

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

CHARLIE WOOD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001391

APPENDIX

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)
)

GENERAL SESSIONS COURT
2012-GS-04-1017

ORIGINAL

STATE OF SOUTH CAROLINA,)
)
PLAINTIFF)
)
vs.)
)
CHARLIE G. WOOD,)
)
DEFENDANT)
)

TRANSCRIPT OF RECORD

FEBRUARY 4, 2014
ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE EDWARD W. MILLER

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

CATHERINE T. HUEY, ESQUIRE
ASSISTANT SOLICITOR

ANDREW T. POTTER, ESQUIRE
ASSISTANT PUBLIC DEFENDER

VIVIAN CROSS,
CIRCUIT COURT REPORTER

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PLEA 3

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* * * P R O C E E D I N G S * * *

MS. HUEY: Your Honor, may it please the court?

THE COURT: Yeah.

MS. HUEY: Before you is Charlie Gene Wood. He is pleading guilty to voluntary manslaughter.

2012-GS-04-1017. There is a recommendation in this case of 20 years, Your Honor.

THE COURT: Okay. All right. Raise your right hand; do you swear to tell the truth?

MR. WOOD: Yes, sir.

THE COURT: All right. How many days has he been in jail?

MS. HUEY: It's 791, Judge.

THE COURT: All right. In the last 24 hours, have you had any drugs, alcohol or medication?

MR. WOOD: No, sir.

THE COURT: Have you ever been treated for substance abuse or mental illness?

MR. WOOD: No, sir.

THE COURT: All right. You're up here on this indictment, 2012-4 -- excuse me -- 1017, alleges you did in Anderson County, December 5, 2011, unlawfully with malicious aforethought kill Cynthia Charping by means of blunt force trauma and she died as a result

1 thereof, tendering a plea to voluntary manslaughter.
2 It carries up to 30 years in prison. This is a violent
3 offense, which affects parole eligibility. It's a most
4 serious offense. If you get convictions for two or
5 more most serious offenses, you are eligible for life
6 in prison without parole; do you understand that?

7 MR. WOOD: Yes, sir.

8 THE COURT: Understanding the nature of the charge
9 against you and the maximum possible punishment, how do
10 you want to plead?

11 MR. POTTER: May it please the court?

12 THE COURT: Yeah.

13 MR. POTTER: Judge, we've -- I know we've
14 discussed -- and I've discussed this with the State --
15 when this incurred, he was -- he was pretty much under
16 substantial substance abuse issues. So if it pleases
17 the court, we would ask to enter an Alford plea.

18 THE COURT: Well, I'll tell you this, an Alford
19 plea is a plea of guilty; do you understand that?

20 MR. WOOD: Yes, sir.

21 THE COURT: And we'll talk more about that in a
22 minute. So how do you want to plead in this case?

23 MR. WOOD: Guilty.

24 THE COURT: All right. And is that your free and
25 voluntary decision?

1 MR. WOOD: Yes, sir.

2 THE COURT: Do you understand that you have an
3 absolute right to a trial by jury, where you would be
4 presumed innocent unless and until the State can prove
5 you guilty beyond any reasonable doubt of each and
6 every element of the offense that you're charged with;
7 you would have a right to confront and cross examine
8 the witnesses and the evidence put up against you by
9 the State; you'd have a right to compel in court all
10 relevant and competent evidence in your own defense or
11 you can remain silent; your silence cannot be held
12 against you and you could never be compelled to
13 incriminate yourself; do you understand all those
14 rights?

15 MR. WOOD: Yes, sir.

16 THE COURT: Do you understand -- I don't know if
17 you made a statement in the case -- but if you made a
18 statement, if you enter this plea and I accept it, you
19 give up your right to contest the constitutional
20 propriety of that statement; do you understand that?

21 MR. WOOD: Yes, sir.

22 THE COURT: The same is true with respect to the
23 admission of evidence. If you have some issue with
24 respect to some violation of the constitution in the
25 collection of evidence, if you enter this plea and I

1 accept it, you give up your right to contest that; do
2 you understand that?

