

RECEIVED
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SC SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Williamsburg County

Steven H. John, Circuit Court Judge

ANDRE A. ROBINSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002202

A P P E N D I X

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ATTORNEYS FOR RESPONDENT

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1 State of South Carolina
2 County of Williamsburg
3
4

5 Andre Antonio Robinson, Guilty Plea
6 Plaintiff 2012-GS-45-00269

7 vs.

8 The State of South Carolina, March 5, 2013
9 Defendants Kingstree, S.c.
10
11

12 BEFORE THE HONORABLE Clifton Newman, Judge.
13
14
15

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

17 Ms. Kimberly V. Barr,
18 Assistant Solicitor for the State

19 Mr. Doward Harvin,
20 Attorney for the Defendant

21 Margaret T. Sullivan,
22 Court Reporter
23
24
25

1 MS. BARR: This is Indictment
2 2012-GS-45-269. It's the State versus Andre Antonio
3 Robinson. It is an indictment for murder. Judge,
4 he is here with his lawyer, Mr. Doward Harvin. He
5 wishes to enter a guilty plea as indicted.

6 (Whereupon, the defendant is sworn.)

7 THE COURT: And, Mr. Harvin, you represent
8 him?

9 MR. HARVIN: Yes, Your Honor.

10 THE COURT: And you have reviewed with him
11 these charges. And discussed with him the possible
12 punishment, which is 30 years to life imprisonment.

13 MR. HARVIN: Yes, I have, Your Honor.

14 THE COURT: And you discussed with him his
15 constitutional rights, including the right to have a
16 jury trial?

17 MR. HARVIN: Yes, Your Honor.

18 THE COURT: And you don't believe he wants
19 one?

20 MR. HARVIN: I do not, Your Honor.

21 THE COURT: And do you agree with his
22 decision to plead guilty?

23 MR. HARVIN: I do, Your Honor.

24 THE COURT: Mr. Robinson, do you want to
25 plead guilty to murder?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Has anyone promised you
3 anything to get you to plead guilty?

4 THE DEFENDANT: No, sir.

5 THE COURT: Do you understand that for
6 murder, the minimum sentence is 30 years, the
7 maximum sentence is life imprisonment?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And as you stand before at me
10 at this moment in time, you are presumed to be not
11 guilty of this charge. And you have the right to
12 have a jury trial. And if you were to have a jury
13 trial, the State would have to prove your guilt
14 beyond a reasonable doubt. Otherwise, the jury must
15 find you not guilty. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And if you were to have a jury
18 trial, you would have the right to remain silent.
19 About the jury would be instructed that they cannot
20 not that against you. You would have the right to
21 challenge any incriminating statements you may have
22 made. As well as, challenge any incriminating
23 evidence the State may offer against you. You
24 understand that, sir?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: In addition to that, your
2 lawyer, Mr. Harvin, would have the right to cross
3 examine any witnesses who my testify against you,
4 and also present any witnesses that you may have to
5 testify on your own behalf. Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: In addition to all of that,
8 you have the right to present any defense that you
9 might have to this charge. Do you understand, sir?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you have any defense to
12 this charge?

13 THE DEFENDANT: Sir?

14 THE COURT: Do you have any defense to the
15 charge of murder?

16 THE DEFENDANT: No, sir.

17 THE COURT: Are you guilty of murder?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And are you satisfied with the
20 representation of your attorney, Mr. Harvin?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Has he fully investigated the
23 case?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Has he shared with you all the

1 evidence or information he has received concerning
2 the case?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you know of anything else
5 he could do or to assist you in defending you on
6 this charge?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: And what makes you guilty of
9 murder?

10 THE DEFENDANT: I killed my cousin.

11 THE COURT: You killed your cousin. And
12 why did you do that?

13 THE DEFENDANT: It wasn't intentional.

14 THE COURT: Say again.

15 THE DEFENDANT: It wasn't intentional. It
16 started off with an argument and a fight. It went
17 too far.

18 THE COURT: Now when you say that you
19 killed your cousin but it wasn't intentional, you
20 know, murder is the intentional killing of another
21 person with malice. Do you understand that? Do you
22 understand that as being what murder is?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And it's your position that
25 this was an unintentional killing, be that it

1 involuntary or be that it was an accident or
2 anything of that nature, which would amount to a
3 legal defense, you would have the right to present
4 that defense to a jury. Do you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you do not wish to present
7 any defense to the charge?

8 THE DEFENDANT: No, sir.

9 THE COURT: And you are pleading guilty to
10 intentionally killing Myron McCray.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And are you on probation or
13 parole at this time?

14 THE DEFENDANT: No, sir.

15 THE COURT: And do you understand that the
16 offense of murder is a non-parolable offense? It's
17 classified in the law as being a most serious
18 offense. Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Are you on probation or parole
21 at this time?

22 THE DEFENDANT: No, sir.

23 THE COURT: And are you today under the
24 influence of any drugs or alcohol or anything that
25 might affect your ability to understand what you are

1 doing?

