

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

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S.C. Supreme Court

JASON D. PARKER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-210672

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA	)	
-vs-	)	TRANSCRIPT OF RECORD
JASON D. PARKER, ET AL,	)	10-GS-32-1144, et al
Defendants.	)	

April 7, 2010
Lexington, South Carolina

B E F O R E:

HONORABLE R. KNOX MCMAHON, Judge.

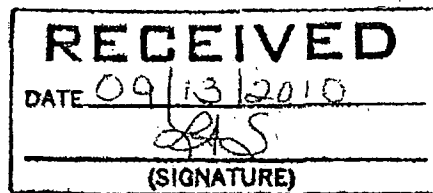
A P P E A R A N C E S:

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Circuit Court Reporter



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INDEX OF WITNESSES

(Court Reporter's Note: There was no direct or cross examination of any witnesses).

INDEX OF EXHIBITS

(Court Reporter's Note: No exhibits were marked or received into evidence).

1 (The following proceedings are reported on
2 April 7, 2010).

3 CLERK: Indictment 2010-GS-32-1131, the State
4 versus Amanda S. Williams, indicted for accessory after
5 the fact of voluntary manslaughter, she is pleading as
6 charged. She is waiving presentment to the grand jury.

7 Indictment 2009-GS-32-3100, the State versus
8 Amanda Williams, indicted for forgery less than \$5,000,
9 she is pleading as charged. This indictment has been
10 true billed, and she is represented by Mr. Snell.

11 Indictment 2010-GS-32-1144, the State versus
12 Jason D. Parker, indicted for destruction or desecration
13 of human remains, he is pleading as charged.

14 Indictment 2010-GS-32-1135, the State versus
15 Jason D. Parker, indicted for voluntary manslaughter, he
16 is pleading as charged. He is waiving presentment to
17 the grand jury on both indictments and is represented by
18 Mr. Madsen.

19 Raise your right hands, please.

20 AMANDA S. WILLIAMS and JASON D.
21 PARKER are first duly sworn.

22 THE COURT: Mr. Snell, you represent Amanda S.
23 Williams?

24 MR. SNELL: I do, Your Honor.

25 THE COURT: Have you explained to her the

1 charges in the indictments, the possible punishment, and
2 her rights, including her right to a jury trial?

3 MR. SNELL: I have, Your Honor.

4 THE COURT: In your opinion does she
5 understand these things?

6 MR. SNELL: She does, Your Honor.

7 THE COURT: How does she indicate she intends
8 to plead to accessory after the fact of a felony and
9 forgery of a value less than \$5,000?

10 MR. SNELL: She is pleading to forgery, and I
11 believe she is waiving indictment and pleading guilty to
12 accessory to voluntary manslaughter.

13 THE COURT: Thank you. Mr. Madsen, do you
14 represent Jason D. Parker?

15 MR. MADSEN: I do, Your Honor.

16 THE COURT: Have you explained to him the
17 charges in the indictments, the possible punishment, and
18 his rights, including his right to a jury trial?

19 MR. MADSEN: I have, Your Honor.

20 THE COURT: In your opinion does he understand
21 these things?

22 MR. MADSEN: He does, Your Honor.

23 THE COURT: How does he indicate he intends to
24 plead to destruction, desecration or removal of human
25 remains and voluntary manslaughter?

1 MR. MADSEN: Guilty, Your Honor.

2 THE COURT: Thank you. Ms. Williams,
3 Mr. Parker, before I can accept pleas of guilty, it's
4 necessary for me to determine if your pleas are being
5 given freely and voluntary. Therefore, I need to ask
6 you some questions.

7 If you do not understand my questions, please
8 let me know, I will try to explain them to you. If at
9 any time you want to talk with your attorney, please
10 advise me, and I will allow you to do so. Do you
11 understand, Ms. Williams?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand, Mr. Parker?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: How old are you, Ms. Williams?

16 THE DEFENDANT: I'm 32, sir.

17 THE COURT: Speak up a little bit for me.

18 THE DEFENDANT: I'm 32, sir.

19 THE COURT: How much education do you have?

20 THE DEFENDANT: Tenth grade.

21 THE COURT: What type of work do you do?

22 THE DEFENDANT: I'm a stay-at-home mother.

23 THE COURT: How old are you, Mr. Parker?

24 THE DEFENDANT: Thirty, Your Honor.

25 THE COURT: How much education do you have?

1 THE DEFENDANT: Eleventh grade.

2 THE COURT: What type of work do you do?

3 THE DEFENDANT: Construction.

4 THE COURT: Ms. Williams, today are you under
5 the influence of any medication, drugs or alcohol?

6 THE DEFENDANT: No, sir.

7 THE COURT: Mr. Parker, are you?

8 THE DEFENDANT: No, sir.

9 THE COURT: Mr. Parker, are you today aware of
10 any physical, emotional or nervous problem that keeps
11 you from understanding what you are doing?

12 THE DEFENDANT: No, sir.

13 THE COURT: Ms. Williams, are you aware of any
14 physical, emotional or nervous problem that might keep
15 you from understanding what you are doing?

16 THE DEFENDANT: No, sir.

17 THE COURT: Each of you have heard your
18 attorneys tell me that they have explained to you the
19 charges in the indictments, the possible punishments,
20 and your constitutional rights, including your right to
21 a jury trial and that you understand these things. Is
22 that correct, Mr. Parker?

23 THE DEFENDANT: Yes, sir, it is.

24 THE COURT: Is that correct, Ms. Williams?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Ms. Williams, as to your
2 indictments, I have been handed up two indictments. The
3 first one I come to is 09-GS-32-03100. It's a true bill
4 indictment.

5 It basically reads that Amanda S. Williams did
6 in Lexington County, on or about August 13, '09,
7 knowingly and willfully did utter or publish as true any
8 false, forged or counterfeit writing or instrument, to
9 wit, presented and cashed a counterfeit check,
10 specifically check number 2135 in the name of Caughman's
11 Meat Plant with Bank of America in the amount of \$356.77
12 made payable to the Defendant and presented at Crouch's
13 Liquor Store on Highway 378, such having a value of less
14 than \$5,000.

15 That's a true bill indictment for forgery less
16 than \$5,000. You can receive a sentence of up to five
17 years for that charge. Do you understand?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: The next indictment,
20 2010-GS-32-01131, basically reads that Amanda S.
21 Williams did in Lexington County, South Carolina, on or
22 about August 6, 2009, knowingly and willfully harbor or
23 assist Jason Parker with the intention of facilitating
24 his escape from arrest, conviction or punishment while
25 knowing that Jason Parker had committed a Class-A

1 felony, to wit, the voluntary manslaughter of Jonathan
2 Sulton, in violation of the common laws of South
3 Carolina and punishable under 16-1-55 of the Code of
4 Laws of South Carolina, to wit, the Defendant aided
5 Jason Parker in the movement and disposal of the
6 victim's body in an attempt to conceal the crime and
7 avoid arrest and/or punishment.

8 It is a charge of accessory after the fact of
9 voluntary manslaughter for which you can receive a
10 sentence of up to 15 years. Do you understand?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Mr. Parker, I have been handed up
13 two indictments. The first is 2010-GS-32-01135. It
14 basically reads that Jason D. Parker did in Lexington,
15 South Carolina, on or about August 6, 2009, unlawfully
16 kill one Jonathan Sulton without malice, expressed or
17 implied, in a sudden heat of passion and upon sufficient
18 legal provocation, to wit, Jason Parker killed the
19 victim, Jonathan Sulton, by strangling him to death
20 during the course of a physical altercation between the
21 two men in violation of 16-3-50 of the Code of Laws of
22 South Carolina.

23 That is an indictment for voluntary
24 manslaughter for which you can receive a sentence of up
25 to 30 years. Do you understand?

1 THE DEFENDANT: Yes, sir, I do.

2 THE COURT: Further, this is considered a most
3 serious offense. It is a no-parole offense and it is a
4 violent offense. Do you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: The next indictment,
7 2010-GS-32-01144, reads that Jason D. Parker did in
8 Lexington, South Carolina, on or about August 6, 2009,
9 knowingly and willfully and without proper legal
10 authority destroy or damage the remains of a deceased
11 human being and/or desecrate humans remains, to wit,
12 the Defendant, Jason Parker, after killing the victim,
13 Jonathan Sulton -- that's S-U-L-T-O-N; is that
14 correct?

15 MR. GRAHAM: Yes, Your Honor.

16 THE COURT: I will correct the spelling on
17 this indictment, Mr. Madsen.

18 MR. MADSEN: No objection, Your Honor.

19 THE COURT: That the Defendant, Jason Parker,
20 after killing the victim, Jonathan Sulton, did pour
21 gasoline over the remains of Jonathan Sulton and set his
22 remains on fire in violation of 16-17-600(a) of the Code
23 of Laws of South Carolina as amended.

24 That's an indictment for destruction or
25 desecration of human remains for which you can receive a

1 sentence of not less than one, no more than ten years
2 and/or a fine of \$5,000. Do you understand?

3 THE DEFENDANT: Yes, Your Honor I do.

4 THE COURT: Ms. Williams, Mr. Parker, if you
5 both would please listen to me. When you plead guilty,
6 you give up certain important constitutional rights.
7 First, you give up your right to remain silent. Second,
8 you give up your right to a jury trial. That is your
9 right against self incrimination, your right to say
10 nothing all. You cannot be compelled to testify or to
11 provide evidence against yourself.

12 Second, you give up your right to have a jury
13 trial. That is your right to have a jury decide whether
14 or not you are guilty beyond a reasonable doubt. The
15 jury would base their decision upon evidence which the
16 State presents and on any evidence you might wish to
17 introduce.

18 In a trial you would be presumed to be
19 innocent, and the State would have to produce evidence
20 that would convince all 12 members of the jury that you
21 were guilty beyond a reasonable doubt.

22 Third, you give up your right to confront and
23 be confronted by the witnesses against you. That is the
24 right to see, to hear, and to cross examine any
25 witnesses that may be called against you during the

1 trial and the right to subpoena and call witnesses on
2 your own behalf.

3 Further, both Ms. Williams and Mr. Parker, as
4 to Ms. Williams, one of your indictments, accessory
5 after the fact of voluntary manslaughter, has not yet
6 been before the grand jury.

7 Mr. Parker, as to your indictments, neither
8 one, the voluntary manslaughter nor the destruction or
9 desecration of human remains, have been before the grand
10 jury. The cases have not been before the grand jury for
11 their consideration.

12 After hearing evidence at least 12 of the 18
13 members of the grand jury would have to agree that you
14 were probably guilty before the charges against you
15 could be reported out as a true bill ready for trial.
16 The grand jury might return a no bill, which would mean
17 that the charge would be dismissed. Do you understand
18 this, Ms. Williams?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand this,
21 Mr. Parker?

22 THE DEFENDANT: I do, Your Honor.

23 THE COURT: Ms. Williams, do you wish to give
24 up your right to have the grand jury examine your case?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Mr. Parker, do you wish to give up
2 your right to have the grand jury examine both of your
3 cases, voluntary manslaughter and destruction or
4 desecration of human remains?

5 THE DEFENDANT: I do, Your Honor.

6 THE COURT: Ms. Williams, do you understand
7 all of these rights?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Do you understand that when you
10 plead guilty, you give up all of these constitutional
11 rights?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Is that what you want to do?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand that you will
16 not get a jury trial if you plead guilty?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Mr. Parker, do you understand all
19 of these constitutional rights?

20 THE DEFENDANT: I do, Your Honor.

21 THE COURT: Do you understand that when you
22 plead guilty, you give up all of these constitutional
23 rights?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Is that what you want to do?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand that you won't
3 get a jury trial if you plead guilty?

4 THE DEFENDANT: Yes, sir, I do, Your Honor.

5 THE COURT: Ms. Williams, understanding then
6 the nature of the charge against you as to accessory
7 after the fact of voluntary manslaughter, for which you
8 can receive a sentence of up to 15 years, how do you
9 plead to that charge, guilty or not guilty?

10 THE DEFENDANT: Guilty, Your Honor.

11 THE COURT: As to the charge of forgery of a
12 value less than \$5,000, for which you can receive a
13 sentence of up to five years, how do you plead to that
14 charge, guilty or not guilty?

15 THE DEFENDANT: Guilty, Your Honor.

16 THE COURT: Do you understand that when you
17 plead guilty, you admit the truth of the charges made
18 against you?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Ms. Williams, you may have
21 defenses to these charges. I don't know whether you do
22 or not. Do you understand that if you plead guilty, you
23 will waive or give up any defenses to these charges?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You may have given incriminating

1 statements in these cases. If you plead guilty, do you
2 understand that you waive or give up the right to
3 contest or challenge whether such a statement was freely
4 and voluntarily given in accordance with your
5 constitutional rights?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Did you commit the offense of
8 accessory after the fact of voluntary manslaughter?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Did you commit the offense of
11 forgery of a value less than \$5,000?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Mr. Parker, understanding the
14 nature of your charges of voluntary manslaughter, for
15 which you can receive a sentence of up to 30 years, how
16 do you plead to that charge, guilty or not guilty?

17 THE DEFENDANT: Guilty, Your Honor.

18 THE COURT: And understanding the nature of
19 the charge against you of destruction or desecration of
20 human remains, for which you can receive a sentence of
21 not less than one, no more than the ten years and a fine
22 of \$5,000, how do you plead to that charge, guilty or
23 not guilty?

24 THE DEFENDANT: Guilty, Your Honor.

25 THE COURT: Do you understand that when you

1 plead guilty, you admit the truth of the charges made
2 against you?

3 THE DEFENDANT: Yes, sir, I do.

4 THE COURT: You may have defenses to these
5 charges against you. I don't know whether you do or
6 not. Do you understand that by pleading guilty, you
7 give up or waive any defenses to these charges?

8 THE DEFENDANT: Yes, Your Honor, I do.

9 THE COURT: You may have given incriminating
10 statements in this case. If you plead guilty to these
11 charges, do you understand that you waive or give up the
12 right to contest or challenge whether such a statement
13 was given freely and voluntarily in accordance with your
14 constitutional rights?

15 THE DEFENDANT: I do, Your Honor.

16 THE COURT: Did you commit the offense of
17 voluntary manslaughter?

18 THE DEFENDANT: I did, Your Honor.

19 THE COURT: Did you commit the offense of
20 destruction or desecration of human remains?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Solicitor, have there been any
23 plea negotiations in this case?

24 MR. GRAHAM: As to Ms. Williams, Your Honor,
25 no. As to Mr. Parker, he has a pending forgery charge

1 that the State is dismissing, and Mr. Madsen informs me
2 there may be another unserved warrant for another
3 forgery. If that's the case, the State will dismiss
4 that forgery as well.

5 THE COURT: Is that the full and complete plea
6 negotiations into the record as to Mr. Parker,
7 Mr. Madsen?

8 MR. MADSEN: Judge, they are also reducing --
9 he was originally charged with murder. They are
10 reducing that down to voluntary manslaughter.

11 THE COURT: Is that correct, Solicitor?

12 MR. GRAHAM: Correct, Your Honor.

13 THE COURT: That's the full and complete plea
14 negotiations, Mr. Madsen, as to Mr. Parker?

15 MR. MADSEN: It is, Your Honor.

16 THE COURT: Mr. Snell, I understand there is
17 no plea negotiation between the State and the Defendant,
18 Ms. Williams.

19 MR. SNELL: Other than she was originally
20 charged with accessory after the fact of murder, and she
21 is being allowed to plead to accessory after voluntary
22 manslaughter.

23 THE COURT: Is that correct, Solicitor?

24 MR. GRAHAM: Yes, Your Honor.

25 THE COURT: Is that your understanding of the

1 plea negotiations in your case, Mr. Parker?

2 THE DEFENDANT: Yes, sir, it is.

3 THE COURT: Is that your understanding of the
4 plea negotiations in your case, Ms. Williams?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: The only thing is the reduction of
7 the charge from accessory after the fact of murder to
8 accessory after the fact of voluntary manslaughter,
9 Ms. Williams?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: What's the difference in those
12 charges, accessory after the fact of murder versus
13 accessory after the fact of voluntary manslaughter?

14 MR. GRAHAM: I believe the punishment is the
15 same, Your Honor.

16 THE COURT: So the label of the charge is
17 different, but the punishment is still the same?

18 MR. GRAHAM: That's my understanding, Your
19 Honor.

20 THE COURT: Do you understand that,
21 Ms. Williams?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: If you were up here pleading to
24 accessory after the fact of murder, you could still
25 receive a sentence of up to 15 years.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And you are pleading to accessory
3 after the fact of voluntary manslaughter. I can still
4 sentence you up to 15 years on that charge. Do you
5 understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you still wish to plead guilty,
8 Ms. Williams?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And as to your charges,
11 Mr. Parker, with the plea negotiations stated into the
12 record, do you still wish to plead guilty?

13 THE DEFENDANT: I do, Your Honor.

14 THE COURT: Ms. Williams, has anyone promised
15 you anything or held out any hope of reward to get you
16 to plead guilty?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: Has anyone threatened you or used
19 force to get you to plead guilty?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: Has anyone used any pressure or
22 intimidation to cause you to plead guilty?

23 THE DEFENDANT: No, sir.

24 THE COURT: Have you had enough time to make
25 up your mind as to whether or not you want to plead

1 guilty?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Are you pleading guilty of your
4 own free will and accord?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Mr. Parker, has anyone promised
7 you anything or held out any hope of reward to get you
8 to plead guilty?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: Has anyone threatened you or used
11 force to get you to plead guilty?

12 THE DEFENDANT: No, sir.

13 THE COURT: Has anyone used any pressure or
14 intimidation to cause you to plead guilty?

15 THE DEFENDANT: No, sir.

16 THE COURT: Have you had enough time to make
17 up your mind as to whether or not you want to plead
18 guilty?

19 THE DEFENDANT: I have, Your Honor.

20 THE COURT: Are you pleading guilty of your
21 own free will and accord?

22 THE DEFENDANT: I am, Your Honor.

23 THE COURT: Mr. Parker, are you satisfied with
24 the manner in which your lawyer has advised you and
25 represented you?

1 THE DEFENDANT: I am, yes, sir.

2 THE COURT: Ms. Williams, are you satisfied
3 with your lawyer?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Ms. Williams, have you talked with
6 your lawyer as often and for long as you feel necessary
7 for him to properly represent you?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Have you, Mr. Parker?

10 THE DEFENDANT: I have, Your Honor.

11 THE COURT: Mr. Parker, do you need anymore
12 time to talk with your lawyer?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: Have you understood your talks
15 with your lawyer?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Ms. Williams, do you need anymore
18 time to talk with your lawyer?

19 THE DEFENDANT: No, sir, Your Honor.

20 THE COURT: Have you understood your talks
21 with your lawyer?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Ms. Williams, has your lawyer done
24 everything for you you feel like he could have done or
25 should have done?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Has your lawyer done anything in
3 this case he should not have done?

4 THE DEFENDANT: No, sir.

5 THE COURT: Mr. Parker, has your lawyer done
6 everything for you you feel like he could have done or
7 should have done?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Has your lawyer done anything that
10 you feel like he should not have done?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: Are you totally and completely
13 satisfied with your lawyer's services, Mr. Parker?

14 THE DEFENDANT: I am, Your Honor.

15 THE COURT: Are you totally and completely
16 satisfied with your lawyer's service, Ms. Williams?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Ms. Williams, do you have any
19 complaint you want to make about your lawyer, the
20 solicitor or any police officers involved in your
21 case?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: Mr. Parker, do you have any
24 complaint you want to make about your lawyer, the
25 solicitor or any police officers involved in your

1 case?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Mr. Parker, have you understood my
4 questions?

5 THE DEFENDANT: Yes, sir, I have.

6 THE COURT: Is there anything you would like
7 to ask me about what we have just been over?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: Do you understand you have a right
10 to appeal your guilty pleas and the sentence of the
11 Court and that you or your lawyer must do so within ten
12 days?

13 THE DEFENDANT: I do, Your Honor.

14 THE COURT: Ms. Williams, have you understood
15 my questions?

16 THE DEFENDANT: Yes, sir, Your Honor.

17 THE COURT: Is there anything you would like
18 to ask me about what we have just been over?

19 THE DEFENDANT: No, sir.

20 THE COURT: Do you understand you have a right
21 to appeal your guilty pleas and the sentence of the
22 Court and that you or your lawyer must do so within ten
23 days?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Solicitor, if you would give me

1 the facts, please.

2 MR. GRAHAM: Thank you, Your Honor. Starting
3 on Ms. Williams' forgery, the incident occurred on
4 August 13, 2009. At that time, Your Honor, Ms. Williams
5 presented and cashed a counterfeit and forged check in
6 the name of Caughman Meat Plant drawn on the Bank of
7 America account in the amount of \$356.77 at Crouch's
8 Liquor Store, which is on Highway 378 in the Lexington
9 area of Lexington County.

10 Ms. Williams was identified from a photo
11 lineup on that, Your Honor. There are no victims
12 present on that case. Do you want to ask her about that
13 or have me go into the next?

14 THE COURT: You can proceed.

15 MR. GRAHAM: On August 6, 2009, Your Honor,
16 at about 12:45 a.m., law enforcement responded to
17 [REDACTED] in the Gilbert area of Lexington
18 County, which is part of Clayton Rawl's farm.

19 Several Hispanic workers, farm workers, had
20 discovered a body on a dirt road in the woods in that
21 area. When police officers responded, they found a body
22 that had been dumped there, Your Honor. There was an
23 overriding smell of gasoline, and the body had been
24 burned and placed on fire.

25 The investigation began at the time. The

1 identity of that body was not known for several days.
2 On August 15, 2009, that would be approximately nine
3 days after the body was found, Ms. Fredrena Johnson, who
4 is Jonathan Sulton's mother, filed a missing person's
5 report with the Lexington County Sheriff's Department
6 stating that she had not heard from her son in
7 approximately three weeks.

8 She stated it was unlike him to be gone for
9 that period of time without contacting anyone in the
10 family. On the 17th officers contacted a friend of
11 Mr. Sulton's named Ashley Adams. She stated that she
12 had not heard from Mr. Sulton since August 6th of
13 2009.

14 She said the last time she had talked to him
15 was approximately 1:30 a.m. that morning. She had
16 received a telephone call from a telephone
17 number [REDACTED]. Officers called that number and spoke
18 with Amanda Williams.

19 THE COURT: Spoke with who?

20 MR. GRAHAM: Ms. Williams, Your Honor. She
21 answered that phone. She lived, along with Mr. Parker,
22 at [REDACTED] in Lexington, South Carolina. She
23 stated that Mr. Sulton had been there earlier. She had
24 allowed him to use the phone, and she believed at this
25 time that was the last time she saw him and believed he

1 might have gone to North Carolina.

2 The following day on the 18th, officers with
3 the Sheriff's Department contacted or attempted to
4 contact Ms. Williams again to see whether she had any
5 additional information about Mr. Sulton's whereabouts.

6 At that time when they dialed number, they
7 spoke with Mr. Parker, the Defendant before you as well.
8 The officers noted that Mr. Parker was very helpful and
9 provided the officer with the phone numbers for two
10 other individuals, Q. and Cap, who were associates of
11 Mr. Sulton.

12 I believe Mr. Parker stated that he thought he
13 might be with those individuals. Mr. Parker stated that
14 Mr. Sulton had been there earlier on the 6th because
15 Mr. Parker had owed him \$40 for the sale of crack
16 cocaine.

17 Mr. Parker stated that Mr. Sulton came back
18 later on that day and he was upset, and he believed that
19 he was upset because he had been in an argument with a
20 girl. That was on the 18th.

21 As well as on the 18th, Mr. Parker stated that
22 on the day of the 6th, that Cap came by and they got
23 into an argument. The argument was over a breach of
24 trust vehicle and that Mr. Sulton had given Cap a
25 quantity of crack cocaine to ease the argument.

1 On the 19th officers continued their
2 investigation. The case officer received a phone call
3 from a north region detective in Lexington County who
4 stated that he was at Jackson's Pawn Shop speaking with
5 Shea Jackson. I believe he was one of the operators of
6 that store.

7 The officer stated that Mr. Jackson was
8 inquiring about whether a burnt body had been found,
9 stating that an individual named Jason Parker, the
10 Defendant, had been in the shop and stated he had
11 confessed to him about killing somebody and setting his
12 body on fire.

13 Officers went to interview Mr. Jackson. He
14 stated that on the morning of August 11th that Jason
15 Parker came into his shop and called him over to the
16 side, that Mr. Parker was nervous and animated, possibly
17 even high and starting telling him he had killed
18 somebody.

19 He said, I did something I didn't mean to do,
20 but I got into it with the guy and killed him.
21 Mr. Jackson stated that he was told they were drinking
22 and smoking crack cocaine when they got into a scuffle
23 and he began to choke him.

24 He said he also struck the individual with
25 something, and he said, I took him to a dirt road way

1 out in Lexington, and I put on him fire. I can't tell
2 you anymore. I've got to go.

3 Officers went back and began to question
4 Mr. Parker. They went out to his residence. He was not
5 in custody at that time. They asked him if he was one
6 of the last -- their investigation led them to believe
7 that Mr. Parker was one of the last people to see him
8 alive.

9 When they stated that to Mr. Parker, his
10 demeanor changed drastically. He began to cry. He
11 stated at that time they beat him down. He went on to
12 tell a story about how other individuals had been there,
13 had beaten Mr. Sulton down and dragged him away.

14 There were several statements to several
15 individuals, as well as law enforcement, Your Honor,
16 which go along with that, that there had been some kind
17 of physical altercation they had gotten into for
18 different reasons and that in the evening Mr. Parker
19 choked out Mr. Sulton. He told some individuals he used
20 an electrical cord.

21 Ms. Williams came in and spoke with me, Your
22 Honor, and the story she had was somewhat similar.
23 There were different reasons for why the altercation
24 occurred, but she acknowledged that they had got into
25 a physical altercation. She had left the room and

1 that Mr. Parker came and told her he had killed
2 Mr. Sulton.

3 That was the morning, the early morning hours
4 of the 6th. Later on that day, Ms. Williams contacted
5 her mother and borrowed a vehicle from her. It was a
6 Suzuki, I think. Her and Mr. Parker put Mr. Sulton's
7 body in the back of that car.

8 They went to a gas station. There is footage
9 from a gas station showing Mr. Parker obtaining
10 gasoline. You can't tell what he's putting into. He is
11 obviously not putting it into the car.

12 They then drive out to Rawl's farm on [REDACTED]
13 [REDACTED] in Gilbert, take the body out of the car, and
14 Mr. Parker pours gasoline over Mr. Sulton's body and
15 sets him on fire.

16 The car was parked so closely, Your Honor,
17 that the explosion, I guess, of gasoline which ignited
18 did heat damage to the wheel cover of the spare wheel on
19 the Suzuki.

20 The autopsy, Your Honor, revealed that
21 Mr. Sulton had second and third degree -- first, second,
22 and third degree burns on 80 percent of his body. The
23 toxicology report was negative.

24 So he was not, Mr. Sulton was not, using crack
25 cocaine as Mr. Parker had stated to Mr. Jackson. It was

1 also negative for drugs and also for carbon monoxide.
2 showing that the body was deceased prior to it being set
3 on fire.

4 Identification took several days. It was made
5 on the basis of dental records and tattoos, Your Honor.
6 The examination showed that there was some contusion of
7 the right conjunctiva, and there was no soot in the
8 airway.

9 The strap muscles in the neck were without
10 contusion, except for a small hemorrhage high on the
11 left side of the neck. The pathologist stated the cause
12 of death was most likely asphyxia due to compression of
13 the neck, citing the slight hemorrhage high on the neck
14 and the strap muscles during the autopsy. She opines
15 that the compression of the neck, her findings are
16 consistent with a chokehold.

17 Ms. Williams does not have a prior record,
18 Your Honor. Mr. Parker does, Your Honor. He has a 1998
19 defective tag light; 2004, operating unsafe vehicle,
20 driving under suspension; a shoplifting in 2005; a
21 burglary third in 2005; malicious injury to property,
22 2005. It shows a revocation of his probation in 2008.
23 He received a 30-month revocation on that.

24 I know at the appropriate time, Your Honor,
25 that the victim's mother, Fredrena Johnson, and his

1 grandmother, Gladys Whetstone, would like to address the
2 Court.

3 I don't know that we are ever going to know
4 exactly what happened between the two individuals, Your
5 Honor. There is little physical evidence, other than
6 the body itself and what the autopsy showed. The only
7 other information about what happened that night was
8 statements made by Mr. Parker and Ms. Williams.

9 THE COURT: Thank you, Solicitor.

10 I find there is a substantial factual basis
11 for the guilty plea, both as to Ms. Williams and
12 Mr. Parker. The Defendants', Ms. Williams' and
13 Mr. Parker's, decisions to enter these pleas of guilty
14 are freely, voluntarily, knowingly, and intelligently
15 made.

16 They each had the advice and counsel of a very
17 competent attorney that each state they are well and
18 totally satisfied with their attorneys. Therefore,
19 their pleas are accepted, both as to Ms. Williams and as
20 to Mr. Parker.

21 The Defendants', Ms. Williams' and
22 Mr. Parker's, decisions to enter these pleas of guilty
23 are freely, voluntarily, knowingly, and intelligently
24 made. They have each had the advice and counsel of a
25 very competent attorney. Each state they are well and

1 totally satisfied with their attorneys. Therefore their
2 pleas of guilty are accepted.

3 I would be glad to hear from whoever, you want
4 me to hear from, Solicitor.

5 MR. GRAHAM: Thank you, Your Honor. In
6 addition to the mother and the grandmother, Your Honor,
7 I want to make the Court aware that there are several
8 other members, friends and family, present here in the
9 courtroom today.

10 THE COURT: Yes, ma'am, your name, please?

11 MS. JOHNSON: My name is Fredrena Johnson.

12 THE COURT: Ms. Johnson, I would be glad to
13 hear from you.

14 MS. JOHNSON: I'm Jonathan's mother.

15 (Pause.)

16 MS. JOHNSON: I had not seen my son for a
17 couple of weeks before this. Jason brought him to my
18 house and told me how much he loved my son, that he
19 would never do anything to hurt him. I didn't even see
20 if he had -- if he needed a haircut.

21 I couldn't kiss him one more time. The last
22 conversation I had with my son, he talked to me and he
23 was home. With Jason and Amanda, I just don't want you
24 to ever forget what they took from me. My son will
25 never know his oldest brother. I'm not supposed to bury

1 my child. He's supposed to bury me.

2 THE COURT: Yes, ma'am, your name, please?

3 MS. WHETSTONE: Gladys Whetstone. I am the
4 grandmother of Jonathan Sulton.

5 THE COURT: I would be glad to hear from you,
6 Mr. Whetstone. If you would speak up just a little bit
7 for me, please.

8 MS. WHETSTONE: Yes, sir, I am the grandmother
9 of Jonathan Sulton. I delivered him 20 years ago. My
10 hands are what, with God's help, bring him into this
11 world and practically raised him off and on for 20
12 years. He lived with me half the time.

13 On August the 6th, Jonathan called me. I
14 said, Jonathan, where are you, Baby? He said, Grandma,
15 I'm all right. He said, I'm with my friends. I said,
16 Who? He said Jason and Amanda.

17 He said, Grandmamma, don't worry. I will be
18 all right. I said, Baby be careful. I said, I love
19 you. He said, Grandma, I love you, too. I said, Are
20 you working? Because every time he called me, I always
21 asked all my grands that is old enough to have a job,
22 Are you working?

23 Yes, ma'am.

24 I was like, Where is you working at?

25 Grandma, I got a job.

1 I said, Okay.

2 Grandma, don't worry about it. I will be all
3 right.

4 After that I called my daughter as the week
5 went by. I said, Fredrena, Jonathan is on my mind so
6 heavy. I said, I don't want to put it in my heart that
7 something had happened.

8 So Fredrena, she contacted the police
9 department. She called me back that Monday. She said,
10 Momma, I got a feeling something is wrong. When she
11 came at my job -- I work at Gilbert High School -- and
12 said it was him that they found, off and on I prayed and
13 I asked God for strength, but the pain and the hurt is
14 still there.

15 My baby, he wasn't no violent type person. I
16 raised all of them, helped raise them, and never been in
17 trouble, never been in jail. He was a fun-type person.
18 Everybody, everybody that knew Jonathan, if y'all would
19 known him, he wasn't the type of person to fight with
20 nobody.

21 If it please the Court, may I say to Jason and
22 Amanda, y'all are somebody's children, too. We aren't
23 the only ones that's hurting. Your parents is too.

24 THE COURT: I'm sorry, I can't quite hear you,
25 Ms. Whetstone.

1 MS. WHETSONE: I said if it please the Court,
2 I would like to say to Amanda and Jason, they are
3 somebody's children also. If the shoe was turned the
4 other way around, their family member, they would be
5 hurting also.

6 This is something that we will never forget as
7 long as the day we live. I ask God every day to keep
8 his legacy alive in all of our hearts. His birthday is
9 coming up, July 18th. We don't know how to celebrate it
10 for him, but we are going to do the best we can, even
11 though we know he is not going to be here anymore.
12 Thank you, Your Honor.

13 MR. GRAHAM: Your Honor, the only other thing
14 is the family has asked me to express their desire for
15 you to give Mr. Parker the maximum sentence.

