorney has a duty to investigate, but this duty is limited to a reasonable investigation, which includes, at a minimum, the interviewing of potential witnesses and an independent investigation of the facts and circumstances of the case. Ard v. Catoe, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007). To establish counsel was inadequately prepared for trial due to a failure to investigate, 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); Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (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"); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (relief denied where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation could have had any possible effect on the result at trial).

Applicant testified that he had previously seen counselors and psychiatrists for the treatment of behavioral issues; that he spent two (2) months in an inpatient facility in Houston, Texas at around the age of six (6) or seven (7) years of age for the treatment of said behavioral

issues; and that he had for a time taken prescription medication for the treatment of his behavioral issues. Applicant was unable to remember a diagnosis or the name of his prescriptions. Applicant testified that he suffers from poor sleep and intermittent blackouts where he continues to function but without control or subsequent memory of his actions. Applicant was not using any prescription medication at the time of his arrest, but admitted to using marijuana prior to his arrest as a means to stay calm. Applicant acknowledged that his attorneys had him evaluated by a doctor, but Applicant was unable to explain the purpose or results of that evaluation. Applicant did not call Dr. Knight as a witness at the PCR hearing.

Bank testified that Applicant was evaluated by Dr. Susan C. Knight, a forensic psychologist with the Medical University of South Carolina. Though neither he nor Delaney requested a formal report from Dr. Knight, she clearly communicated her findings that Applicant was criminally competent, though he was likely suffering from marijuana-induced paranoia. Delaney testified that she ordered the mental evaluation of Applicant due to his stated fear of the victim, though Applicant was unable to articulate a reason for his fear. Delaney corroborated the testimony of Bank as to Dr. Knight's findings.

Bank also testified that a private investigator, Joseph Bust, attempted to acquire records and locate persons from Applicant's past that could elaborate upon his mental health or otherwise provide evidence for mitigation. Bank testified that due to Applicant's unfortunately nomadic upbringing, Bust's efforts were fruitless—records could not be found and individuals familiar with Applicant who could be reached were not willing to appear in a way that would benefit his defense.

This Court finds Counsel effectively and adequately investigated Applicant's mental health. Counsels' investigation of Applicant's mental health fell within prevailing professional

DOB
p. 5 of 12

norms and demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. The testimony of both attorneys Bank and Delaney demonstrated their knowledge of the findings of Dr. Knight and her conclusion that Applicant was criminally competent. Testimony and the plea transcript show that Bank understood and effectively delivered to the court the useful findings of Dr. Knight's evaluation during his mitigation efforts. Therefore, Applicant has failed to meet his burden of proving that Counsel's performance was deficient in this regard. Furthermore, Applicant did not call Dr. Knight at the evidentiary hearing and thus has failed to show any prejudice rising from the deficiency alleged. Accordingly, this allegation shall be dismissed.

Counsel Failed to Call Expert Witness Dr. Susan Knight at Plea

Applicant also alleges that Bank was ineffective for failing to call Dr. Knight during his guilty plea proceeding. In order to show ineffective assistance of counsel due to counsel's failure to call a witness or witnesses, an Applicant must "produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Dalton v. State, 376 S.C. 130, 142-43, 654 S.E.2d 870, 876-77 (Cl. App. 2007) (quoting Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998)). "Mere speculation of what a witness' testimony may be is insufficient to satisfy the burden of showing prejudice in a petition for PCR." Id. at 143, 654 S.E.2d at 877 (citing Porter v. State, 368 S.C. 378, 386-87, 629 S.E.2d 353, 358 (2006)).

Bank testified that he did not call Dr. Knight to appear at the plea proceeding and that her testimony may have provided some beneficial context, but that he did present her findings to the

DCB
8.6.9.12

Court in the course of offering mitigation. Delaney agreed that Dr. Knight may have been able to make a more convincing presentation. Dr. Knight was not present at the hearing, did not testify, and no other evidence was introduced to show what her testimony would have been had she testified at Applicant's guilty plea.