2 THE DEFENDANT: No, sir.

3 THE COURT: If you were to have a jury
4 trial, do you believe that you most likely would be
5 found guilty of murder?

6 THE DEFENDANT: No, sir.

7 THE COURT: But you want to plead guilty
8 to it not knowing whether a jury would find you
9 guilty of murder or not?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you believe the evidence
12 that the State would offer could likely -- could
13 lead a jury to find you guilty of murder?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And understanding the nature
16 of the charge and the possible punishment, how do
17 you plead to the offense of murder, guilty or not
18 guilty?

19 THE DEFENDANT: Guilty.

20 THE COURT: Ms. Barr.

21 MS. BARR: Your Honor, please the court,
22 this incident happened somewhere between the
23 nighttime and morning hours between the 8th of
24 September and the 9th September, in the vicinity of
25 a little nightclub they call the Boom Boom Room on

1 the Lakewood Road in Salters. The victim in the
2 case, Myron McCray, was 22 years old. His body was
3 found by the owner of that club at about 8:30 on the
4 morning of September the 9th.

5 The owner is Virgil McCray. He called and
6 reported that he saw a body by his building. The
7 body was face down. He contacted of course, law
8 enforcement. And law enforcement came out, observed
9 Myron's body, face down. They observed many, what
10 they call severe cuts or gashes about his head. He
11 had on one sock. And he was missing a shoe. One of
12 his shoes were located in the area near his body.
13 They also saw various spots of blood. It was
14 apparent from the dirt marks that Mr. McCray's body
15 had been dragged some distance up until it's final
16 resting place.

17 They started contacting individuals to try
18 to find out who the victim was last seen with.
19 Judge, initially it was difficult to identify his
20 body based on the extensive nature of the wounds.
21 They got dental records from his dentist. I
22 believe it's Dr. Schwartz, if I am not mistaken.
23 But following the autopsy, I believe one of his
24 family members was able to ID the body. They
25 interviewed, the police officers interviewed several

1 witnesses. A couple of them told the police
2 officers that Mr. McCray was last seen with the
3 defendant who is his first cousin. The victim's
4 mother and the defendant's mother are sisters.

5 His girlfriend at the time, a Ms. Bradley,
6 give a statement to the police indicating that I
7 guess it was somewhere perhaps maybe 3:00 o'clock in
8 the morning, they rented a hotel; that the
9 defendant, when he came back to the hotel he was
10 wearing flip-flops, which she thought was unusual,
11 because the last time she saw him he was wearing
12 Timberland boots. And that when he got there, he
13 started washing his hands and his belt. She had
14 never seen him do that before, so she thought it was
15 odd. The police officers arrested the -- or
16 initially questioned the defendant. Over the course
17 of about I guess 3 or 4 statements over the next 2
18 days, he gave varying accounts of what happened.

19 Initially denied being anywhere near the
20 victim at the time of his death. Then gradually he
21 admitted that he was with him. He said that it was
22 a fight. He indicated that he had saw his cousin
23 who had a key to the Boom Boom Room, to go in and he
24 was getting a beer. And he said he asked Myron,
25 man, can I have a beer. I will pay you back

1 tomorrow. And he indicated that Myron agreed to do
2 that. But he said when Myron comes out of the Boom
3 Boom Room, he only has one beer in his hand. He's
4 on the phone fussing with somebody over the phone,
5 pointing to the defendant.

6 The defendant then says that he asked the
7 victim, why didn't you bring my beer out. And he
8 says that he and the victim started to argue about
9 that. And the victim allegedly pushed him. And he
10 says that they started tussling. He pushes the
11 victim, and the victim's head strikes a concrete
12 block that's on the ground. After law enforcement
13 received the autopsy photos, and received the
14 autopsy report, it was clear that the victim did not
15 die from a single blow to the head. The medical
16 examiner, the pathologist report indicates that
17 there were 12 gashes to his head; that he had been
18 stabbed with a blunt, sharp object. And there was
19 evidence that he had been choked as well.

20 So when they interviewed the defendant for
21 the last time, he indicated that he was on top of
22 the victim at one point, and was repeatedly, well I
23 shouldn't use the word repeatedly. A few times he
24 had struck the victim's head against the concrete
25 slab. And of course that was the cause of his

1 death. And, Judge, that's essentially the facts.

2 THE COURT: Do you dispute any of the
3 facts as stated by the solicitor Mr. Robinson? Is
4 everything she said true?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: I will accept the guilty plea.
7 Criminal history.

8 MS. BARR: Your Honor, the defendant has a
9 conviction in 1991, for two counts of malicious
10 injury to personal property. Based on his sentence,
11 we know that it was a General Sessions level
12 offense, because he received a probationary
13 sentence. In 2004, he was convicted of simple
14 possession of marijuana. In 2006, he was convicted
15 of burglary in the second degree. He received a
16 probationary sentence that appears to have been
17 revoked at some point later. Judge, this happened
18 on the night of the 8th, and the early morning hours
19 of the 9th. His birthday was the 10th. And I
20 believe there was some altercation or something with
21 his girlfriend. And he was convicted of CDV as a
22 result of that. And that's his record.