16 MS. WHETSONE: Please do.

17 THE COURT: That was Mr. Parker?

18 MR. GRAHAM: Yes, Your Honor.

19 THE COURT: Does the family have a position as
20 to Ms. Williams?

21 MR. GRAHAM: No, Your Honor.

22 THE COURT: How old would Mr. Sulton be
23 July 18th?

24 MR. GRAHAM: Twenty-one, Your Honor.

25 THE COURT: He'd be 21?

1 MR. GRAHAM: Yes, Your Honor.

2 THE COURT: This would have been his 21st
3 birthday?

4 MR. GRAHAM: Correct, Your Honor.

5 THE COURT: Solicitor, were Mr. Parker and
6 Ms. Williams and Mr. Sulton, were they friends?

7 MR. GRAHAM: They knew each other. I don't
8 know how much they were friends. I know Ms. Johnson
9 told me that several weeks before Mr. Sulton's death
10 that Mr. Parker had brought Mr. Sulton over to her
11 house. So I know they knew each other. I don't know
12 how to classify their relationship.

13 THE COURT: Where is Cathy Lane? Did you say
14 that address, Solicitor.

15 MR. GRAHAM: I did, Your Honor. Mr. Madsen or
16 Mr. Snell might be better in telling you where that is
17 at.

18 THE DEFENDANT (PARKER): It's off Vonda and
19 Bluefield, off Number 6.

20 THE COURT: Bluefield Road, is that by Bethany
21 Church? You go out by Bethany Church?

22 THE DEFENDANT (PARKER): Yes, sir, it is.
23 It's right before that actually.

24 THE COURT: Solicitor, did the investigation
25 reveal any connection between Mr. Parker, Ms. Williams

1 or Mr. Sulton and the dirt road where Mr. Sulton's body
2 was located?

3 MR. GRAHAM: No, Your Honor.

4 THE COURT: On Clayton Rawl's farm.

5 MR. GRAHAM: The investigation did not show
6 any significance to that location, other than a remote
7 area of Lexington County.

8 THE COURT: All right.

9 MR. GRAHAM: If I didn't make it clear,
10 according to the Defendant and codefendant, the killing
11 of Mr. Sulton occurred at their residence.

12 THE COURT: Solicitor, I'm not familiar and I
13 am just asking you this question. Does the destruction
14 of human remains by fire in any way affect toxicology
15 results that you know of, Solicitor?

16 MR. GRAHAM: I'm not aware of fire affecting
17 the toxicology reports and accuracy for measurement of
18 drugs, Your Honor.

19 THE COURT: What about the fact that -- well,
20 all right. That's all. Thank you. Anything further,
21 Solicitor?

22 MR. GRAHAM: No, Your Honor.

23 THE COURT: Mr. Snell.

24 MR. SNELL: Thank you so much, Your Honor. I
25 am appointed counsel for Ms. Williams, who is here today

1 accompanied by some members of her family. At the end I
2 would like to ask the Court to hear from them.

3 Your Honor, she is 32 years of age, has no
4 prior record. She is a longtime Lexington County
5 resident and was living with Jason Parker, who is a
6 codefendant up here with her, and her three children.
7 [REDACTED] is 12, [REDACTED] is ten, and [REDACTED] is four.

8 Her mother is in poor health and wasn't able
9 to be here today. Her father, who is 72 years old, is
10 in the back of the courtroom. With his health he was
11 not comfortable coming up front and standing.

12 She has a -- just to let the Court know -- she
13 has a terminal illness which affects her immune system.
14 She doesn't have a normal life expectancy. She requires
15 regular medical assistance and takes regular
16 medications.

17 I understand that she was taking some pain
18 medication related to another injury to her foot. I am
19 hoping -- I will ask the Court to make sure she is not
20 on any particular pain medications today that may affect
21 her.

22 THE COURT: I asked her that question earlier
23 if she was under the influence of any medication, drugs
24 or alcohol. I will revisit that now since you brought
25 it up, Mr. Snell.

1 Ms. Williams, are you under the influence of
2 any medication, drugs or alcohol?

3 THE DEFENDANT: No, sir.

4 THE COURT: Do you take certain prescribed
5 medication?

6 THE DEFENDANT: I was.

7 THE COURT: Are you taking any now?

8 THE DEFENDANT: Yes, sir. I am taking -- it's
9 called Atripla. It's not for pain.

10 THE COURT: What it is for?

11 THE DEFENDANT: It's for my illness.

12 THE COURT: Does it negatively affect your
13 thinking ability?

14 THE DEFENDANT: No, sir.

15 THE COURT: Do you know what you are doing
16 today?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: What are you doing here today,
19 Ms. Williams?

20 THE DEFENDANT: I'm pleading guilty, sir.

21 THE COURT: Pleading guilty to what?

22 THE DEFENDANT: To accessory after
23 manslaughter.

24 THE COURT: What else?

25 THE DEFENDANT: And the forgery.

1 THE COURT: Thank you. Thank you very much.
2 You may continue, Mr. Snell.

3 MR. SNELL: Thank you, Your Honor. She has
4 currently served 221 days in the detention center. Bond
5 was set at 260,000 and it has remained at that. She
6 wasn't able to afford to get out.

7 Your Honor, I spent an awful lot of time
8 meeting with her, reviewing the discovery, and talking
9 to her about legal issues and defenses and her rights.
10 She is here today kind of first and foremost because she
11 is exceedingly remorseful about what happened.

12 She wanted to be sure to plead with Mr. Parker
13 at the same time out of respect for Mr. Sulton's family
14 and the Court so as not to have to do this twice. Your
15 Honor, on August 6, as I understand, there was a dispute
16 between Mr. Parker and Mr. Sulton over a quantity of
17 drugs. I think also Mr. Sulton may have expressed kind
18 of a romantic interest.

19 THE COURT: In Ms. Williams?

20 MR. SNELL: Ms. Williams.

21 THE COURT: Or Mr. Parker?

22 MR. SNELL: Ms. Williams.

23 THE COURT: Thank you.

24 MR. SNELL: When Ms. Williams discovered, I
25 guess, or found out what had happened, her children were

1 in the house and she was in her room. Tyler, the first
2 thing that happened was she panicked and didn't want her
3 children exposed to what had happened.

4 That started her off on kind of the poor
5 decision track which has led her here today. She and
6 Mr. Sulton had, I think, from her prospective up until
7 this night had a positive relationship or a friendly
8 relationship.

9 She reports on his last birthday in July,
10 several weeks previously, they had actually given him a
11 birthday party with a birthday cake. He was somebody
12 who was becoming more of more of an acquaintance and a
13 regular person in their house.

14 Your Honor, she made a poor decision out of
15 fear, out of panic at the time, not knowing what to do.
16 She didn't want anything to happen to her children. She
17 didn't want to be taken from her children or have them
18 removed from her life, and unfortunately it's had the
19 opposite affect.

20 She has reported over and over how sorry she
21 is. She didn't immediately report it to law
22 enforcement, and she -- we had some good talks, and she
23 recognizes how she took an awful situation and
24 compounded it and made it so much worse on Mr. Sulton's
25 family.

1 Your Honor, her reasons, she really wants to
2 provide -- it was, I think, a tragedy for all the
3 families involved. She looked at this as an opportunity
4 today to begin the healing process for everybody, and
5 she did want to come and accept responsibility. I think
6 that's the only way you can truly show remorse for
7 involvement in anything like this.

8 Additionally, as to the forgery, as part of
9 it, there is restitution. She very much would like to
10 pay the restitution as soon as she is available. That
11 happened approximately a little over a week after this
12 happened.

13 I think during that whole time until her
14 arrest, it would be fair to say she wasn't thinking
15 clearly and was in a really heightened panic state.
16 Your Honor, if it please the Court, I would like to ask
17 you to hear from her family.

18 THE COURT: Certainly. I would be glad to
19 hear from whoever you would like me to hear from,
20 Mr. Snell.

21 MR. SNELL: State your full name for the court
22 reporter.

23 MS. LANDIS: My name is Mary Landis. Amanda
24 is my niece. Her mother is my sister. I have known
25 Amanda since she was born. I took care of her when she

1 was a baby. I used to baby-sit for her. She has always
2 been sort of head strong, but in the past few years she
3 had seemed to grow up.

4 She has three children that depend on her, and
5 she has been a good mother. She has tried under various
6 circumstances. She has had some difficult times,
7 difficult husbands, difficult relationships. Through
8 all of them, she has tried to do the best she could at
9 taking care of her kids. They came first.

10 Right now her mother is taking care of the
11 kids. Her mother is in very poor health. She just had
12 surgery. I'm having to come from Elgin where I live to
13 live with my sister to help take care of her and the
14 children.

15 Mandy feels very remorseful and very sorry. I
16 have talked to her almost every week since she has been
17 in jail, and I have gradually seen a progression of
18 acceptance of what she has done and how she feels about
19 it.

20 She feels very sorry for the family of
21 Mr. Sulton. It is hard on them and it's hard on us,
22 too, because we know what happened, and we have to live
23 with it just like she does.

24 Mandy would like to be able to spend some
25 quality time with her children before she dies. As

1 Mr. Snell said, she has a terminal disease. It is
2 currently being moderately controlled with medication.

3 We just hope that before it progresses, she
4 will get out to see her children and spend quality time
5 with them. The three year old asks every night that God
6 bless mommy in her prayers, and she asks every day, When
7 is mommy coming? When can I see mommy?

8 That's the most difficult part to try to
9 explain to a little 4 year old. She just turned four,
10 that her mommy can't come and see her and she can't go
11 see her mommy and it's going to be a while. We are
12 having to deal with that as well. We ask that you just
13 consider all of this when you sentence Amanda.

14 THE COURT: Thank you. Thank you, Ms. Landis.
15 Thank you for being here.

16 MR. SNELL: Your Honor, this is Amanda's
17 brother. State your name for the court reporter.

18 MR. SHEHAN: My name is David Anthony Shehan.

19 THE COURT: Yes, sir, I would be glad to hear
20 from you.

21 MR. SHEHAN: I grew up with Mandy. I have
22 known her all my life. I don't see how this tragedy
23 happened to be honest with you. I love her to death.
24 My whole family loves her very much. It's tearing us
25 apart.

1 I hope you can find mercy in your heart
2 because I know she is very sorry for what she has done.
3 Every time I talk to her she cries and cries, and I hope
4 you have mercy. Thank you.

5 THE COURT: Thank you. Thank you for being
6 here, yes, sir.

7 MR. SNELL: Your Honor, again I think just on
8 Ms. Williams' behalf, I know she would like to address
9 Your Honor.

10 THE DEFENDANT: I would just like to tell both
11 families, all families, I really apologize for all of
12 this. I mean, Jason, I know he did not mean for
13 anything bad to happen. I really would like to just
14 apologize for all of this. I could not imagine...

15 THE COURT: Tell me what you did,
16 Ms. Williams.

17 THE DEFENDANT: There was a little spot of
18 blood on the floor that I cleaned up so my son wouldn't
19 get in it, and I rode with him.

20 THE COURT: Where were your children when you
21 rode with him?

22 THE DEFENDANT: I took my son to my mother.

23 THE COURT: And is that when you borrowed the
24 car?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Who borrowed the car, you or
2 Mr. Parker?

3 THE DEFENDANT: Well, actually I asked for it.
4 He had, Mr. Parker, had a job interview that day.

5 THE COURT: Speak up a little bit for me.
6 Speak into the microphone. Adjust the microphone,
7 Mr. Snell.

8 THE DEFENDANT: Mr. Parker had a job interview
9 later on that day. So we had already established that
10 we were going to use my mother's car. I just called her
11 and asked her if we could go ahead and use it a little
12 bit earlier.

13 THE COURT: So y'all didn't have an
14 automobile?

15 THE DEFENDANT: No, Your Honor. Well, we did
16 but we ended up getting rid of it.

17 THE COURT: How far did your mother live from
18 where y'all live?

19 THE DEFENDANT: About ten minutes.

20 THE COURT: How did you get from y'all's house
21 to your mother's house?

22 THE DEFENDANT: My sister came and picked me
23 up.

24 THE COURT: Where was Mr. Sulton's body during
25 all this?

1 THE DEFENDANT: I have no idea, Your Honor.

2 THE COURT: So your sister takes you to your
3 mother's house, both of you; correct?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: You borrow your mother's car?

6 THE DEFENDANT: Yes.

7 THE COURT: Then where do y'all go?

8 THE DEFENDANT: We went back to my house. The
9 body was in my house.

10 THE COURT: Do what?

11 THE DEFENDANT: The body was in my house.

12 THE COURT: So y'all get back to your house
13 and what do you do?

14 THE DEFENDANT: I took a shower and changed my
15 clothes. I was just in shock and scared and didn't know
16 what to do.

17 THE COURT: While you are doing that, what was
18 Mr. Parker doing?

19 THE DEFENDANT: He was crying, too, and in
20 shock.

21 THE COURT: How did get the body from inside
22 your house to the trunk of the car?

23 THE DEFENDANT: That I really don't know.

24 THE COURT: So Mr. Parker did that?

25 THE DEFENDANT: I didn't see him actually do

1 it. I don't know if he did it or not.

2 THE COURT: When y'all left your house, who
3 was driving?

4 THE DEFENDANT: He was.

5 THE COURT: Where did y'all go?

6 THE DEFENDANT: I have no idea. I had never
7 been there and I was in shock anyway. I couldn't even
8 tell you where we went.

9 THE COURT: Where did you stop at the gas
10 station?

11 THE DEFENDANT: I don't know which gas station
12 it was. It was right there by our house.

13 THE COURT: When did you stop?

14 THE DEFENDANT: I believe like right after we
15 left from the house if I'm not mistaken.

16 THE COURT: That's where Mr. Parker got gas?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Then y'all went to this location
19 you had never been to before?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: What happened there?

22 THE DEFENDANT: He got out of the vehicle and
23 got him out.

24 THE COURT: What did you do?

25 THE DEFENDANT: I sat there.

1 THE COURT: From there where did you go?

2 THE DEFENDANT: I really don't remember, Your
3 Honor.

4 THE COURT: You say your children were at your
5 mother's?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Thank you. Anything further,
8 Ms. Williams?

9 THE DEFENDANT: No, sir.

10 THE COURT: Thank you. Anything further,
11 Mr. Snell?

12 MR. SNELL: Your Honor, we just -- it's my
13 understanding her involvement was in the car. We throw
14 ourselves on the mercy of the Court and ask any sentence
15 you give her to make it concurrent. Thank you.

16 THE COURT: Thank you, Mr. Snell. Mr. Madsen.

17 MR. MADSEN: Thank you, Your Honor. This is
18 obviously a troubling case from many respects. You have
19 got a 20 year old who has lost his life, and obviously
20 you have a family that is understandably very upset.
21 Your Honor is going to sentence another young man to a
22 significant amount of prison.

23 I would like to say first and foremost and
24 Jason wanted me, and I think he will do it later, to
25 express his extreme remorse to the family. I can tell

1 Your Honor that when I have met with him, most of the
2 time that I have talked with him, he has been in tears.

3 There have been a couple of times where quite
4 honestly when either myself or individuals from my
5 office have gone and talked with him, he has expressed
6 some things that we had to report him to the jail, which
7 ended up with him being on suicide watch, which is
8 apparently not a pleasant thing. He has been upset
9 about that. We kind of felt the duty for his safety.
10 So he has a tremendous amount of remorse for what
11 happened.

12 Judge, he and I have gone over many times that
13 if we were to have taken this to trial, which quite
14 honestly from our conversations was never something he
15 considered, but I went over with him that there would
16 have been potential defenses.

17 I specifically went over with him
18 self-defense, defense of others, accident, and even
19 lesser included and just wanted to make the record clear
20 that he is absolutely waiving any of those defenses. He
21 knows that when he pleads guilty; he is not going to
22 have a trial and that those are not defenses to his
23 case.

24 Judge, he is 30 years of age. He actually has
25 three children. He was born in South Carolina but tells

1 me he had a grandfather and a grandmother who lived out
2 in California. I believe his grandfather was in some
3 failing health.

4 So the family left South Carolina and went out
5 to California. His grandfather died when he was about
6 six or seven, he tells me. They packed up his
7 grandmother and they all ended up moving back to South
8 Carolina.

9 Once he got here, he started high school at
10 Brookland Cayce but ended up finishing at Lexington. He
11 came out in the 11th grade. He was on home bound a lot
12 because he has -- and I'm not familiar with it -- a
13 disease called C.V.I.D. which apparently affects his
14 ability to create white blood cells.

15 He tells me in the end what that means is that
16 he gets sinus infections and colds a lot quicker than
17 maybe you or I would get, and it takes a lot longer for
18 him to recover from that disease. He was diagnosed with
19 that at 13 years of age. Also, he has an inhaler
20 because he has asthma that he has had since he was a
21 baby and tells me now he basically has the onset of
22 emphysema.

23 Judge, he had a pretty good work history. At
24 one point in time, from 1999 to 2003, he worked for a
25 business, I believe, called Telecom. They did

1 telecommunications, computer networking.

2 Shortly after he started with them, he was
3 promoted to supervisor. They would do stuff, if I
4 understand, correctly with businesses or schools like
5 Pelion High School. He worked at the Urgent Cares
6 around the area. They would run cables and set up
7 networks.

8 He eventually had gotten into drugs,
9 specifically crack cocaine, and ended up losing that job
10 because of his drug use. At some point in time, he had
11 actually committed himself voluntarily to Three Rivers
12 to deal with that drug abuse issue that he had.

13 Also, he was diagnosed there with depression
14 and also a personality disorder. Basically he doesn't
15 like to be around large crowds. He tells me if he was
16 to go into a store and it got extremely busy, he would
17 very much feel uncomfortable and would end up having to
18 leave.

19 Ultimately after he kind of got straight
20 again, he started working with a place called United
21 Contractors. They would travel the state and build
22 bridges. He tells me he was kind of a jack of all
23 trades with them. He would do some welding, some
24 finishing of concrete, running a track hoe.

25 He had worked with them for about a year.

1 Like I said, they would travel. He tells me there were
2 two bridges that they ended up doing in Charleston. He
3 pretty much worked four ten-hour days.

4 At the time of this event, that job had kind
5 of gone away. He had gotten back with a friend at some
6 point in time. They would hang out, drink some beers.
7 The friend offered him some crack cocaine. He made poor
8 decisions and started using again.

9 Judge, just to kind of shed some light,
10 because I think Your Honor might have some questions, he
11 knew the victim as John John. The way he ended up
12 meeting John John was through something who had given
13 him drugs by the name of Q.

14 Over a period of time, sometimes John John
15 would sell him drugs. Sometimes John John would just
16 stop by and say, Hey, do y'all need a bump or some more.
17 But one thing he wanted me to point out to the Court,
18 because there were some specific questions I asked him,
19 he wanted to point out to the Court that John John did
20 not use crack cocaine.

21 One thing that Jason had mentioned to me was
22 that the discovery makes John John sound like he was
23 some kind of big drug dealer. He said he was not. He
24 was a very nice and likeable individual.

25 What ended up happening is over the period of

1 time with their relationship, there ended up being kind
2 of a breach of trust of a car that was investigated
3 against John John.

4 John John had told him it was basically a
5 crack rental from an individual. Jason in the end
6 actually talked with the lady and took the car back to
7 her. She says it was more that someone else had stolen
8 the car from her, but he ended up taking the car back to
9 her.

10 What had happened is Mr. Sulton didn't have a
11 place to stay. So with the fact that Ms. Williams and
12 Mr. Parker had a place to stay, he asked if he could
13 kind of park that car out in their yard and just sleep
14 in the car.

15 They discussed it among themselves and said
16 he could come in and sleep on the couch. So he was
17 kind of staying on and off at their residence sleeping
18 on the couch for a period or time. They had only known
19 him, I guess, two or three months prior to all this
20 happening.

21 There was some talk in the discovery about the
22 fact that Mr. Sulton was, like I said, a drug dealer, a
23 member of the gang, the Crips. I talked with Jason. He
24 never saw anything on behalf of Mr. Sulton indicating
25 that he was in any type of gang.

1 He ended up staying at the house. Obviously
2 they were getting some crack cocaine from him. He was
3 recently unemployed. They weren't able to pay
4 Mr. Sulton the money they owed him.

5 At some point in time, there ended up being a
6 dispute earlier in the day that kind of started in the
7 house and ended up going outside between Mr. Sulton and
8 a fellow by the name of Cap and another individual that
9 Jason tells me was a large fellow and said was from
10 Batesburg and played football out there.

11 From what Jason understood, it was over
12 Mr. Sulton owing them some money for some drugs. Given
13 the fact that -- excuse me -- that Cap owed Jonathan
14 some money. He corrected me on that.

15 He said that Mr. Sulton had tried to get the
16 money that they owed him. They talked about \$40. Jason
17 tells me it was more like they owed Mr. Sulton about
18 \$180 for crack cocaine. That is actually borne out in
19 the discovery from the investigators.

20 Prestigiacomo, from his investigation,
21 apparently Mr. Sulton had told some other people that he
22 was kind of sore that they had owed him some money. He
23 tells me on that night after that dispute ended up
24 happening, there was a fellow there who was a preacher
25 by the name of Mr. Jafari (phonetic).

1 Jason and this Jafari fellow ended under
2 leaving and going to a convenience store while that
3 argument was taking place. When Jason got back, he
4 came in the back door and saw Mr. Sulton at the couch,
5 didn't have a shirt on, that Ms. Williams was underneath
6 him.

7 As soon as he came in there, she kind of
8 rushed out. His thing was, What in the world is going
9 on? Apparently once she ended up leaving the room, the
10 argument between those two individuals ended up
11 escalating.

12 He tells me that Mr. Sulton ended up having a
13 knife. They started wrestling around. He was able to
14 get the knife away from him, I believe hit him with a
15 book. But when they were struggling around, he ended up
16 getting a cord and wrapping it around Mr. Sulton's neck.

17 He says at some point in time, Mr. Sulton quit
18 struggling. It wasn't his intent obviously to kill him.
19 He said there was blood coming out of his mouth and he
20 was dead.

21 I would submit to Your Honor that at that
22 point if he had done what he should have done and called
23 law enforcement, that this case might be in a different
24 posture, but he did not. He panicked, for lack of a
25 better word, kind of freaked out, and then from there

1 made some very, very poor decisions.

2 He got Amanda. They figured out that
3 Mr. Sulton was deceased at that point in time. They
4 ended up borrowing a car and disposing of the body,
5 Judge.

6 What I would ask at this point in time if Your
7 Honor would allow -- Jason's mother is here. I would
8 like her to address the Court, and then I would like
9 just a little bit to address the Court.

10 THE COURT: Certainly. I would be glad to
11 hear from her, Mr. Madsen.

12 Yes, ma'am, your name, please?

13 MS. PARKER: My name is Lona Parker. I'm
14 Jason's mother. His father is unable to be here today.
15 He is gravely ill also. I did prepare a statement, and
16 then I have a letter from my sister from Mississippi.
17 She was unable to come here.

18 Jason has no really close family. Both sets
19 of grandparents are deceased. His aunts and uncles, two
20 aunts and one uncle, have been with him since he was
21 younger, younger years. They are also deceased, as of
22 the last one dying in November of last year.

23 Jason did not have a normal childhood. At the
24 age of three, he was diagnosed with severe steroid
25 dependent asthma, chronic sinusitis, and allergic

1 rhinitis. At the age of 13, he was then diagnosed with
2 what is called C.V.I.D., Common Variable
3 Immunodeficiency Disease.

4 It affects the vital organs -- the liver, the
5 heart, the lungs. It creates excessive infections in
6 the body, and it's hard to remedy that. He was getting
7 antibiotic infusions up until a few years ago. They are
8 quite expensive and he was no longer on his father's
9 insurance, so we had to discontinue that.

10 He spent the majority of his school years at
11 home, with homebound instruction, and also I went back
12 to teaching school and had him as my student, which
13 helped him with his studies.

14 He was not supposed to live beyond the age of
15 18 with this type of disease, but he has, with his
16 consistent medical treatment, he has proven the medical
17 community wrong so far.

18 As a child he was not allowed to interact with
19 other children because of the infections, and he spent
20 most of his time at home. A lot of his friends were
21 afraid to be with him because he was so ill.

22 When he became older and did go out on his
23 own, his choice of friends and his environment was not
24 very conducive to admirable behavior. He assumed
25 everyone he came in contact with would be a true friend,

1 and he followed along a lot of times blindly.

2 His naivety has caused him many problems along
3 the way with his trusting nature and his good
4 intentions. He was not the typical child to fight back.
5 In fact, he would always turn the other cheek, which
6 resulted in a lot of hospital visits. He would not
7 throw a punch. He was always afraid of hurting someone
8 else above himself.

9 I do feel maybe in this instance that
10 self-preservation took over, and it was a tragic and
11 catastrophic event that took place. In fact, John John
12 had been at our house a couple of times also, and Jason
13 introduced him as his friend.

14 There has not been a single day or night that
15 our family has not thought of John John, and I know
16 Jason hasn't either, as he has told me in his letters
17 and visits. He would cry tremendously over this.

18 Words can't express the terrible loss for the
19 family and for all the members of both families. I just
20 hope that in time we can all get through this and endure
21 this pain and heal.

22 I would also, while I'm here, like to speak
23 for Mandy. I have only known her for two years. She
24 has been at our house quite frequently. Jason's
25 children love her greatly. My other grandchildren think

1 highly of her.

2 If there is anything else I can say to help on
3 her behalf, we love Mandy and she has been a great help
4 to us in our home also with Jason's father being so ill.
5 I just, with your wisdom, respect whatever decisions you
6 come with. I appreciate it.

7 THE COURT: Thank you, Ms. Parker. You had a
8 letter you wanted me to look at it?

9 MS. PARKER: This is from my sister in
10 Mississippi. It says, My name is Carol Hibbon
11 (phonetic). I am Jason Parker's aunt. I am unable to
12 be here today because I had wrist surgery two weeks ago,
13 and I am unable to drive.

14 I've known Jason since he was a baby and cared
15 for him throughout his childhood. I have never known
16 Jason to be a violent person. He has made mistakes in
17 his life and has paid for those mistakes. He has never
18 intentionally hurt anyone and would not hurt anybody
19 unless he was forced to do.

20 I have seen him with his children, and he is
21 an exceptional father. Please take into consideration
22 when making your decision that he has three small
23 children who need their father in their life. Then she
24 has also if you would like to contact her with any other
25 information, and she has put a phone number on here.

1 THE COURT: Thank you. Thank you very much,
2 Ms. Parker. Mr. Madsen.

3 MR. MADSEN: Judge, we appreciate the offer
4 from the Solicitor's Office. Our thoughts were that if
5 we were to have gone to trial, they would have found him
6 guilty of what he is pleading guilty for.

7 I wanted to point out, Judge, that this is a
8 case of August of '09. Jason has never made a request
9 for a bond. He knew from the beginning that he was
10 going to end up serving a substantial time in prison.

11 I spoke within one of the detectives,
12 Detective Prestigiaco, who I believe Your Honor is
13 familiar with. He expressed that he was one of the
14 individuals who would interview Jason, and he talked
15 about how he felt sorry for Jason because of this
16 situation.

17 Obviously though there is repercussions to
18 actions. We certainly understand the family's position
19 in requesting the maximum, but, Judge, we would request
20 leniency in this case.

21 I would ask the Court to consider on his
22 behalf, given the fact that his prior record is that
23 burglary third and some magistrate's court, that Your
24 Honor would consider a sentence in the nature of 15
25 years.

1 Obviously if Your Honor was inclined to do
2 that and do a suspended sentence afterwards, whatever
3 sentence Your Honor gives him, he will come out on a
4 community supervision.

5 Judge, we would in the end ask for any
6 leniency the Court can give him, and we would request a
7 sentence in nature of 15 years. I do believe that Jason
8 would like to address Your Honor.

9 THE COURT: Thank you, Mr. Madsen.
10 Mr. Parker.

11 THE DEFENDANT: Yes, sir. I'm sorry for
12 everything.

13 THE COURT: I can't hear you, I'm sorry. I
14 would be glad to hear from you. I just couldn't hear
15 you.

16 (Pause.)

17 MR. MADSEN: I don't think he can right now,
18 Judge.

19 THE COURT: Mr. Parker, part of what your
20 attorney, in his presentation said, that he had reviewed
21 with you the various defenses, including self-defense,
22 defense of others, and various, I guess, lesser-included
23 offenses.

24 I would take that to mean involuntary
25 manslaughter or perhaps accident, although that is not a

1 lesser-included offense. It's more in the nature of a
2 defense. Is that correct, he discussed those issues
3 with you, Mr. Parker?

4 THE DEFENDANT: He did, Your Honor.

5 THE COURT: You understand by entering this
6 plea of guilty, that you are waiving any and all of
7 those defenses? Do you understand that?

8 THE DEFENDANT: I do, Your Honor.

9 THE COURT: I don't know whether you have a
10 defense of self-defense or defense of others or if after
11 all the evidence and testimony presented, a judge would
12 decide to give the jury the option of returning a
13 verdict on involuntary manslaughter, for example. Do
14 you understand that?

15 THE DEFENDANT: Yes, sir, I do.

16 THE COURT: You understand by entering this
17 plea of voluntary manslaughter, you are waiving, you are
18 giving up all those defenses?

19 THE DEFENDANT: I do, Your Honor.

20 THE COURT: Further, your attorney stated that
21 you had no intent. You didn't mean this to happen.
22 Well, by its very nature, voluntary manslaughter, there
23 is intent. It may not be in the classic -- it's not in
24 the classic sense of a malicious intent, but there is
25 certain unlawfulness involved.

1 Voluntary manslaughter, the State would have
2 to prove that you took the life of another, in this case
3 Jonathan Sulton, in sudden heat of passion based on
4 sufficient legal provocation. Do you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You understand you are pleading
7 guilty to that? You are saying that's what I did?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Did you commit that offense?

10 THE DEFENDANT: I did, Your Honor.

11 THE COURT: Any question in your mind about
12 that?

13 THE DEFENDANT: No, sir.

14 THE COURT: Any questions you would like to
15 ask me about the offense of voluntary manslaughter?

16 THE DEFENDANT: No, sir.

17 THE COURT: Do you need to discuss that issue
18 any further with your attorney?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: Thank you. Anything further,
21 Mr. Madsen?

22 MR. MADSEN: No, Your Honor.

23 THE COURT: Anything further, Mr. Snell?

24 MR. SNELL: No, Your Honor.

25 THE COURT: Solicitor?

1 MR. GRAHAM: No, sir.

2 THE COURT: Thank you. Thank you, Mr. Madsen
3 and Mr. Snell, for your service in this case,
4 particularly Mr. Snell for taking this appointment being
5 a private practitioner.

6 2010-GS-32-01131 and 2009-GS-32-03100, that's
7 the forgery charge, and 1131 is the accessory after the
8 fact of a felony as to Amanda S. Williams, the Defendant
9 is committed to the State Department of Corrections for
10 a determinate term of ten years, provided upon the
11 service of six years, that is six years active.

12 09-GS-32-3100, forgery, the value less than
13 5,000, the Defendant is committed to the State
14 Department of Corrections for a determinate term of
15 three years, provided that is suspended with probation
16 for two years. The probation shall begin after the
17 current active six-year sentence as to Ms. Williams.

18 As to Mr. Parker, 2010-GS-32-1135, voluntary
19 manslaughter, and 2010-GS-32-1144, destruction,
20 desecration or removal of human remains, as to the
21 voluntary manslaughter, the Defendant is committed to
22 the State Department of Corrections for a determinate
23 term of 24 years.

24 As to 1144, destruction of human remains, the
25 Defendant is committed to the State Department of

1 Corrections for a determinate term of ten years. Those
2 are concurrent as to both Defendants. No contact with
3 the family of the victim, Jonathan Sulton. Good luck to
4 you, Ms. Williams. Good luck to you, Mr. Parker.

5 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTONJASON DWANE PARKER # 328223)
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

FILED SCANNED
IN THE COURT OF COMMON PLEAS

2010 JUN 25 12:05

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & E.C.
APPLICATION FOR

POST-CONVICTION RELIEF

2010CP3202626

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 MCCORMICK CORRECTIONAL INSTITUTION ME, S.C. 2989
2. Name and location of Court which imposed sentence LEXINGTON COUNTY COURT OF G.S.
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) 2010-GS-32-1135 / 2010-GS-32-1144
 - (b) VOLUNTARY MANSLAUGHTER
 - (c) GRAVE/DESTRUCTION DESECRATION OR REMOVAL OF HUMAN REMAINS.
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) APRIL 7, 2010
 - (b) 24-YEARS 10-YEARS NON-VIOLENT CONCURRENT WITH 24 YR.

- (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 _____

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7. Did you appeal from the judgment of conviction or the imposition of sentence? No

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

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

- i. _____
- ii. _____ N/A
- iii. _____

2010CP3202626

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

- i. _____
- ii. _____ N/A
- iii. _____

- (c) the date of each such result:

- i. _____
- ii. _____ N/A
- iii. _____

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

- i. _____
- ii. _____ N/A
- iii. _____

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

- (a) Counsel failed to file - Notice of Appeal
- (b) SC DEPT of CORRECTION, HAS CONTROL MANAGEMENT, I WAS ^{NOT} ALLOWED TO GO TO LAW FIRM.
- (c) _____

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

INEFFECTIVE ASSISTANCE of TRIAL COUNSEL.
DENIAL of DISCOVERY
CONFLICT of INTEREST

2010CP3202626

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

- (a) INADEQUATE PREPARATION, FAILURE TO OBJECT TO POINTS SENTENCE ERROR
 (b) DEFECT OF COMPETENCY HEARING
 (c) FAILURE TO INVESTIGATE AND FAILURE TO PROVIDE EXPERTS
 (d) FAILED TO OBJECT TO SOLICITOR'S ERRORS IN STATING THE FACTS/EVIDENCE

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

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

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

- (a) the specific nature thereof:

- i. _____
 ii. _____ N/A
 iii. _____
 iv. _____

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

- i. _____
 ii. _____ N/A
 iii. _____
 iv. _____

- (c) the disposition thereof:

- i. _____
 ii. _____ N/A
 iii. _____

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2010CP 3202626
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iv. _____
(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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BETH L. CARRIGG
CLERK OF COURT
JULIA B. SC

(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?