This Court finds Counsel's failure to call Dr. Knight as a mitigation expert does not fall below prevailing professional norms. To the contrary, Counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. As previously stated, Bank clearly and effectively delivered Dr. Knight's findings to the court as part of his mitigation efforts. Furthermore, Applicant did not present Dr. Knight at the PCR hearing, nor did Applicant offer any other valid and compelling evidence to show what her mitigation testimony might have been, only the speculation of Bank and Delaney. Therefore, Applicant has failed to meet his burden of proving that Counsel's performance was deficient in this regard. Furthermore, Applicant has failed to show any prejudice rising from the deficiency he alleges. Accordingly, this allegation shall be dismissed.

Inadequate Time to Prepare for Trial

Applicant alleges ineffective assistance of counsel on grounds that that he "[w]as given a new lawyer without notification" who had "no time to prepare for trial[.]" The "brevity of time spent in consultation, without more, [does] not establish that counsel was ineffective." Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980)). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's alleged lack of time to prepare. Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878

Dec
P. 7/7/12

(2006) (discussing U.S. v. Cronin, 466 U.S. 648 (1984)); U.S. v. LaRouche, 896 F.2d 815, 823 (4th Cir. 1990). In order to show that counsel was ineffective for failing to move for a continuance, applicant must show what benefits would accrue from additional preparation. Skeen, 325 S.C. at 214, 418 S.E.2d at 131 (discussing Bozeman v. State, 307 S.C. 172, 414 S.E.2d 144 (1992)).

The testimony of every witness at the evidentiary hearing and the records before the Court consistently show that Applicant was appointed counsel through the Richland County Public Defender's Office. Delaney served as Applicant's counsel in that capacity for roughly two years, at which time she resigned in order to accept employment elsewhere. Bank then assumed representation of Applicant shortly before a February 2015 trial date; the trial date was moved to May 2015 shortly thereafter. Bank met with Applicant three (3) times prior to the plea, in addition to Delaney's nine (9) visits, about which she left extensive notes.

Bank testified that neither he nor Applicant believed a trial was likely to end in a favorable outcome, either in terms of guilt or sentencing, and that the focus from early on in Bank's representation was preparing for a plea. Bank retained the notes and materials prepared by Delaney during her time representing Applicant and discussed the case with Delaney. Bank further testified that he explained to Applicant that the reassignment was due only to a personnel change in the Public Defender's Office and not due to any aspect of his case. According to Bank, Applicant's only concern was the upcoming trial date and voiced no complaint or concern about Bank serving as his attorney. Bank admitted that Applicant's case was his first time defending against a murder charge in a leading role, and that he spent longer than usual reviewing the voluminous amount of discovery in the file.

DCB
P. 8 of 12

This Court finds that Applicant has not met his burden of proving ineffective assistance of counsel on either grounds that Bank's assumption of representation was inadequately communicated or on grounds that Bank had inadequate time to prepare for trial. Bank's testimony shows that he did communicate the reason for the change in representation and committed himself to adequate preparation to proceed with representation. Applicant has made no showing of what, if any, additional defenses Bank could have prepared given additional time. Applicant has demonstrated no specific prejudice nor has he identified any specific benefit he could have received given more time. Applicant has not demonstrated that he would have proceeded to trial but for Applicant's failure to request more time to prepare. Therefore, Applicant has failed to meet his burden of proving that Counsel's performance was deficient in this regard. Furthermore, Applicant has failed to show any prejudice rising from the deficiency he alleges. Accordingly, this allegation shall be dismissed.

Applicant Believed He Might Plead to Voluntary Manslaughter

At the evidentiary hearing, Applicant briefly alleged that he hoped to plea to the lesser charge of voluntary manslaughter.¹ Where an Applicant seeks relief from a guilty plea entered upon advice of counsel, he must show that counsel's advice fell below established objective standards and that, but for that error, he would have insisted on proceeding to trial. Roscoe at 20, 546 S.E.2d at 419. Though a defendant must have full understanding of the consequences of his plea and of the charges against him, his own silent error or ignorance, unsupported by the error of either his counsel or the court, is not a ground adequate for relief. See Id., n.6; State v. Lambert, 266 S.C. 574, 579, 225 S.E.2d 340, 342 (1976) (low intelligence or limited education does not preclude a valid guilty plea).

¹ The Court notes that Applicant did not raise this allegation in his original application for post-conviction relief, nor in any subsequent amendment.