23 THE COURT: And the victim's statements.

24 MS. BARR: Judge, we have Myron's mother,
25 Ms. Sherry McCray here in the courtroom.

1 MS. MCCRAY: I am Sherry McCray.

2 THE COURT: Yes, ma'am.

3 MS. MCCRAY: Myron's mother.

4 THE COURT: What would you like to tell
5 me, Ms. McCray.

6 MS. MYRON: He is my baby. God. Oh, it's
7 so hard, Jesus. It is so hard. I've been through
8 death with my mother. I've been through the death
9 with my father and my brother. But this is so
10 different. Oh, God, just take my baby. If I had
11 just known that day I saw him I would never see
12 again. Oh, my God. Oh, my God. Two families. Oh
13 my, God. Oh, my God. But we are going to make it.
14 Oh, my God. I am going to find a way to be with my
15 baby. Oh, my God, I can't see him again. Jesus.
16 Oh, Jesus. Oh, Jesus. Oh, Jesus.

17 MS. MCCRAY BRADLEY: Good morning. My
18 name is Furlie McCray Bradley. I am Myron's aunt.
19 Tony, we would like to say to you, we still love
20 you. We are family, and we are going to be family.
21 But we know that justice will be served, but we
22 still love you, Marie, all of us. We love you. I
23 pray for you daily. I pray for my sister daily.
24 But we are going to make it. I want you to know, we
25 are here. We know that you have to go away, but

1 we're going here with Marie and we are going to
2 stick together, and love each other. Thank you.

3 THE COURT: Ms. Barr, what is the
4 relationship with the victim and the defendant?

5 MS. BARR: They are first cousins. Judge,
6 I believe that's all the family members that would
7 like to address the court.

8 THE COURT: Mr. Harvin.

9 MR. HARVIN: May it please the court, I
10 stand here with Mr. Andre Robinson. Also his father
11 and his mother Marie Robinson. I do believe his
12 brother Daniel Robinson is in the courtroom, and the
13 mother of his children is also here as well.
14 Mr. Robinson is a 41-year-old man. He graduated
15 from high school here in the county, and received
16 some training as a truck driver. And he tells me
17 his last place of employment was handling, replacing
18 fiberoptic channels for a company for about 6
19 months. He has two children. One is 13 and one is
20 10.

21 Obviously, Your Honor, having myself just
22 deal with the death of a loved one, I do understand
23 the victim's family and how they feel. Obviously,
24 it was stated that this is two families. But in
25 essence, this is really just one family. His mother

1 who I have spoken to on a couple of occasions, you
2 know, struggles with this situation, because she is
3 the link between Mr. Robinson and Mr. McCray's
4 family as well. So this has been a difficult time.

5 THE COURT: What's the link?

6 MR. HARVIN: I have been told that
7 Ms. Robinson is first cousins with Ms. McCray. And
8 so I guess that would make him his second cousin, if
9 I am not mistaken. The victim and Andre are second
10 cousins. You know, this incident seems to have
11 stemmed from, you know, alcohol, some drug usage.
12 And it just lead to a fight for whatever reason. I
13 don't know whether we will ever be satisfied as to
14 what actually started the fight. But the fight took
15 on a different element at some point where my
16 client immediately strikes Mr. McCray repeatedly,
17 over a cinder block, I believe, is what the State's
18 evidence shows.

19 I first met Mr. Robinson when he had
20 his -- we were going to have his preliminary
21 hearing. And It was -- I was a little confused,
22 because, you know, when I asked Mr. Robinson, I
23 said, well what questions do you want me to ask in
24 the preliminary hearing that I should remember. And
25 the first thing he said was, I don't want a

1 preliminary hearing. And I am looking at him, you
2 know, you are charged with murder. You just don't
3 waive a preliminary hearing on murder. He, you
4 know, against everything I advised him, you know, he
5 stated to me, he didn't want to put the family
6 through more than he already did. And so when we
7 talked about going to trial, you know, that was
8 really at the forefront of the conversation; in
9 that, he had realized that this was his family that
10 he had already hurt, and he didn't want to continue
11 to put them through any further pain.

12 And I think it is self evident by the
13 comments made, that this is a close family for them
14 to still have love and affection for Mr. Robinson
15 after this ordeal, it says a lot about them. And,
16 you know, obviously leniency isn't something that
17 the court is going to be willing to give
18 Mr. Robinson. We would ask for any type of mercy
19 that the court would deem fit. Obviously, that's in
20 the hands of Your Honor. I do believe his father
21 would like to address the court. And I do believe
22 the mother of his children would like to address the
23 court.