N/A

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) DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL.

(b) DENIAL OF DUE PROCESS AND FUNDAMENTAL FAIRNESS

(c) _____

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

2010CP 320 2626

- (a) your arraignment and plea? ✓
- (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. Mr. Rob MADSON, ESQ.
- ii. 406 - E. MAIN ST.
- iii. LEONISTON, SC - 29072
- (b) the proceedings at which each such attorney represented you:
- i. ARRAIGNMENT AND GUILTY PLEA.
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
- ~~SEE~~ VACATE SENTENCE AND CONVICTION.
20. Are you now under sentence from any other court that you have not challenged?
- N/A

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CLERK OF COURT

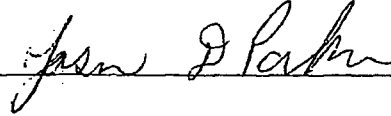
2010CP3202626

STATE OF SOUTH CAROLINA

VERIFICATION

County of LEXINGTONJASON D. PARKER

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 18
day of June, 2010.

J C Frankler (L.S.)
Notary Public

My Commission Expires: 12-16-2019

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How cited

Frazer v. South Carolina, 430 F. 3d 696 - Court of Appeals, 4th Circuit 2005

430 F.3d 696 (2005)

Frank D. FRAZER, Petitioner-Appellee,

v.

State of SOUTH CAROLINA; Henry Dargan McMaster, Attorney General for South Carolina, Respondents-Appellants.

No. 04-6500.

United States Court of Appeals, Fourth Circuit.

Argued December 2, 2004.
Decided December 8, 2005.

699 *697 *698 *699 *700 *701 ARGUED: William Edgar Salter, III, Senior Assistant Attorney General, Office of the Attorney General of South Carolina, Columbia, South Carolina, for Appellants. David Bruce Betts, Columbia, South Carolina, for Appellee. ON BRIEF: Henry Dargan McMaster, Attorney General, John W. McIntosh, Chief Deputy Attorney General, Donald J. Zelenka, Assistant Deputy Attorney General, Columbia, South Carolina, for Appellants.

Before LUTTIG, MOTZ, and DUNCAN, Circuit Judges.

Affirmed by published opinion. Judge DUNCAN wrote the majority opinion, in which Judge DIANA GRIBBON MOTZ joined. Judge DIANA GRIBBON MOTZ, wrote a separate concurring opinion. Judge LUTTIG wrote a dissenting opinion.

OPINION

DUNCAN, Circuit Judge.

South Carolina appeals the district court's order granting relief on Frank Frazer's petition for a writ of habeas corpus. The court granted relief solely as to Frazer's claim that his attorney failed to consult with him regarding a direct appeal following his sentencing on state trafficking charges in 1994, and that as a result he lost his right to appeal. Although the state courts that reviewed this claim concluded that the Sixth Amendment did not require Frazer's counsel to consult with him regarding an appeal, the district court found this conclusion was unreasonable under *Strickland v. Washington*, 464 U.S. 688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), and its progeny. For the following reasons, we affirm.

I.

702 In March 1994, a South Carolina grand jury indicted Frazer for trafficking, possessing a weapon during the commission of a crime of violence, and possessing a controlled substance with intent to distribute. At a change of plea and sentencing hearing on March 22, 1994, Frazer pleaded guilty to the first two charges. It is undisputed that Frazer and the state assumed that the trial judge would apply concurrent five-year sentences. However, the court imposed consecutive five-year sentences and a fine of \$100,000, despite the fact that the maximum fine for Frazer's convictions was \$25,000. As Jack Howle, Frazer's counsel, subsequently acknowledged, Frazer did not expect to receive consecutive sentences, *702 and Frazer immediately expressed his surprise and discontent. After the judge announced Frazer's sentence, Frazer asked Howle to see "about having time run together." J.A. 189.

Despite a prior assurance that he would "file the necessary paperwork" if something went wrong at sentencing, J.A. 178, Howle's only effort to that end was an informal oral motion for reconsideration, which the court denied without order or other elaboration. At no time either before or after the denial of the motion for reconsideration did Howle ascertain whether Frazer wished to appeal. As a result, the period for noting an appeal passed without a notice of appeal being filed, a fact Frazer did not learn until after he wrote Howle to express his continuing dissatisfaction and desire to pursue an appeal.

Frazer filed a state application for post-conviction relief ("PCR") on February 10, 1997. His application alleged that he received ineffective assistance of counsel, that his plea had not been knowing and voluntary, and that the trial court lacked jurisdiction to accept the guilty plea.¹¹ Following an evidentiary hearing at which Howle testified, the PCR court concluded that it was appropriate to adjust Frazer's fine from \$100,000 to \$25,000 (the amount both parties agreed was the maximum for the trafficking charge), but that Frazer was otherwise not entitled to relief. The PCR court noted that, although Howle "never informed him of his right to appeal," there was nothing in the record or the hearing "to indicate that [Frazer] conveyed to

his trial attorney a desire to appeal until it was too late." J.A. 209. The PCR court's order issued on September 17, 1999. Frazer appealed the PCR court's decision to the South Carolina Supreme Court by petition for certiorari dated June 12, 2000. The South Carolina Supreme Court summarily denied Frazer's petition on May 30, 2002.

On March 7, 2003, Frazer filed the underlying pro se application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Frazer's application renewed the five issues presented to the South Carolina Supreme Court.¹²¹ His § 2254 application was referred to a magistrate judge who recommended denying relief on all claims, finding no error in the PCR court's reasoning that Howle was under no Sixth Amendment obligation to consult with Frazer regarding an appeal. Frazer filed timely objections to this recommendation.

Following a de novo review, the district court found that Howle had an obligation under *Strickland* to consult with Frazer regarding an appeal. While acknowledging that Frazer never formally demanded an appeal until after the appeal period had expired, the district court noted

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[t]he undisputed evidence shows that, immediately after sentencing, Frazer and Howle agreed that Howle would seek review of the sentence. Howle assured "703 Frazer that he "would file the necessary paperwork" to have the sentence modified, and Frazer did not hear from Howle again until Frazer contacted him about the status of his appeal.

J.A. 114. The district court specifically noted that "Frazer reasonably demonstrated to Howle that he was interested in seeking review of the sentence," and that "there were non-frivolous grounds for appeal." *Id.* at 115. The district court's order granting habeas relief on this claim was entered on February 12, 2004, and South Carolina noted a timely appeal.

II.

A district court's decision to grant habeas relief is reviewed de novo. *Allen v. Lee*, 366 F.3d 319, 323 (4th Cir. 2004) (*en banc*), cert. denied, ___ U.S. ___, 125 S.Ct. 208, 160 L.Ed.2d 182 (2004). As with the district court, our review of a habeas petitioner's claims is governed by the Anti-Terrorism and Effective Death Penalty Act of 1996, Pub.L. No. 104-132, 110 Stat. 1214 (the "AEDPA"). In relevant part, the AEDPA provides that

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d); see also *Williams v. Taylor*, 529 U.S. 382, 402-13, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000) (discussing § 2254(d)). The phrase "clearly established Federal law, as determined by the Supreme Court of the United States" requires that federal courts assess the validity of the inmate's claims based on the holdings of the Supreme Court "as of the time of the relevant state-court decision." *Id.* at 412, 120 S.Ct. 1495. A state habeas court unreasonably applies clearly established Federal law when it "identifies the correct governing legal principle . . . but unreasonably applies that principle to the facts of the prisoner's case." *Id.* at 413, 120 S.Ct. 1495.

A.

The legal principle applicable to claims of ineffective assistance of counsel are set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). *Strickland* establishes the extent and nature of counsel's obligations to the defendant and a two-part test for assessing whether counsel has proved ineffective in discharging those obligations. First, the defendant must prove that his counsel's efforts were objectively unreasonable when measured against prevailing professional norms. *Id.* at 688-90, 104 S.Ct. 2052. Second, the defendant must demonstrate that counsel's performance, if deficient, was also prejudicial. *Id.* at 694, 104 S.Ct. 2052. This generally requires the defendant to demonstrate by a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *Id.*

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The two-part test of *Strickland* that defendants must satisfy in order to prevail on an ineffective assistance of counsel claim unquestionably qualifies as "clearly established" federal law under § 2254(d). *Williams*, 529 U.S. at 391, 120 S.Ct. 1495 ("It is past question that the rule set forth in *Strickland* qualifies as '704 clearly established Federal law, as determined by the Supreme Court of the United States.'"). In *Roe v. Flores-Ortega*, 528 U.S. 470, 477-80, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000), the Supreme Court applied *Strickland* to hold that counsel's duty to consult with the defendant generally requires counsel to discuss with the defendant whether to pursue an appeal. 528 U.S. at 477-80, 120 S.Ct. 1029. The Court then followed the two-part test of *Strickland* to assist courts in establishing whether the

particular failure to consult regarding an appeal amounted to ineffective assistance. However, because *Flores-Ortega* issued after Frazer's state-court conviction became final, we must take up the threshold issue of whether we are relying on that decision in violation of the non-retroactive principle announced in *Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989).^[3] See *Horn v. Banks*, 536 U.S. 266, 271-72, 122 S.Ct. 2147, 153 L.Ed.2d 301 (2002) (*per curiam*) (noting federal habeas courts must take up an analysis under *Teague* where necessary before addressing the merits of the defendant's claims under the standards of the AEDPA).

B.

Under *Teague*, a state prisoner collaterally attacking his conviction may not rely on a new constitutional rule announced after his conviction became final.^[4] *Teague*, 489 U.S. at 310-11, 109 S.Ct. 1060. A new rule is one which "breaks new ground," "imposes a new obligation on the States or the Federal Government," or "was not dictated by precedent existing at the time the defendant's conviction became final." *Teague*, 489 U.S. at 301, 109 S.Ct. 1060. As the Supreme Court has noted, these are guidelines rather than rigidly applied criteria, and no single test is determinative. See *Gilmore v. Taylor*, 508 U.S. 333, 340, 113 S.Ct. 2112, 124 L.Ed.2d 306 (1993) (noting the "dictated by" test is meaningful in a "majority of cases").

Applying these guidelines to *Flores-Ortega* demonstrates that it does not present a new constitutional rule under *Teague*. Rather, *Flores-Ortega* simply crystalizes the application of *Strickland* to the specific context presented by Frazer's claim. *Flores-Ortega*, 528 U.S. at 476-81, 120 S.Ct. 1029. In making this tailored analysis, the Supreme Court relied exclusively on the principles announced in *Strickland* and other cases defining the role of counsel in the appellate process. See *id.* Indeed, the Court's conclusions in *Flores-Ortega* are dictated by its prior conclusions that: a) the defendant has ultimate authority to make the fundamental decision as to whether to take an appeal, *Jones v. Barnes*, 463 U.S. at 751, 103 S.Ct. 3308, and b) counsel's obligation to assist the defendant includes a duty "to consult with the defendant on important decisions," *Strickland*, 466 U.S. at 688, 104 S.Ct. 2052.

The necessity of counsel's consultation with the defendant regarding the fundamental decision of whether to appeal is clear from *Strickland* and cases preceding it that address the nature of the defendant's right to a direct appeal. A defendant has a right to pursue a direct appeal, even if frivolous, which counsel must assist as "an active advocate in behalf of his client." *Anders v. California*, 386 U.S. 738, 744, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). Although counsel need not press particular issues of the defendant's choosing, by implication counsel must consult with the defendant to identify whether there are any meritorious issues to appeal. *Barnes*, 463 U.S. at 752, 103 S.Ct. 3308. Indeed, a discussion with the defendant regarding a direct appeal and what issues to pursue (if any) is critical, as "multiplying assignments of error will dilute and weaken a good case and will not save a bad one." *Id.* (internal quotations omitted). The defendant's need for the assistance of an advocate who can "examine the record with a view to selecting the most promising issues for review," *id.*, cannot be overstated, and is a necessary component of the "particular duty" to consult with the defendant on important decisions" identified in *Strickland*, 466 U.S. at 688, 104 S.Ct. 2052. *Flores-Ortega*'s distillation that counsel generally (but not invariably) has a duty to consult with his client regarding whether to pursue an appeal is thus dictated by *Strickland*. As such, the Court did not break new ground for *Teague* purposes with respect to counsel's duty to consult.

Flores-Ortega's formulation of the prejudice prong of *Strickland* likewise presents nothing new under *Teague*. The *Flores-Ortega* Court noted explicitly that its tailoring of *Strickland*'s prejudice prong to better suit the context of an attorney's obligation to consult regarding an appeal "breaks no new ground," as it "mirrors the prejudice inquiry applied in *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985), and *Rodriguez v. United States*, 395 U.S. 327, 89 S.Ct. 1715, 23 L.Ed.2d 340 (1969)." 528 U.S. at 485, 120 S.Ct. 1029. Because the Court did not impose on defense counsel a new duty and did not believe it was postulating a new rule regarding prejudice, *Flores-Ortega* introduces no element or consideration that federal courts would be foreclosed from applying retroactively. Indeed, South Carolina does not argue to the contrary, as it did not raise the issue in its briefs and expressly disclaimed it at oral argument.

Finally, both the procedural posture in which *Flores-Ortega* arose and the Supreme Court's disposition of the case confirm that it did not announce a new rule for habeas purposes. *Flores-Ortega* involved a collateral attack on a state court sentence under 28 U.S.C. § 2254. See 528 U.S. at 473-74, 120 S.Ct. 1029. The very fact that the Supreme Court addressed the merits of the petition — and remanded for further proceedings — in the face of the "708 limitations imposed by *Teague* demonstrates that the controlling legal principle discussed in *Flores-Ortega* was not a new rule. See *Penry v. Lynaugh*, 492 U.S. 302, 313, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989), abrogated on other grounds, *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002) ("Under *Teague*, new rules will not be applied or announced in cases on collateral review unless they fall into one of two exceptions.") Had the principle not been clearly established, the Supreme Court, as well as all lower Federal courts, would have been precluded by *Teague* from granting the relief requested by the petitioner in *Flores-Ortega*.

Accordingly, we join the Third Circuit in holding that *Flores-Ortega* does not constitute a new rule for the purposes of *Teague*. *Lewis v. Johnson*, 359 F.3d 846, 657 (3d Cir.2004).^[5] but see *Daniel v. Cockrell*, 283 F.3d 697, 707-08 (5th Cir.2002) (assuming, without deciding, that *Flores-Ortega* announced a "new" rule for *Teague* purposes), abrogated in part, *United States v. Grammas*, 376 F.3d 433, 438 (5th Cir.2004). Neither *Teague* nor § 2254(d)

forecloses an examination of Frazer's entitlement to habeas relief under *Strickland* and its most directly applicable progeny, *Flores-Ortega*.

C.

The dissent, and the dissent alone, asserts that we cannot rely on the elaboration of *Strickland* in *Flores-Ortega* in evaluating Frazer's claim of ineffective assistance of counsel. Although South Carolina nowhere makes this argument, the dissent posits on its behalf that because *Flores-Ortega* issued after the PCR court rendered its decision, the AEDPA forecloses any recourse to *Flores-Ortega* in evaluating Frazer's claim. While § 2254(d) does limit the availability of federal habeas relief to claims that rely on "clearly established Federal law," the dissent's insistence on divorcing the *Teague* and Section 2254(d) analysis in this case is misguided. The Supreme Court has made clear that "whatever would qualify as an old rule under our *Teague* jurisprudence will constitute 'clearly established Federal law, as determined by the Supreme Court of the United States' under § 2254(d)(1)." *Williams*, 529 U.S. at 412, 120 S.Ct. 1495 (emphasis added).¹⁸

III.

707 Assessing Frazer's claim under these precedents, we agree with the district court that the "state PCR court's decision constituted an unreasonable application of *Strickland*."¹⁹ J.A. 112. The PCR court denied habeas relief without considering whether Howie had a duty to consult with Frazer regarding an appeal that was distinct from the generic obligation to apprise Frazer of that right. The PCR court's failure to assess the extent of Howie's duty to consult under the circumstances, despite having identified *Strickland* as the relevant paradigm in which to assess Frazer's claim, demonstrates an unreasonable application of that paradigm.

As noted above, *Strickland* requires that the inmate demonstrate counsel's performance was objectively unreasonable and that he was prejudiced by this unreasonable performance. *Strickland*, 486 U.S. at 688-90, 94, 104 S.Ct. 2052. The *Flores-Ortega* Court explained that the Sixth Amendment generally, but not invariably, requires counsel to consult with the defendant regarding a direct appeal. 528 U.S. at 477-80, 120 S.Ct. 1029. Significantly, the PCR court determined only that Frazer's counsel was under no constitutional obligation to inform him of his right to appeal under the circumstances of this case. Counsel's obligation to consult, however, is distinct from the duty to inform. See *id.* at 688, 104 S.Ct. 2052 (identifying "more particular duties to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution" (emphasis added)). Therefore, when confronted with a claim that counsel rendered ineffective assistance in failing to consult with the defendant regarding an appeal, a court must conduct a three-step inquiry.

The threshold consideration is whether the defendant had independently decided whether to appeal and communicated that decision to counsel.²⁰ If the defendant has affirmatively requested an appeal, counsel's assistance to the defendant in making that decision is obviously unnecessary. See *id.* at 477, 120 S.Ct. 1029. Indeed, long before *Strickland*, the Supreme Court held that the "fundamental decision" of whether to appeal rests with the defendant. *Jones v. Barnes*, 463 U.S. 745, 751, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983).

708 Where, as here, the defendant has not specifically requested an appeal, counsel is under a professional obligation to "consult" with the defendant regarding that fundamental decision, unless the circumstances demonstrate that consultation is unnecessary. *Flores-Ortega*, 528 U.S. at 478-79, 120 S.Ct. 1029.²¹ If counsel fails "to consult, the defendant may demonstrate prejudice by showing that a rational defendant would want to appeal. The defendant may do this by demonstrating either that a) there were non-frivolous issues for appeal, or b) he had adequately indicated his interest in appealing." *Id.* at 480, 120 S.Ct. 1029. The mere presence of non-frivolous issues to appeal is generally sufficient to satisfy the defendant's burden to show prejudice. *Id.* at 488, 120 S.Ct. 1029. Attempting to demonstrate prejudice based on a reasonably obvious interest in pursuing an appeal, however, necessitates an additional showing "that, had the defendant received reasonable advice from counsel about the appeal, he would have instructed his counsel to file an appeal." *Id.*

A.

After reviewing the factual determinations of the PCR court and according them the deference required by § 2254(e), we find the denial of relief on Frazer's habeas claim unreasonably applied *Strickland* and its progeny. As noted above, after accepting Frazer's guilty plea, the trial court proceeded immediately to sentencing, and imposed consecutive sentences as well as a statutorily impermissible fine. The PCR court found that Frazer did not explicitly request an appeal at that time, and it is undisputed that Howie never discussed that possibility with Frazer. Nevertheless, the PCR court found no Sixth Amendment violation, citing *Carey v. Leverette*, 605 F.2d 745 (4th Cir.1979), for the proposition that "there is no constitutional requirement that necessitates that trial counsel inform a criminal defendant of his right to appeal, following a guilty plea." J.A. 209.

That this result is objectively unreasonable in light of the dictates of *Strickland* is made abundantly clear by *Flores-Ortega*. While *Flores-Ortega* echoes the holding in *Carey* that there is no *per se* rule requiring counsel to consult with his client regarding a direct appeal, *Carey* does not delineate the circumstances under which such a duty would apply. *Flores-*

Ortega does, however, illustrate that when there are non-frivolous issues to appeal or the defendant has manifested an interest in appealing, *Strickland* requires that counsel consult with the defendant in deciding whether to go forward. *Flores-Ortega*, 528 U.S. at 478-79, 120 S.Ct. 1029. Significantly, this duty applies even if the defendant has pled guilty. Although there may be fewer issues to appeal under such circumstances, so long as the defendant retains an appeal of right, counsel's obligation remains the same. See *id.* at 480, 120 S.Ct. 1029.

709 The PCR court's reliance on our decision in *Carey* as determinative of Frazer's claim is unreasonable even without the benefit of *Flores-Ortega*. *Carey*'s holding conflicts with the subsequent decisions in *Strickland* and *Jones*, which a) require counsel to assist the defendant with all important decisions, and b) identify the decision whether to pursue a direct appeal as an important decision that ultimately lies with the defendant.¹⁰⁰ The duty to "709 consult identified in *Strickland* is broader than the narrow obligation to inform a defendant of his right to appeal. As *Strickland* itself makes clear,

[r]epresentation of a criminal defendant entails certain basic duties. Counsel's function is to assist the defendant, . . . (which includes) the overarching duty to advocate the defendant's cause and the more particular duties to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution.

466 U.S. at 688, 104 S.Ct. 2052. *Strickland* itself indicates that the duty to consult and the duty to inform are "particular," and therefore distinct obligations on counsel. It is therefore inadequate to simply analyze whether Howle discharged his duty to inform Frazer of his right to appeal; Howle had a separate obligation to consult regarding an appeal as well. Although the PCR court did not have the benefit of *Flores-Ortega* and its synthesis of the holdings in *Strickland* and *Barnes*, the two later decisions were available to the PCR court and the rules contained therein were clearly established at the time the PCR court reached its decision.

B.

We turn now to whether Frazer can satisfy the requirements that the *Flores-Ortega* Court distilled from *Strickland*. In order to demonstrate prejudice from Howle's failure to consult, Frazer must show that a rational defendant in his position would want to appeal. He may do so by either identifying non-frivolous issues that could have been appealed or by showing that he adequately expressed an interest in pursuing an appeal. *Flores-Ortega*, 528 U.S. at 480, 120 S.Ct. 1029. We conclude that Frazer has shown both.

1.

We agree with the district court that Frazer could have pursued two non-frivolous issues on appeal. As stated above, Frazer's guilty plea exposed him to a statutory-maximum fine of \$25,000, and all parties (including South Carolina) expected that Frazer's sentences for the two counts to which he was pleading guilty would be concurrent. However, the court imposed a fine of \$100,000 and, without a request from the prosecution, consecutive sentences — actions Frazer felt were impermissibly motivated. The trial court also refused to revisit its decision in response to Howle's oral motion for reconsideration. South Carolina responds that three procedural obstacles would have prevented Frazer from pressing these issues on appeal, and that therefore Howle had no duty to consult. We consider these in turn.

a.

710 First, South Carolina contends that Frazer's guilty plea automatically foreclosed appellate review of all issues that did not relate to the trial court's subject matter jurisdiction. However, this assertion overstates the holdings of the decisions on which it is based. Although there is some broad language in South Carolina case law to the effect that "a guilty plea generally constitutes a waiver of non-jurisdictional defects and claims of violations of constitutional rights," *State v. Passaro*, 350 S.C. 499, 567 S.E.2d 862, 866 (2002) (citing *Rivers v. Strickland*, 264 S.C. 121, 213 S.E.2d 97, 98 (1975)), the general rule appears to be that "a plea of guilty, voluntarily and understandingly, '710 made, constitutes a waiver of non-jurisdictional defects and defenses . . . prior to the plea," *Rivers*, 213 S.E.2d at 98 (emphasis added).¹¹¹ Moreover, in South Carolina, "[s]entencing, although often combined with the admission of guilt in a hearing, is a separate issue from guilt and a distinct phase of the criminal process," *Easter v. State*, 355 S.C. 79, 584 S.E.2d 117, 119 (2003), which bolsters our conclusion that defendants cannot be expected to forego subsequent errors at sentencing simply by pleading guilty. In fact, the South Carolina Supreme Court has corrected a sentence on direct appeal that both parties agreed exceeded the statutory maximum, despite the defendant's failure to raise a sentencing objection at trial. *Johnston*, 510 S.E.2d at 425 (noting that "the State has conceded in its briefs and oral argument that the trial court committed error by imposing an excessive sentence."). Consequently, we are not persuaded that Frazer's guilty plea foreclosed an appeal as South Carolina argues.

Moreover, South Carolina proffers no case supporting the proposition that a virtually contemporaneous motion for reconsideration is insufficient to preserve an objection for review. To the contrary, several South Carolina cases indicate that presenting an issue to the trial court for its initial determination is all that is necessary. See, e.g., *State v. Johnston*, 333 S.C. 459, 510 S.E.2d 423, 425 (1999) (stating that if an "issue was not raised below and did not involve subject matter jurisdiction," the defendant could not raise it for the first time on

appeal (emphasis added)); *State v. Williams*, 303 S.C. 410, 401 S.E.2d 168, 169 (1991) (noting that it is the failure to "interpose[] a timely objection at sentencing in order to have [an] issue ruled upon by the circuit court in the first instance" that forecloses further review (emphasis added)); *State v. Woodruff*, 300 S.C. 265, 387 S.E.2d 453, 454 n. 1 (1988) ("Matters not passed upon by the trial court will not be reviewed." (emphasis added)).¹²¹ And to the extent that ambiguity exists regarding preservation of error in such circumstances, it suggests the existence of another non-frivolous issue for appeal.

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South Carolina further argues that an affidavit Frazer signed just prior to pleading guilty, in which he acknowledged his right to appeal, relieved Howle "711 of any obligation to consult with Frazer regarding an appeal. Frazer's "Affidavit of Defendant for Guilty Plea" does reflect his understanding of his right to appeal. However, that document is insufficient to relieve Howle of his obligations under *Strickland* and *Flores-Ortega*, as an attorney's duty to consult requires more than informing the defendant that he has the right to appeal. The term consult "convey[s] a specific meaning — advising the defendant about the advantages and disadvantages of taking an appeal, and making a reasonable effort to discover the defendant's wishes."¹²³ *Flores-Ortega*, 528 U.S. at 478, 120 S.Ct. 1029 (emphasis added). Simply demonstrating that the defendant was actually or constructively aware of his right to appeal is insufficient to relieve defense counsel of his obligations under *Flores-Ortega*.¹²⁴

Finally, South Carolina argues that the only issue Frazer could have raised on appeal is now frivolous, as the PCR court remedied this error by reducing the fine. Even assuming for the sake of argument that this is indeed the only issue Frazer could have pressed on appeal, we disagree. Both parties agree that the fine exceeded the statutory maximum when it was imposed by the trial court.¹²⁵ In establishing whether counsel had an obligation to consult given the circumstances, *Flores-Ortega* asks only whether the defendant would have elected to proceed with an appeal following that consultation. It is therefore the presence of error in the conviction or sentence at the time the decision to appeal is to be made that is determinative. The correction of the error in a separate proceeding is irrelevant to the issue of counsel's obligation to consult.

b.

Turning to whether there existed non-frivolous issues for appeal, we note at least two: the excessive fine and the imposition of consecutive sentences. With respect to the first, South Carolina's acknowledgment that Frazer's fine exceeded the statutory maximum indicates that Frazer could have pressed it on appeal. As noted above, there is precedent allowing South Carolina defendants to present an otherwise unpreserved sentencing error where "the State has conceded in its briefs and oral argument that the trial court committed error." *Johnston*, 510 S.E.2d at 425. Consequently, the excessive fine presents a non-frivolous issue that triggered Howle's duty to consult.

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Second, the district court noted that Frazer arguably could have challenged the trial court's decision to impose consecutive sentences. South Carolina correctly notes that in South Carolina, trial judges have "broad discretion in sentencing within statutory limits," and that neither of Frazer's custodial sentences exceeded the relevant statutory maximum. However, there is an exception to this rule where there are "facts supporting an allegation of prejudice" against the defendant. *Garrett v. State*, 320 S.C. 353, 485 S.E.2d 349, 350 (1995). Here, the trial court's "712 decision to impose consecutive sentences took both parties by surprise, and Frazer's sentencing took place just one day after "a heated [pre-trial] hearing" in which "thing [s] really kind of went [s]outh." J.A. 183-84. Describing this hearing as "brutal," Howle noted that "any adverse ruling we could have had" from the judge that sentenced Frazer the following day, "we got." *Id.* at 184. Under these circumstances, we are not persuaded that an assertion by Frazer that his sentence was "the result of partiality [or] prejudice" would be frivolous. *Garrett*, 485 S.E.2d at 350 (internal quotations omitted).

2.

In the alternative, Frazer may show prejudice under *Flores-Ortega* by demonstrating an interest in an appeal and showing that a consultation with his counsel would not have dissuaded him from pursuing it. It is uncontested that, immediately following sentencing, Frazer indicated his unhappiness with his consecutive sentences and asked Howle to see about "having [them] run together." J.A. 128. It was in fact Frazer's indication of dissatisfaction that prompted Howle to make his oral motion for reconsideration. Given that Frazer need only demonstrate an interest in appealing, *Flores-Ortega*, 528 U.S. at 480, 120 S.Ct. 1029, Frazer meets the initial requirement for demonstrating prejudice in this manner.

However, Frazer must also show that the resulting consultation would have galvanized that interest into a desire to go forward, rather than dissuading him. See *id.* at 486, 120 S.Ct. 1029. We find Frazer's letter to Howle satisfies this secondary showing. Frazer was clearly dissatisfied that the district court refused to reconsider its sentencing decisions, and expressed his dissatisfaction both as the sentencing hearing concluded and in subsequent communications with Howle. Because Frazer's interest in an appeal was unwavering and ongoing, we find it adequately reflects both his interest in an appeal and an intent to pursue them at all costs. Frazer's tenacity in pursuing habeas relief only bolsters this conclusion.¹²⁶

IV.

Because we agree with the district court that, in light of *Strickland* and *Flores-Ortega*, Frazer's

counsel had an obligation to consult with him regarding an appeal, and that Frazer was prejudiced by his counsel's failure to do so, we find the PCR court unreasonably applied federal law in rejecting this claim. Accordingly, we affirm the district court's grant of habeas relief.

AFFIRMED.

DIANA GRIBBON MOTZ, Circuit Judge, concurring:

I concur in Judge Duncan's opinion for the court. I write separately simply to set forth more fully why I believe the district court correctly granted habeas relief here.

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The Antiterrorism and Effective Death Penalty Act (AEDPA) authorizes a federal court to grant an application for a writ of habeas corpus with respect to a claim adjudicated on the merits in state court if that adjudication "resulted in a decision that was [1] contrary to, or [2] involved an unreasonable application of, clearly established Federal law, as determined by the '713 Supreme Court of the United States.'" 28 U.S.C. § 2254(d)(1)(2000). The Supreme Court has explained that "[a] state-court decision will certainly be contrary to" clearly established Federal law, as determined by the Supreme Court, "if the state court applies a rule that contradicts the governing law set forth" in Supreme Court precedent. Williams v. Taylor, 529 U.S. 362, 405, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000). "A state-court decision that correctly identifies the governing legal rule but applies it unreasonably to the facts of a particular prisoner's case certainly would qualify as a decision 'involv[ing] an unreasonable application of . . . clearly established Federal law.'" *Id.* at 407-408, 120 S.Ct. 1495 (alterations in original).

The Court has further explained that "'clearly established Federal law, as determined by the Supreme Court' . . . refers to the holdings, as opposed to the dicta," in Supreme Court decisions "as of the time of the relevant state-court decision." *Id.* at 412, 120 S.Ct. 1495. Moreover, and of particular significance in this case, the Williams Court has instructed that "whatever would qualify as an old rule under [the Court's] Teague [v. Lane, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989)] (plurality opinion) jurisprudence will constitute 'clearly established Federal law,'" under § 2254(d)(1) of AEDPA as long as a Supreme Court case is the source of the rule. *Id.*

In the case at hand, the district court properly granted habeas relief because the state court decision denying Frazer's claim was both "contrary to" and "involved an unreasonable application of" Strickland v. Washington, 486 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). No one can question that Strickland qualifies as clearly established Supreme Court precedent; indeed, the Williams Court so stated. See Williams, 529 U.S. at 391, 120 S.Ct. 1495 ("It is past question that the rule set forth in Strickland qualifies as 'clearly established Federal law, as determined by the Supreme Court of the United States.'"). Nor can there be any question that Strickland, which the Court issued in 1984 to establish legal principles governing claims of ineffective assistance of counsel, was extant at the time of all relevant state court decisions in this case.

To demonstrate a claim of ineffective assistance under Strickland's familiar two-part test, a petitioner must show that (1) "counsel's performance was deficient" and (2) that this "deficient performance prejudiced the defense." Strickland, 486 U.S. at 687, 104 S.Ct. 2052. We measure prejudice under a reasonableness standard. Generally, a defendant must show that there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694, 104 S.Ct. 2052. However, "[a]ctual or constructive denial of the assistance of counsel altogether is legally presumed to result in prejudice." *Id.* at 692, 104 S.Ct. 2052. As to counsel's performance, the Strickland Court eschewed adopting a bright-line standard or "detailed guidelines for representation," explaining that "[n]o particular set of detailed rules" could "satisfactorily take account of the variety of circumstances faced by defense counsel." *Id.* at 688-89, 104 S.Ct. 2052. Once again reasonableness is the touchstone. Strickland directs courts to "judge the reasonableness of counsel's challenged conduct on the facts of the particular case." *Id.* at 690, 104 S.Ct. 2052.