3 MR. WOOD: Yes, sir.

4 THE COURT: All right. Understanding all that,
5 you want to give those all up to enter this plea; is
6 that right?

7 MR. WOOD: Yes, sir.

8 THE COURT: All right. And do you believe that if
9 you and your attorney and the State put 12 jurors in
10 the box over there, that the State has sufficient
11 evidence that there is a substantial likelihood that
12 you would be found guilty?

13 MR. WOOD: Yes, sir.

14 THE COURT: All right. And I find there has been
15 a benefit because it's been reduced from murder; isn't
16 that right?

17 MS. HUEY: Yes, sir, Your Honor.

18 THE COURT: Okay. And are you totally satisfied
19 with your lawyer?

20 MR. WOOD: Yes, sir.

21 THE COURT: Is there anything that he's done that
22 you didn't like?

23 MR. WOOD: No, sir.

24 THE COURT: Is there anything that he has not done
25 that you think he should have done?

1 MR. WOOD: No, sir.

2 THE COURT: And do you have any complaints that
3 you want to make about the way you've been treated in
4 this case?

5 MR. WOOD: No, sir.

6 THE COURT: Have you had enough time to review the
7 evidence the State has against you?

8 MR. WOOD: Yes, sir.

9 THE COURT: Okay. Tell us about it.

10 MS. HUEY: Your Honor, may it please the court.

11 On December 6th of 2011, Anderson County deputies
12 responded to a deceased female, who was eventually
13 identified as Renee Charping. She was 42 years of age
14 at the time. She was located outside of her car at
15 Little Mountain Road in Anderson County.

16 Two by-standers had initially located the body
17 and also found an infant child in the back of the car,
18 who luckily had not been harmed. They took the baby to
19 their home until the deputies arrived.

20 When the victim was identified on the news, this
21 defendant, who was age 19 at the time, was named as one
22 of the last persons to have been seen with the victim
23 when she was alive.

24 According to witnesses, the victim had come into
25 contact with the defendant when she was looking to buy

1 methamphetamine, and the two drove off in her car
2 together, with the baby in the backseat.

3 Two receipts for pseudoephedrine were located in
4 the car, and investigators were able to obtain
5 surveillance videos from these pharmacies where the
6 victim was seen buying this pseudoephedrine. And as
7 the court is aware, that is used in making
8 methamphetamine.

9 Several other witnesses report seeing the
10 defendant after the incident would have occurred, and
11 said he was acting weird and suspicious. He made an
12 admission of sorts, regarding having killed the victim.
13 The majority of witnesses in this case, however, Your
14 Honor, certainly have criminal records themselves.

15 When questioned by law enforcement, the
16 defendant claimed that the victim was setting him up,
17 that she pulled a gun on him and tried to rob him.
18 While that does not seem plausible to the State,
19 regardless, as the defendant has indicated, he claims
20 to have blacked out and doesn't really know what
21 happened. But he did have lots of blood on him.

22 His fingerprint was located in the victim's
23 blood on the window of the car. And his jacket, with
24 his ID, was also located at the crime scene.

25 According to Dr. Woodard, a forensic pathologist

1 who performed the autopsy, she died as a result of
2 massive blunt force trauma from multiple blows to the
3 head. We are not sure of the murder weapon in this
4 case, possibly a tire iron. The toxicology report
5 indicates that she did have methamphetamine in her
6 system, Your Honor.

7 Rita Campbell, who's the sister of Ms. Charping
8 is here, Your Honor, and she would like to address the
9 court at the appropriate time. I have met with them
10 several times and they understand the recommendation.
11 They naturally would like more time, but they
12 understand.

13 THE COURT: Okay. All right. Yes, ma'am.

14 MS. CAMPBELL: Judge, my name is Rita Campbell,
15 C-a-m-p-b-e-l-l. When Mr. Wood made a decision to take
16 Renee's life, he not only took away her life, he took
17 away a daughter, a sister, and a mother of six
18 children. Two of her children are teenagers; three of
19 them are babies that will never see their mother again.
20 The 6th child is Brittney, who is here today. Renee
21 will never see her get married or have children or be a
22 grandmother.