24 THE COURT: Yes, sir.

25 MR. ROBINSON: Yes, Your Honor. My name

1 is Charles Robinson. I am Andre's father. Andre
2 has been with me a lot of his life. I was military.
3 And during the time I was in 71, when I came down
4 here to pick him up and he spent a year with me in
5 Virginia. At that time. I was in Department of
6 Corrections. I retired from the military. And as a
7 matter of fact, the week of the before the incident
8 happened, he was supposed to come to Virginia to
9 spend some time with me, because he said he wasn't
10 able to find employment after he was laid off. And
11 the next week I heard about the incident. But Andre
12 has always been a loving child, and he would do
13 anything in the world that anyone would ask him.
14 And I don't know what transpired. Only him and the
15 victim knows that.

16 But I do know that he has a sister that he
17 has never held. He has two daughters that misses
18 him, and would like one day to be back with their
19 father. And I am not in the best of health. I
20 don't know what tomorrow may bring. I moved from
21 Virginia here to support my son. I don't agree with
22 what has happened. That's my son. And I would beg
23 you to follow leniency on behalf of my son and both
24 of the families, which all in one.

25 THE COURT: Thank you, sir.

1 MR. HARVIN: And I think this is the
2 mother of his 13 year child.

3 MS. ROBINSON: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MS. ROBINSON: My name is Shonda Robinson.

6 And I stand here on behalf 13-year-old daughter.

7 She loves her dad. I tried to bring her as much as

8 I could, to see him while he was here. Her daddy

9 explained to her last night, because she asked me

10 she said, she said, mama, are you going to my

11 daddy's trial tomorrow. I tell her, yes. I tell

12 her, I'll go. And I just tried to reassure her and

13 let her know that, you know, that daddy probably

14 will be going away. I told her I don't know how

15 much time. Whenever she gets home from school and I

16 get her from work today, I will tell her.

17 But Tony has been a very good dad to our

18 daughter. He loves her very much. And I know the

19 court has a job to do. And whatever the decision is

20 going to be, I'll just try to do my best to continue

21 to raise our child the best that I know how. And

22 for her to see her dad as much as possible. Thank

23 you.

24 THE COURT: Yes, ma'am. Thank you.

25 Mr. Robinson, what would you like to say?

1 THE DEFENDANT: First of all, I guess, the
2 fact is, no matter what happened, how it started, is
3 how it ended. It ended up with my cousin dead with
4 me standing here. And nothing I can say or do to
5 bring him back. And I can say, I want to apologize
6 to their family. And I got to apologize to my
7 family first and foremost. I apologize to my
8 family, my community, and to this court. With that
9 being said, Your Honor, I just place myself in the
10 mercy of this court. That's all I have got to say.

11 THE COURT: Mr. Harvin, anything else?

12 MR. HARVIN: No, sir, Your Honor. I think
13 everything has been said.

14 THE COURT: Ms. Barr, anything else?

15 MS. BARR: Judge, I believe I was notified
16 that one of the victim's family members, I
17 overlooked, may have wanted to speak to the court.
18 I'm sorry. She's changed her mind, Judge. We don't
19 have anything else.

20 THE COURT: Mr. Robinson, I am sure you
21 are well aware when you unlawfully take the life of
22 another human being, that that's the most serious
23 crime that exists on the books. It's almost as if
24 you put yourself in the position of God to determine
25 whether another person lives or dies. That's a

1 position that you can't put yourself in. And you
2 can't put yourself in that position even for a
3 moment. The moment that you decided to put yourself
4 in that position, it ended up a very tragic moment
5 for Myron McCray and his family. And actually a
6 very tragic moment for yourself, because it resulted
7 in your being right here today along with all the
8 fall out from it, which will last forever. It's
9 quite apparent that you recognize all of that. And
10 it appears that you have done as much as you could
11 do to -- how limited that is and how futile that is,
12 you have at least attempt to accept responsibility
13 for it, as opposed to many people who won't do that.
14 But you accepted responsibility, and now you are
15 here to face the consequences.

16 And as I stated at the outset, murder
17 carries a sentence from 30 years to life
18 imprisonment. And for many people that can be 30,
19 40, 50, 100, 200, and on and on up to life. I note
20 that you are 41 years old, that whatever sentence
21 you get, you will be, it's get close to a life
22 sentence. But you still have what he doesn't have,
23 which is life itself. The sentence of the court is,
24 taking into consideration everything that I have
25 heard, that you be committed to the State Department

1 of Corrections for a period of 30 years. Good luck
2 to you.

3 --End of Requested Transcript of Record--

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

I, Margaret T. Sullivan, Court Reporter, for the Third Judicial Circuit of the State of South Carolina, do hereby Certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced on March, 2013, in General Sessions Court, Williamsburg County, Kingstree, South Carolina.