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In Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000), the Supreme Court did precisely this. The case illustrates how the Strickland test applies to the "facts of [a] particular case" — one involving a claim that counsel was ineffective for failing to consult with "714 his client about taking an appeal. For this reason, Flores-Ortega is obviously useful in considering Frazer's habeas claim. That the case involves a claim of ineffective assistance arising from different facts than were at issue in Strickland does not render the claim a "new" one unresolved by clearly established Supreme Court precedent and, therefore, barred by AEDPA. Although this argument is occasionally offered, it has gained little traction in the Supreme Court. Rather, the Court has directed that "the Strickland test provides sufficient guidance for resolving virtually all ineffective-assistance-of-counsel claims." ⁽¹⁾ Williams, 529 U.S. at 391, 120 S.Ct. 1495. Thus, as the Court has explained, just because "the Strickland test of necessity requires a case-by-case examination of the evidence," this "obviates neither the clarity of the rule nor the extent to which the rule must be seen as 'established' [for AEDPA purposes] by this Court." *Id.* (internal quotation marks and citation omitted).

Moreover, the fact that the Supreme Court issued Flores-Ortega after the state court denied Frazer's ineffective assistance claim does not prevent a federal habeas court from considering Flores-Ortega in resolving Frazer's claim under AEDPA. In Wiggins v. Smith, 539 U.S. 510, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003), the Supreme Court soundly and explicitly rejected the contention that AEDPA prohibits consideration of cases postdating the state-court decision under review. In Wiggins, the Court concluded that, notwithstanding AEDPA, it

could consider a case issued after the relevant state court decision because its recently decided case simply "illustrat[ed] the proper application" of *Strickland*. *Id.* at 2535-36.

Wiggins provides important guidance here. The *Wiggins* Court first looked to *Strickland*, setting forth the *Strickland* test and noting that although *Strickland* had "declined to articulate specific guidelines for appropriate attorney conduct," it had set forth the proper standards for generally assessing the challenged judgments of counsel "in terms of the adequacy of the investigations supporting those judgments." *Id.* at 2535; see *Strickland*, 466 U.S. at 689-91, 104 S.Ct. 2052. The *Wiggins* Court next looked to its recent decision in *Williams*, in which it had found a habeas claim similar to *Wiggins*'s ineffectiveness claim to be "mentorious." *Wiggins*, 123 S.Ct. at 2535. The *Wiggins* Court expressly found its recent "opinion in *Williams v. Taylor* [to be] illustrative of the proper application of the [] relevant *Strickland* standards" and relied on the rationale of *Williams* in holding that *Wiggins* involved a violation of clearly established Supreme Court precedent. See *id.*

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Justice Scalia, in dissent, objected to the majority's reliance on *Williams* because *Williams* "postdate[d] the Maryland court's decision rejecting *Wiggins*'s Sixth Amendment claim." See *id.* at 2546 (Scalia, J., dissenting). Although the Supreme '715 Court had decided *Williams* after the state court upheld the denial of *Wiggins*'s claim for post-conviction relief, the majority rejected Justice Scalia's complaint, explaining that it could look to *Williams* as a "proper application" of *Strickland* because *Williams* had come before the Court on "habeas review" and the Court had "made no new law in resolving *Williams*' effectiveness claim." *Id.* at 2535. The *Wiggins* majority held it could look to *Williams* as "illustrative of the proper application" of *Strickland* because *Williams* did not create new law, but rather was "squarely governed by [the Court's] holding in *Strickland*." *Id.* at 2536 (quoting *Williams*, 529 U.S. at 390, 120 S.Ct. 1495). *Wiggins* teaches that even if a Supreme Court habeas case is issued after the relevant state court decision, it can be considered as illustrative of the proper application of *Strickland* — and, therefore, as indicative of clearly established Supreme Court precedent as of the time of that state court decision — if in the new decision the Court makes clear that it is simply applying well-established Supreme Court precedent.

Faithful adherence to the reasoning in *Wiggins* inexorably leads to the conclusion that in the case at hand the district court properly granted habeas relief. Here, as in *Wiggins*, although *Strickland* does not articulate specific guidelines for appropriate attorney conduct as to the petitioner's claim, *Strickland* does set forth the proper standards for judging that conduct. The *Strickland* Court carefully explained that among the "basic duties" owed by counsel to his client are the duties "to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution." *Strickland*, 466 U.S. at 688, 104 S.Ct. 2052. Whether to appeal, particularly in a case like this in which even the State concedes that an illegal sentence has been imposed, obviously constitutes a most "important decision" about which an attorney should "consult" with his client. *Id.* *Strickland* also establishes the proper prejudice inquiry in a situation like this in which there has been a denial of counsel "altogether" at a critical stage: that is, "prejudice is presumed." *Id.* at 692, 104 S.Ct. 2052. Thus, here, as in *Wiggins*, the "clearly established" precedent of *Strickland* governs. See *Wiggins*, 123 S.Ct. at 2536.

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Moreover, again as in *Wiggins*, a Supreme Court habeas case (here, *Flores-Ortega*) issued shortly after the relevant state court decision illustrates the proper application of *Strickland* to the particular facts of the case. Indeed, the Supreme Court made it even clearer in *Flores-Ortega* than it did in *Williams* that it was simply applying *Strickland* to the facts before it. See *Flores-Ortega*, 528 U.S. at 477, 120 S.Ct. 1029 (holding that the *Strickland* "test applies to claims . . . that counsel was constitutionally ineffective for failing to file a notice of appeal"); 528 U.S. at 478, 120 S.Ct. 1029 (rejecting a *per se* rule adopted by some circuits "as inconsistent with *Strickland*'s holding" and concluding that the court below had "failed to engage in the circumstance-specific reasonableness inquiry required by *Strickland*"); 528 U.S. at 479, 120 S.Ct. 1029 (dismissing a suggested holding because it "would be inconsistent with both our decision in *Strickland* and common sense"); 528 U.S. at 481, 120 S.Ct. 1029 (explaining what "[t]he second part of the *Strickland* test requires"); 528 U.S. at 485, 120 S.Ct. 1029 (finding that in the case before it, "[a]s with all applications of the *Strickland* test," a defendant's ability to make the "requisite showing will turn on the facts of a particular case"); 528 U.S. at 487, 120 S.Ct. 1029 (vacating because the "court below undertook neither part of the *Strickland* '716 Inquiry").¹² Accordingly, as the *Wiggins* Court could, consistent with AEDPA, look to *Williams* as illustrative of the proper application of *Strickland* to a particular factual scenario, we can look to *Flores-Ortega* as illustrative of the proper application of *Strickland* here.

The propriety of looking to *Flores-Ortega* as illustrative of "clearly established Federal law" under AEDPA should not be surprising. Rather, such use simply accords with the fact that, as Judge Duncan has explained, Supreme Court precedent establishes *Flores-Ortega* as an old rule under *Teague*, i.e., a rule dictated by precedent (*Strickland*) existing at the time *Frazer*'s conviction became final. When, as here, a Supreme Court case provides the source of an "old" *Teague* rule, that "old" rule, by definition, "will constitute clearly established Federal law . . . under" AEDPA. *Williams*, 529 U.S. at 412, 120 S.Ct. 1495 (internal quotation marks and citation omitted). In the case at hand, the State does not even contend that *Flores-Ortega* announced a new rule under *Teague*. A survey of the legal landscape as it existed when *Frazer*'s conviction and sentence became final conclusively demonstrates that it did not. For, as explained above, and by the Supreme Court itself in *Flores-Ortega*, *Strickland* dictated *Flores-Ortega*. See also *Lewis v. Johnson*, 359 F.3d 648, 655 (3d Cir.2004) (holding that "*Flores-Ortega*'s application of the *Strickland* standard was dictated by precedent and merely clarified the law as is applied to the particular facts of that case"); *Hudson v. Hunt*, 235 F.3d 892, 896 (4th Cir.2000) (recognizing that "*Roa v. Flores-Ortega* clarified the application of the *Strickland* standard to a claim that an attorney was constitutionally deficient for failing to file a notice of appeal").

In sum, *Wiggins* and the case at hand demonstrate that in assessing "clearly established Federal law" under AEDPA, a court may occasionally consider a Supreme Court opinion issued after the state court's denial of the petitioner's post-conviction claim. Generally, of course, when a federal habeas court asks whether a state-court decision was "contrary to" or an "unreasonable application of . . . clearly established Federal law," it will consider only those Supreme Court opinions issued prior to the state court's denial of relief. However, this case — and *Wiggins* — provide the exceptions that prove this rule. Where, as here and in *Wiggins*, a Supreme Court decision post-dating state collateral review (e.g., *Williams* or *Flores-Ortega*) simply illustrates the appropriate application of a Supreme Court precedent that pre-dates the state-court determination (e.g., *Strickland*), a federal court on habeas may consider the postdated opinion.

717 Turning then to *Flores-Ortega*, there the Court explained that a counsel's failure to consult with the defendant about an appeal constitutes deficient performance if the attorney had a duty to consult. *Flores-Ortega*, 528 U.S. at 478, 120 S.Ct. 1029. "[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel '717 that he was interested in appealing.'" *Id.* at 480, 120 S.Ct. 1029. Once the defendant establishes deficient performance, he is entitled to relief if he can show prejudice. *Id.* at 481, 120 S.Ct. 1029. "[T]o show prejudice in these circumstances, a defendant must demonstrate that there is a reasonable probability that, but for counsel's deficient failure to consult with him about an appeal, he would have timely appealed." *Id.* at 484, 120 S.Ct. 1029.

When these principles are applied to the case at hand it is clear that the state court's decision rejecting Frazer's ineffective-assistance claim was both "contrary to" and "involved an unreasonable application of" this clearly established law.

The state PCR court recounted that Frazer "testified that Counsel never informed him of his right to appeal and never filed an appeal on his behalf." J.A. 209. The PCR court then expressly found that "Counsel agreed, testifying he never discussed a direct appeal with [Frazer]." *Id.* Nevertheless, the PCR court rejected Frazer's ineffective assistance claim. Relying on our pre-*Strickland* decision, *Carey v. Leverette*, 605 F.2d 745 (4th Cir.1979), the PCR court concluded that Frazer's counsel was not deficient for failing to file an appeal because there was nothing in the record and no testimony at the hearing "to indicate that the Applicant conveyed to his trial attorney a desire to appeal until it was too late." J.A. 209-10.

This court's holding in *Carey* — that absent "extraordinary circumstances" no "constitutional requirement" mandates "that defendants must always be informed of their right to appeal following a guilty plea," *Carey*, 605 F.2d at 746 — adopted the type of bright-line rule the Supreme Court expressly rejected in *Strickland* and its progeny. See, e.g., *Strickland*, 466 U.S. at 688-90, 104 S.Ct. 2052 (refusing to adopt "detailed rules" or provide "special amplification" of its two-part test); *Flores-Ortega*, 528 U.S. at 478, 120 S.Ct. 1029 (rejecting a *per se* rule "as inconsistent with *Strickland*'s holding that 'the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances'"). *Strickland* and *Flores-Ortega*, unlike *Carey*, do not require the defendant to demonstrate "extraordinary circumstances" to obtain relief. While *Carey* holds that in most cases (i.e., "absent extraordinary circumstances") an attorney need not inform his client about his appellate rights, *Flores-Ortega* clearly illustrates that *Strickland* requires a contrary rule: "in the vast majority of cases, . . . counsel [will] ha[ve] a duty to consult with the defendant about an appeal." *Flores-Ortega*, 528 U.S. at 481, 120 S.Ct. 1029. Accordingly, the PCR court's reliance on *Carey* was contrary to clearly established federal law. See *Williams*, 529 U.S. at 405, 120 S.Ct. 1495 ("A state-court decision will certainly be contrary to our clearly established precedent if the state court applies a rule that contradicts the governing law set forth in our cases.")

718 For similar reasons, to the extent that the PCR court applied *Strickland* (which it cited once) when it followed *Carey*, the court engaged in an unreasonable application of *Strickland*, a clearly established Supreme Court precedent. *Id.* at 407-08, 120 S.Ct. 1495 (explaining that if "[a] state-court decision . . . correctly identifies the governing legal rule but applies it unreasonably to the facts of a particular prisoner's case," it "certainly would qualify" as "an unreasonable application of . . . clearly established Federal law"). *Strickland* makes clear that to be constitutionally effective, counsel must "consult with the defendant on important decisions" and "keep the defendant informed of important developments in the course of the prosecution." *Strickland*, 466 U.S. at 688, 104 S.Ct. 2052. 718 As explained above, *Flores-Ortega* illustrates the proper application of *Strickland* when counsel fails to consult with his client about taking an appeal when nonfrivolous grounds for appeal exist. See *Flores-Ortega*, 528 U.S. at 480, 120 S.Ct. 1029. Frazer's counsel utterly failed to consult with his client about an extremely important decision — whether to file an appeal in light of the unexpected and illegal sentence imposed by the trial court. Since the PCR court denied relief despite finding that counsel "never discussed a direct appeal with" Frazer, J.A. 209 (emphasis added), even though nonfrivolous grounds for appeal existed, the PCR court's application of *Strickland* was unreasonable.

Because the state court's decision in this case was both contrary to and involved an unreasonable application of clearly established law, the district court properly reviewed Frazer's claim *de novo*. See *Rose v. Lee*, 252 F.3d 676, 689-90 (4th Cir.2001). Moreover, as Judge Duncan has demonstrated, the district court properly concluded that Frazer established that his trial counsel's conduct was objectively unreasonable and demonstrated the requisite prejudice resulting from the constitutionally deficient representation. See *ante* at 14-19; see also *Frazer v. State of South Carolina*, No. 03-CV-738 (D.S.C. Feb. 12, 2004). Accordingly, we must affirm the order of the district court granting habeas relief.

LUTTIG, Circuit Judge, dissenting:

The majority's grant of the writ of habeas corpus is transparently based on the impermissible holding that the state PCR court's decision was an unreasonable application of a Supreme Court precedent that post-dated that decision. Although the majority asserts conclusorily that the state PCR court's failure was in not reasonably applying *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), it is evident that the majority actually reasons and holds that the state PCR court unreasonably applied *Roe v. Flores-Ortega*, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000). In fact, it is as if its opinion were reasoned and written on the mistaken understanding that *Flores-Ortega* was decided before the state PCR court reached its decision, and then amended so as to state (though not reason) that it rested on *Strickland* when it was discovered that *Flores-Ortega* actually post-dated the state PCR court's decision. Of course, because *Flores-Ortega* was not decided until after the only state court to consider the merits of Frazer's claim (the state PCR court) issued its decision,^[1] it is impermissible under section 2254(d)(1) for the majority to rely upon that opinion to hold that the state unreasonably applied "clearly established Federal law, as determined by the Supreme Court of the United States." As it is apparent that clearly established Supreme Court precedent at the time of the state PCR court decision did not dictate that Frazer be afforded relief on his ineffective assistance of counsel claim, I would hold that the state PCR court did not unreasonably apply clearly established Supreme Court precedent and I would reverse the contrary judgment of the district court.

I.

Both the majority and the concurring opinion attempt to evade section 2254(d)(1)'s requirements by holding that the rule of *Flores-Ortega* was an old rule of constitutional law under *Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989), and thus part of the clearly established law for purposes of section 2254(d)(1) when the state court issued its decision. Ante at 705; ante at 716 (Motz, J., concurring). Neither the majority opinion nor the separate concurrence is even remotely convincing that *Flores-Ortega* was dictated by prior precedent and thus not a new rule under *Teague*.

A.

In order to grant Frazer's habeas petition on the basis of *Flores-Ortega*, the majority must overcome two independent bars to relief — that imposed by section 2254(d)(1) and that imposed by *Teague*. Section 2254(d)(1) bars relief unless the PCR court's judgment "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." Even if *Flores-Ortega* were clearly established federal law at the time the PCR court rendered its judgment, and even if the PCR court unreasonably applied it, thus overcoming the AEDPA bar, *Teague* — which held that federal courts will not apply new rules of constitutional law retroactively to cases on collateral review — independently prevents granting the writ on the basis of *Flores-Ortega* because, as explained *infra*, that case announced a new rule of constitutional law. See *Horn v. Banks*, 538 U.S. 266, 122 S.Ct. 2147, 153 L.Ed.2d 301 (2002) (per curiam) ("While it is of course a necessary prerequisite to federal habeas relief that a prisoner satisfy the AEDPA standard of review . . . none of our post-AEDPA cases have suggested that a writ of habeas corpus should automatically issue if a prisoner satisfies the AEDPA standard, or that AEDPA relieves courts from the responsibility of addressing properly raised *Teague* arguments.")^[2]

Teague would not bar relief on the basis of *Flores-Ortega* if the rule announced in *Flores-Ortega* had been an old rule of constitutional law. Old rules of constitutional law are those that were "dictated by precedent existing at the time the defendant's conviction became final." See *Teague*, 489 U.S. at 301, 109 S.Ct. 1060. A rule is not dictated by precedent — and is therefore a new rule of constitutional law — if, prior to its announcement, its existence was "susceptible to debate among reasonable minds." See *Butler v. McKellar*, 494 U.S. 407, 415, 110 S.Ct. 1212, 108 L.Ed.2d 347 (1990). In other words, a rule is an old rule of constitutional law only if all reasonable jurists would have agreed that it existed prior to its announcement.

The majority correctly recognizes that if *Flores-Ortega* announced a new rule of constitutional law, *Teague* would bar relief. The majority incorrectly concludes, however, that *Flores-Ortega* was dictated by prior precedent and was therefore an old rule. And it is able to so hold in large part because it does not even attempt to show that all reasonable jurists would have anticipated the outcome of that case. ⁷²⁰ Instead of conducting this proper inquiry, the majority merely sets about to show that in *Flores-Ortega* "the Supreme Court relied exclusively on the principles announced in *Strickland* and other cases defining the role of counsel in the appellate process," ante at 705, a task that the majority mistakenly believes establishes that *Flores-Ortega* was dictated by *Strickland* and other Supreme Court precedents existing at the time Frazer's conviction became final and that *Flores-Ortega* was therefore an old rule. Of course, to establish that the Supreme Court relied exclusively on the principles of prior cases in reaching the rule of *Flores-Ortega* is not at all to establish that those cases dictated that rule, that is, that all reasonable jurists would have agreed that those precedents led inexorably to *Flores-Ortega*.

Apart from this erroneous "relied-exclusively-on" test, the majority's only other analysis of whether *Flores-Ortega* was dictated by precedent remarkably consists solely of the bald assertion that because the decision to appeal is important, and *Strickland* stated in dicta that counsel has a duty to consult with the defendant on important decisions, *Strickland* dictated the rule of *Flores-Ortega*. This analysis is entirely unconvincing on its own terms and, it should go without saying, does not even remotely approximate the proper *Teague* inquiry.^[3]

B.

Having improperly conducted and answered the *Teague* inquiry, the majority then compounds the confusion by importing its erroneous *Teague* conclusion into its AEDPA analysis, deciding that because *Flores-Ortega* is an old rule of constitutional law under *Teague*, "[n]either *Teague* nor § 2254(d) forecloses an examination of Frazer's entitlement to habeas relief." See *ante* at 708. In so doing, the majority fails completely to recognize that, as the Supreme Court has emphasized, "the AEDPA and *Teague* inquiries are distinct." *Horn*, 536 U.S. at 272; 122 S.Ct. 2147. The *Teague* new-rule inquiry requires us to ask whether a rule that the petitioner seeks to benefit from was dictated by precedent at the time the petitioner's conviction became final. Section 2254(d)(1), in contrast, requires us to ask whether the rule that the PCR court allegedly applied unreasonably was clearly established at the time of the PCR court's decision.

721 The majority relies on the Supreme Court's statement in *Williams v. Taylor* that there is a "slight connection" between "721 the phrase 'clearly established Federal law' in section 2254 (d)(1) and *Teague*, namely that 'whatever would qualify as an old rule under our *Teague* jurisprudence will constitute 'clearly established Federal law, as determined by the Supreme Court of the United States' under § 2254(d)(1)." *Ante* at 706 (quoting *Williams*, 529 U.S. at 412, 120 S.Ct. 1495) (emphasis added by majority). It intends this "connection" to explain (and justify) its focus on *Teague*, as opposed to a focus on the actual standard of section 2254(d)(1). But to reason in this fashion is to read out of *Teague* and section 2254 the critically different temporal limitations of these "distinct" inquiries.¹¹

A correctly reasoned opinion would address head-on the relevant question under AEDPA of whether the rule announced in *Flores-Ortega* was clearly established at the time of the state PCR court's decision, that is, whether at the time of the state PCR court's decision all reasonable jurists would have agreed that the rule of *Flores-Ortega* was already extant. (In contrast, the corresponding, but different, inquiry under *Teague* is whether at the time the petitioner's conviction became final all reasonable jurists would have agreed as to the required outcome of *Flores-Ortega*.) But, as noted above, the majority never asks the crucial question whether, at the time of the state PCR court's decision, all reasonable jurists would have anticipated *Flores-Ortega*. Needless to say, as a consequence, the majority's analysis under AEDPA is demonstrably flawed.

Had the majority undertaken the proper analysis under section 2254, it would have been required to hold, for the reasons explained *infra*, that a reasonable jurist clearly could have read *Rodriguez v. United States*, 395 U.S. 327, 89 S.Ct. 1715, 23 L.Ed.2d 340 (1969), and *Peguero v. United States*, 526 U.S. 23, 119 S.Ct. 981, 143 L.Ed.2d 18 (1999), as consistent with *Carey v. Leverette*, 605 F.2d 745 (4th Cir.1979), and as authority for the conclusion that Frazer's claim was defeated by his failure to request that his attorney appeal.¹² Such a jurist could thus have reasonably failed to anticipate the holding of *Flores-Ortega*, as indeed the state court did in this case.¹³

722 *722 Despite the protestations of the majority and concurrence that *Flores-Ortega* follows unavoidably from *Strickland* and *Jones v. Barnes*, 483 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983), neither opinion is able to offer any explanation, much less a plausible one, as to why a reasonable jurist would not have relied directly on *Rodriguez* and *Peguero*, which address this precise context. Indeed, the majority does not even as much as cite *Peguero* and it mentions *Rodriguez* only in passing. And the only reference to either in Judge Motz's concurrence is a brief recognition that both cases are cited in *Flores-Ortega*.¹⁴

Because the outcome of *Flores-Ortega* was undoubtedly in question prior to the issuance of that case, *Flores-Ortega* was neither old law nor clearly established federal law, as determined by the Supreme Court of the United States. As a consequence of the fact that *Flores-Ortega* was not clearly established federal law until the day it was issued, that case cannot be applied to Frazer's claims — at least not consistent with section 2254(d)(1).

C.

Like the majority, the concurrence attempts to defend reliance upon *Flores-Ortega* on the grounds that *Flores-Ortega* is old law and thus was clearly established at the time of the state-court decision. *Ante* at 715-718 (Motz, J., concurring). However, for its part, the concurrence attempts to redefine entirely the elements of an old rule under *Teague*. It does so by urging that the category of old rules includes first, all cases which "simply 'illustrat[e] the proper application' of prior precedent, *ante* at 714 (Motz, J., concurring), and second, all later cases that interpret *Strickland*, *ante* at 714 (Motz, J., concurring).

In support of its first definition of an old rule, the concurrence invokes the Supreme Court's statement that *Williams v. Taylor* could be applied to the petitioner's habeas claim in *Wiggins v. Smith*, 539 U.S. 510, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003), even though *Williams* post-dated the state court's rejection of *Wiggins'* claim, because the *Wiggins* Court concluded that the *Williams* Court had "made no new law in resolving *Williams'* ineffectiveness claim." *Id.* at 522, 123 S.Ct. 2527 (emphasis added). The concurrence characterizes the Court's application of *Williams* in *Wiggins* as a conclusion that the Court "could consider a case issued after the relevant state court decision because its recently decided case simply 'illustrat[ed] the proper application' of *Strickland*." *Ante* at 714 (Motz, J., concurring) (emphasis and alteration in majority).

But the Supreme Court does not determine whether a rule is an old rule by deciding that it will

723 "simply illustrate the '723 proper application" of an earlier case. If this were the test, virtually everything would be an old rule, because the Supreme Court rarely, if ever, decides a case without properly applying an earlier case. Such a broad view of old rules ignores *Teague's* focus on the importance of the finality of criminal judgments. *Teague*, 489 U.S. at 309, 109 S.Ct. 1060.

Instead, the Court has held — and reaffirmed repeatedly — that a rule is *new* when "the result [it reaches] was not *dictated* by precedent existing at the time the defendant's conviction became final." *Id.* at 301, 109 S.Ct. 1060. This definition of a new rule is meant to "validate[] reasonable, good-faith interpretations of existing precedents made by state courts even though they are shown to be contrary to later decisions." *O'Dell v. Netherland*, 521 U.S. 151, 156, 117 S.Ct. 1969, 138 L.Ed.2d 351 (1997). The focus of the old-rule inquiry is thus decidedly *not* on whether a case "illustrates the proper application" of or otherwise relies on previously decided cases; the focus of the inquiry is on whether a case applies such prior cases in such a manner that no reasonable jurist could have disagreed about the result of the later-decided case — a far narrower inquiry.

The concurrence's second justification for characterizing the holding of *Flores-Ortega* as an old rule is its implicit assertion that *Williams* holds that virtually all cases interpreting the two-prong *Strickland* standard set forth old rules. *See ante* at 714 (Motz, J., concurring) ("Rather, the Court has directed that 'the *Strickland* test provides sufficient guidance for resolving virtually all ineffective-assistance-of-counsel claims.'") (quoting *Williams*, 529 U.S. at 391, 120 S.Ct. 1495). But *Williams* provides no support for such an assertion. Instead, *Williams* holds only that *Strickland* itself is clearly established law even though *Strickland* requires a case-by-case inquiry, and thus that a state court's application of *Strickland* could entitle a habeas petitioner to relief if the state court decision was contrary to or an unreasonable application of *Strickland*. *Williams*, 529 U.S. at 390-91, 120 S.Ct. 1495. The language about *Strickland* "resolving virtually all ineffective-assistance-of-counsel claims," which the concurrence takes out of context from *Williams*, provides in full:

The Virginia Supreme Court erred in holding that our decision in *Lockhart v. Fretwell*, 506 U.S. 364, 113 S.Ct. 838, 122 L.Ed.2d 180 (1993), modified or in some way supplanted the rule set down in *Strickland*. It is true that while the *Strickland* test provides sufficient guidance for resolving virtually all ineffective-assistance-of-counsel claims, there are situations in which the overriding focus on fundamental fairness may affect the analysis.

Id. at 391, 120 S.Ct. 1495. In context, it is clear that this language does *not* mean, as the concurrence suggests, *ante* at 714 (Motz, J., concurring), that a case involving ineffective assistance is necessarily an old rule under *Strickland* because *Strickland* resolves "virtually all" such claims, but rather that it is only in rare circumstances that a court must have an "overriding focus" on a *different* legal test altogether than the one set forth in *Strickland*, i.e., whether the proceeding is consistent with fundamental fairness. Contrary to Judge Motz's implication, this statement thus emphatically does *not* hold that, for every one of the Court's post-*Strickland* ineffective assistance cases, no reasonable jurist could have disagreed with the result — as would be required for all such cases to constitute old law under *Teague*.

724 Judge Motz, in attempted rejoinder to this obvious point, rejoins not at all. *Ante* at 714, n. 1. That *Strickland* resolves the "724 vast majority of ineffective assistance claims says nothing whatsoever as to whether a particular application of *Strickland* constitutes a new rule or not. Indeed, Judge Motz reveals her own misunderstanding of the new-rule inquiry by noting emphatically (as if it were the inquiry) that *Strickland* "guides" most ineffective assistance claims. *Ante* at 714, n. 1. Of course, the new-rule inquiry is not whether *Strickland* "guides" the ineffective assistance analysis, but, rather, whether *Strickland* dictates the resolution of a particular ineffective assistance claim. Judge Motz attempts to salvage her position by hastily asserting that the *Strickland* analysis that generally guides ineffective assistance claims actually dictated the result in *Flores-Ortega*. *See ante* at 714, n. 1. But this is mere assertion; she does not even attempt to demonstrate that no reasonable jurist would have disagreed with the result in *Flores-Ortega*.

The Court's statement in *Wiggins* that *Williams* set forth an old rule thus cannot be read as a holding that a case sets forth an old rule whenever it "simply applies" prior precedent or interprets *Strickland*, as the concurrence would have us believe. Instead, under the Supreme Court's definition of an old rule, the conclusion in *Wiggins* that *Williams* was an old rule must have represented a belief by the Court that it would have been unreasonable for a jurist to fail to recognize that the result in *Williams* was dictated by precedent. *See Teague*, 489 U.S. at 301, 109 S.Ct. 1060. An interpretation of *Strickland* that was contrary to *Williams* would thus have failed to qualify as a "reasonable, good-faith interpretation" that *Teague* recognized as deserving of deference. *See O'Dell*, 521 U.S. at 156, 117 S.Ct. 1969. This reading of *Wiggins* is necessary for *Wiggins* to be consistent with the Court's holding, both pre- and post-*Wiggins*, that the relevant law under section 2254(d)(1) is that which is clearly established at the time of the relevant state-court decision. *See Williams*, 529 U.S. at 412, 120 S.Ct. 1495; *Yarborough v. Alvarado*, 541 U.S. 652, 124 S.Ct. 2140, 2147, 158 L.Ed.2d 938 (2004). By declaring that *Williams* set forth an old rule, the Supreme Court indicated that all reasonable jurists would have agreed even prior to the issuance of *Williams* that *Williams* should be decided the way that it was. Thus, the Court's application of *Williams* in *Wiggins* was not an unexplained departure from the Supreme Court's repeated explanations of the section 2254(d)(1) standard; rather, it was simply a further application of the Court's conclusion that a rule of law that is dictated by precedent is clearly established when that precedent is issued, even if that is before the rule of law is explicitly stated. *See Williams*, 529 U.S. at 412, 120 S.Ct. 1495.

D.

725 Betraying its discomfort with its obvious reliance on *Flores-Ortega*, the majority begins its opinion with a revealingly abridged statement of its holding, that "*Strickland* . . . and its progeny" were unreasonably applied, *ante* at 701, and, in like fashion, it prefaces its ultimate analysis of Frazer's claim with the statement that "the state PCR court's decision constituted an unreasonable application of *Strickland*," *ante* at 708. It is clear, however, that the majority does not hold (or even believe) that *Strickland* alone is sufficient or, for that matter, even that *Strickland* dictated *Flores-Ortega*. The majority opinion cites *Flores-Ortega* more than twice as often as it does *Strickland*, and cites *Flores-Ortega* almost exclusively in its actual analysis of Frazer's claim. See, e.g., *ante* at 708-708 (relying, in holding that Frazer's counsel failed the performance prong, on *Frazer-Ortega* for the proposition that "[c]ounsel's '725 obligation to consult . . . is distinct from [his] duty to inform";) *ante* at 708-712 (considering "whether Frazer can satisfy the requirements that the *Flores-Ortega* Court distilled from *Strickland*" and proceeding to analyze Frazer's claim of prejudice under *Flores-Ortega*'s two-part test); *ante* at 711 (concluding that counsel had failed to meet "his obligations under *Strickland* and *Flores-Ortega*"); *ante* at 712 (claiming that "Frazer need only demonstrate an interest in appealing" in order to "show prejudice under *Flores-Ortega*"); *ante* at 712 (stating that "in light of *Strickland* and *Flores-Ortega*, Frazer's counsel had an obligation to consult with him regarding an appeal"). In fact, the majority virtually admits that *Flores-Ortega* is essential to its holding when it concludes that "[b]ecause the dissent's analysis of the merits of Frazer's claim is predicated on its conclusion that *Flores-Ortega* does not apply, its analysis is largely irrelevant." *Ante* at 712. If *Flores-Ortega* was not necessary to the majority's holding, then the analysis based on Supreme Court precedent pre-dating *Flores-Ortega* that this dissent conducts would not only be relevant, but of course, would be the analysis the majority should be conducting as well.

That the majority does not believe that it can grant relief without relying on *Flores-Ortega* is further confirmed by the fact that it even raises *Teague* at all. If the majority actually believed that the PCR court's judgment was an unreasonable application of *Strickland* independent of *Flores-Ortega*, then its analysis of whether *Flores-Ortega* announced a new rule barred by *Teague* would be utterly irrelevant because the PCR court's unreasonable application of *Strickland* would alone justify issuance of the writ. *Strickland* was unquestionably clearly established federal law at the time of the PCR court's decision for purposes of section 2254 (d)(1), and it was just as certainly an old rule of constitutional law under *Teague* at the time Frazer's conviction became final. It is only if *Flores-Ortega* is necessary to a conclusion that the state court unreasonably applied clearly established federal law that an analysis of whether *Flores-Ortega* is a new rule under *Teague* is apt because, as explained above, in order to grant the writ of habeas corpus on the basis of *Flores-Ortega* the majority must conclude that that decision is not *Teague*—barred.

The problem for the majority on this score is that it meets itself coming around. If *Flores-Ortega* is necessary to a conclusion that the PCR court unreasonably applied clearly established federal law, then it follows that *Flores-Ortega* was not dictated by *Strickland*—contrary to the majority's separate conclusion. For if *Flores-Ortega* were dictated by *Strickland*, then the state court judgment would have been unreasonable under *Strickland*, without resort to *Flores-Ortega*.

The majority understands well that *Strickland* did not dictate *Flores-Ortega*, as evident from the myriad of formulations that it invokes in explanation of the relationship between *Strickland* and *Flores-Ortega*—variously asserting that *Flores-Ortega* "crystalize[d]," *ante* at 704, "distill [ed]," *ante* at 705, 709 "elaborat[ed]," *ante* at 708, "reinforced," *ante* at 707, n. 8, and "synthesiz[ed]," *ante* at 709, *Strickland*. Many, if not all, of these formulations connote addition to or change from *Strickland*—a connotation inconsistent with a conclusion that all reasonable jurists would have agreed that the rule of *Flores-Ortega* existed prior to its announcement.