23 The youngest of her children, Eli, was in the
24 backseat of the car while his mother was being murdered
25 just a few feet away from him. So I ask you today,

1 when you make a decision of his sentence, to look at
2 Renee as more than just another name on the list. She
3 -- she had a family that loved her and misses her
4 dearly. Given a chance, Mr. Wood may take away another
5 family's loved one. Please consider this when you make
6 your decision.

7 THE COURT: All right. Thank you very much. Yes,
8 ma'am. All right. Based on what -- the evidence that
9 the State has put on the record, do you think there's a
10 substantial likelihood that they could prove that at
11 trial?

12 MR. WOOD: Yes, sir.

13 THE COURT: All right. Anything you want to
14 change or add to it?

15 MR. WOOD: I apologize for the loss of their loved
16 one, and I hope it never happens again because I can't
17 recall whatever happened that night.

18 THE COURT: All right. Does he have a criminal
19 history?

20 MS. HUEY: Your Honor, he does. In 2009, he has
21 two counts of malicious injury to personal property.
22 And in 2010, he was convicted of burglary 2nd and
23 strong armed robbery. I believe he was sentenced to a
24 YOA for that.

25 THE COURT: Okay. All right. What do y'all want

1 to tell me?

2 MR. POTTER: May it please the court.

3 THE COURT: Yeah.

4 MR. POTTER: Judge, Charlie is 22 years old. He
5 does have two children, a three year old and a two year
6 old. They stay with their mother.

7 He has got as far as 8th grade in school, but he
8 was able to get his GED. He got that in 2011.

9 He was -- he's had about a six year old meth
10 habit. He was taken from his family's home when he was
11 11 years old by DSS. He was taken because his mother
12 and his father were -- had substantial substance abuse
13 issues. And as a result, DSS came in and took custody
14 of them.

15 He was sent down to Columbia, lived with a
16 foster family in Columbia. And then eventually made
17 his way back here to Anderson where he has a sister.

18 Naturally, I'm sure Your Honor's aware, when you
19 have substance abuse, it is -- it is something that
20 unfortunately can be carried down from father to son,
21 and I think that's pretty much what happened here.

22 The incident happened, the victim called him up,
23 said I want some meth. And he said come on over, and
24 we'll -- we'll go cook up some meth. And she came.

25 He had no idea there was a child in the back.

1 He was going on 16 to 18 days worth of being on meth,
2 when she finally did contact him.

3 He's very remorseful and regretful for what
4 happened. I mean, but for the substance abuse problem,
5 he's -- he's a likeable gentleman. He seems to be a
6 decent kid.

7 When I met with him the first time in the
8 detention center, we explained -- we talked about the
9 circumstances. He -- he was pretty much -- I was
10 tweaking, Andy. I didn't -- I -- I was on meth for a
11 long time. I can't tell you exactly what happened. I
12 just can't remember.

13 Since -- obviously, he's been locked up 791
14 days. It's probably the longest he's been sober. And
15 -- and my most recent meetings with him have been --
16 have been good. And like I said, but for the substance
17 abuse issues, but for that, obviously he wouldn't be
18 here today. And, you know, I hazard to say that half
19 the work that we have, we wouldn't have.

20 He is young. What I'd ask, Your Honor, to do --
21 and I understand there is a recommendation of 20 years,
22 I'm -- I'm not going to ask you not to punish him. He
23 understands he has to make right for what he's done.
24 And whatever Your Honor fashions, he -- he naturally is
25 going to accept.

1 What I'd ask Your Honor to consider is -- is the
2 fact that he is young. This is a situation that but
3 for the substance -- but for the meth, he wouldn't be
4 before you today. And he got into that -- you know,
5 into that hole, and just couldn't get himself out, and
6 didn't have the support to help him get himself out.
7 Didn't have family that he could turn to, didn't have
8 anybody -- the best he had was a probation agent and a
9 parole agent when he initially caught the charges
10 there, and unfortunately that didn't work.

11 Respectfully, I would ask you to consider --
12 consider 13 to 15 years as opposed to a 20 year
13 sentence on this. He has the ability. He does have
14 his GED. He does have the ability to make things right
15 and do well from here on out. He does have two small
16 children.

17 And I understand the victim, those -- those
18 children aren't going to have a mom anymore. And --
19 and he understands that and he knows that, but he would
20 ask Your Honor to consider that, and fashion a
21 reasonable sentence where justice is served not only
22 for the victim and the victim's family, but also for
23 himself.