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

3/10/15
DATE

Margaret T. Sullivan

COURT REPORTER

My Commission expires: 9/7/2021

FORM 5

14 CP45 02 7

STATE OF SOUTH CAROLINA

COUNTY OF Williamsburg

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

v. Andre AntonioRobinsonState of South Carolina scoc # 319391) IN THE COURT OF COMMON PLEAS
) A CERTIFIED TRUE COPY) Sharon W. Staggars
) SHARON W. STAGGERS
) CLERK OF COURT
) WILLIAMSBURG COUNTY

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institution Ridgeville, SC
2. Name and location of Court which imposed sentence Williamsburg County Court of General Sessions Kingslee, SC
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) # 2012-GS-45-0269 / Murder
 - (b)
 - (c)
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 5, 2013 30 years / Murder
 - (b)

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) WAS NOT informed of the right to any appeals by Counsel.
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective assistance of Counsel
- (b) Involuntary Guilty Plea
- (c) Reserve the right to amend once counsel's appointed

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

- (a) Failure to investigate evidence on defenses
- (b) was not informed
- (c) _____

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) PCR was first opportunity to present issues

(b) _____

(c) _____

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? N/A
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

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. Howard Howard, P.O. Box 520 Hemingway, SC 29554

ii. _____

iii. _____

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

i. Bond Hearing

ii. Plea / Sentencing

iii. _____

19. State clearly the relief you seek in filing this application: Conviction and Sentence reversed and remanded for new trial or any other relief the court deems just and proper

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

No

STATE OF SOUTH CAROLINA

County of Dorchester

VERIFICATION

I, Andre Robinson #319391

, 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.

Andre A. Robinson

SWORN to and subscribed before me this 16th
day of December, 2013.

Ludeman Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

FILED
2014 JAN 15 AM 10:24
CLERK OF COURT
1000 STATE ST.
COLUMBIA, SC 29201

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

Andre Robinson #19391

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Andre G. Robinson
Applicant

SWORN or affirmed to and subscribed before me this
16th day of December, 2013.

Quedra Bryant
Notary Public

My Commission Expires: May 26, 2020

FILED
JAN 15 AM 10:24
CLERK OF COURT
JULIA A. BROWN

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Andre Antonio Robinson, #319391,	)	2014-CP-45-027
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed January 15, 2014¹, 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 Williamsburg County Clerk of Court. The Applicant was true bill indicted at the October 2012 term of the Williamsburg County Grand Jury for Murder (2012-GS-45-0269). Doward Harvin, Esquire represented Applicant. On March 5, 2013, Applicant pled guilty as indicted before the Honorable Clifton Newman. Judge Newman sentenced Applicant to a thirty year term of imprisonment. Applicant did not appeal his sentence or conviction.

Attached herewith and incorporated herein are the records of the Williamsburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections and the plea transcript will be sent upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

¹ The application for post-conviction relief was received by Respondent on July 18, 2014.

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. "Failure to investigate evidence on defenses"
2. Involuntary Guilty Plea
 - a. "was not informed"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Applicant’s assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d

742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy

between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248.

VI.

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

[Signature block on following page]

VII.

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

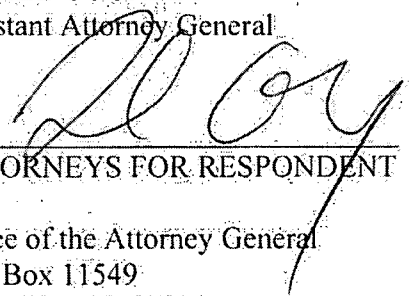
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

September 24 2014.

STATE OF SOUTH CAROLINA)

COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS

2014-CP-45-027

ANDRE ANTONIO ROBINSON, #319391,)

Applicant,)

vs.)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

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

Charles T. Brooks, Esquire
Law Office of Charles T. Brooks, III
309 Broad St.
Sumter, SC 29150

DATED this 24th day of September, 2014.


 Caroline Kaiser, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA

COUNTY OF WILLIAMSBURG

ANDRE ROBINSON, 319391

Applicant

STATE OF SOUTH CAROLINA

Respondent,

IN THE COMMON PLEAS COURT

DOCKET NO.: 2014-CP-45-0027

AMENDED APPLICATION FOR POST
CONVICTION RELIEFSHARON L. WAGNER
CLERK OF COURT
KINGSTREE, S.C.

2014 OCT 15 PM 4: 35

FILED

The Applicant through undersigned Counsel wishes to Amend his Post Conviction Relief

Application filed on January 15, 2014 as follows:

Trial Attorney never met with Applicant or sat down to ask questions as to what happened on the night of the murder. There was never a discussion of any defenses that could be used. Applicant and Trial Attorney never talked about or discussed a plea at any time. All of this was presented to Applicant at the time of trial/plea.

Trial Attorney was ineffective as he never took the time to review the evidence. The evidence is mostly Applicant's statement which would have shown that this was clearly a lesser crime, not murder.