726 In the end, for the reasons explained, it is transparent that the majority cannot establish that *Strickland* dictated *Flores-Ortega* *726 and that it rests its grant of the writ instead on the conclusion that the state PCR court unreasonably applied *Flores-Ortega*—a precedent that did not even exist at the time that court issued its judgment.

E.

The majority's reliance upon *Flores-Ortega* would at least be defensible if the state supreme court's discretionary denial of certiorari, not the state PCR court's decision, were the relevant decision for our review under AEDPA. For *Flores-Ortega* did pre-date that decision. However, the majority correctly acknowledges, as it must, that the state PCR court decision is the relevant state court decision for purposes of section 2254(d). See *ante* at 705, n. 7.

Under no circumstance can a discretionary denial of certiorari be relevant to the inquiry mandated by section 2254(d). Only the pre-*Flores-Ortega* opinion of the PCR court, and not the letter denying discretionary review, can be said to have been an "adjudication of the claim that resulted in a decision" within the meaning of section 2254(d).

The South Carolina Supreme Court did not address the merits of Frazer's claims at all. Rather, the South Carolina Supreme Court entered a letter order on May 30, 2002, stating that Frazer's "Petition for Writ of Certiorari [was] Denied." J.A. 259; see also Br. of Appellee at 4 (describing Frazer's petition for writ of certiorari as being "summarily denied without consideration on the merits") (emphasis added). In South Carolina, "the denial of a petition for a writ of certiorari to the Court of Appeals does not dismiss or decide the underlying appeal; it

simply determines that, as a matter of discretion, [the South Carolina Supreme Court] does not desire to review the decision of the Court of Appeals." *State v. Rucker*, 321 S.C. 552, 471 S.E.2d 145, 145 (1996) (emphasis added); see also *Austin v. South Carolina*, 305 S.C. 453, 409 S.E.2d 395, 396 (1991) (reaching the same conclusion with respect to the South Carolina Supreme Court's refusal to review the denial of post-conviction relief).

The language of section 2254, the Supreme Court's interpretation of that language, and plain common sense all preclude the conclusion that such a discretionary denial should be examined by a federal habeas court. Section 2254(d) provides, in relevant part, that

[a]n application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim —

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.

28 U.S.C. § 2254(d) (emphasis added). The Supreme Court has defined the phrase "clearly established Federal law" as including "the holdings, as opposed to the dicta, of this Court's decisions as of the time of the relevant state-court decision." *Yarborough*, 124 S.Ct. at 2147 (emphasis added) (quoting *Williams*, 529 U.S. at 412, 120 S.Ct. 1495). In light of the statutory language, it is obvious that only the state PCR court's adjudication, and not the South Carolina Supreme Court's letter denying discretionary review, can constitute the "relevant state-court decision" under *Yarborough*. The only plausible reading of section 2254 is that "the adjudication of the claim" refers to the "adjudication on the merits" that must be present for the statute to be implicated. Because the "727 state supreme court's letter denying review was neither an 'adjudication' nor 'on the merits,'" it cannot be the relevant adjudication for consideration under the statute. The final "adjudication on the merits" was performed by the state PCR court, and it is only this adjudication that we must examine to determine whether it "resulted in a decision" that is not entitled to deference.

In fact, we have previously taken precisely this approach. In *Bacon v. Lee*, 225 F.3d 470 (4th Cir.2000), the state MAR court summarily denied a habeas petitioner's claims. *Id.* at 475. The North Carolina Supreme Court then denied certiorari. *Id.* In setting forth our standard of review, we did not mention the denial of certiorari, instead applying section 2254(d)(1) only to the decision of the MAR court. *Id.* at 478.

Nor could we reasonably adopt any other interpretation of the statute. There are only two possible means by which one could reach the conclusion that the denial of discretionary review is an "adjudication on the merits" — and neither is supportable. On the one hand, one might treat the denial of discretionary review as just what it is — a discretionary decision to deny further review — and then inquire whether the state court's failure to act was an unreasonable application of federal law. But with such treatment, there would never be any grounds for relief to a petitioner under the deferential standards of section 2254(d)(1), because the exercise of effectively unlimited discretion simply to decline to review a particular case, with no indication that the discretion was exercised for any reason barred by federal law, can never be "contrary to" or an "unreasonable application of" federal law — for the simple reason that it does not purport to apply federal law at all. Just as the United States Supreme Court itself refuses to review the vast majority of cases brought before it in order to keep its business "within manageable proportions," so also state supreme courts are entitled to circumscribe their review in a purely discretionary fashion. See *Brown v. Allen*, 344 U.S. 443, 491, 73 S.Ct. 397, 97 L.Ed. 469 (1953) (opinion of Frankfurter, J.); *Felton v. Barnett*, 912 F.2d 92, 95 (4th Cir.1990). Adopting the view that the denial of certiorari is the relevant state-court decision for our review would mean that, absent exceptional circumstances (as, for example, if the state court were shown to exercise its discretion in an unconstitutional manner), anytime the state's highest court denied discretionary review, the petitioner would be ineligible for relief in federal court. Thus, if faithfully applied, this interpretation would entirely insulate from review many decisions of the state courts; such a result cannot be correct.

Alternatively, one could instead mischaracterize the state court's denial of discretionary review as a summary affirmation that adopted and ratified the reasoning of the lower court. See *McHone v. Polk*, 392 F.3d 691, 704 n. 5 (4th Cir.2004) (holding that the state supreme court's summary adjudication of habeas petitioner's claims "left intact the reasoning of the [lower] court, and that the state is accordingly entitled to the benefit of the more thorough treatment of petitioner's *Strickland* claims in that court"). Such disregard of the state court's characterization of its own order, far from enforcing the principle of comity that AEDPA respects, instead undermines that principle by giving no effect to the South Carolina Supreme Court's holdings respecting the import of a denial of discretionary review. That a petitioner is required to seek discretionary review in the state's highest court in order to exhaust his state remedies serves the interests of comity because it gives the state's highest court the opportunity, if it so desires, "728 to reconsider the intermediate appellate court's disposition of the claim. See *O'Sullivan v. Boerckel*, 526 U.S. 838, 845, 119 S.Ct. 1728, 144 L.Ed.2d 1 (1999) ("Because the exhaustion doctrine is designed to give the state courts a full and fair opportunity to resolve federal constitutional claims before those claims are presented to the federal courts, we conclude that state prisoners must give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process."). This requirement precludes a petitioner from effectively circumventing the state court in favor of a federal forum. In contrast, an interpretation treating a discretionary denial of certiorari as the "relevant state-court decision" would frustrate comity by disregarding the state's decision not to grant discretionary review, and thus, like a

petitioner who fails to seek discretionary review, would fail utterly to respect the state court's right of "selectively choosing to hear only those cases which seem to it to come within its primary purposes and functions." See *Moffitt v. Ross*, 483 F.2d 650, 653 (4th Cir.1973) (emphasis added). In so doing, it effectively forces state supreme courts to grant review and decide the claim on the merits in any case where a relevant intervening Supreme Court decision has been decided, or face having the reasonable decisions of its lower courts overturned by the federal habeas courts. This is just the sort of intrusion onto state-court systems in violation of comity that AEDPA was designed to prevent.

Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991), and *Ylst v. Nunnemaker*, 501 U.S. 797, 111 S.Ct. 2590, 115 L.Ed.2d 706 (1991), which discussed the relevance of the actions of the last state court involved in a petitioner's habeas proceedings, confirm that a discretionary decision by a state supreme court is not the last state court judgment for the purposes of federal habeas review.

In *Coleman*, the Supreme Court directed federal habeas courts to look to "the decision of the last state court to which the petitioner presented his federal claims" to determine whether a state court decision rests on federal law, rather than on an independent and adequate state ground. *Coleman*, 501 U.S. at 732-35, 111 S.Ct. 2546. This directive to look to the decision of the "last state court" merely reiterated the Court's previous holding in *Harris v. Reed*, 489 U.S. 255, 109 S.Ct. 1039, 103 L.Ed.2d 308 (1989). See *id.* at 263, 109 S.Ct. 1039 ("[P]rocedural default does not bar consideration of a federal claim on either direct or habeas review unless the last state court rendering a judgment in the case 'clearly and expressly' states that its judgment rests on a state procedural bar.") (emphasis added). Our circuit has held that "[t]he denial of the petition for certiorari was not . . . the last state court judgment" for purposes of applying *Harris*, because "the denial of such a writ is not a judgment but is simply a refusal to hear the appeal." *Felton*, 912 F.2d at 94; see also *Smith v. Dixon*, 14 F.3d 956, 984 n. 4 (4th Cir.1994) (same).¹⁸¹ And *Felton* is plainly correct; the state court's unexplained denial of discretionary review cannot reasonably be read to impart any view on whether an adequate and independent state ground bars federal court review. See *Goodwin v. Collins*, 910 F.2d 185, 187 (5th Cir.1990). *Felton* also virtually compels the directly analogous rule that a "729 denial of discretionary review cannot reasonably be said to represent a judgment by the state court that no recent Supreme Court precedent requires relief.

Indeed, the Supreme Court has recognized that the federal courts are "in accord" with *Felton*'s holding that a discretionary denial of certiorari does not constitute the last state court judgment for purposes of determining the applicability of a state procedural bar. *Ylst*, 501 U.S. at 802 n. 2, 111 S.Ct. 2590 (citing *Goodwin*, 910 F.2d at 187 ("[T]he *Harris* court's reference to 'the last state court rendering a judgment in the case' references the 'state intermediate appellate court [that] renders a decision,' not 'the highest state court [that] simply denies discretionary review.'"); and *Prithoda v. McCaughtry*, 910 F.2d 1379, 1383 (7th Cir.1990) ("Unexplained affirmances or denials of discretionary review do not retract a state-law basis of decision already given."); see also *McBee v. Abramatis*, 929 F.2d 264, 267 (6th Cir.1991). Furthermore, *Ylst* cannot be interpreted to have concluded that a discretionary denial of certiorari adopts the reasoning of the last explained decision below, because the Court assumed that the California Supreme Court lacked "any discretion not to entertain habeas corpus petitions." *Ylst*, 501 U.S. at 802 n. 2, 111 S.Ct. 2590.

Because the only relevant state-court decision is the state PCR court's decision, and because *Flores-Ortega* was not decided at the time of the PCR court's decision, the majority's reliance on *Flores-Ortega* flouts the clear statutory mandate of section 2254(d). *Flores-Ortega* is simply irrelevant to the question presented to us.

II.

Unable to rely upon *Flores-Ortega*, the majority's review of the merits of Frazer's case violates the strict limits AEDPA places on our review of state court judgments. Rather than deferring to the factual conclusions of the state court, the majority accepts as true Frazer's representations to the state PCR court, even though they were rejected by that court. The majority then utterly fails to address the two most relevant Supreme Court cases — or indeed, to address any Supreme Court case other than *Flores-Ortega* at any length — in reaching its erroneous conclusion that the state holdings both with respect to the performance and the prejudice prongs of *Strickland* were unreasonable.

A.

The majority disregards the stringent limitations AEDPA places on the ability of the federal courts to second-guess the factual conclusions of state habeas courts. Under AEDPA, "a determination of a factual issue made by a State court shall be presumed to be correct," and "[t]he applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence." 28 U.S.C. § 2254(e)(1). The state PCR court, which, unlike the district court and the majority, had the benefit of a full evidentiary hearing in which both Frazer and his counsel testified, held that "[t]here [is] nothing in the record or the testimony at this hearing to indicate that the Applicant conveyed to his trial attorney a desire to appeal until it was too late." J.A. 209-10. Despite this conclusion, both the majority and the district court conclude that Frazer expressed at least an interest in appealing. *Ante* at 709, 712; J.A. 114-15. But neither the majority nor the district court even purports to hold that Frazer has met his burden of disputing the state court's finding by clear and convincing evidence, or indeed even addresses the impact of the "730 state court's factual finding on this case. Nor could they reasonably conclude that Frazer has met his burden; the state court expressly refused to credit Frazer's testimony at points during the hearing, J.A. 208, and Frazer's was the only

testimony that supported the conclusion that his trial counsel ever agreed to file an appeal. J.A. 177-78. In fact, Frazer's trial counsel expressly *denied* that he and Frazer had ever talked about appealing the sentence, and instead indicated only that he was asked to "see[] about having time run together," and that he did so by making an oral motion for reconsideration to the trial court. J.A. 189.

B.

The state PCR court was thus faced only with evaluating the claim that Frazer's counsel provided ineffective assistance by failing to appeal after Frazer, who had unquestionably been advised of his right to appeal by the plea affidavit, J.A. 143, nonetheless failed to request that his counsel appeal. Because the state court correctly identified *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), as the law governing claims of ineffective assistance of counsel, we may only grant relief if the state court's decision was an unreasonable application of *Strickland* and other clearly established Supreme Court precedent.

It is clear that the state court's conclusion that Frazer was not entitled to relief on such facts was an eminently reasonable application of the relevant Supreme Court law, i.e., that Supreme Court law existing in September 1999. Under *Strickland*, "[j]udicial scrutiny of counsel's performance must be highly deferential." *Strickland*, 466 U.S. at 689, 104 S.Ct. 2052. Here, Frazer pled guilty, which, as the majority recognizes, at least waives all "nonjurisdictional defects and defenses, including claims of violation of constitutional rights prior to the plea." *Rivers v. Strickland*, 284 S.Ct. 121, 213 S.E.2d 97, 98 (1975); *ante* at 709-710. The limited scope of appealable issues of course renders defendants who plead guilty less likely to prevail on appeal and thus presumably less likely to desire an appeal. Moreover, as discussed above, Frazer did not ask his counsel to seek an appeal. In these circumstances, it was not unreasonable for counsel to fail to do so. See *Carey v. Leverette*, 605 F.2d 745, 748 (4th Cir.1979) (holding that there is generally "no constitutional requirement that defendants must always be informed of their right to appeal following a guilty plea.").

Supreme Court precedent specific to the context of a petitioner's allegation that he was wrongfully denied an appeal also requires the conclusion that it would not have been unreasonable for a state court pre-*Flores-Ortega* to determine that Frazer's failure to request an appeal, when he knew of his right to appeal, was dispositive. In *Rodriguez v. United States*, 395 U.S. 327, 329, 89 S.Ct. 1715, 23 L.Ed.2d 340 (1969), the Supreme Court held that a client who requests that his lawyer file an appeal and whose lawyer fails to do so is entitled to relief in the form of a belated appeal, even if he is unable to disclose what claims he would have raised or demonstrate a likelihood of success on those claims. See *id.* at 329, 89 S.Ct. 1715; see also *Flores-Ortega*, 528 U.S. at 477, 120 S.Ct. 1029.

The importance of the client's request for an appeal to the holding in *Rodriguez* was confirmed in *Peguro v. United States*, 528 U.S. 23, 119 S.Ct. 961, 143 L.Ed.2d 19 (1999). In *Peguro*, the habeas petitioner alleged that he was entitled to relief because his counsel had failed to file a notice of appeal pursuant to his request and because the district court had "731 failed to inform him of his right to appeal, as required by Federal Rule of Criminal Procedure 32(a)(2)." *Id.* at 25, 119 S.Ct. 961. The district court made factual findings that the court had failed to notify Peguro of his right to appeal, but that Peguro had already been aware of his right to appeal, and that Peguro had told his trial counsel that he did not wish to appeal. *Id.* The Supreme Court reviewed only Peguro's claim under Rule 32(a)(2) and, because of Peguro's awareness of his right to appeal, refused to infer prejudice from the trial court's failure to inform Peguro of that right. *Id.* at 28, 119 S.Ct. 961. The Court concluded that *Rodriguez*, which had relied in part on the trial court's failure to inform Rodriguez of his right to appeal, was "not implicated here because of the District Court's factual finding that petitioner did not request an appeal." *Id.*

Although *Peguro* did not address an ineffective assistance of counsel claim, a pre-*Flores-Ortega* court could reasonably have concluded that *Peguro* indicated that petitioner's express request for an appeal was crucial to the holding in *Rodriguez* and thus that *Rodriguez* should not be extended to circumstances where petitioner failed to request an appeal. Frazer, as noted above and contrary to the majority's assumption, made no such request. Considering *Rodriguez* and *Peguro* alone, then, the state court could reasonably have concluded that a defendant must at least either request an appeal or be unaware of his right to appeal before counsel has an obligation to pursue an appeal. Such a conclusion is particularly reasonable in light of the deferential review of counsel's performance required by *Strickland* and this court's conclusion in *Carey* that no consultation regarding an appeal after a guilty plea is necessary, absent extraordinary circumstances.

The majority fails to analyze — or even cite — *Peguro*, and it mentions *Rodriguez* only in passing. Its judgment rests almost entirely on its conclusion that the state court's decision, as "made abundantly clear by *Flores-Ortega*," was "objectively unreasonable in light of the dictates of *Strickland*"; according to the majority, the state court "unreasonably applied *Strickland* and its progeny," by which it of course means *Flores-Ortega*. *Ante* at 708. That the majority's holding necessarily rests on *Flores-Ortega* is confirmed by its extensive *Teague* analysis, an analysis in which it engages solely to justify its ultimate reliance on *Flores-Ortega*. Besides this ill-conceived reliance on *Flores-Ortega*, the majority's discussion of the merits of Frazer's case makes only a fleeting reference to relevant Supreme Court law, in the form of its conclusion that *Jones v. Barnes*, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983), and *Strickland* render the PCR court's reliance on our decision in *Carey v. Leverette* unreasonable.⁽⁹⁾ *Ante* at 709. When examined at greater length, however, it is clear that neither of these cases renders the state's decision an unreasonable application of clearly

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The state PCR court's decision that Frazer's counsel performed reasonably was thus not an unreasonable application of clearly established Supreme Court precedent, and the majority's conclusion to the contrary is a clear misapplication of the deferential standards of AEDPA review.

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The mere fact that the *Flores-Ortega* Court notes that its prejudice standard "breaks no new ground" does not compel the contrary conclusion. Insofar as *Flores-Ortega* reaffirms the holding that the petitioner is not required to show that his appeal would have been successful, it indeed was clearly established law prior to *Flores-Ortega*.^[11] *Flores-Ortega*, 528 U.S. at 484, 120 S.Ct. 1028; *Rodriguez*, 395 U.S. at 328, 89 S.Ct. 1715. However, prior to *Flores-Ortega*, it could have been reasonable to read *Peguro* to indicate that a petitioner who alleged that he was prejudiced because he was denied an appeal was required to demonstrate that he would have appealed, and that, as a matter of law, a petitioner who knew of his right to appeal but did not request an appeal could not make this showing.^[12] To the extent that the *Flores-Ortega* Court held that a showing of "nonfrivolous grounds for appeal" can demonstrate prejudice even if a petitioner did not request an appeal, that rule was simply not clearly established prior to *Flores-Ortega*.

The majority can grant the writ of habeas corpus in this case only by grounding its conclusion that the state acted unreasonably on a Supreme Court precedent decided after the relevant state court judgment was entered and by failing to defer to either the factual or legal conclusions of the appropriate state court. I dissent. I would reverse the decision of the district court and remand for dismissal of Frazer's petition.

[3] There is an exception to this rule: "a federal court may, but need not, decline to apply *Teague* if the State does not argue

11" *Caspi v. Bohlen*, 510 U.S. 383, 389, 114 S.Ct. 948, 127 L.Ed.2d 238 (1994). Although we opt to apply *Teague* here, South Carolina's failure to address the matter in its opening briefs to this court could provide adequate grounds to forego this inquiry altogether. See, e.g., *Pleasurecraft Marine Engine Co. v. Thermo Power Corp.*, 272 F.3d 654, 657 (4th Cir.2001); *Arredondo v. Ortiz*, 365 F.3d 778, 781 (9th Cir.2004) (declining to apply *Teague* sua sponte where it was mentioned by the state "only in passing"), cert. denied, ___ U.S. ___, 125 S.Ct. 102, 160 L.Ed.2d 156 (2004); see also *Noland v. French*, 134 F.3d 208, 212 (4th Cir.1998) (noting the *Teague* rule is in the nature of an affirmative defense); *Royal v. Taylor*, 188 F.3d 239, 247 (4th Cir.1999) ("Because in the district court the Commonwealth failed to raise the [affirmative defense] of ... default with respect to these claims (indeed it affirmatively asserted that the claims had been decided on the merits), it has waived its right to pursue the matter on appeal." (emphasis added)).

[4] The non-retroactivity rule of *Teague* is subject to two exceptions not applicable here. "The first exception permits the retroactive application of a new rule if the rule places a class of private conduct beyond the power of the State to proscribe, ... or addresses 'substantive categorical guarant[ee]s accorded by the Constitution,' such as a rule 'prohibiting a certain category of punishment for a class of defendants because of their status or offense.'" *Saffle v. Parks*, 494 U.S. 484, 494, 110 S.Ct. 1257, 108 L.Ed.2d 418 (1990) (citations omitted). "The second exception is for 'watershed rules of criminal procedure' implicating the fundamental fairness and accuracy of the criminal proceeding." *Id.* at 495, 110 S.Ct. 1257.

[5] In *Lewis v. Johnson*, the Third Circuit noted that *Strickland* established a rule of "general applicability" necessitating a case-by-case assessment, and that the proposition that "a defendant requires the advice of counsel to make an informed decision respecting his right to appeal" was hardly novel "when the habeas applicant's state-court conviction became final." 359 F.3d at 655, 656. Affording *Frazer* the benefit of *Flores-Ortega* comports with the Supreme Court's emphasis that a given constitutional rule be applied uniformly and consistently within each class of appeal, so as to avoid an unjust disparity in the treatment of similarly situated defendants.

[6] Although *Williams* tells us that an old rule under *Teague* constitutes "clearly established" federal law for purposes of § 2254(d)(1), we recognize that the converse is not necessarily true. This is so because a rule may be announced after a defendant's conviction becomes final, which is the relevant point for purposes of a *Teague* analysis, but before the relevant state court decision, which is determinative for purposes of consideration under § 2254(d)(1). That latter scenario is not the case here, however. Our analysis is governed by *Strickland*, which pre-dated both the conviction and PCR court review.

[7] We recognize that the PCR court's decision is the relevant state-court decision for purposes of 28 U.S.C. § 2254(d).

[8] Because the dissent rejects the relevance of *Flores-Ortega*, its analysis of the merits asks only whether *Frazer* explicitly requested that Howle file an appeal and whether Howle was obliged to inform *Frazer* of that right. *Post* at 731. However, we believe it clear based on *Strickland* and *Barnes* that this is an incomplete analysis, and this conclusion is reinforced by *Flores-Ortega*. The dissent's insistence that we ignore *Flores-Ortega*'s distillation of *Strickland* and *Barnes* given the procedural posture of this appeal is, as noted above, unpersuasive.

[9] *Flores-Ortega* offers two examples where counsel would be relieved of a duty to consult by circumstance. *Flores-Ortega* notes that where

a defendant consults with counsel; counsel advises the defendant that a guilty plea probably will lead to a 2 year sentence; the defendant expresses satisfaction and pleads guilty; the court sentences the defendant to 2 years' imprisonment as expected and informs the defendant of his appeal rights; the defendant does not express any interest in appealing, and counsel concludes that there are no nontrivial grounds for appeal. Under these circumstances, it would be difficult to say that counsel is professionally unreasonable, as a constitutional matter, in not consulting with such a defendant regarding an appeal. Or, for example, suppose a sentencing court's instructions to a defendant about his appeal rights in a particular case are so clear and informative as to substitute for counsel's duty to consult. In some cases, counsel might then reasonably decide that he need not repeat that information. We therefore reject a bright-line rule that counsel must always consult with the defendant regarding an appeal.

528 U.S. at 479-80, 120 S.Ct. 1029 (internal quotations and citations omitted).

[10] Interestingly, South Carolina does not contend that we are barred from considering *Frazer*'s claim in light of *Flores-Ortega*. Indeed, South Carolina asserts that *Carney* is consistent with *Flores-Ortega*. For the reasons stated, we disagree. *Carney* presumes that counsel need not inform or consult with his defendant regarding the right to appeal. *Flores-Ortega*, however, states the opposite: that "in the vast majority of cases, counsel [will] have] a duty to consult with a defendant about an appeal." 528 U.S. at 481, 120 S.Ct. 1029.

[11] See also *Tollett v. Henderson*, 411 U.S. 258, 267, 93 S.Ct. 1692, 38 L.Ed.2d 235 (1973) (holding entry of guilty plea waives challenges to "the deprivation of constitutional rights that occurred prior to the entry of the guilty plea" (emphasis added)).

[12] The fact that there was little opportunity at sentencing to protest the judge's sentence and that the judge did not appear amenable to an objection adds weight to the argument that, under the present circumstances, an oral motion for reconsideration could suffice to preserve review. *Frazer*'s sentencing hearing concluded as follows:

"The sentence on the trafficking in cocaine, you be [sic] incarcerated for a period for ten years and pay a fine of one hundred thousand dollars.

Sentence on the possession of a weapon during a violent crime, that you be incarcerated for a period of five years to run consecutive.

I'm recommending counseling and treatment for drug abuse. And I will tell you this, that if you had gone to trial on the charges it's my firm belief that you would have been convicted of the charges and I would have given you every day that I could have based on what I consider to be a trial without merit."

J.A. 137. *Frazer*'s sentencing adjourned immediately following these statements, without an opportunity for final comments or objections. Generally, if a defendant "had no opportunity to object to or comment" on particular aspects of his sentence, his failure to press a contemporaneous objection would not result in the waiver of subsequent review. *United States v. Warden*, 291 F.3d 363, 385 n. 1 (5th Cir.2002).

[13] Indeed, at argument counsel for South Carolina conceded that Howle had not consulted with *Frazer* within the meaning of *Flores-Ortega*.

[14] We note that it appears this would also be insufficient as a matter of South Carolina law. *In re Anonymous Member of the Bar*, 303 S.C. 306, 400 S.E.2d 483 (1991); *White v. State*, 263 S.C. 110, 208 S.E.2d 35, 39 (1974) (noting that even though there is "a reasonable basis for trial counsel's conclusion or assumption that the defendant was fully aware of his appeal rights, counsel should not have rested upon that assumption").

[15] See S.C.Code Ann. §§ 44-53-370, 44-53-375.

[16] Because the dissent's analysis of the merits of *Frazer*'s claim is predicated on its conclusion that *Flores-Ortega* does not apply, its analysis is largely irrelevant. We therefore forego taking up its contentions regarding the merits of *Frazer*'s claim as doing so would not advance the resolution of this appeal.

[17] The dissent mystifyingly claims that this sentence, which contains only six words in addition to an accurate quotation from *Williams*, somehow finds "no support" in *Williams*. *Post* at 723. The dissent also suggests that I have taken this passage from *Williams* "out of context." *Id.* But, this is not so. The sentence from *Williams* states in its entirety: "It is true

that while the *Strickland* test provides sufficient guidance for resolving virtually all ineffective-assistance-of-counsel claims, there are situations in which the overriding focus on fundamental fairness may affect the analysis." *Williams*, 529 U.S. at 391, 120 S.Ct. 1495. Thus, the *Williams* Court specifically "directed," as I note, that the *Strickland* analysis guides "virtually all ineffective-assistance-of-counsel claims." When, as here, that analysis dictates the result in a given application of *Strickland*, it provides "clearly established law" for AEDPA purposes.

[2] Moreover, *Flores-Ortega* contains no statement, or even suggestion, that its holding is in any way at odds with other Supreme Court precedents. Rather, at various junctures *Flores-Ortega* cites and relies on some of *Strickland*'s numerous antecedents and progeny, including *Rodriguez v. United States*, 395 U.S. 327, 89 S.Ct. 1715, 23 L.Ed.2d 340 (1969), and *Peguerro v. United States*, 526 U.S. 23, 119 S.Ct. 961, 143 L.Ed.2d 18 (1999) (both the majority opinion and Justice O'Connor's concurrence).

[1] The state PCR court rendered its decision dismissing Frazer's claims on September 17, 1999, J.A. 215, and the Supreme Court decided *Flores-Ortega* on February 23, 2000. The state supreme court denied certiorari on May 30, 2002, J.A. 258.

[2] For an example of how *Teague* can independently bar habeas relief even when AEDPA is not a bar, assume the following sequence of events: First, the petitioner's conviction becomes final. Second, the Supreme Court issues a case announcing a new rule of constitutional law. Third, the PCR court unreasonably applies that newly announced rule to the petitioner's case. In such a case, section 2254(d)(1) would not bar relief—the new rule of constitutional law was clearly established at the time of the PCR court's decision and was unreasonably applied. *Teague*, however, would prevent the federal habeas court from issuing the writ on the basis of the newly announced rule because the petitioner's conviction became final before the new rule was announced.

[3] In one last attempt to defend its holding that *Flores-Ortega* was an old rule, the majority notes that *Flores-Ortega* was decided by the Supreme Court on collateral review. From this fact, the majority infers, based on *Teague*, that the Supreme Court must have concluded that the rule set forth in *Flores-Ortega* was an old rule. See *ante* at 705. This is a fair debating point, but no more than that, and certainly not one upon which an appellate court would rely (as, in fairness to the majority, it appears to understand).

In any event, it is far more likely, if not probable, that the Court instead considered the *Teague* issue waived, as the state did not raise *Teague* in its brief on the merits before the Court. If the Court did not consider the argument waived for this reason, it most certainly never gave a moment's thought to whether it was announcing a new rule. But if any inference is to be drawn from the Court's complete silence, it is the opposite one from that drawn by the majority, given that the Court's test for determining whether a rule is new plainly dictates that the rule announced in *Flores-Ortega* is new, not old, contrary to the majority's unpersuasive contention. In the absence of any statement by this Court as to the matter, as in *Flores-Ortega*, the default rule that new rules will not be announced on habeas would almost certainly yield to the actual test for determining whether a rule is or is not new.

[4] Because of the temporal difference between the two inquiries, it is clear that not everything that qualifies as clearly established federal law under AEDPA qualifies as an old rule under *Teague*. For example, if *Flores-Ortega* had been announced between the time Frazer's conviction became final and the date of the PCR court's judgment, it would have been clearly established federal law for purposes of AEDPA review but a new rule under *Teague*. I believe that it is likewise clear that not everything that is an old rule under *Teague* is clearly established for purposes of AEDPA. But even accepting the Supreme Court's contrary observation in *Williams v. Taylor*, such does nothing to save the majority's bootstrapped AEDPA analysis given the flaws in its *Teague* analysis detailed above. Because the majority did not, and cannot, properly show that *Flores-Ortega* was an old rule of constitutional law, the *Williams* bootstrap is unavailable.

[5] The concurrence contends that *Carey* is inconsistent with *Strickland* because it imposes a bright line rule. But even the concurrence must recognize that what *Carey* establishes is really a presumption, not a *per se* rule. *Ante* at 717 (Molz, J., concurring) ("Carey holds that in most cases (i.e., absent extraordinary circumstances) an attorney need not . . ." (emphasis added)). And the concurrence cannot contend that a mere presumption, even if it establishes bright lines, is inconsistent with *Strickland*, as it also contends that the rule in *Flores-Ortega*, which is itself a presumption, is compelled by *Strickland*. *Ante* at 717 (Molz, J., concurring) (admitting implicitly that the rule in *Flores-Ortega* is also a presumption because it applies only "in the vast majority of cases").

[6] That we applied *Flores-Ortega* in *Hudson v. Hunt*, 235 F.3d 892 (4th Cir.2000) does not imply that we held that a reasonable jurist pre-*Flores-Ortega* would have been required to anticipate *Flores-Ortega*. In *Hudson*, we indeed applied *Flores-Ortega* to Hudson's claims, even though the state court had denied post-conviction relief before *Flores-Ortega* was issued. See *id.* at 895-97. However, the question of whether AEDPA barred relief because *Flores-Ortega* was not a part of the clearly established federal law was not presented to the court in that case, because the state court had dismissed Hudson's claims on procedural grounds, not on the merits. We thus reviewed the claims *de novo*, rather than in accordance with AEDPA's restrictive standard of review. *Id.* at 895. We did not raise *Teague* *sure sponte* in *Hudson*, and thus also reached no holding that *Flores-Ortega* could be applied consistent with *Teague*.

[7] That the Supreme Court did not suggest that *Rodriguez* or *Peguerro* was inconsistent with *Flores-Ortega* of course carries no corresponding implication that a reasonable jurist reading those cases and *Strickland* would have necessarily recognized that the outcome of *Flores-Ortega* was the only way to reconcile the two lines of authority.

[8] Although *Felton* and *Smith* interpret a denial of a petition for certiorari by the North Carolina Supreme Court, rather than the South Carolina Supreme Court, the South Carolina Supreme Court's holding that its denials of certiorari are not judgments on the merits of the case brings it within the reach of the rule in *Felton* and *Smith*.

[9] The majority's almost-exclusive focus on *Flores-Ortega* confirms that the majority is aware that only *Flores-Ortega* provides a rule of law that can even arguably afford Frazer relief. See *supra* at 13 (cataloging the majority's critical reliance on *Flores-Ortega*).

[10] The concurrence is obviously aware of the distinction between the holding of a case and dicta, see *ante* at 713 (Molz, J., concurring), but fails to give it any application, reasoning that the PCR court unreasonably applied *Strickland* because "*Strickland* makes clear that to be constitutionally effective, counsel must 'consult with the defendant on important decisions . . .'" *ante* at 717 (Molz, J., concurring). Whether a particular rule is "clearly" set forth in dicta or only arguably set forth in dicta is irrelevant for AEDPA purposes, given that the Supreme Court has made clear that no dicta is a part of the clearly established law under section 2254(d).