Applicant testified that he understood the plea judge to be lenient and hoped that she would reduce his charge from murder to voluntary manslaughter as part of his straight plea. Bank, during State's cross-examination, indicated that he never suggested such a possibility with Applicant, nor did Applicant ever communicate such an expectation to him. Bank's testimony indicated that negotiations with the solicitor were anything but fruitful and that the only offer available was a plea of guilty to murder with a sentencing range of sixty (60) to eighty (80) years. Neither Bank nor Delaney indicated any willingness of the solicitor to permit Applicant to plead to voluntary manslaughter.

Testimony and the plea transcript show that counsel, as well as the plea judge, advised Applicant of the elements of murder, the potential sentence range of thirty (30) years to life imprisonment, and advised him of all his constitutional rights. During the evidentiary hearing, Applicant could clearly recall his plea proceeding and his statements made at that time. Applicant concurred with both Banks and Delaney that the State's case against him was extremely strong, and this Court agrees.

The Court finds that Applicant knowingly, voluntarily, and intelligently entered a plea of guilty to murder. The Court finds that argument to the contrary based upon Applicant's hope for a reduction in his charge is without merit—no evidence exists in the record to justify that expectation or impute it to erroneous advice of counsel. Counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. Therefore, Applicant has failed to meet his burden of proving that Counsel's performance was deficient in this regard. Furthermore, Applicant has failed to show any prejudice rising from the deficiency he alleges. Accordingly, this allegation shall be dismissed.

DLB
P 10/7/12

Unduly Harsh Sentence

Applicant alleges that his sentence of fifty (50) years for murder was unduly harsh in light of his immaturity, his youth, and the negative influences in his life. PCR is not a substitute for appeal and issues that could have been raised at trial or on direct appeal are not permitted in an action for post-conviction relief. S.C. Code Ann. § 17-27-20(b); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). Trial court error is not a cognizable claim for PCR. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997); Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Thus, this allegation shall be dismissed.

Failure to Investigate Medical Examiner's Report

Lastly, Applicant alleged in his application that Counsel failed to investigate a medical examiner's report. However, no testimony was offered at the evidentiary hearing to precisely identify the report to which Applicant referred, nor is there any evidence regarding any deficiency or prejudice related thereto. To the extent that Applicant was referring to anything other than the findings of Dr. Knight previously discussed, the Court must find that Applicant has abandoned his allegation in this regard and failed to offer any evidence to support either prong of *Strickland*. Thus, this allegation shall be dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that 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 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

Def
p-11/9/12

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. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 2 day of August, 2016.


D. CRAIG BROWN
Presiding Judge
Fifth Judicial Circuit

 South Carolina

WITNESSES

(S) K.E. Johnson
- Richland County Sheriff

ARREST WARRANT NUMBER

2013A4010200201

ACTION OF GRAND JURY

TRUE BILL

Valencia Morton
Foreperson of Grand Jury JUL 17 2013
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-40-04237

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JULY TERM 2013

92

THE STATE
vs.

Brice Di'Von Coley

Indictment for
MURDER

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

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.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Janetta W. M. B. B. B.
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on JULY 17, 2013, the
Grand Jurors of Richland County present upon their oath:

MURDER

That Brice Di Von Coley did in Richland County, on or about January 15, 2013, willfully, feloniously, and intentionally kill the victim, MOSES MCKNIGHT, with malice aforethought, either express or implied, by means of GUN SHOT, and the victim did die as a proximate result thereof in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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



DAN JOHNSON, SOLICITOR

2013 JUL 17 PM 4:00
RICHLAND COUNTY
CLERK OF COURT
RECEIVED

COUNTY OF
STATE

Richland

VS.

B rre Di Von Co ky

AKA:

Race: BLACK

Sex: M

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder

INDICTMENT/CASE#: 2013GS4004237

A/W#: 2013A4010200201

Date of Offense: 1/15/2013

S.C. Code § : 16-03-0010

CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0010

of the S.C. Code of Laws, bearing CDR Code #

0116

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS(CSC☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY:

Margaret Bodman

70937

SC Bar#

Brice Colley

Defendant

Robert Runk

Attorney for Defendant

101112

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,for a determinate term of 50 days/months/years or ☐ under the Youthful Offender Act not to exceed 50 years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender

Other: _____

TRUE COPY

OF ORIGINAL FILED

JENNIFER W. M. B. R. C.

C.C.C.P.&G.S.

RICHLAND COUNTY

SOUTH CAROLINA

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2/1/13

4/2/2015

ORIGINAL