The plea that Applicant entered was unintelligent and involuntary as Applicant did not clearly understand the elements of Murder. The statement given by Applicant, along with the statement by the Prosecutor during the plea both corroborate that there was legal provocation. Applicant was struck first by the victim which started the altercation. As for the elements of murder, the victim was Applicant's first cousin and Applicant's family was very close so there never any malice. Not realizing the nature and crucial elements of Murder, Applicant plead guilty to "Malice" and "Aforethought".

RESPECTFULLY SUBMITTED ON BEHALF OF
APPLICANT ANDRE ROBINSON



Charles T. Brooks, III
Attorney for Applicant
309 Broad Street
Post Office Box 3512
Sumter, South Carolina, 29150
(803) 418-5708

October 7, 2014

State of South Carolina	)	Court of Common Pleas
	)	Third Judicial Circuit
County of Williamsburg	)	Case No. 2013-CP-45-00027
	)	
Andre Antonio Robinson,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

July 14, 2015
Sumter, South Carolina

B E F O R E:

The Honorable Steven H. John, Judge

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

Charles Brooks III, Esquire
Attorney for the Plaintiff

Daniel Gourley, Esquire
Attorney for the Defendant

Krystal J. Smith
Court Reporter

I N D E XWITNESS/DESCRIPTIONPAGE NUMBER

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

1 JULY 14, 2015

2 (WHEREAS this matter was scheduled for a post-conviction
3 relief hearing, the applicant appeared along with his
4 counsel of record. The hearing began at 1:49 p.m.)

5 THE COURT: Yes, sir, Mr. Attorney General?

6 MR. GOURLEY: Yes, Your Honor. This is Andre Robinson.
7 May it please the Court?

8 THE COURT: Yes, sir.

9 MR. GOURLEY: Andre Robinson versus the State of South
10 Carolina, Docket Number 2014-CP-45-027. He's presently
11 confined in the South Carolina Department of Corrections
12 pursuant to orders of commitment of the Williamsburg County
13 Clerk of Court.

14 He was true-bill indicted at the October 2012 term of the
15 Williamsburg County Grand Jury for murder. Mr. Harvin
16 represented him. On March 5th, 2013, he pled guilty as
17 indicted before the Honorable Clifton Newman. Judge Newman
18 sentenced the applicant to a 30-year term of imprisonment.
19 The applicant did not appeal his sentence or conviction.

20 He filed a timely application for PCR on January 15th,
21 2014, alleging that he was being held in custody unlawfully
22 based off of ineffective assistance of counsel for failure to
23 investigate and an involuntary guilty plea. The applicant
24 filed an amended application on October 15th, 2014, alleging
25 additional claims of ineffective assistance of counsel and

ANDRE ROBINSON - DIRECT BY MR. BROOKS

1 involuntary guilty plea. The State filed its return September
2 24th, 2014, and he's represented in this matter by Mr. Brooks.

3 THE COURT: All right. Very good. All right. Mr.
4 Brooks, I'll be glad to hear from you, sir.

5 MR. BROOKS: Thank you, Judge. My client still wants to
6 proceed and we're ready to call him to the stand.

7 THE COURT: All right. Very good. Come around, Mr.
8 Robinson.

9 THE CLERK: Place your left hand on the Bible and raise
10 your right hand. State your name, please.

11 THE APPLICANT: Andre Robinson.

12 THE CLERK: Do you solemnly swear or affirm your
13 testimony to the Court shall be the truth, the whole truth,
14 and nothing but the truth, so help you God?

15 THE APPLICANT: Yes, sir.

16 THE CLERK: Thank you. Have a seat up there, please.
17 Please state your full name and spell your last name for the
18 record.

19 THE APPLICANT: Andre Robinson. R-o-b-i-n-s-o-n.

20 THE COURT: Very good. All right. You may proceed, sir.

21 ANDRE ROBINSON, being first duly
22 sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. BROOKS:

25 Q: Mister Robinson, how are you today?

ANDRE ROBINSON - DIRECT BY MR. BROOKS

1 A: Pretty good, sir.

2 Q: And you had Mr. Harvin as your attorney?

3 A: Yes, sir.

4 Q: And he was court appointed; is that correct?

5 A: Yes, sir.

6 Q: Okay. Now, you pled guilty in front of Judge Newman and

7 you received a sentence of -- is it 30 years?

8 A: Yes, sir.

9 Q: Okay. Now, you do understand that if we convince Judge

10 John here to set aside your guilty plea that you could go back

11 and potentially face more time?

12 A: Yes, sir.

13 Q: Okay. And I explained that to you and you told me you

14 still wanted to go forward; correct?

15 A: Yes, sir.

16 Q: Okay. Now, this incident involved your cousin, the

17 victim, Mr. McCrea. Y'all got into a dispute. You pled

18 guilty. What did -- why did you plead guilty?

19 A: Basically, like I said, it was a family member and, you

20 know, we were close family and I didn't want to take the

21 family through a trial being that it was just six months after

22 the -- you know, the incident. When I was, you know, in court

23 -- I was brought to court, like, six months after the incident

24 and I just didn't want to take my family through, you know,

25 the trial and the hurt again.