24 THE COURT: All right. Anything you want to say?

25 MR. WOOD: I'm willing to take responsibility for

1 all the wrong doings I've done on my actions.

2 THE COURT: How did you get started on meth?

3 MR. WOOD: My father.

4 THE COURT: Your own father?

5 MR. WOOD: Yes, sir.

6 THE COURT: Well, you don't remember anything
7 about what happened?

8 MR. WOOD: No, sir.

9 THE COURT: Well, when you come to court, you
10 bring your prior record with you. And you brought a
11 record with you on this. I think your lawyer has done
12 a great job getting the -- the recommendation that he's
13 gotten, and I'm going to go along with that. So 20
14 years, credit for the time he's entitled to. Good luck
15 to you. All right.

16 MS. HUEY: Thank you, Judge.

17 MR. POTTER: Thank you, Judge.

18 (Whereupon, the hearing adjourned.)

19

20

END OF TRANSCRIPT

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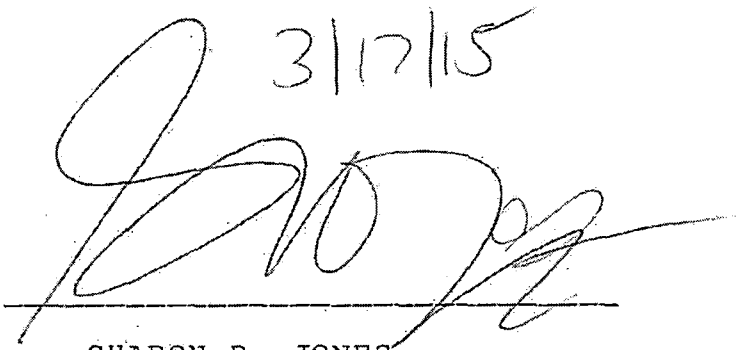
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CERTIFICATE OF REPORTER

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I, SHARON D. JONES, CERTIFIED COURT REPORTER,
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
GENERAL SESSIONS FOR ANDERSON COUNTY, SOUTH CAROLINA,
ON THE 4TH DAY OF FEBRUARY, 2014.

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

3/17/15


SHARON D. JONES,
CERTIFIED COURT REPORTER

STATE OF SOUTH CAROLINA)

County of Anderson)

IN THE COURT OF COMMON PLEAS

2015-CP-04-00107

Charlie G Wood #338866)

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

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

FILED-CLERK'S OFFICE
ANDERSON SC

2015 JAN 14 PM 2:44

COMMON PLEAS AND
GENERAL SESSIONS

INSTRUCTIONS B READ CAREFULLY

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

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

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

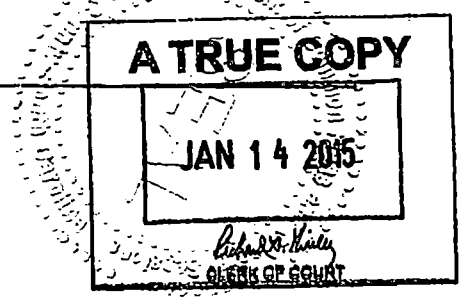
1. Place of detention Lee Correctional Inst.

2. Name and location of Court which imposed sentence Anderson County

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) 2012-GS-04-01017



(b) _____

(c) _____

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

(a) 2-4-14

(b) 20 years 85%

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

NO

8. If you answered Ayes@ 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 Ano@ to (7), state your reasons for not so appealing:

(a) _____

- (b) _____
- (c) _____

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

- (a) Ineffeive Assistance Counsel
- (b) Due process
- (c) Lack of Evidents

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

- (a) _____
- (b) _____
- (c) _____

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

- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered Ayes@ 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?

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) _____
- (b) _____
- (c) _____

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

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

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

(a) the name and address of each attorney who represented you:

i. Andrew Potter
305 Camgon Road Anderson, SC 29625

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Sentence

ii. _____

iii. _____

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

Vacate Sentence and Plea
Time Cute

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Anderson)

VERIFICATION

I, Charlie G. Wood, 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.