[11] The concurrence's recognition that *Strickland* held that "prejudice is presumed" when counsel is denied altogether at a critical stage, *ante* at 715 (Molz, J., concurring), is thus correct. But it begs the more important question of whether counsel was denied altogether for an appeal or whether the petitioner simply failed to seek the assistance of counsel for an appeal; it is this question that *Flores-Ortega* provides a framework to answer.

[12] Justice O'Connor's concurrence in *Peguerro* could, pre-*Flores-Ortega*, have reasonably been read to support this conclusion. She distinguished between the inability to demonstrate that one would have appealed, which defeats prejudice, and the inability to demonstrate that one's appeal would have been successful, which does not defeat prejudice. *Peguerro*, 526 U.S. at 30, 119 S.Ct. 961 (O'Connor, J., concurring). Justice O'Connor agreed with the majority that *Peguerro*'s knowledge of his right to appeal and failure to request an appeal placed him in the first category and thus that he could not demonstrate prejudice. She then noted her belief that petitioners in the second category who alleged trial court error could demonstrate prejudice, and that this view was consistent with the Court's treatment of claims of ineffective assistance of counsel. *Id.* (citing *Rodriguez*, 395 U.S. at 327, 89 S.Ct. 1715). Justice O'Connor's opinion thus is consistent with a reasonable belief that, regardless of whether a petitioner alleged ineffective assistance of counsel or a violation of Rule 32 (a)(2), pre-*Flores-Ortega* law barred relief to any petitioner who could not demonstrate that he would have appealed because, like *Peguerro*, he knew of his right to appeal but never requested an appeal, but did not bar relief to any petitioner simply because he could not demonstrate that his appeal would have been successful.

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

JASON D. PARKER

I, JASON D. PARKER, 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.

Jason Parker
Applicant

SWORN or affirmed to and subscribed before me this
18 day of June, 2010.

J. Frankler
Notary Public

My Commission Expires: 12-6-2019

FILED
2010 JUN 25 12:06
CLERK OF COURT
JULIA A. CARRIG
JULIA A. CARRIG
JULIA A. CARRIG

2010CP3202626

FILED

STATE OF SOUTH CAROLINA - County of Lexington
 IN THE COURT OF COMMON PLEAS FOR THE COUNTY FOREST

2010 JUN 25 12:06

BETH A. CARRIGG
 CLERK OF COURT
 LEXINGTON SC

ATTACHMENT SHEET FROM TABLE, ITEMS #9(A), 10(A), AND 18

JASON D. PARKER

Applicant-PA SE

VS-

STATE OF SOUTH CAROLINA

Respondent.

Application For
 Post Conviction Relief
 Case No. #

2010CP 3202626

THE APPLICANT HERETOFOR DOES HEREBY ASSERT THAT HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL, AS GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND BY ARTICLE I, § 14 OF THE SOUTH CAROLINA CONSTITUTION, HAS BEEN VIOLATED. IN THE APPLICANT'S GUILTY PLEA, COUNSEL FAILED TO PROVIDE REASONABLE PROFESSIONAL ASSISTANCE WITHIN THE STANDARD OF PERFORMANCE DEMANDED OF ATTORNEY REPRESENTING CLIENTS IN CRIMINAL MATTERS, FOR WHICH THE APPLICANT REQUESTS THAT HIS CONVICTIONS BE VACATED.

Jason D. Parker
 Applicant-PA SE

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
	)	2010-CP-32-2626
	)	
Jason D. Parker, #328223,	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed June 25, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the April 2010 term of the Lexington County Grand Jury for Voluntary Manslaughter (2010-GS-32-1135) and Destruction or Desecration of Human Remains (2010-GS-32-1144). He was represented by Robert Madsen, Esquire. On April 7, 2010, the Applicant pled guilty as charged. He was sentenced by the Honorable R. Knox McMahon to confinement for an aggregate period of twenty-four (24) years. The Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend and/or supplement this Return upon receipt with any relevant materials.

II.

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

1. Ineffective assistance of counsel;
 - a. "Counsel failed to file Notice of Appeal."
 - b. "Inadequate preparation, failure to object to court's sentence error."
 - c. "Denial of Competency Hearing."
 - d. "Failure to investigate and failure to provide experts."
 - e. "Failed to object to solicitor's errors in stating the facts/evidence."
 - f. "Denial of Discovery."
 - g. "Conflict of Interest"

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective

assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland.

Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. Nevertheless, the allegation of ineffective assistance of counsel probably raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

IV.

Here, in addition to making general allegations pertaining to Plea Counsel's performance, the Applicant also specifically claims that he was denied effective assistance of counsel because his attorney did not inform him of his right to appeal his guilty plea conviction. Absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Jones v. State, 677 S.E.2d 20 (2009). Counsel has a constitutionally imposed duty to consult with the defendant about an appeal only when there is reason to think either: (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal); or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 120 S.Ct. 1029 (2000). In making this determination, courts must take into account all the information counsel knew or should have known.

Id. Although not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings. Id.

There being nothing in the record to indicate that the Applicant reasonably demonstrated to Counsel that he was interested in appealing, the State submits that the allegation is totally without merit and should be dismissed. Nevertheless, the allegation probably raises a question of fact which may not be conclusively refuted by the record and therefore requires that an evidentiary hearing be convened. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

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

VI.

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

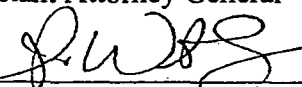
Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

A. WEST LEE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

October 19, 2010.

1 State of South Carolina

Court of Common Pleas

2 County of Lexington

3
4
5 Jason D. Parker)

6 Plaintiff,)

7 v.)

8 State)

9 Defendant.)

Transcript of Record
10-CP-32-2626

10 August 30, 2011

11 Lexington, South Carolina

12
13 B E F O R E:

14 The Honorable William P. Keesley, Judge.

15
16 A P P E A R A N C E S:

17 Pamela J. Roberts, Esquire
Attorney for the Plaintiff

18 Kaelon E. May, Assist. Attorney General
19 Attorney for the State

20
21
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23
24 Stacy L. Sheppard, RPR
25 Circuit Court Reporter

I N D E X

WITNESSPAGE

Jason Dwayne Parker

Direct Examination By Ms. Roberts

Cross-Examination By Ms. May

Redirect Examination By Ms. Roberts

Recross-Examination By Ms. May

Robert Madsen

Direct Examination By Ms. Roberts

Cross-Examination By Ms. May

Redirect Examination By Ms. Roberts

Certificate of Reporter

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E X H I B I T S

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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1 (The following proceedings were held on
2 August 30, 2011.)

3 MS. MAY: Your Honor, next, the State would
4 call Jason Parker v. State. It's case number
5 2010-CP-32-2626. This case comes from a PCR
6 application filed June 25th, 2010, by Mr. Parker.

7 Mr. Parker came before the Honorable Judge
8 McMahon on April 7th, 2010. He was charged with
9 voluntary manslaughter and destruction of human
10 remains. He pled guilty to this charge and was
11 sentenced 24 years for voluntary manslaughter and
12 10 years for the destruction of human remains, those
13 running concurrent. There was no appeal. And
14 Ms. Roberts is representing Mr. Parker.

15 THE COURT: Yes, ma'am.

16 MS. ROBERTS: Yes. Good morning, Your Honor.
17 My name is Pamela Roberts from Bowman and Brooke.
18 With me is Patrick Cleary. We represent Mr. Parker
19 in his petition.

20 THE COURT: All right. Do you wish to make any
21 sort of opening statement or you just want to
22 present your case?

23 MS. ROBERTS: I'll reserve it for closing. If
24 I can go ahead and call Mr. Parker.

25 THE COURT: All right. Come around, please,

JASON DWAYNE PARKER - DIRECT BY MS. ROBERTS

5

1 sir.

2 JASON DWAYNE PARKER,

3 having been duly sworn, testified as follows:

4 THE CLERK: Have a seat and state your name for
5 the record.

6 THE WITNESS: Jason Parker.

7 DIRECT EXAMINATION

8 BY MS. ROBERTS:

9 Q Mr. Parker, could you go ahead and state your
10 full name for the record, please?

11 A Jason Dwayne Parker.

12 Q And what is your age?

13 A Thirty-two.

14 Q And at some time -- well, let me start with you
15 understand you're under oath today?

16 A Yes, ma'am.

17 Q And at some time in August 2009, were you
18 arrested in connection with the death of
19 Mr. Jonathan Sultan?

20 A Yes, ma'am.

21 Q And what charges were brought against you?

22 A Just the murder and there was, I think, a
23 forgery charge.

24 Q Were you also arrested for the desecration or
25 destruction or removal of human remains?

JASON DWAYNE PARKER - DIRECT BY MS. ROBERTS

6

1 A No, ma'am. They added that later.

2 Q Were you appointed legal counsel to represent
3 you?

4 A Yes, ma'am.

5 Q And who was your appointed counsel?

6 A Rob Madsen.

7 Q And did Mr. Madsen represent you as legal
8 counsel through the entire proceeding?

9 A Yes, ma'am.

10 Q And did Mr. Madsen represent anyone else in
11 connection with your proceeding?

12 A Not to my knowledge.

13 Q And how were the charges against you concerning
14 Mr. Sultan resolved?

15 A We ended up taking a plea.

16 Q So you pled guilty; is that correct?

17 A Yes, ma'am.

18 Q And what did you plead guilty to?

19 A Voluntary manslaughter and desecration of human
20 remains.

21 Q And following your guilty pleas, were you
22 sentenced by the judge?

23 A Yes, ma'am.

24 Q And what was your sentence?

25 A Twenty-four years for voluntary manslaughter,

1 ten years for desecration and removal of remains.

2 Q And, at some point, did you file a petition for
3 post-conviction relief?

4 A Yes, ma'am.

5 Q And why did you file a petition for
6 post-conviction relief?

7 A I was trying to appeal the decision, the
8 sentence, and missed the deadline.

9 Q Are you here today because you believe, for
10 some reason, you were not adequately represented by
11 your counsel in connection with your guilty pleas?

12 A Yes, ma'am.

13 Q Let's talk about your appeal. Did you have an
14 understanding that you could appeal your guilty
15 pleas?

16 A Yes, ma'am. The judge stated that on the
17 record.

18 Q And what was your understanding of that right?

19 A That you had ten days to appeal the sentence.

20 Q Did you ever discuss your right to appeal with
21 your counsel, Mr. Madsen?

22 A Not until the day of court when they -- after I
23 had pled guilty, they took me into the back to kind
24 of calm down and they brought me back and I was
25 sitting behind him. And Deputy Farr, I believe it

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1 was, was one of the officers that I got him to ask
2 Madsen, but he was writing something on top of his
3 paper when I asked him about it.

4 Q And asked whom about it?

5 A Mr. Madsen.

6 Q And what did you say?

7 A I asked him if he was going to do the appeal.
8 I'm not sure exactly what he said because he was
9 writing something on top of the paperwork.

10 Q Did you say anything else to Mr. Madsen about
11 pursuing a right to appeal?

12 A No, ma'am, that was it.

13 Q Did Mr. Madsen say anything back to you?

14 A I couldn't understand what he was saying
15 because they were still doing pleas, so we were kind
16 of quiet.

17 Q Other than what you've just described was your
18 conversation with Mr. Madsen, did you discuss with
19 anyone else your intention to pursue your right to
20 appeal?

21 A My mother, I had talked to her about it, the
22 night that I ended up taking the appeal, they came
23 for a visit, and another inmate in -- at Kirkland.
24 When I wrote Mr. Boatman, he's in charge of the,
25 like, the law library or whatever for helping

1 inmates, I believe he was on vacation, he sent one
2 of the law clerks to me and he said it would be
3 better just to do the PCR instead of the appeal
4 because of the deadline.

5 Q Let's back up. You said that you talked to
6 your mother. When did you talk to your mother about
7 pursuing the appeal?

8 A It was the same night.

9 Q I'm sorry. The same night as what?

10 A As the plea.

11 Q Was it after you had entered your plea?

12 A Yes, ma'am.

13 Q And where were you when you discussed this with
14 your mother?

15 A At the Lexington County Detention Center.

16 Q And what did you discuss with her?

17 A We were just talking. My dad was there. We
18 were talking about the sentence and she said that I
19 could always appeal it if I, you know, wanted to try
20 and get some time back or something.

21 Q And, at that point, had you made a decision to
22 appeal your sentence?

23 A Yes, ma'am.

24 Q And did you ask your mother to do anything in
25 connection with pursuing an appeal?

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1 A No, ma'am.

2 Q Did you make any effort to contact Mr. Madsen
3 again?

4 A No, ma'am. They transferred me. It was close
5 to the weekend, so by the time you get settled in --
6 and the officers have to sharpen your pencils for
7 you. It's kind of hard to get out when you're on a
8 24-hour lockdown. So I wasn't able to write or
9 contact him mist (phonetic) into the weekend, that
10 would have counted as the days I'm assuming.

11 Q So other than what you described to me as a
12 comment to Mr. Madsen and your conversation with
13 your mother, did you discuss with anyone else
14 pursuing your right to appeal before you contacted
15 the prison personnel?

16 A No, ma'am.

17 MS. ROBERTS: Your Honor, if I could approach
18 the witness, I have an exhibit.

19 THE COURT: Yes, ma'am. You need to show it to
20 opposing counsel.

21 MS. ROBERTS: Yes.

22 (Pause.)

23 BY MS. ROBERTS:

24 Q Mr. Parker, I've just provided for you a
25 one-page document dated, in the upper right-hand

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11

1 corner, 4/10/2010. Have you ever seen this document
2 before?

3 A Yes, ma'am. It's one of the two that I wrote.

4 Q And what is it?

5 A It's a request to Mr. Boatman at the Kirkland
6 R&E to find out about doing the appeal.

7 Q And did you complete this form?

8 A Yes, ma'am, I did.

9 Q And why did you complete this form?

10 A To try to file the appeal, to get help with it.

11 Q And is that your signature on the lower
12 right-hand corner?

13 A Yes, ma'am, it is.

14 Q And what did you do once you completed this
15 form?

16 A I believe I wrote the Clerk of Court a letter
17 to find out if any appeals or anything like that had
18 been filed. I got a letter back stating that
19 nothing was on record.

20 Q What did you do with this actual --

21 A Oh, I turned it in. You drop it in a, like, a
22 little mailbox and they get it and send it to
23 whoever you're writing to.

24 MS. ROBERTS: Your Honor, I'd like to go ahead
25 and offer this into evidence.

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1 THE COURT: Is there any objection?

2 MS. MAY: No objection, Your Honor.

3 THE COURT: Mark it in the record, please,
4 ma'am.

5 (Plaintiff's Exhibit Number 1, department of
6 corrections form, marked and admitted into
7 evidence.)

8 BY MS. ROBERTS:

9 Q Mr. Parker, did you ever show this form to Mr.
10 Madsen?

11 A No, ma'am.

12 Q Reading the beginning part, it reads, I took a
13 guilty plea on 4/7/10 due to my attorney's advice.
14 He misinformed me as to information on statutes and
15 told me it was the only way for me.

16 Mr. Parker, what did you mean by misstatements
17 or misinformed me?

18 A When we talked about my case or whatever, he
19 said something about I couldn't get the involuntary,
20 I'd have to plead to the voluntary.

21 Q Was there any other misinformation that you're
22 referring to in that statement?

23 A I don't believe so right offhand.

24 Q And did you ever hear from Mr. Boatman in
25 response to this form?

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1 A No, ma'am. He sent one of the little, I guess,
2 like, the little legal clerks, which is an inmate,
3 to come talk to me. And he said something about the
4 ten days was the ploy or something like that, and he
5 said to file the PCR would be just as quick.

6 Q Now, you were sentenced on April 7th, 2010; is
7 that correct?

8 A Yes, ma'am.

9 Q And this is dated 4/10/2010?

10 A Yes, ma'am.

11 Q Did you complete the form on 4/10/2010?

12 A Yes, ma'am.

13 Q And did you submit it into the box at the jail?

14 A Yes, ma'am. I believe that was Sunday's date
15 or either Monday's date. It was over the weekend
16 when I filled it out.

17 MS. ROBERTS: Your Honor, if I could approach
18 again. I have another exhibit.

19 THE COURT: Yes, ma'am.

20 (Plaintiff's Exhibit Number 2, department of
21 corrections form, marked for identification
22 purposes.)

23 BY MS. ROBERTS:

24 Q Mr. Parker, I'd ask you to look at the one-page
25 exhibit I just put in front of you. It's dated in

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14

1 the upper right-hand corner 4/18/2010. Do you see
2 that?

3 A Yes, ma'am.

4 Q Can you tell me what this document is?

5 A I never received this -- actually, the little
6 law clerk come and talked to me, I think, a day or
7 two after I had turned this one in. Mr. Boatman, to
8 my knowledge, I think was on vacation. So, you
9 know, I was impatient about the time period that's
10 why I wrote this request back to try to find out if
11 there was any way I can get help with it.

12 Q All right. Let's go first through it. Is
13 everything on the upper part of this form your
14 writing?

15 A Yes, ma'am.

16 Q And is that your signature in the lower
17 right-hand corner?

18 A It is.

19 Q And when did you complete this form?

20 A The date is 4/18/2010, eight days after the
21 other one.

22 Q And that is the date that you completed this
23 form?

24 A Yes, ma'am.

25 Q And what did you do once you completed this

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1 form?

2 A Dropped it in the little post -- the little
3 mailbox on the way to the cafeteria.

4 MS. ROBERTS: Your Honor, I'd like to offer
5 this into evidence.

6 THE COURT: Is there any objection to this?

7 MS. MAY: No objection, Your Honor.

8 THE COURT: Mark it in evidence, please.

9 (Plaintiff's Exhibit Number 2, department of
10 corrections form, admitted into evidence.)

11 BY MS. ROBERTS:

12 Q Mr. Parker, once you submitted this form into
13 the box, did anyone come see you?

14 A The clerk came back a couple days later. If
15 you notice the date on the bottom when he signed it,
16 it was on the 26th.

17 Q And do you know the name of that person?

18 A No, ma'am, I sure don't.

19 Q And what was the basis of your understanding
20 that this was someone that was a clerk?

21 A They work in the law library. They work under
22 him, so. We have them at McCormick and I'm pretty
23 sure at any other prison as well.

24 Q Looking at the top sentence, it says, I filled
25 out a request for filing my appeal last week and

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1 haven't had a reply back. What are you referring to
2 in that?

3 A Another one of these request forms to the -- to
4 his office, to him.

5 Q To whom?

6 A This is the request form, so that's what I
7 meant by filled out the request. It was a request
8 form.

9 Q For assistance in filing a notice of appeal?

10 A Yes, ma'am.

11 Q So you're not saying you filed a notice of
12 appeal --

13 A No, ma'am.

14 Q -- that then got lost. You're saying you were
15 seeking assistance?

16 A Yes, ma'am.

17 Q Did you ever discuss this form, the 4/18/2010
18 form, with Mr. Madsen?

19 A No, ma'am.

20 Q I'd ask you to turn to the end where it says --
21 the final sentence reads, Also my attorney did, in
22 fact, lie about numerous things to me as well. Do
23 you see that sentence?

24 A Yes, ma'am.

25 Q What were you referring to in that respect to

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17

1 what your attorney lied to you about?

2 A Throughout the whole request form, I was just
3 listing what I felt, you know. So when he'd come to
4 talk to me, I could, like, better explain, he would
5 already know when he came.

6 But as far as, like, the -- the way that he
7 explained it to me, I got a letter with some stuff
8 that was printed off from, like, some type of
9 Wikipedia or encyclopedia or something like that on
10 voluntary manslaughter, involuntary and murder on
11 the different ways -- not ways, but -- I don't know
12 how you would say it. But he said, basically, just
13 told me that my best option would be to take the
14 voluntary, that I couldn't get involuntary. And I
15 found out that it's really, you know, the judge can
16 make that decision when you go to trial and take --
17 offer that to the jury.

18 Q So the statement in your form from the
19 4/18/2010 form referencing lies by your counsel,
20 you're referring to communications from Mr. Madsen
21 about what you might be able to plead to?

22 A Yes, ma'am.

23 Q And you're talking about the difference of
24 whether you could plead to voluntary versus
25 involuntary?

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18

1 A Yes, ma'am.

2 Q Did you ever attempt to file a notice of
3 appeal?

4 A Didn't know who to write or how to do it.

5 Q And were you told at some point to go ahead and
6 file a PCR or a petition for a post-conviction
7 review?

8 A That was from the inmate at Kirkland.

9 Q Did you ever discuss that with anyone in the
10 law library?

11 A When I got to McCormick, I had talked to an
12 inmate in the law library and he had explained to me
13 on how to fill it out. He helped me kind of fill it
14 out.

15 Q I'd like to change gears and ask you a little
16 bit about your competency the day of your plea.
17 After you were arrested and up to the date that you
18 entered your guilty plea, were you ever given any
19 kind of mental examination?

20 A No, ma'am.

21 Q And after you were arrested and up till the
22 date of your guilty plea, did you ever meet with any
23 mental health care provider?

24 A Through Kirkland, I talked to, I believe his
25 name was Hallman. And then when I got to McCormick,

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1 they assigned me a counselor.

2 Q Okay. Now, the question was from the date of
3 arrest to the date that you pled guilty.

4 A Oh, no, ma'am. No, ma'am.

5 Q Since you've been in prison incarcerated after
6 your guilty plea, you've had different counseling
7 and services provided to you, correct?

8 A Yes, ma'am.

9 Q Did you ever discuss with Mr. Madsen your
10 mental state or what you were feeling?

11 A Just explained to him about the Three Rivers
12 thing and when I committed myself for that and the
13 medication I was on.

14 Q And so we have a record here today, in 2002,
15 did you self-admit yourself to Three Rivers?

16 A I believe that was the year, yes, ma'am.

17 Q And why did you admit yourself?

18 A Drug addiction, severe depression.

19 Q And how long were at Three Rivers?

20 A I think two weeks, I believe.

21 Q And when you were discharged from Three Rivers,
22 did you receive any diagnosis?

23 A I'm not sure exactly what it was. I had a
24 counselor that I was seeing.

25 THE COURT: I can't hear you. I'm sorry.

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1 THE WITNESS: I had a counselor that I was
2 seeing somewhere over in Columbia, Providence
3 Hospital area.

4 BY MS. ROBERTS:

5 Q And were you diagnosed with depression?

6 A Yes, ma'am, severe depression, I believe
7 anxiety disorder or something like that.

8 Q And how was that anxiety disorder described to
9 you?

10 A I'm not really sure.

11 Q Was it described to you as you had severe
12 anxiety in crowds?

13 A Yes, ma'am.

14 Q And did you report this to Mr. Madsen?

15 A Yes, ma'am.

16 Q So he was aware of this prior to your entering
17 your guilty pleas, correct?

18 A Yes, ma'am.

19 Q And on April 7th, 2010, when you entered your
20 plea, were you on any prescriptions?

21 A I was on Remeron for --

22 Q And what is Remeron?

23 A It's for depression.

24 Q And did you tell the court that you were on
25 that medication?

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21

1 A Reading the transcripts, I don't believe I did,
2 but I thought I -- I thought I did at the time. I'm
3 not real sure.

4 Q Are you on Remeron today?

5 A Yes, ma'am.

6 Q Does Remeron affect your ability to comprehend
7 the proceedings?

8 A No, ma'am.

9 Q When you left Charter Rivers, did they
10 prescribe any medications to you?

11 A Yes, ma'am. I was on Depakote, Remeron and I
12 believe it was something else, but I'm not sure what
13 the name of it was.

14 Q And in 2009, were you on any prescription
15 medications other than Remeron?

16 A No, ma'am.

17 Q Mr. Parker, in your petition for a
18 post-conviction review, you stated that one of your
19 grounds for ineffective assistance of counsel was a
20 conflict of interest. Do you remember that?

21 A Yes, ma'am.

22 Q Can you explain for me what you perceived was
23 the conflict of interest that Mr. Madsen had?

24 A Yes, ma'am. I had called Mr. Madsen one time
25 and talked to him. I asked him about the Solicitor,

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1 if he knew who the Solicitor was. He told me it was
2 Shawn Graham. I asked him how he was. He said he
3 was -- he could be kind of bullheaded at times, I
4 believe was his words. He stated that they were
5 good friends. So I thought -- I didn't know. And I
6 knew that Mr. Madsen had been a Solicitor at one
7 time as well.

8 Q Did you ask Mr. Madsen whether he had discussed
9 your case with Mr. Graham?

10 A No, ma'am. He had made the comment at one --
11 or several different times that he had talked to him
12 off and on about the case.

13 Q So Mr. Madsen had told you that he had talked
14 about your case with Mr. Graham. Did he tell you
15 what they specifically discussed?

16 A No, ma'am.

17 Q Why did this make you believe Mr. Madsen had a
18 conflict of interest?

19 A I kind of felt that he was just trying to get
20 me to take the plea just to get off the case to
21 lighten his work load.

22 Q Did you ever tell Mr. Madsen that you were
23 concerned about his friendship with Mr. Graham?

24 A No, ma'am.

25 Q Was there any other reason that you believe Mr.

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23

1 Madsen had a conflict of interest and was not able
2 to effectively represent you?

3 A No, ma'am, not to my knowledge.

4 Q Mr. Parker, do you recall in your
5 post-conviction petition, that you also said that
6 you believed the court sentencing was based on
7 error?

8 A Yes, ma'am.

9 THE COURT: Based on what?

10 MS. ROBERTS: Error.

11 THE COURT: All right. Go ahead.

12 BY MS. ROBERTS:

13 Q Do you understand that you pled guilty to
14 voluntary manslaughter?

15 A Yes, ma'am.

16 Q And you understand that the maximum sentence
17 was 30 years, correct?

18 A Yes, ma'am.

19 Q And you were sentenced for 24?

20 A Yes, ma'am.

21 Q And so the error that you're talking about is
22 not the technical error of calculating your terms,
23 your years of a sentence; is that correct?

24 A No, ma'am -- I mean, yes, ma'am, that's
25 correct, that's not what it was.

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24

1 Q That's right. And you were there for the
2 entire sentencing, correct?

3 A Yes, ma'am.

4 Q And you have since read the transcript of the
5 proceeding, correct?

6 A Yes, ma'am.

7 Q And it's the underlying circumstances that were
8 provided to the court during the hearing, that is
9 what you mean when you say the court entered your
10 sentence based on error; is that correct?

11 A Yes, ma'am.

12 Q And the errors that you were talking about are
13 factual errors that were made by statements through
14 Mr. Graham or by family speaking prior to your
15 sentencing?

16 A Yes, ma'am.

17 Q Do you remember any of those errors that
18 concerns you?

19 A Like the facts that the Solicitor had stated,
20 he had to make the vehicle wrong, the color of the
21 vehicle, which he did state, though, he believed
22 that's what it was, but he stated that the
23 pathologist's opinion that the cause of death was
24 due to asphyxia by way of choke hold, but in the
25 coroner's files, it all says undetermined. It just

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25

1 has noted. And as far as the, like, the coroner's
2 report, it's listed as undetermined. There's no
3 specific cause of death.

4 Q Any other errors as you described them that you
5 remember?

6 A Mr. Madsen's mitigation, a lot of the
7 information that he gave was -- wasn't correct. As
8 far as my past history, drug problems and the mental
9 health stuff was kind of off a little bit as far as
10 the facts go on that.

11 Q Well, if you'll permit, I'll come back to Mr.
12 Madsen's statement. Let's focus on statements made
13 either by the Solicitor, Mr. Graham, or by family
14 members in connection with their statements made
15 prior to your sentencing. Do you remember any other
16 errors that you were concerned about?

17 A I believe his grandmother said that she had
18 talked to the victim on August the 6th, but that's
19 when they found his body in the early morning hours,
20 so that couldn't have been it. But they were
21 talking about his birthday coming up. They didn't
22 know what they were going to do for his birthday.
23 The judge, he stopped and asked how old he would
24 have been. When they told him, he started writing.
25 So I'm assuming that's how he come up with the

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1 calculation for my sentence.

2 Q Were there any other misstatements that you
3 were concerned about?

4 A I can't think of anything right offhand.

5 Q All right. Let's turn to Mr. Madsen. And you
6 said that you believe that Mr. Madsen misstated your
7 prior drug history?

8 A Yes, ma'am.

9 Q What did Mr. Madsen misstate about your drug
10 history?

11 A I would have to look at the transcript to see
12 exactly what was said.

13 Q Did you believe that in addition to
14 misstatements, there was not sufficient evidence
15 provided to the court concerning the mitigating
16 circumstances that led to the death of Mr. Sultan?

17 A I'm sorry. Can you repeat that?

18 Q Yes. That's pretty long. I'm sorry. Did you
19 believe that Mr. Madsen did not present your state
20 of mind and emotional -- at the time of the fight
21 that led to Mr. Sultan's death?

22 A No, ma'am, he did not. I don't believe so.

23 Q And that was one of your concerns as well --

24 A Yes, ma'am.

25 Q -- that not only were there errors, but there

1 was an absence of evidence about the passion or
2 state of mind of you at the time that Mr. Sultan was
3 killed?

4 A Yes, ma'am.

5 Q And what precisely was not reported to the
6 court?

7 A I can't think right offhand.

8 Q Are there any particulars that you believe
9 would have better described your passion and emotion
10 and state of mind at the time that you began to
11 fight with Mr. Sultan?

12 A It started off verbally just arguing. When I
13 went to tell him to get down, he shoved me against
14 the wall. When I got up off the floor, he was
15 coming around the corner from the kitchen with a
16 knife in his hand and we started wrestling on the
17 ground. I eventually got the knife from him. He
18 kind of slammed me in the floor and had me pinned
19 down and I was panicking, was just trying to get him
20 off of me.

21 Q So is it your belief that there was not enough
22 facts presented to the court about the actual fight
23 that led to Mr. Sultan's death?

24 A Yes, ma'am.

25 MS. ROBERTS: Your Honor, I have no further

JASON DWAYNE PARKER - CROSS BY MS. MAY

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1 questions of Mr. Parker.

2 THE COURT: Cross.

3 MS. MAY: May it please the Court, Your Honor.

4 THE COURT: Yes, ma'am.

5 CROSS-EXAMINATION

6 BY MS. MAY:

7 Q With regard to your appeal that you wanted,
8 what exactly did you ask your attorney after the
9 guilty plea?

10 A I asked him if he could file the appeal for me.

11 Q And did he respond to you?

12 A He said something. I was sitting over towards
13 the door in one of the little swivel chairs when
14 they brought me back in. He was sitting at the
15 corner of the table. I believe that Deputy Farr had
16 got his attention for me when I'd asked him. He
17 shook his head, but he was -- he said something, but
18 he was writing on the top right-hand corner of the
19 paper. I'm not sure what he was writing.

20 Q So you didn't hear what he said?

21 A Not particularly clear enough. He kind of
22 nodded his head, so I'm pretty sure, I thought he
23 was going to try to do it for me.

24 Q And you didn't ask him again after that about
25 your appeal?

1 A I don't believe so. I think I might have asked
2 him in a letter that I wrote, but I'm not real sure.
3 I think that would have been after I got the letter
4 from the Clerk of Court back.

5 Q Okay. And you wrote this first, I guess it's
6 Exhibit 1, this first letter to Mr. Boatman on
7 April 10th it says?

8 A Yes, ma'am.

9 Q Were you not able to write a letter to your
10 attorney on that day?

11 A By the time I would have got -- well, see, they
12 give you a pencil and two envelopes to use per
13 month. And an officer has to let you sharpen your
14 pencil and sometimes it's hard to get the officer to
15 do anything for you because you're on a 24-hour
16 lockdown at Kirkland. And by the time I got the
17 pencil to fill out and -- fill this out, I didn't
18 write Mr. Madsen, no.

19 Q So you decided to write the law library instead
20 of writing your attorney about --

21 A I wrote the Clerk of Court a letter as well. I
22 have a copy of the request that I -- where I had
23 wrote the mail room to see about sending that.

24 Q Okay. But on April 10th when you wrote this
25 form, you didn't write your attorney --

JASON DWAYNE PARKER - CROSS BY MS. MAY

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1 A No, I didn't write Madsen.

2 Q Okay. After April 10th and I guess before
3 April 18th, did you attempt to write your attorney
4 about your appeal?

5 A I don't believe so.

6 Q Okay. Prior to your plea and during your plea
7 with regard to your competency, did you ever
8 indicate to Mr. Madsen, your attorney, that you were
9 taking drugs or were on medication?

10 A In the -- at Lexington County Detention Center.

11 Q You indicated that you were taking medication
12 or that --

13 A Yes, ma'am, I was taking medication.

14 Q And what medication did you tell him you were
15 on?

16 A Remeron.

17 Q And did you tell him that that affected your
18 ability to understand anything?

19 A No, that's just for depression. I get real
20 jittery, anxiety real bad when I'm around crowds.

21 Q Okay. And during your guilty plea, I believe
22 you touched on this earlier, but when the court
23 asked you if you were under the influence of any
24 drugs or medications, you answered no, but I believe
25 you stated earlier that you were, in fact, taking

1 medication?

2 A Yes, ma'am. I believe I did state something
3 like that because the judge asked me if it affected
4 my decision or something.

5 Q Your ability to understand what was going on?

6 A Yeah, but it's not in the transcript.

7 Q It's not in the transcript, okay. Did it
8 affect your ability to understand what was going on
9 during your guilty plea?

10 A No, ma'am.

11 Q No, okay. Did you ever ask Mr. Madsen during
12 the guilty plea or indicate to him that you didn't
13 understand what was going on?

14 A No, ma'am.

15 Q And with respect to the -- your conflict of
16 interest claim, did you ever indicate to Mr. Madsen
17 that you were concerned about his relationship with
18 the Solicitor?