ANDRE ROBINSON - DIRECT BY MR. BROOKS

1 Q: Okay. Now, obviously, if Judge John agrees with you, you
2 would end up taking them through a trial again and put them in
3 that same situation; right?

4 A: Yes, sir.

5 Q: You want to do that; right?

6 A: Yes, sir.

7 Q: Okay. Now, why are you -- why are you asking the Court
8 to set aside your guilty plea?

9 A: Well, I pled to a murder. I pled to murder, but, you
10 know, it was not without a clear and well-informed
11 understanding of what I was pleading to, you know, and I
12 didn't know the exact definition of malice. I didn't know
13 that manslaughter would be the taking of someone's life with
14 legal, you know, provocation. You know, things like that I
15 was not informed of by my -- by my attorney then. You know, I
16 didn't know that I could've maybe could've gone to trial and
17 might have got charged, you know, guilty under a lesser-
18 included offense.

19 Q: Which would have been voluntary manslaughter?

20 A: It would have been voluntary manslaughter.

21 Q: You understand that you could still have gotten 30 years
22 for that too?

23 A: Yes, sir.

24 Q: But you said you found out that there's a difference.
25 What's the difference?

ANDRE ROBINSON - DIRECT BY MR. BROOKS

1 A: The difference is murder is day for day.

2 Q: Okay.

3 A: You know, it's a 30-year sentence, 30 days -- 30 years
4 day for day, and I think on manslaughter I would be able to
5 get good time credit, but no work credit.

6 Q: Okay. And did you go over these things with Mr. Harvin?

7 A: No, sir.

8 Q: Okay. All right. Do you think he should have told you
9 all that?

10 A: Yes, sir.

11 Q: If you had known all that, do you think that would have
12 had an impact on whether or not you pled guilty in front of
13 Judge Newman?

14 A: Yes, sir. Especially if I had known, you know, the
15 distinction -- you know, the difference between the -- the
16 murder and the manslaughter, you know. I think I -- I
17 wouldn't have pled guilty.

18 Q: Okay. Now, this -- this incident involved you and your
19 cousin, who was the victim; is that right?

20 A: Yes, sir.

21 Q: You said both of y'all had been drinking and smoking and
22 got into an argument?

23 A: Yes, sir.

24 Q: Okay. And then that argument led to a fight and he
25 ultimately got killed; is that correct?

ANDRE ROBINSON - DIRECT BY MR. BROOKS

1 A: Yes, sir.

2 Q: Okay. All right. And did you explain all this to Mr.
3 Harvin?

4 A: Very little. You know, Mr. Harvin came to see me once in
5 the county and he brought my discovery, and his instructions
6 for me was to write down what happened that night, everything
7 in detail, and he would come back the following weekend and we
8 would go over it, but I never saw Mr. Harvin again until I was
9 in court.

10 Q: Okay. All right. So you only met with him one time and
11 went over your discovery; is that right?

12 A: Yes, sir.

13 Q: You felt that that was sufficient time to talk about your
14 case? Do you feel that was sufficient time to talk about your
15 case?

16 A: No, sir. I was looking, you know, to discuss it more
17 and, you know, he said when he came back like he said he was,
18 but he never returned and when I saw him again, you know, he
19 was -- we was standing in front of the Court --

20 Q: Okay.

21 A: -- on the day of my plea.

22 Q: All right. Is there anything else you want to tell Judge
23 John about your case that we haven't told the judge thus far?
24 Anything I'm missing? Today is the day.

25 A: Well, no, no. I mean you basically covered it all, you

ANDRE ROBINSON - DIRECT BY MR. BROOKS

1 know. It was a stressful situation, you know, and that day
2 when I was -- you know, had to make that decision, I was
3 never, you know, offered -- you know, came to me with a plea
4 or anything. It was just like, you know, here you go in
5 court, you know. What are you going to do? Are you going to
6 plea or are we going to go to trial?

7 You know, and with me -- like I said, within six months,
8 you know, after -- just only six months after the incident
9 and, you know, I just -- I made the decision based on -- to
10 care about my family and it was really an uninformed decision
11 because I don't think I should've been allowed to make that,
12 you know, decision under those -- under that type pressure.

13 Q: How old are you?

14 A: Me, I'm 42 now.

15 Q: And this was done back in 2013?

16 A: Yes, sir.

17 Q: So you were 40?

18 A: Forty.

19 Q: Okay. How far did you go in school?

20 A: I graduated from high school.

21 Q: You got any college? Technical?

22 A: I got CDLs. I was a truck driver.

23 Q: Okay. And you were scared that day; right?

24 A: Yeah. Nervous.

25 Q: Okay. Are you nervous here today?

ANDRE ROBINSON - DIRECT BY MR. BROOKS

1 A: Yes, sir. A little bit.

2 Q: All right. Now, is there anything else you want to tell
3 Judge John about why you think your guilty plea should be set
4 aside that we haven't told him?