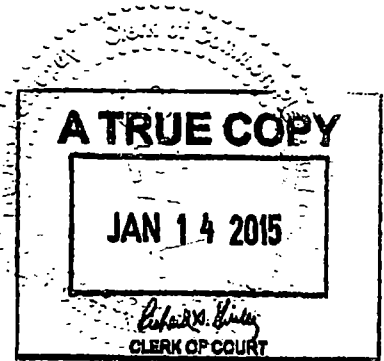
Charlie Wood

SWORN to and subscribed before me this 12 day of Jan, 2015.

Debra Surgen (L.S.)
Notary Public

My Commission Expires: 11-4-2015

FILED-CLERK'S OFFICE
ANDERSON SC
2015 JAN 14 PM 2:41
COMMON PLEAS AND
GENERAL SESSIONS



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

I, _____, 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.

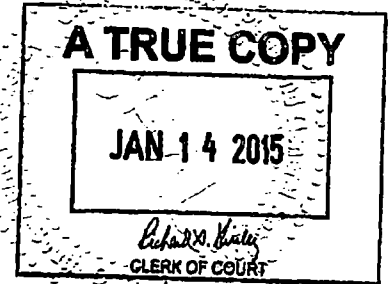
Charlie Wood
Applicant

SWORN or affirmed to and subscribed before me this

12 day of Jan, 2015.

Debra Sures
Notary Public

My Commission Expires: 11-4-2015



COMMON PLEAS AND
GENERAL SESSIONS

2015 JAN 14 PM 2:44

FILED-CLERK'S OFFICE
ANDERSON SC

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ANDERSON)	FOR THE TENTH JUDICIAL CIRCUIT
)	
)	
Charlie G. Wood)	C.A. No. 2015-CP-04-0107
S.C.D.C. No. 338866)	
)	
Applicant,)	
)	
v.)	RETURN¹
)	
State of South Carolina,)	
)	
Respondent.)	
)	

Respondent, making its Return to the Application for Post-Conviction Relief filed January 14, 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 Anderson County Clerk of Court. Applicant was indicted by the February 2012 term of the Anderson County Grand Jury for murder (2012-GS-04-1017). Robert T. 'Theo' Williams, Esq., represented Applicant. On February 4, 2014, Applicant appeared before the Honorable Edward W. Miller and pled guilty to the lesser included offense of voluntary manslaughter. Judge Miller sentenced Applicant to a term of imprisonment for twenty (20) years. Applicant did not appeal his plea or sentence.

II.

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

1. Ineffective Assistance of Counsel
2. Due Process

¹ By Order of January 30, 2015, Hugh Welborn has been appointed as Counsel.

3. Lack of Evidence

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

Attached to this return and incorporated herein are the records of the Anderson County Clerk of Court regarding the subject conviction(s), Applicant's first PCR application, records regarding Applicant's Motion to Reconsider, Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent submits that Applicant's claim of ineffective assistance of trial counsel is without merit. In a PCR 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 trial 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 trial 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 trial counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove trial 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, 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, she 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 trial 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.

In the event Applicant alleges independent claims of due process violations, he fails to set forth with specificity any facts supporting his claim that he was denied due process of law. The Uniform Post-Conviction Procedure Act requires that the applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In a post-

conviction relief application, the applicant must make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (“It is, therefore, incumbent upon the applicant to make at least a *prima facie* showing entitling him to relief.” (citing Babb v. State, 240 S.C. 235, 125 S.E.2d 467 (1962); Crosby v. State, 241 S.C. 40, 126 S.E.2d 843 (1962); Tillman v. Manning, 241 S.C. 221, 127 S.E.2d 721 (1962); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965))).

Since Applicant has failed to make even a *prima facie* showing, Respondent would submit this allegation should be dismissed pursuant to Rule 12(b)(6), SCRCF, for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. In the alternative, Respondent would submit Applicant should be required to provide a more definite statement pursuant to Rule 12(e), SCRCF, because this allegation is so vague and ambiguous Respondent cannot reasonably be required to frame a response.

V.