19 A No, ma'am.

20 Q At the plea, did you indicate your concern at
21 that time?

22 A No, ma'am.

23 Q Okay. Turning to your sentencing error claim,
24 did you discuss the potential sentences that you
25 were facing prior to your plea?

JASON DWAYNE PARKER - CROSS BY MS. MAY

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1 A Yes, ma'am. The reason I listed that issue was
2 because I wasn't sure -- I didn't know that -- I
3 figured because of the -- him sentencing me close to
4 the age, I thought that might have been the reason
5 why. That's why I listed that issue.

6 Q Close to the what? I'm sorry.

7 A Like his age. I figured that's why he
8 sentenced me to that. I didn't know that it was
9 pretty much up to his discretion, if that makes
10 sense.

11 Q During -- when the Solicitor was reciting the
12 facts, did you turn to Mr. Madsen and indicate to
13 him that you felt those -- he was misstating the
14 facts?

15 A Yes, ma'am, I did. He said that it didn't
16 really matter. When he'd stated the wrong color of
17 vehicle and the type, I told him and he said it
18 really didn't matter.

19 Q Okay. And when Mr. Madsen was discussing the
20 mitigation to the court, did you indicate to him
21 that he made any misstatements?

22 A No, ma'am. I was real emotional. I wasn't
23 really paying attention to everything that was being
24 said.

25 Q Okay. And at the plea hearing, the judge asked

1 you if you were satisfied with the services of your
2 attorney and I believe you answered yes?

3 A (No response.)

4 Q Is that correct, you answered yes?

5 A That would be back at the beginning of the
6 plea.

7 Q Okay. And you were telling the truth, correct?

8 A Yes, ma'am.

9 Q Okay. And you also told the judge that your
10 attorney did everything that you asked of him; is
11 that correct?

12 A I believe I did.

13 Q Okay. And that was the truth?

14 A Yes, ma'am.

15 Q Okay. You also told the court that you were
16 guilty of voluntary manslaughter. Was that the
17 truth?

18 A No, ma'am -- well, yes, ma'am, I did say it,
19 but the only reason I was taking the plea was
20 because of his advice.

21 Q So it was not the truth?

22 A He said I couldn't get involuntary. The way he
23 explained it was the heat of passion thing, I had
24 that wrong.

25 Q So when the court asked you if you were guilty

JASON DWAYNE PARKER - CROSS BY MS. MAY

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1 and you said yes, that was not the truth?

2 A Probably not.

3 Q Okay. You also told the court that you were
4 guilty of destruction of human remains?

5 A Yes, ma'am, I am.

6 Q Was that the truth?

7 A Yes, ma'am.

8 Q Okay. Do you recall apologizing for the crimes
9 that you had pled guilty to?

10 A I believe I tried to and couldn't.

11 Q Okay. Well -- okay. I'm sorry, what did -- I
12 didn't hear what you said.

13 A I said I tried to, but I couldn't speak.

14 Q If I could -- do you have a transcript up there
15 with you?

16 A Yes, ma'am.

17 Q Could I have you -- are you able to turn to
18 page 61 of the transcript?

19 THE WITNESS: Your Honor, is it all right if I
20 have the officers take one set of these cuffs off of
21 me?

22 THE COURT: Can you take one cuff off?

23 (Pause.)

24 BY MS. MAY:

25 Q If I can have you turn to page 61 of the

1 transcript, please?

2 A Yes, ma'am.

3 Q I'm going to refer you to lines 11 and 12, and
4 I'll just ask you again, do you recall apologizing
5 for the crimes that you pled guilty to, after
6 refreshing your memory?

7 A Yes, ma'am.

8 Q Okay. And your apology, was that honest and
9 truthful?

10 A Yes, ma'am.

11 Q Okay. And I believe you stated earlier that
12 the judge did inform you of your right to appeal?

13 A Yes, ma'am.

14 Q Okay. And did you attempt to file an appeal
15 yourself?

16 A I wrote the Clerk of Court to see if there was
17 one on file for Mr. Madsen and I wrote two request
18 forms to Mr. Boatman. I wasn't sure what the
19 address was to wherever you would write to try to
20 file the appeal or how to even proceed with that.

21 Q Okay.

22 MS. MAY: Beg the Court's indulgence, Your
23 Honor.

24 THE COURT: Yes, ma'am.

25 (Pause.)

JASON DWAYNE PARKER - CROSS BY MS. MAY

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1 BY MS. MAY:

2 Q Mr. Parker, was it your decision to plead
3 guilty?

4 A With Mr. Madsen's -- he came and told me about
5 the plea. I told him that I'd have to think about
6 it and that if I was to take it, I needed to talk to
7 my mother and see about making arrangements for my
8 kid. He came back the next day and said that we
9 were scheduled to be in court the next morning. I
10 told him I hadn't had a chance to talk to my mother
11 yet and he stated that he had contacted her. And I
12 asked him what she thought about it. He said that
13 she was fine with it.

14 Q Okay. But was it your decision to plead
15 guilty?

16 A Not completely.

17 Q What do you mean by that?

18 A I was just taking his advice to take the plea
19 because he said that if I went to trial, that they
20 would -- he felt they had enough evidence to get me
21 for the murder.

22 Q Did you ever indicate to Mr. Madsen that you
23 wanted to go to trial?

24 A I don't believe so right offhand. I'm not real
25 sure.

JASON DWAYNE PARKER - REDIRECT BY MS. ROBERTS

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1 MS. MAY: I have no further questions, Your
2 Honor.

3 THE COURT: Redirect.

4 REDIRECT EXAMINATION

5 BY MS. ROBERTS:

6 Q Mr. Madsen [sic], I just have a couple quick
7 questions to see if we could clarify the record.
8 You said that you believed that now -- part of your
9 post-conviction review application means that you
10 believed you could have pled to involuntary
11 manslaughter; is that correct?

12 A Well, not just necessary plead. If I would
13 have went to trial, it would be up to the judge to
14 instruct the jury whether it would be, like, one of
15 their determinations.

16 Q Did you ever discuss that with Mr. Madsen?

17 A I believe I talked to him before and he had
18 said that I couldn't get involuntary, said it was
19 like waving the gun around and the gun going off or
20 something like that was his definition of defining
21 it. He also said the definition -- the way he
22 defined for the voluntary manslaughter was, like, if
23 a man come in and saw his wife sleeping with
24 somebody and, at that point, he just killed them or
25 whatever, which I thought that wouldn't be right

JASON DWAYNE PARKER - REDIRECT BY MS. ROBERTS

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1 anyway.

2 Q What wouldn't be right?

3 A That kind of plea saying voluntary manslaughter
4 because it wasn't, like, in the heat of passion,
5 that's not why it happened that way. We got in --

6 THE COURT: I couldn't hear the last part of
7 what you said.

8 THE WITNESS: It wasn't done in the heat of
9 passion like that that -- in that tense.

10 BY MS. ROBERTS:

11 Q I'm sorry. I'm not following you. You're
12 saying that your fight with Mr. Sultan was not done
13 in the heat of passion as you understood heat of
14 passion for an involuntary manslaughter?

15 A No. The heat of passion part would be -- I
16 didn't quite understand the heat of passion, that
17 certain provocation, until I read it in the Black
18 Law Dictionary, the actual definition, but it, like
19 the judge stated on the thing -- in the record, was
20 something about the intent. And he asked me if that
21 was the intent, but it wasn't -- I wasn't trying to
22 kill him. I was just trying to get him off of me.

23 Q Do you remember the judge talking to you about
24 intent?

25 A Bits and pieces, not -- I didn't remember it

1 exactly until I read this. There's a lot of stuff
2 that I'm not sure about.

3 Q Why don't you take a look at page 62 line 20?

4 A (Witness complies.)

5 Q And, Mr. Parker, what I'm trying to do is just
6 to make sure you've got a clear record here of your
7 recollection and your misunderstanding. Do you
8 remember the court discussing that a plea to
9 voluntary manslaughter, there is an element of
10 intent and he went on to talk to you about that?

11 A Yeah. I didn't remember anything about that
12 until I actually read through the transcript. I was
13 real emotional, so.

14 Q So is it still your position that when you
15 entered this guilty plea, you misunderstood the
16 difference between voluntary and involuntary?

17 A Yes, ma'am.

18 MS. ROBERTS: I have no further questions of
19 Mr. Parker.

20 THE COURT: Recross.

21 MS. MAY: Just briefly, Your Honor.

22 RECROSS-EXAMINATION

23 BY MS. MAY:

24 Q Mr. Parker, on page 63 line 14 and 15, the
25 court asked you, Any questions you'd like to ask me

JASON DWAYNE PARKER - RECROSS BY MS. MAY

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1 about the offense of voluntary manslaughter? And
2 what was your response?

3 A What was your question one more time?

4 Q On page 63, on lines 14 and 15, the judge at
5 your guilty plea asked you, Any questions you'd like
6 to ask me about the offense of voluntary
7 manslaughter? And your response on line 16 was
8 what?

9 A No, sir.

10 Q Okay. If you were confused about voluntary and
11 involuntary manslaughter, why didn't you ask the
12 judge any questions at that point?

13 A I was trying to get it over with.

14 Q You were just trying to get through the plea?

15 A (Witness nodded head.)

16 Q Okay. And after the judge explained to you
17 voluntary manslaughter, he asked if you understood
18 and you indicated, Yes. Was that the truth?

19 A I believe I did state yes, but not exactly the
20 truth, no.

21 MS. MAY: I have no further questions.

22 THE COURT: Anything else of the witness?

23 MS. ROBERTS: No, Your Honor.

24 THE COURT: Thank you, sir. You may step down.
25 Call your next witness.

ROBERT MADSEN - DIRECT BY MS. ROBERTS

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1 MS. ROBERTS: Robert Madsen.

2 THE COURT: Come around, please.

3 ROBERT MADSEN,

4 having been duly sworn, testified as follows:

5 THE CLERK: Have a seat and state your name for
6 the record.

7 THE WITNESS: Robert Madsen, M-a-d-s-e-n.

8 DIRECT EXAMINATION

9 BY MS. ROBERTS:

10 Q Good morning, Mr. Madsen.

11 A Good morning.

12 Q I just have a few quick questions for you this
13 morning. You represented Mr. Parker in connection
14 with the charges made against him in connection with
15 Mr. Sultan's killing; is that correct?

16 A I did.

17 Q And you represented Mr. Parker at the hearing
18 in which he entered his guilty pleas?

19 A I did.

20 Q Did the judge, prior to him entering the
21 sentence, inform or -- strike that -- did Judge
22 McMahon inform Mr. Parker he had a right to appeal?

23 A I believe he did from reviewing the
24 transcripts.

25 Q And did he, in fact, tell Mr. Parker that he

ROBERT MADSEN - DIRECT BY MS. ROBERTS

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1 had ten days to file a notice of appeal?

2 A I believe he did.

3 Q Did Mr. Parker ask you to file a notice of
4 appeal for him?

5 A He did not.

6 Q Did he discuss with you any aspect of filing a
7 notice of appeal?

8 A He did not. Once we got done with the plea, I
9 remember speaking with his, I believe it was his
10 mother, he had some family there, speaking with one
11 of them back in the gallery just explaining what the
12 sentence was to her and what it realistically meant
13 as far as time. I had no other communication with
14 him.

15 I do recall, and I don't have it in my file or
16 in my notes because my case had been closed out, but
17 I do remember being contacted by someone a month or
18 two later asking as to the status of appeal. I
19 believe, again, that was his mother, but I'm not a
20 hundred percent sure, telling her that he had not
21 requested an appeal and so none was filed.

22 Q And you heard Mr. Parker's testimony earlier
23 this morning in which he described after the
24 sentence and after the judge concluded his remarks,
25 including the comments about his right to appeal,

1 that he made some statement to you and that you then
2 wrote something down. Do you remember that
3 testimony?

4 A I remember the testimony.

5 Q Do you recall what you wrote down?

6 A I'm not real sure what he's talking about.

7 Q After Mr. Parker pled guilty and was sentenced,
8 did you have any further contact with him?

9 A I did not.

10 Q And as you've just described, you believe
11 approximately two months after the sentencing, you
12 heard from someone, perhaps a family member?

13 A At some point in time, I believe someone had
14 contacted me in regards to an appeal. I don't --
15 quite frankly, I don't remember if it was by e-mail,
16 letter or phone, although my memory is telling me it
17 was phone, but it was well after the ten days.

18 Q Did you, at any point after the sentencing,
19 hear from Mr. Parker concerning a request for his
20 file?

21 A I don't recall.

22 Q So you don't recall some time in, say, August,
23 a year after the killing, getting any communication
24 from Mr. Parker?

25 A I don't recall.

ROBERT MADSEN - DIRECT BY MS. ROBERTS

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1 Q You've heard this morning some testimony
2 concerning a possible conflict of interest you might
3 have had. When did you become the Public Defender
4 for the Eleventh Circuit?

5 A August of 2008, I believe.

6 Q And you're still presently the Public Defender?

7 A I am.

8 Q And in April 2009, you were asked to represent
9 Mr. Parker; is that correct?

10 A I was.

11 Q And before you were a Public Defender, did you
12 work for the Solicitor's office?

13 A I did.

14 Q And did you first work in the Second Circuit?

15 A I did.

16 Q And then you worked in the Eleventh Circuit?

17 A That is correct.

18 Q And what timeframe did you work for the
19 Eleventh Circuit?

20 A I believe I started in end of September 2002.

21 Q And you stopped working some time in August of
22 2008?

23 A That's correct. I believe my first day was
24 August 3rd. So I would have stopped whenever that
25 pay period before.

1 Q Did you have any cases follow you from the
2 Solicitor's office?

3 A No.

4 Q And in April 2009, did you maintain any social
5 friendships with people in the Solicitor's office?

6 A I mean, not more so than anyone else. I'm sure
7 that there are certain times where people would get
8 together and have a drink, but I don't recall any
9 specifically, but I'm sure that that probably had
10 happened.

11 Q Was Mr. Graham working in the Solicitor's
12 office at any time while you were in the Solicitor's
13 office?

14 A He was the entire time I was working there.

15 Q And is Mr. Graham a professional acquaintance
16 of yours?

17 A He is. We went to law school together. I had
18 first met him in law school. I think I met him once
19 at a party there and didn't really have any contact
20 with him until I started at the Lexington
21 Solicitor's Office and then...

22 Q How would you describe your relationship with
23 Mr. Graham?

24 A Pretty much normal as anyone else. He and I in
25 the past -- he has a son that is about the same age

ROBERT MADSEN - DIRECT BY MS. ROBERTS

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1 as my son or at least the same grade. So they have
2 gone on play dates, but that has been, I think,
3 maybe once or twice, but that was well before this.
4 I hadn't done anything socially with him probably a
5 couple of years before this.

6 Q Did this relationship with Mr. Graham in any
7 way influence your representation of Mr. Parker?

8 A Absolutely not.

9 Q Did you and Mr. Graham ever discuss
10 Mr. Parker's case?

11 A We did, but it was obviously discussed in the
12 realm of my representation and him prosecuting him.
13 We did have various discussions, kind of the plea
14 negotiations back and forth.

15 Q And, in fact, Mr. Parker's plea was a
16 compromise plea, correct?

17 A It was a what?

18 Q It was a plea bargain in which you also --

19 A Yes, ma'am, it was. He was originally charged
20 with murder and forgeries and it was a reduction of
21 that original charge.

22 Q Do you believe that your representation of Mr.
23 Parker was in any way compromised by the fact that
24 as recently as a year, you had been work -- prior,
25 you had been working in the Solicitor's office?

1 A Absolutely not.

2 Q I'd like to ask you a couple of questions about
3 Mr. Parker's competency. We've talked about that
4 this morning. Mr. Parker informed you that he had
5 self-admitted himself in Three Rivers in 2002; is
6 that correct?

7 A Well, he did. When we initially screened him,
8 we had asked about any treatment facilities and he
9 had indicated that he had been to Three Rivers and
10 also Insights.

11 Q And after that initial evaluation, did you
12 conduct any other evaluation of his mental status?

13 A I did not. I had no questions as to his
14 competency or his ability to distinguish right from
15 wrong. During the entire time that I spoke with
16 him, I never had a question that he understood what
17 was going on.

18 Q On April 7th, 2010, the day Mr. Parker entered
19 his plea, did you have any communication problems
20 with him?

21 A I did not.

22 Q During your representation of Mr. Parker, did
23 you ever think Mr. Parker needed further mental
24 health examination or care?

25 A I did not.

ROBERT MADSEN - CROSS BY MS. MAY

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1 **MS. ROBERTS:** Your Honor, I have no further
2 questions at this time.

3 **THE COURT:** Thank you.

4 Questions of the witness from the State.

5 **MS. MAY:** Yes. May it please the Court, Your
6 Honor.

7 CROSS-EXAMINATION

8 **BY MS. MAY:**

9 **Q** Mr. Madsen, I believe you stated, just to
10 refresh, were you appointed or retained?

11 **A** I was appointed.

12 **Q** You were appointed, okay. And did you meet
13 with Mr. Parker to discuss the charges?

14 **A** I did. By my notes, I believe I met with him
15 in person eight times, to include the day of the
16 plea, and then had at least three phone
17 conversations over the six or seven months that I
18 represented him.

19 **Q** And did you discuss the indictments and the
20 elements of each offense?

21 **A** Yes, I did. When I initially met with him, I
22 went over him -- or with him what he was charged
23 with, lesser included offenses, potential -- excuse
24 me -- lesser included offenses, any potential
25 defenses and also voluntary intoxication. And then

1 prior to his plea, I met with him at the jail and
2 again went over not only the elements of murder, but
3 also voluntary manslaughter, involuntary
4 manslaughter, self-defense, accident, defense of
5 others and then waiver of presentment of the
6 indictments to the grand jury.

7 Q Okay. Specifically, with regard to your
8 discussion with involuntary manslaughter and
9 voluntary manslaughter, based -- have you had
10 experience with those charges before, defending and
11 prosecuting cases?

12 A I have.

13 Q Okay. And your discussion with him, that was
14 based on your knowledge of the law and your
15 experience?

16 A Yes. Generally what I do is just go over the
17 elements of an offense with an individual, explain
18 to them what a lesser included offense is and how
19 that can potentially come in play as far as a trial.
20 And then also a lot of times I try to give them some
21 type of an example of a fact that I -- or facts that
22 I would think would fit one of those crimes.

23 Q And did Mr. Parker ever indicate that he didn't
24 understand your discussions, specifically with
25 regard to the charges and the possible charges that

ROBERT MADSEN - CROSS BY MS. MAY

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1 -- the lesser included offenses?

2 A No, ma'am.

3 Q Did you review the possible punishments for
4 each charge?

5 A I did.

6 Q Do you recall what you told him or...

7 A As far as the potential punishments?

8 Q Just the sentence ranges.

9 A Yes, ma'am. That murder would have been
10 somewhere between 30 years to life, voluntary would
11 have been a minimum two, maximum 30, and then
12 involuntary would have been a zero to five.

13 Q Okay. And did you discuss his constitutional
14 rights, his right to a jury trial, his right to
15 remain silent, all of those?

16 A Yes, ma'am.

17 Q And did he understand?

18 A Yes, ma'am. He appeared to understand all of
19 that.

20 Q And did you discuss the State's burden of
21 proving guilt beyond a reasonable doubt if y'all
22 proceeded to trial?

23 A I explained to him that and then also with
24 defense as -- such as self-defense, that it would be
25 the State's burden of proof to disprove that beyond

1 a reasonable doubt.

2 Q And did he understand those --

3 A He appeared to understand all that.

4 Q And did you discuss his version of the facts,
5 his version of the events?

6 A Yes, ma'am.

7 Q And what did he tell you?

8 A It changed a little bit over the period of time
9 that I had represented him, but, ultimately, he had
10 talked about the fact that this fellow had been kind
11 of staying with he and his girl -- or his
12 girlfriend, that they had purchased some drugs from
13 this individual, that this fellow was not a big drug
14 dealer, but that the fellow had had a car at their
15 residence that was apparently some sort of crack
16 rental, that, at some point in time, he had returned
17 it to the person that this fellow had taken it from.
18 We talked about the fact that there was a struggle,
19 that he ended up putting some type of cord or neck
20 [sic] around him. He had indicated that the fellow
21 had had a knife at some point in time.

22 There was -- the co-defendant was represented
23 by an attorney. I had had some discussions with
24 that attorney where the attorney had indicated to me
25 that when Mr. Parker had come back, that the victim

1 in this case was masturbating over the co-defendant
2 and that's kind of what started the struggle. I
3 talked with Jason about that. He denied that. When
4 I originally talked to him later, he seemed to kind
5 of come back around and adopt, saying that something
6 like that had happened.

7 When I initially talked to him, he had
8 indicated that that hadn't happened and that there
9 was something about three weeks beforehand, but that
10 was different, apparently, than what the
11 co-defendant was telling her attorney, and that
12 eventually he had taken the body and taken it some
13 place out into a woods and set it on fire.

14 Q With respect to his competency, did you ever
15 feel the -- or have any indication to question his
16 competency prior to the guilty plea?

17 A I never had any question whatsoever as far as
18 his competency. If, at any point in time, that I
19 would have spoken with him -- I believe that it's
20 better to be safe than sorry. I would have had him
21 evaluated if I had any doubts whatsoever as to
22 whether, not only did he understand what we were
23 talking about, but whether there was a potential
24 defense as far as insanity or whether he knew right
25 from wrong and I had no question about that.

1 Q And did he ever indicate to you that -- about
2 the medications he was taking or that they --

3 A He did not. We had spoken and I believe he had
4 sent something in a letter talking about that he had
5 some anxiety when he was kind of around large
6 crowds.

7 Q Did you file a discovery motion?

8 A I believe I did.

9 Q Do you recall the items that were in the
10 discovery materials, just generally?

11 A As far as things that I had gotten from law
12 enforcement or from the Solicitor's office?

13 Q Both.

14 A I had gotten incident reports, witness
15 statements. I had also received a audio statement
16 that he had given. A majority of what I had
17 received, I believe, was on disk and I then printed
18 out the hard copy of things that I could take and
19 sent those on to Mr. Parker for his review.

20 Q Did you discuss the discovery with Mr. Parker?

21 A I did multiple times.

22 Q Okay. Did he give you any names of witnesses
23 or people that might have been beneficial to his
24 case?

25 A There were some things that -- he had sent me

ROBERT MADSEN - CROSS BY MS. MAY

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1 some letters during the time I had represented him
2 that talked about, but as far as anyone outside of
3 the discovery that I had received, I don't recall
4 any.

5 Q And I believe you discussed the possible
6 defenses, specifically self-defense?

7 A We did, self-defense, defense of others. I
8 explained to him that voluntary intoxication would
9 not be a defense, also spoke about accident.

10 Q And did you -- after reviewing the discovery
11 and your talks with Mr. Parker, did you develop an
12 opinion regarding the strength of the State's case?

13 A Yes, I did. I told him that I believed that if
14 we went to trial, I thought that he would be found
15 guilty of the murder. I don't tell my clients to
16 plead guilty or go to trial. I leave that up to
17 them, but I do think it's important that I give them
18 my opinion on what I think potentially could happen
19 or the strength of our case and I did inform him
20 about that.

21 Q And do you feel that you had sufficient time to
22 prepare and review Mr. Parker's case?

23 A Yes, ma'am.

24 Q I believe you said earlier that you enter --
25 you took part in the plea negotiations on behalf of

1 Mr. Parker?

2 A Correct.

3 Q Okay. Do you recall how many offers there
4 were?

5 A I don't specifically remember any -- I want to
6 say that initially the only offer that we got is the
7 one that he had pled to. And from my recollection,
8 I had approached the Solicitor about just a plea to
9 voluntary manslaughter. They had come back with the
10 voluntary with the desecration of human remains.

11 Q Okay. And did you discuss all of the plea
12 negotiations with Mr. Parker?

13 A I did. I went over those. By my notes, I had
14 met with him on April 2nd and went over some of the
15 audio that I had received from them and the impact
16 of that on this case. And then later, on April 6th,
17 I met with him back at the jail and went over the
18 plea a second time.

19 Q Did you discuss the options, the available
20 options, in terms of benefits and drawbacks of going
21 to trial versus pleading?

22 A Yes, ma'am.

23 Q Okay. And did he understand that discussion?

24 A He appeared to.

25 Q Okay. And what did Mr. Parker say about taking

1 the plea?

2 A He was -- once I explained it to him, it was
3 something that we had kind of talked about from the
4 beginning of the representation and he expressed his
5 desire to take the plea.

6 Q And was it his decision ultimately to plead
7 guilty?

8 A It was. As I said, I don't ever tell my
9 clients what to do. I think it's up to them, but I
10 do give them insight into what I see and what I
11 think as far as chances at trial.

12 Q Okay. And on the day of the guilty plea, did
13 he indicate any concerns about pleading guilty and
14 possibly wanting to go to trial instead?

15 A No, ma'am, not that I recall.

16 Q And during the guilty plea, did he?

17 A No, ma'am.

18 Q With regard to the conflict of interest between
19 you -- or the alleged conflict between you and the
20 Solicitor, did your relationship in any way affect
21 your representation of Mr. Parker?

22 A Absolutely not.

23 Q And during, I guess, the Solicitor's facts,
24 during his recitation of the facts, did Mr. Parker
25 indicate to you that he felt that the facts were

1 being misstated?

2 A I do recall, at some point in time, him saying
3 something about something as far as the color of the
4 car or a model or something like that. And I told
5 him that that's not necessarily anything that is
6 important given the overall scheme of the facts or
7 what was presented, that that was not something that
8 I thought that would help to object or to say
9 anything about, that we would get a chance to speak
10 and he would get a chance to speak.

11 Q And so you don't -- that didn't affect any of
12 the sentencing?

13 A No, ma'am.

14 Q The fact of the color of -- okay. And I
15 believe during your mitigation, Mr. Parker said that
16 you might have misstated some of his prior history?

17 A Looking back through the transcript, at some
18 point in time, I recall me saying something and him
19 correcting me and I think I had presented that to
20 the court.

21 MS. MAY: I believe those are all my questions.
22 Thank you.

23 THE COURT: Any other questions of the witness?

24 MS. ROBERTS: Yes, Your Honor.

25 ****

1 REDIRECT EXAMINATION

2 BY MS. ROBERTS:

3 Q Mr. Madsen, just a couple questions concerning
4 factual or potential factual misstatements made in
5 connection with the sentencing of Mr. Parker. Do
6 you recall that you reported in your background
7 about Mr. Parker that he had a drug history, that he
8 had, at least twice, been clean and then he
9 eventually, as you say on page 51, eventually had
10 gotten back into drugs? Do you remember generally
11 that --

12 A Yes, ma'am. I remember him telling me that he
13 had -- and we had spoken about the fact that he had
14 used before, had been clean for a period of time and
15 then had, so to speak, fallen off the wagon at some
16 point in time. And he had indicated to me that when
17 this all occurred, he was using crack cocaine during
18 that period.

19 Q And I believe that's exactly on page 51 line 9
20 where you say specifically crack cocaine. Did Mr.
21 Parker ever correct you and tell you that it wasn't
22 crack cocaine, that he had fallen off the wagon
23 concerning drinking, weed and other drugs, but not
24 crack cocaine?

25 A Not what I -- not what I recall. In fact, when

1 I represented him, I remember us having a specific
2 conversation about how he had started back using
3 crack cocaine. And he had said that he had gone to
4 a friend who was using it and he had been clean for
5 a period of time and that fellow ended up having
6 something and that ended up how he had started back
7 using it again.

8 Q And your recollection is specifically crack
9 cocaine?

10 A Yes, ma'am.

11 Q What about in your report to the court, you
12 recite that he lost his job as a result of drug use;
13 do you remember that statement?

14 A I do.

15 Q Did Mr. Parker ever correct you and tell you
16 that he actually lost the job as a result of a
17 suspended license?

18 A No, ma'am. I remember us basically talking
19 about the fact that his drug use had ended up
20 resulting in him losing his job.

21 Q Do you remember any other corrections that Mr.
22 Parker made to you?

23 A No, ma'am, I do not.

24 MS. ROBERTS: Thank you. No further questions,
25 Your Honor.

1 THE COURT: Anything else of the witness?

2 MS. MAY: No, Your Honor.

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

4 Any other witnesses from the Applicant?

5 MS. ROBERTS: None from Mr. Parker, Your Honor.

6 THE COURT: Any witnesses from the State?

7 MS. MAY: No, Your Honor.

8 THE COURT: Do y'all wish to make an argument?

9 MS. ROBERTS: Your Honor, in conclusion -- yes,
10 Your Honor.

11 THE COURT: Go ahead.

12 MS. ROBERTS: In conclusion, we would simply
13 ask the Court to find that Mr. Parker did not
14 knowingly and intelligently waive his right to
15 appeal, that his pleas -- guilty plea was not done
16 knowingly, voluntarily and intelligently because
17 while he was represented and did meet with Mr.
18 Madsen, that due to ineffective assistance of
19 counsel, he was -- he did not freely and voluntarily
20 enter his plea. And that is based on issues of
21 failure to have a competency hearing, possible
22 conflict of interest, failure to provide accurate
23 and more detailed underlying facts to form a basis
24 of his sentence.

25 THE COURT: I couldn't hear the last part of

1 what you said.

2 MS. ROBERTS: I'm sorry, Your Honor.

3 And the last ground would be the failure to
4 provide accurate and sufficient, factual
5 underpinnings to the event such to impact that -- a
6 fair and accurate sentence.

7 THE COURT: Thank you.

8 Anything from the State?

9 MS. MAY: Just briefly, Your Honor. The State
10 would rely upon the record that's been conducted
11 today.

12 With regard to the failure to file an appeal,
13 Applicant testified he briefly asked his attorney,
14 Mr. Madsen testified he doesn't recall being asked.
15 Mr. Parker didn't write his attorney about an
16 appeal, he didn't attempt to file an appeal on his
17 own. Mr. Madsen testified that, I believe, that if
18 he was asked to, he would have filed an appeal.

19 I believe there's adequate evidence that Mr.
20 Madsen prepared, had discussions with the Applicant
21 that he understood. And we would just submit that
22 the Applicant hasn't proved that his attorney's
23 performance was deficient and that he was prejudiced
24 or that his guilty plea was made involuntarily or
25 unknowingly.

1 THE COURT: Anything else from the Applicant?

2 MS. ROBERTS: No, Your Honor.

3 THE COURT: All right. Well, since this issue
4 has come up, in an abundance of caution, I'm going
5 to disclose to you all, I have a Facebook page. And
6 I think that Mr. Graham and Mr. Madsen are Facebook
7 friends, if you call it that. I've never had any
8 social relationship with either one of these
9 gentlemen.

10 I disclosed this in a matter a while back and I
11 don't remember who it was, but I disclosed that they
12 were friends on Facebook and the response was, Well
13 you never put anything on there except football.
14 And that's pretty much true, it's sports. We
15 certainly don't ever discuss cases or law. The last
16 thing I want to talk about with anybody after I
17 leave here is law. But I'm disclosing it to you and
18 if y'all want another judge to hear it, tell me.

19 We'll be in recess for 10 minutes.

20 Let me put one more thing on there. As far as
21 I know, I don't know if we've ever had any direct
22 messages between Mr. Graham and me or Mr. Madsen and
23 me even through Facebook. I do it because it's a
24 way for me to keep up with what's going on, you
25 know, like deaths and people that are sick and

1 things are going on in people's lives, that's how I
2 found out about it because I'm so isolated in this
3 job.

4 MS. MAY: Your Honor, Mr. Madsen just indicated
5 that he doesn't believe --

6 MR. MADSEN: I don't think that we are Facebook
7 friends. And I don't think I'm Facebook friends
8 with Mr. Graham either, if he is on Facebook.

9 THE COURT: Well, shows you how much I pay
10 attention to it.

11 All right. Thank you.

12 (Brief Recess.)

13 THE COURT: All right. I understand that I was
14 wrong about Facebook that Mr. Graham's not on there.

15 MR. GRAHAM: That's correct, Your Honor. I
16 don't have a Facebook account.

17 THE COURT: And Mr. Madsen and I are not
18 Facebook friends so that goes to show you how much
19 attention I pay to it. I was going to check it
20 before I said anything, but a directive came down
21 yesterday from the Chief Justice, which does not go
22 into effect until September the 6th I think, but it
23 says we're not to access Facebook from any state
24 computer or any other social network site from the
25 state computer. So they're changing the policy.

1 And I immediately went in and deleted my link.

2 All right. So I guess it's a nonissue if -- I
3 don't know why I thought I had seen those two names
4 come up on the Facebook over the years.

5 All right. I'll take the matter under
6 advisement and notify you of my decision in writing.
7 Thank you.

8 MS. ROBERTS: Thank you, Your Honor.

9

10 END OF PROCEEDINGS

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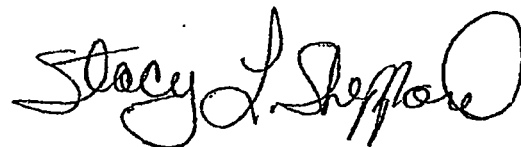
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh 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 the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Lexington County, South Carolina, on the 30th of August, 2011.