Respondent submits Applicant’s allegation regarding the lack of evidence should be summarily dismissed. Post-conviction relief “is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction.” S.C. Code Ann. § 17-27-20(b); see also Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (“It is uniformly held that an application for post-conviction relief is not a substitute for an appeal.”). Applicant’s allegation is an inappropriate challenge to the sufficiency of the evidence. Simmons, 264 S.C. at 423, 215 S.E.2d at 885 (“[T]he Uniform Post-conviction Procedure Act ‘shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.’” (citing Ashley v. State, 260 S.C. 436, 196 S.E.2d 501

(1973)). Furthermore, a knowing and voluntary guilty plea waives any non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence. See Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (citing Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975); State v. Fuller, 254 S.C. 260, 174 S.E.2d 774 (1970)). Because Applicant admitted his guilt at the plea hearing, he cannot now challenge the sufficiency of the evidence against him. See Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (“A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed.” (citing Blackledge v. Allison, 431 U.S. 63 (1977))). Therefore, Respondent submits this allegation should be dismissed pursuant to Rule 12(b)(6), SCRPC.

VI.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

(SIGNATURE ON NEXT PAGE)

VII.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

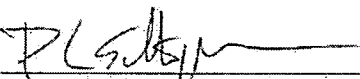
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

PATRICK L. SCHMECKPEPER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

September 29~~th~~, 2015

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)
)
 CHARLIE G. WOOD, #338866,)
)
 Applicant,)
))
 vs)
))
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

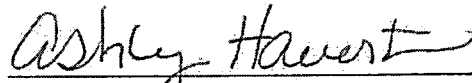
2015-CP-04-0107

AFFIDAVIT OF SERVICE BY MAIL

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

Mr. Hugh Wingo Welborn, Esquire
PO Box 173
Anderson, SC 29622

DATED this 29th day of September, 2015.



 Ashley Haworth, Legal Assistant
 For Respondent

1 State of South Carolina
2 County of Anderson

In the Court of Common Pleas

4 Charlie G. Wood,
5 Applicant,

2015-CP-04-00107

6 -vs-

June 10, 2016

7 State of South Carolina,
8 Respondent.

Transcript of Record

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B E F O R E:

The Honorable R. Scott Sprouse, Judge

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

Hugh W. Welborn, Esquire
Attorney for Applicant

Johanna C. Valenzuela, Esquire
S.C. Attorney General's Office
Attorney for Respondent

Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 9:05 a.m.)

4 THE COURT: Let's go on the record.

5 Ms. Valenzuela.

6 MS. VALENZUELA: Yes, your Honor. May it please
7 the Court. This is the case of Charlie Wood versus the
8 State of South Carolina, case number 2015-CP-04-107.
9 Mr. Wood filed his PCR application January 14th of
10 2015, and the State did file a return in this case.
11 Mr. Wood, the applicant, is currently confined in the
12 Department of Corrections, your Honor. The State
13 confirmed with SCDC this morning that SCDC transported
14 him as we requested and that he is in Anderson County.
15 However, it's come to our attention that he's refusing
16 to leave the jail and come to the courtroom. I believe
17 that one of the bailiffs in the room or the deputy
18 spoke with dispatch to confirm that he is indicating he
19 is not going to come.

20 The victims are here. The State is ready to
21 proceed with this case, and so at this moment we would
22 move for a motion to dismiss based on failure to
23 prosecute under *Don Shevey vs. American Motors*, 279
24 S.C. 58 Supreme Court case out of 1983 where the court
25 clearly indicated that you can dismiss an action for

1 the plaintiff's neglect in proceeding with his cause.

2 And then after you dismiss it, I do have one
3 additional thing to put on the record as to Mr. Woods's
4 case.

5 THE COURT: All right.

6 Mr. Welborn.

7 MR. WELBORN: Your Honor, if it please the Court,
8 as an officer of the court, I have an obligation to
9 inform the court I've done all I can to speak with
10 Mr. Wood. We actually schedule time to speak with
11 these people through the people that are incarcerated.

12 My last phone conversation with him was
13 January 29th of this year, 2016, a phone conversation.
14 And after that, he refused to speak with me. I have no
15 idea -- I've gotten no -- received no complaints from
16 him, so I'm at a total loss, and I just have to tell
17 the court this and I've done my best efforts to try to
18 work with him. And I'd ask the court to make an
19 appropriate ruling.

20 THE COURT: Thank you, Mr. Welborn. All right.

21 The plaintiff or the applicant in a PCR action has
22 the burden of proof; therefore, I will dismiss this
23 action for failure to prosecute.

24 MS. VALENZUELA: Thank you, your Honor.

25 And one last thing, there was an amendment filed

1 in this case where, through an e-mail from counsel that
2 stated that the applicant had indicated that he
3 wanted -- a DNA test should have been taken in his
4 crime. And so just for the candor with the court and
5 also for notice to the applicant through his attorney,
6 that is -- excuse me, that issue is most properly
7 handled in general sessions pursuant to the
8 Postconviction DNA Testing Act, and that's 17-28-10,
9 and that 17-28-40 gives specific procedures and also
10 sets a statute of limitation for the action to be
11 brought. So I'm just making sure to put on notice this
12 wouldn't have been the appropriate forum anyway, but
13 letting them know that needs to be done.

14 And also I went to notify the solicitor's office
15 that through that amendment I thought that that was an
16 indication that that was an interest.

17 THE COURT: Thank you, Ms. Valenzuela.

18 Ms. Valenzuela, prepare me an order, send
19 Mr. Welborn a copy of the draft.

20 MS. VALENZUELA: Yes. Will do.

21 THE COURT: All right.

22 (WHEREUPON, the hearing ended at 9:07 a.m.)

23 ***END OF REQUESTED TRANSCRIPT OF RECORD***

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Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Anderson County, South Carolina, on the 10th day of June 2016.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

September 12, 2016


Diane L. Marcengill, RFR, CRR
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)
)
 Charlie G. Wood,)
 S.C.D.C No. 338866)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE TENTH JUDICIAL CIRCUIT

2015-CP-04-0107

ORDER OF DISMISSAL
 (Failure to Prosecute)

A TRUE COPY

JUN 27 2016

2016 JUN 24 PM 2:27

CLERK OF COURT

ANDERSON PLEAS AND GENERAL SESSIONS

FILED CLERK'S OFFICE ANDERSON SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed January 14, 2015. Respondent made a Return on or about September 29, 2015.

The Court convened an evidentiary hearing into the application on June 10, 2016, at the Anderson County Courthouse. Hugh W. Welborn, Esquire, appeared on behalf of Applicant. Johanna C. Valenzuela, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant refused to leave the holding cell and did not appear at the scheduled hearing. Applicant's attorney informed the Court he had done all he could to speak with Applicant. The last call Mr. Welborn had with Applicant was on January 29, 2016, after which Applicant refused to speak with Mr. Welborn despite Mr. Welborn's attempts to schedule calls with him. Mr. Welborn was not aware of any complaints Applicant had against him, and Mr. Welborn stated he had done his best to try to work with Applicant. Respondent moved to dismiss this matter due to Applicant's failure to prosecute.¹

¹ Respondent made note of an informal amendment she had received through Applicant's counsel regarding DNA testing. Respondent stated she would forward counsel's letter to the Solicitor's Office; however, Respondent noted the DNA claim must be brought pursuant to Section 17-28-10, et seq.


RS

Applicant has the burden of prosecuting this action, and the trial court may properly dismiss an action for plaintiff's neglect in proceeding with his cause. See, e.g. Don Shevey & Spires, Inc. v. American Motors Realty Corp., 279 S.C. 58, 59, 301 S.E.2d 757, 758 (1983) (dismissing a plaintiff's case where the plaintiff "fail[ed] to proceed in the cause"). Applicant's failure to communicate with his attorney regarding this action indicates a lack of diligence in prosecuting his case. This Court finds Respondent's motion well taken and hereby dismisses this matter with prejudice.

IT IS THEREFORE ORDERED THAT

- The above captioned application is dismissed with prejudice for failure of Applicant to prosecute.

AND IT IS SO ORDERED this 17 day of June, 2016


 HONORABLE R. SCOTT SPROUSE
 Presiding Judge
 Tenth Judicial Circuit

Walhalla, South Carolina

FILED-CLERK'S OFFICE
 ANDERSON SC
 2016 JUN 24 PM 2:27
 COMMON PLEAS AND
 GENERAL SESSIONS