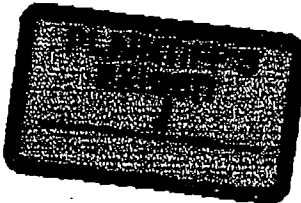
I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 14, 2012



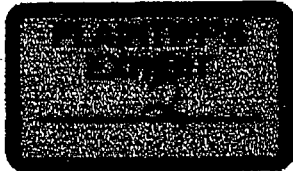
Stacy L. Sheppard, RPR
Circuit Court Reporter

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER**

TO: NAME:	TITLE:	DATE:
MR. Boatman/Law Library		4-10-2010
INMATE'S NAME:	SCDC #:	
Jason Duane Parker	328223	
INSTITUTION:	LIVING QUARTERS:	
Kirkland R.N.E	F1-211	
I took a guilty plea on 4-7-2010, due to my Attorney's Advice, he miss informed me as to information on Statuits and told me it was the only way for me. I only have 10day for an appeal the Solicitor made numerous mistakes in stating the facts as to evidence. I also feel that the Judge may have let a few loopholes as well. I would like to see if I could, some how, receive a copy of the court transcripts as well. I have Questions on my Sentencing Sheets that I'm not sure about. Also is there any way for me to get copies of Voluntary and In-Voluntary manslaughter statuites as well. Please Sir! Is there any way for me to talk to some one about all of this to someone without to many people in my dorm hearing what is being said? I don't want people all in my business with my case info. Thank you, J. Parker		
DISPOSITION BY STAFF MEMBER:		
Will Visit!		
		
DATE:	SIGNATURE:	
4-14-10	H. Boatman	

166

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER**

TO: NAME:	TITLE:	DATE:
MIR. Boatman / Mailbox		4-18-200
INMATE'S NAME:	SCDC #:	
Jason Dwane Porter	328223	
INSTITUTION:	LIVING QUARTERS:	
Kirkland RME	F1-211	
I filled out a request for filing my appeal, last week and haven't had a reply back yet. I was told I only had 10 days to file my appeal. My Attorney told me different story's as to me taking a plea and the Solicitor made numerous errors in stating the fact, and evidence in my case, on record. I also have questions about my sentencing sheet I would like to have answered. I fill the Judge sentenced me, as well as, made errors in the process of pleading out. Also how does "PCR'S" work and how can I receive information about them? also how can I obtain information on the Statute's for manslaughter and involuntary manslaughter 16-03-050. I would, I guess, file the appeal for ineffective counsel and on the grounds that the Judge may have erred in his ruling. If I could please receive a response back about this matter. Also my attorney did in fact lie about numerous things to me as well. Thanks, J. Porter		
DISPOSITION BY STAFF MEMBER:		
Will visit		
		
DATE:	SIGNATURE:	
4-26-10	H. [Signature]	

STATE OF SOUTH CAROLINA

(7) COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Case No. 2010-CP-32-02626

Jason D. Parker, #328223,

Applicant / Petitioner

vs.

MEMORANDUM ORDER

State of South Carolina,

Respondent.

Following a hearing, the court makes the following ruling(s) as indicated below.

- (X) 1. The application for post-conviction relief is: (X) denied
 () granted
 () under advisement.

A more detailed order is to follow as directed in No.6 below.

- () 2. The motion to dismiss and/or for summary judgment is hereby:
 () granted () denied () under advisement.

The ruling on the motion is based upon:

- () the statute of limitations; and/or,
 () the application is impermissibly successive; and/or,
 () other reason(s): _____

- () 3. Upon considering the conditional order of dismissal previously filed in this case, the court finds:
 () There has not been sufficient cause shown to summarily dismiss the application. A hearing on the merits is to be scheduled.
 () The application for Post Conviction Relief is dismissed because:
 () the response to the conditional order of dismissal does not demonstrate good cause for allowing the action to continue; or,
 () no response has been filed to the conditional order of dismissal.

- () 4. The applicant withdrew his application freely, voluntarily, and intelligently on the record.
 The case is dismissed: () with prejudice () without prejudice.

- (X) 5. Other: The Applicant *W.D.K.*

The Applicant has failed to meet his burden of proof. He has not established that his counsel performed deficiently or that he was prejudiced in any way by deficient performance of counsel.

The court does not find the Applicant credible concerning his testimony regarding requesting that an appeal be filed. He has not proven that he instructed his attorney to appeal from his guilty plea Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995)). The plea attorney testified credibly that he informed the Applicant about his right to appeal and that the attorney was not told to file an appeal.

Most of the Applicant's claims are refuted by the plea transcript. The plea judge did an excellent job of covering every issue that was required to make a Boykin determination, including matters such as defenses. The judge went over the concept of lesser-included offenses very clearly. He covered the defense of accident. Mr. Parker entered a plea to choking a man to death. It is difficult to envision how he believes that any claim of a lesser-included offense of involuntary manslaughter could have prevailed. In any event, he has not established that his attorney was deficient in failing to pursue an involuntary manslaughter plea or the likelihood that a jury would have been given that option, or that it is likely that they would have returned a verdict for that offense.

W.D.K.
 4/1

Mr. Parker has not proven that his plea attorney had any conflict of interest. He knew at all relevant times that his attorney had formerly worked for the Solicitor. He has not demonstrated that there was any conflict arising from a friendship with the Assistant Solicitor. Mr. Parker testified that his attorney told him that he was a friend of the Assistant Solicitor, and Mr. Parker failed to prove that the relationship was anything other than a friendship that many members of the Bar have with other members of the Bar. He has not proven that any alleged conflict of interest resulted in any prejudice to him.

Mr. Parker has not established that any mental illness or use of medications affected his plea in any way. He has not established that counsel was deficient in failing to investigate the issue more fully.

Any issues not addressed in this memorandum order, but which were raised on PCR, are to be addressed in the proposed final order from the Attorney General.

- (X) 6. (X) A proposed order is to be submitted by (X) the Attorney General () Applicant's counsel, with a copy to be sent to opposing counsel within (30) days.
 () Both sides are directed to submit proposed orders to the court and to serve the orders on each other within () days.
 () The court will prepare a more detailed order without assistance from counsel.

IT IS SO ORDERED.

FEB. 15, 2012
 Date: ~~August 31, 2011~~

William P. Keesley
 William P. Keesley, Judge

Court Reporter: S. Sheppard

Attorney for Applicant: Pamela J. Roberts, Esq.

Attorney for State: Asst. A.G. Kaelon May

FILED

1:53

-#2-

ORIGINAL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	
	)	
	)	2010-CP-32-2626
	)	
Jason D. Parker, #328223,	)	
Applicant,	)	ORDER OF DISMISSAL
	)	
v.	)	
	)	
State of South Carolina,	)	
Respondent.	)	

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed June 25, 2010. Respondent made its Return on October 19, 2010. An evidentiary hearing into the matter was convened on August 30, 2011, at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Pamela J. Roberts, Esquire. The Respondent was represented by Kaelon E. May of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. The State offered the testimony of Rob Madsen, Esquire (Mr. Madsen) Applicant's plea counsel. This Court also had before it the records of the Lexington County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant waived presentment at the April 2010 term of the Lexington County Grand Jury for Voluntary Manslaughter (2010-GS-32-1135) and Destruction or Desecration of Human Remains (2010-GS-32-1144). He

was represented by Robert Madsen, Esquire. On April 7, 2010, the Applicant pled guilty as charged.

He was sentenced by the Honorable R. Knox McMahon to confinement for an aggregate period of twenty-four (24) years. The Applicant did not appeal his guilty plea or sentence.

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

1. Ineffective assistance of counsel;
 - a. "Counsel failed to file Notice of Appeal."
 - b. "Inadequate preparation, failure to object to court's sentence error."
 - c. "Denial of Competency Hearing."
 - d. "Failure to investigate and failure to provide experts."
 - e. "Failed to object to solicitor's errors in stating the facts/evidence."
 - f. "Denial of Discovery."
 - g. "Conflict of Interest"

FILED

II. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR

EVIDENTIARY HEARING

Applicant's Testimony

At the PCR hearing Applicant testified that he filed his application for post-conviction relief because he wanted to appeal his sentence but that he missed the deadline to file an appeal. Applicant testified that he understood he had 10 days to file an appeal of his guilty plea. Applicant testified that after his guilty plea he asked plea counsel if he would file an appeal, that plea counsel shook his head and said something, but that Applicant did not hear what plea counsel said. Applicant testified that he spoke with his mother about appealing as well as another inmate. Applicant testified that he contacted a Mr. Boatman who worked at the law library in the jail and that Applicant spoke with his mother the same night after his guilty plea. Applicant testified that he made no effort to try to contact

plea counsel about filing an appeal after the guilty plea hearing. Applicant testified that on April 10, 2010 and April 18, 2010, he filled out a form requesting an appeal and then inquired about the status of his appeal request. Applicant testified that he did not submit either of these forms to plea counsel. Applicant testified that plea counsel misinformed Applicant that Applicant could not plead to involuntary manslaughter or get an involuntary manslaughter instruction if Applicant proceeded to trial, and that Applicant had to plead to voluntary manslaughter.

WPC #3
Applicant testified that he did not receive a reply to the form he completed on April 10, 2010, that he completed the second form on April 18, 2010 and put it in the mail to the clerk of court, and that Applicant received a reply from the clerk on April 26, 2010. Applicant testified that he did not attempt to contact plea counsel between April 10, 2010 and April 18, 2010, and that Applicant never discussed the form with plea counsel. Applicant testified that in the form he completed on April 18, 2010, Applicant indicated that plea counsel lied to Applicant by telling Applicant that voluntary manslaughter was the best option and not involuntary manslaughter. Applicant testified that he did not attempt to file an appeal.

Applicant testified that plea counsel failed to question Applicant's competency on the day of the plea, that Applicant did not undergo a mental examination, and that Applicant recalled telling the plea judge that he had no problem understanding what he was doing at the guilty plea. Applicant testified that he did not speak with anyone prior to the guilty plea, that Applicant explained his stay at 3 Rivers to plea counsel, and that Applicant self admitted himself in 2002 to 3 Rivers for two weeks. Applicant testified that when he was discharged from 3 Rivers that Applicant was diagnosed with depression and anxiety, and that Applicant had severe anxiety in crowds. Applicant testified that he informed plea counsel of all his mental diagnoses and issues. Applicant testified that on the day of

the guilty plea Applicant did not tell the plea court that he was taking a medication called Remeron, that Remeron did not affect Applicant's ability to comprehend the proceedings, and that in 2009 Applicant was only taking Remeron.

WJH
did

Applicant testified that he asked plea counsel about the solicitor and that plea counsel informed Applicant that counsel was friends with the solicitor. Applicant testified that he did not ask if plea counsel discussed Applicant's case with the solicitor, that plea counsel did not tell Applicant what he discussed with the solicitor, and that Applicant never told plea counsel that he was concerned with counsel's relationship with the solicitor. Applicant testified that at the guilty plea Applicant understood he was pleading to voluntary manslaughter, that Applicant understood the maximum possible sentence was 30 years and that Applicant received a 24 year sentence. Applicant testified that this was not a technical sentencing error but that the underlying facts as stated by the solicitor were in error. Applicant testified that the solicitor provided incorrect information to the plea court about the color of the vehicle and the pathologist's opinion. Applicant testified that plea counsel's mitigation did not correct the solicitor's misinformation and that plea counsel incorrectly stated Applicant's prior drug history.

Applicant testified that there was not sufficient evidence presented to the plea court by plea counsel during mitigation about the time of the fight. Applicant testified that the fight started verbally then Applicant shoved the victim who had a knife, that Applicant got the knife away from the victim and pinned the victim down. Applicant testified that it was not entirely his decision to plead guilty and that Applicant did not tell plea counsel that Applicant wanted to proceed to trial.

Mr. Madsen's Testimony

Plea counsel testified that he represented the Applicant in connection the victim's killing at the guilty plea. Counsel testified that the plea judge informed Applicant about his right to appeal and that Applicant must do so within 10 days, and that Applicant did not request counsel to file an appeal. Counsel testified that Applicant never said anything about filing an appeal, that if Applicant had requested counsel to file an appeal then counsel would have filed an appeal. Counsel testified that he spoke with Applicant's mother after the guilty plea hearing to explain Applicant's sentence. Counsel testified that he recalled being contacted about one month after Applicant's guilty plea about the status of an appeal and that counsel ^{REPLIED} ~~replied~~ that no appeal was filed. Counsel testified that he did not recall writing something down after the guilty plea, that after the guilty plea hearing counsel did not have any further contact with Applicant, and that after sentencing Applicant did request his file from counsel. Counsel testified that he did not recall having any communication one year after the guilty plea hearing.

Counsel testified that he has been a public defender for Lexington County since August 2008 and that he was appointed to represent the Applicant in April 2009. Counsel testified that prior to working at the public defender's office he worked at the eleventh circuit solicitor's office from September 2002 up until August 2008. Counsel testified that he did not work any cases that he handled during his time at the solicitor's office. Counsel testified that he maintained his relationships from the solicitor's office when he moved but nothing further. Counsel testified that solicitor Shawn Graham was working at the solicitor's office the entire time counsel worked there as well. Counsel testified that he attended law school with solicitor Graham but that they did not meet until counsel worked at the Lexington County solicitor's office. Counsel testified that he and the solicitor's sons were the same age, went on play dates but that was long before counsel represented Applicant.

Counsel testified that he had not done anything socially with the solicitor for a few years prior to representing Applicant. Counsel testified that his relationship with solicitor Graham did not affect counsel's representation of Applicant. Counsel testified that he discussed Applicant's case with the solicitor during plea negotiations and that counsel's representation of Applicant was not compromised by working with the solicitor's office. Counsel testified that Applicant informed him about Applicant's stay at 3 Rivers, ^(w/pe) ~~and some insights~~. Counsel testified that after Applicant's initial evaluation at 3 Rivers the Applicant did not have any further mental evaluations conducted. Counsel testified that he had no reason to question Applicant's competency, that counsel had no communication problems with Applicant during the representation and on the day of the guilty plea. Counsel testified that he met with Applicant eight (8) times prior to the guilty ^{plea} ~~and~~ that counsel discussed the indictments, the elements of the offenses, and the nature of the charges against Applicant. Counsel testified that he and Applicant discussed the state's burden of proving guilt beyond a reasonable doubt if Applicant chose to proceed ^{to trial} ~~trial~~ as well as the burden associated with self-defense. Counsel testified that Applicant shared his version of the facts and that Applicant informed counsel there was a struggle and that a cord was around the victim's neck because the victim had a knife. Counsel testified that Applicant's co-defendants were represented by ^{an} ~~an~~ attorney and that counsel discussed this with Applicant. Counsel testified that Applicant never informed him that Applicant was taking any medication.

Counsel testified that he filed a discovery motion, received the discovery materials, and reviewed the discovery materials with Applicant. Counsel testified that the discovery included incident reports and audio statements, and that there were no witnesses outside of the Applicant's case that would have been beneficial. Counsel testified that he discussed possible defenses with

Applicant and developed an opinion regarding the state's ability to prove guilty beyond a reasonable doubt at trial. Counsel testified that the only offer made by the state was what the Applicant ended up pleading to and that counsel met with Applicant on April 2, 2010 to review the audio tapes and the impact they would have. Counsel testified that he recalled informing the plea court during mitigation that the Applicant had gotten back into drugs, that counsel discussed Applicant's drug use prior to the plea, and that counsel recalled a specific conversation with Applicant about Applicant starting back using crack cocaine. Counsel testified that he informed the plea court that Applicant lost his job because of drug use and that Applicant did not correct counsel in that Applicant lost his job because of a suspended license.

III. APPLICABLE LAW

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Will #8
Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. ~~Nevertheless, the allegation of ineffective assistance of counsel probably raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an~~
Cherry
~~evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).~~ 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, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the

application for post-conviction relief, the transcripts and documents from the prior proceedings, the exhibits introduced into evidence at the hearing, and legal arguments of counsel. 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.

Ineffective Assistance of Counsel

a. Failure to File Notice of Appeal

Applicant asserts that counsel was ineffective for failing to file an appeal. This Court does not find the Applicant credible concerning his testimony regarding requesting that an appeal be filed. Applicant has not proven that he instructed plea counsel to appeal from his guilty plea. Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995). This Court finds that plea counsel testified credibly that he informed Applicant about his right to appeal and that counsel was not told to file an appeal. When the question is whether counsel was ineffective in failing to file a direct appeal from the conviction and sentence, the United States Supreme Court has held that counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000). Counsel testified that had Applicant indicated to counsel that he wanted to appeal counsel would have filed an appeal. Under these circumstances, counsel's failure to file an appeal was not unreasonable. This Court finds that counsel was not ineffective in failing to file an appeal; therefore, this allegation is denied and dismissed.

b. Failure to object to court's sentencing error

Applicant asserts that plea counsel ineffective ^{was} or for failing to object to the court's sentencing error. Applicant testified that the court did not make a technical error in his sentence as Applicant testified that he understood the maximum possible sentence was thirty (30) years and that Applicant received a twenty-four (24) year sentence. Applicant testified that plea counsel should have objected to the solicitor's misstatement of the underlying facts. Applicant testified that during the guilty plea hearing he did not alert plea counsel to the solicitor's alleged misinformation and did not ask plea counsel to respond. The record reflects that Applicant did not inform the plea court about any misstatements by the solicitor. Applicant has failed to show that any objection made by counsel would have changed the results of the guilty plea. Applicant indicated to the plea court that he was guilty of voluntary manslaughter after the solicitor recited the facts of the crime for the court. (Tr. p.63). This Court finds that Applicant has failed to show that counsel's performance was deficient and any resulting prejudice; therefore, this allegation is denied and dismissed.

c. Denial of Competency Hearing

Applicant asserts that plea counsel was ineffective for failing to request a competency hearing. At the PCR hearing Applicant testified about his self-admission to 3 Rivers and his resulting diagnosis. Applicant also testified that on the day of his guilty plea he was taking a medication called Remeron but did not inform the plea court of this. Counsel testified that Applicant informed of Applicant's stay at 3 Rivers and the resulting diagnosis. Counsel also testified that Applicant was not further evaluated after 3 Rivers, that Applicant did not inform counsel Applicant was taking medication, and that counsel had no reason to question Applicant's competency. Competency to enter a guilty plea is no more stringent than competency to stand trial. Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992). To sustain a claim of incompetency in fact at a plea, applicant in a PCR

proceeding must show by the preponderance of the evidence he was incompetent at the time of plea. Id. To sustain a claim counsel was ineffective for failing to request a competency hearing, an applicant must show a reasonable probability that he would have been found incompetent. Id. This Court finds that the Applicant has failed to produce any evidence from any medical professional or produce any evidence other than his bare assertion that he did not comprehend what he doing at his guilty plea hearing because he was incompetent or because of the medication Applicant was taking. The guilty plea transcript reflects that Applicant clearly understood the questions asked of him and that Applicant responded in an appropriate manner. This Court finds that Applicant failed to show counsel's performance was deficient and any resulting prejudice; therefore, this allegation is denied and dismissed.

d. Failure to Investigate

WPC
#11 Applicant asserts that plea counsel was ineffective for failing to investigate and discuss possible defenses with Applicant. The plea judge did an excellent job of covering every issue that was required to make a Boykin determination, including matters such as defenses. The plea judge went over the concept of lesser-included offense very clearly. The plea judge covered the defense of accident. The Applicant entered a plea to choking a man to death. It is difficult to envision how Applicant believes that any claim of a lesser-included offense of involuntary manslaughter could have prevailed. Moreover, at the guilty plea hearing Applicant indicated that plea counsel discussed with Applicant self-defense, that Applicant was waiving any and all defenses, and that Applicant understood. (Tr. p.62). the plea judge asked Applicant if he had any questions about voluntary manslaughter for the judge or plea counsel and Applicant indicated that he did not need to discuss it further. (Tr. p.63). In any event, Applicant failed to establish that plea counsel was deficient in

failing to pursue an involuntary manslaughter plea or the likelihood that a jury would have been given that option, or that it is likely a jury would have returned a verdict for that offense.

Furthermore, counsel obtained the discovery materials and reviewed all the materials with Applicant including the audio statements. Counsel testified that he met with Applicant eight (8) times and that they discussed the indictments, the elements of the offenses, and the nature of the offenses. Counsel and Applicant reviewed possible defenses if Applicant chose to proceed to trial. To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." 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. United States v. Cronin, 466 U.S. 648 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990). Here, the Applicant could not point to any specific matters counsel failed to discover which would have caused him to proceed with a jury trial instead of pleading guilty. This Court finds the Applicant offered no evidence at the PCR hearing that counsel could have found that would have been likely to have any outcome more favorable to the Applicant. Therefore, this Court finds that these allegations are denied and dismissed.

e. Conflict of Interest

Applicant asserts that a conflict of interest existed because plea counsel had a prior relationship with the solicitor in Applicant's case. Counsel testified that he worked at the Lexington County solicitor's office with solicitor Graham prior to moving to the Lexington County public

defender's office. Counsel testified that when he began his representation of Applicant, counsel and the solicitor had not socially engaged in a few years and that any relationship he had with the solicitor did not compromise counsel's representation of Applicant. The mere possibility of a conflict of interest is insufficient to challenge a criminal conviction. Langford v. State, 310 S.C. 357, 426 S.E.2d 793 (1993). "In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance." Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809 (1984). The Applicant must show that his attorney actually owed duties to a party whose interests were adverse to the Applicant. Id.; Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001). This Court finds that Applicant has not proven that plea counsel had any conflict of interest. Applicant was aware at all relevant times that counsel had formerly worked for the solicitor's office. This Court finds that Applicant has failed to demonstrate that there was any conflict of interest arising from a friendship with the assistant solicitor. Applicant testified that counsel told Applicant that counsel was a friend of the solicitor. Applicant failed to prove that the relationship was anything other than a friendship that many members of the Bar have with other members of the Bar. Additionally, Applicant failed to show that any alleged conflict of interest resulted in any prejudice to Applicant; therefore, this allegation is denied and dismissed.

All Other Claims

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or

implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues ^{at} the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

WPC
#44

FILED

7/18

~~FILED~~ V. CONCLUSION

Based on all the ~~for~~^{FILED}going, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post conviction relief. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. *See* Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

#15
IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 24TH day of FEB., 2012.

William P. Keesley
William P. Keesley
Presiding Judge

LEXINGTON, South Carolina

WITNESSES

Lexington County Sheriffs Department

Tricia Chandler

Law Enforcement Case #: 09072460

DSG

ARREST WARRANT NUMBER

J826806

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO: 2010GS3201135

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2010

THE STATE

vs.

Jason Dwane Parker

CDR #: 0217

Indictment for

Voluntary Manslaughter

§ 16-03-0050

DONALD V. MYERS, SOLICITOR

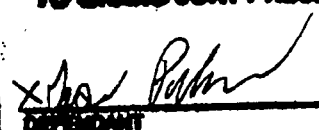
- 0 ≤ 30 years

- violent

- Most Serious

- No Parole

- Waive presentment

I DO HEREBY WAIVE MY RIGHT TO GRAND JURY PRESENTMENT	
	
DEFENDANT	
4/2/10	
DATE	
	
WITNESS	

ORIGINAL
Circuit

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Voluntary Manslaughter

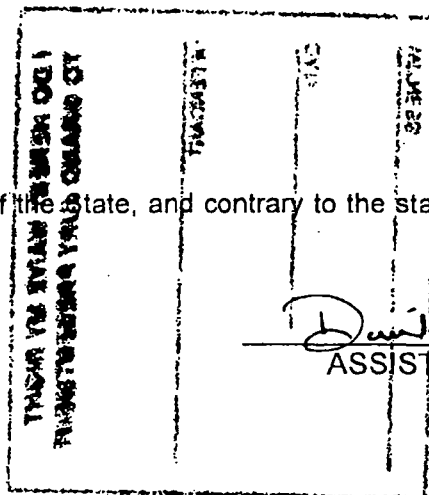
§ 16-03-0050

At a Court of General Sessions, convened on April 2010, the Grand Jurors of Lexington County present upon their oath:

That **Jason Dwane Parker** did in Lexington County, South Carolina on or about August 6, 2009 unlawfully kill one **Jonathan Sulton** without malice, express or implied, in a sudden heat of passion and upon sufficient legal provocation; to wit: Jason Parker killed the victim, Jonathan Sulton by strangling him to death during the course of a physical altercation between the two men, in violation of § 16-3-50 of the Code of Laws of South Carolina, 1976, as amended.

A TRUE COPY
[Signature]
Lex. Co. C.C.C.P., G.S. & F.O.

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



[Signature]
ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriffs Department

Tricia Chandler

Law Enforcement Case #: 09072460

DSG

ARREST WARRANT NUMBER

10-STR-00035

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010GS32011/44

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2010

THE STATE
vs.

Jason Dwane Parker

CDR #: 0471

Indictment for

Destruction or Desecration of Human
Remains

§ 16-17-0600(A)

DONALD V. MYERS, SOLICITOR

- Or \$5,000 or not less than
1 year nor more than 10
years

- As charged

- Waives Presentment

I DO HEREBY WAIVE MY RIGHT
TO GRAND JURY PRESENTMENT

DEFENDANT

DATE

WITNESS

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	Destruction or Desecration of Human Remains
COUNTY OF LEXINGTON	)	
	)	§ 16-17-0600(A)

At a Court of General Sessions, convened on April 2010, the Grand Jurors of Lexington County present upon their oath:

That **Jason Dwane Parker** did in Lexington County, South Carolina, on or about August 6, 2009 knowingly and willfully, and without proper legal authority destroy or damage the remains of a deceased human being and/or desecrate human remains; to wit: The defendant, Jason Parker, after killing the victim, Jonathan ^{Sulton (ek)} Sulton, did pour gasoline over the remains of Jonathan Sulton and set his remains on fire, in violation of Section 16-17-600 (A) of the South Carolina Code of Laws (1976) as amended.

A TRUE COPY

[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

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

[Signature]
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE JRT OF GENERAL SESSIONS

COUNTY OF
STATE

Lexington

LEADERSHIP

INDICTMENT/CASE#:

2010GS3201135

VS.

Jason Dwane Parker

AW#: J826806

(A: _____)
 ice: W Sex: M Age: 30

Date of Offense: 8/6/2009

JB: _____ SS#: _____

S.C. Code §: 16-03-0050

Address: _____

CDR Code #: 0217

City, State, Zip: Lexington, SC 29073

SENTENCE SHEET

_____ SID# SC01235293

CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

Disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADS

Manslaughter / Voluntary manslaughter

Violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS

☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or Lowd Act)

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

TEST:

Davis, Mark Solicitor 11450 SC Bar # X JDP Defendant Dr Attorney for Defendant 12214 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 or a determinate term of 24 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ 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: 2010 15 32 01/44
☒ 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 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 16-25-66 (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: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____
 Substance Abuse Counseling ☐

*Fine:
 \$14-1-206 (Assessments 107.5%) \$ _____
 \$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00
 \$14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____
 \$56-5-2995 (DUI Assessment) \$12 \$ _____
 \$56-1-286 (DUI Breath Test) \$25 \$ _____
 \$47.12 (Public Def/Prob) \$500 \$ _____
 \$14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 \$14-1-213 (Drug Court Surcharge) \$100 \$ _____
 \$50-21-114 (BUI Breath Test Fee) \$50 \$ _____
 \$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
 \$90.7 (SCCJA Surcharge) \$5 \$ 5.00
 3% to County (if paid in installments) \$ _____
 TOTAL \$ _____

Random Drug/Alcohol Testing ☐
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ Beginning _____
 \$ _____ Paid to Public Defender Fund

Other: _____

No CONTACT WITH
VICTIM'S FAMILY
☐ Appointed PD of appointed other counsel,
 \$47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge C. Parker
 Judge Code: 2145
 Sentence Date 7 April 10

Clerk of Court/Deputy Clerk Boeth A. Cunningham
 Court Reporter: C. Parker

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATEVS.
Jason Dwane ParkerINDICTMENT/CASE#: 2010GS3204435 1144AW#: 10-STR-00035Date of Offense: 8/6/2009S.C. Code §: 16-17-0600(A)CDR Code #: 0471

SENTENCE SHEET

NAME: _____
 RACE: W Sex: M Age: 30
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: Lexington, SC 29073
 L# _____ SID# SC01235293
 CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADSby: Graves / Destruction, desecration or removal of human remainsviolation of § 16-17-0600(A) of the S.C. Code of Laws, bearing CDR Code # 0471☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45(CSC w/minor 1st or Lowd Act)

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

TEST:

David S. York 11650 X Jason Parker 12216
 Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 or a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ 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: 2010 65 32 11 35☒ 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 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: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCODPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____
Substance Abuse Counseling ☐

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

Random Drug/Alcohol Testing ☐
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ Beginning _____
 \$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 \$47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/Deputy Clerk Beth A. Carney 104
 Court Reporter: Cocount Parker

Presiding Judge [Signature]
 Judge Code: 02195
 Sentence Date 7 April 10

J-826806
STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Lexington
ORIGINAL
THE STATE
against

Jason Dwane Parker
Address: Lexington, SC 29073-
Phone: SSN
Sex: M Race: W Height: Weight:
DL State: SC DL #:
DOB: Agency ORI #: SC0320000
Prosecuting Agency: Lexington County Sheriff
Prosecuting Officer: T. L. Chandler - 1607
Offense: Murder / Murder

Offense Code: 0116
Code/Ordinance Sec: 16-03-0010, 0020

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of
The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge
Date:

RETURN

A copy of this arrest warrant was delivered to
defendant JASON DWANE PARKER
on 8/20/09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Lexington County Judicial Center
205 East Main Street
Lexington, SC 29072

☒ County/ ☐ Municipality of
Lexington

Personally appeared before me the affiant T. L. Chandler who
being duly sworn deposes and says that defendant Jason Dwane Parker
did within this county and state on or about 08/06/2009 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Lexington)
in the following particulars:

DESCRIPTION OF OFFENSE Murder / Murder

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

On August 6th 2009 the defendant, Jason Dwane Parker, within the area of Lexington County, SC did with malice and forethought
kill the victim, Jonathan Tremain Sulton. The defendant also poured gasoline on the victim and set him on fire.

Signature of Affiant

STATE OF SOUTH CAROLINA -
☒ County/ ☐ Municipality of
Lexington

Affiant's Address P O Box 639
Lexington, SC 29071-
Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY, G.S. & P.C.
It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 8/6/2009 defendant Jason Dwane Parker
did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Lexington) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me

on 08/20/2009
Signature of Issuing Judge (L.S.)
Thomas Rawl
Judge Code: 5683

Judge's Address 139 East Main Street, Suite B
Lexington, SC 29072-
Judge's Telephone (803)785-8221
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

AFFIDAVIT

ORIGINAL

With Preparation by
S.C. Attorney General
April 21, 2003
SCCA 518

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 08/25/10
 OMCOMITA RELEASE DATE SCREEN C023981
 SCDC# > 328223 LOC: MCCORMICK
 PARKER, JASON D. SCDC CLASSIFICATION...: VIOLENT
 OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: N
 SEXUAL PREDATOR...: NOT APP
 DNA STATUS...: COMPLETED
 GPS REQUIREMENT...: N
 PREA DECISION...:
 CURRENT SENTENCE: 024-00-000 CONSECUTIVE SENTENCE ...: N
 024-00-000 CURRENT SENT START DATE: 08/20/2009
 PROJECTED COMPLETION DATES
 MAXOUT DATE: 01/07/2030 CURRENT EWC ..: 3 F 5
 YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
 INITIAL PAROLE DATE: 01/14/2030 NEXT PAROLE HEARING DATE: 01/14/2030

 TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
 TOTAL EARNED WORK CREDITS ..: 000087 LABOR CREW DISQ REASON:
 TOTAL EDUCATION CREDITS: 000000 CATEGORY 4 OR 5 OFFENSE
 TOTAL EXTRA EARNED CREDITS ..: 000
 TOTAL SERVICE TIME EARNED ..: 000365

PFKEYS: 5:HISTORY OF DATE CHANGES
 4-© 1 Sess-1 167.7.50.33 SCDC1343 3/11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 08/25/10

C0239

PARKER, JASON D. FBI # 421884VB4 SID# SC01235293 SCDC # 328223

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ... MCCORMICK CORR INST

SECURITY/CUST.: 3 MINIMUM IN

CURR INCARC SENT...: 24 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: YES

SOCIAL SECURITY #...

DORM.....: F40196X

RACE....:W SEX....:M

PROJ MAXOUT DATE: 01/07/2030

PROJ PAROLE DATE: 01/14/2030

EWC JOB...: GENERAL WORKER

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 3F5 EEC LEVEL:

ASSIGNMENT...: BLDING DETAIL BLDG.

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 31 DATE OF BIRTH...:

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE YRS MOS DYS COUNTY	SENTENCE START V/NV CATEGORY
VOLUNTARY MANSLAUGHTER	24 0 0 LEXINGTON	8/20/20 9 V 4
DEFT GRAVE/HUMAN REMAIN	10 0 0 LEXINGTON	8/20/20 9 N 3

PREVIOUS SCDC OFFENSES (COMPLETE)	SENTENCE YRS MOS DYS COUNTY	SENTENCE START V/NV CATEGORY
BURGLARY-3RD DEGREE	0 30 0 LEXINGTON	1/18/20 7 N 2

PRIOR COMMITMENTS OVER 90 DAYS:

MISSING PRIORS DATA

DETAINERS (HOLD, WANTED, NOTIFY):

NO DETAINERS

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES WHILE IN CUSTODY

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

NO NON-ASSAULTIVE DISCIPLINARY HISTORY

HISTORY OF MOVEMENTS:

DATE	LOCATION	STATUS	REASON
5/20/10	MCCORMICK	INCARCERATED	ADMINISTRATIVE
4/ 9/10	KIRKLAND	INCARCERATED	NEW ADMISSION
7/ 1/ 8	UNK	RELEASE	EXPIRATION OF SENTENCE
6/ 9/ 8	RIDGELAND	INCARCERATED	ADMINISTRATIVE
5/ 7/ 8	KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
GENERAL WORKER	05/25/10	0/ 0/ 0		YF5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON

NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****