5 A: Just I just think that I had the right to have -- you
6 know, to -- to have been able to make, you know, a well-
7 informed decision.

8 Q: Okay.

9 A: And not a decision based on, you know, the care -- my
10 care and my concern about, you know, my family and my family's
11 feelings. You know, I should have still been advised by my
12 attorney to make a more responsible, you know, decision, a
13 well-informed decision.

14 Q: Okay. Anything else?

15 A: No, sir.

16 Q: Okay.

17 MR. BROOKS: No more questions, Judge.

18 THE COURT: Cross-examination?

19 MR. GOURLEY: Yes, Your Honor. May it please the Court.

20 CROSS-EXAMINATION

21 BY MR. GOURLEY:

22 Q: Mr. Robinson, you said you met with Mr. Harvin one time
23 prior to your plea?

24 A: Yes, sir.

25 Q: And at that meeting he gave you the discovery?

ANDRE ROBINSON - CROSS BY MR. GOURLEY

1 A: Yes, sir.

2 Q: Okay. During that meeting, were y'all able to talk about
3 any kind of defenses or anything like that for these cases?

4 A: When he came there, he mentioned that he might -- might
5 be able to use self-defense, but, like I said, he told me to
6 just write down everything that happened that night and then
7 we would come back and discuss it and go over it, but, you
8 know, that never happened.

9 Q: Okay. Did you write down everything that happened that
10 night?

11 A: Yes, sir.

12 Q: Did you mail it or anything or present it to Mr. Harvin
13 at all?

14 A: No, sir. I was supposed to hold it until he came back
15 and discussed it and went over it with me.

16 Q: Okay. And you mentioned earlier on direct that you felt
17 your guilty plea was not intelligently entered because you
18 didn't understand the definition of malice?

19 A: Yes, sir.

20 Q: Do you recall Judge Newman specifically going over the
21 definition of malice and you telling him you understood that
22 during your plea?

23 A: I may have, but I don't really recall.

24 Q: Okay.

25 MR. GOURLEY: Your Honor, may I approach?

ANDRE ROBINSON - CROSS BY MR. GOURLEY

1 THE COURT: Yes, sir.

2 MR. GOURLEY: Your Honor, I'm referencing page 5,
3 starting at line 18 through 23.

4 BY MR. GOURLEY:

5 Q: Mr. Harvin [sic], do you have a copy of the transcript?

6 A: Yes, sir.

7 Q: Okay. I'll let you flip to yours then. We're going to
8 go to page 5, starting on lines 18 through 23.

9 THE COURT: Why don't you start with 15?

10 MR. GOURLEY: 15.

11 BY MR. GOURLEY:

12 Q: So Judge Newman did advise you of malice being the
13 intentional killing; correct?

14 A: (no verbal answer)

15 Q: You've got to answer yes or no for me, please.

16 A: Yes, sir.

17 Q: Okay. And you told Judge Newman that you wanted to waive
18 the defense because he discussed with you possible defenses,
19 maybe like an accident defense and so on and so forth, and you
20 told him that you wanted to waive those defenses and you
21 wanted to plead guilty to murder; right?

22 A: He said about the accident defense?

23 Q: Yes, sir.

24 A: Which line would that be on?

25 MR. GOURLEY: I beg the Court's indulgence, Your Honor.

ANDRE ROBINSON - CROSS BY MR. GOURLEY

1 BY MR. GOURLEY:

2 Q: It continues on. Let's continue on to page 6. Starting
3 with page 5, line 24, Judge Newman is advising you that if
4 there was an unintentional killing, it could be involuntary
5 manslaughter or an accident or something of that nature, which
6 would amount to a legal defense, and you told him, yes, sir.
7 And he asked you if you wanted to present any of those
8 defenses and you told him, no, sir; right?

9 A: Yes, I did.

10 Q: Okay. So at that time you understood that you could
11 possibly present some defenses to these charges if you felt
12 this was an unintentional killing, and you elected not to do
13 so; right?

14 A: Yes. I -- yes.

15 Q: Okay. Mr. Harvin, did you give your attorney any kind of
16 leads or witnesses to look into on your behalf? I'm sorry.
17 Mr. Robinson. I'm sorry. Did you give your attorney, Mr.
18 Harvin, any kinds of leads or witnesses to look into?

19 A: I never had the opportunity to.

20 Q: Okay. Do you recall waiving your constitutional rights
21 during the plea, your right to a jury trial, to present
22 defenses on your behalf, and so on and so forth?

23 A: Yes, sir.

24 Q: Okay. And you told the plea judge that you were
25 satisfied with Mr. Harvin's services; right?

ANDRE ROBINSON - CROSS BY MR. GOURLEY

1 A: Yes, sir.

2 Q: Okay. But today you're saying that you're not satisfied
3 with his services?

4 A: Yes, sir.

5 Q: What's changed between now and then?

6 A: The limited knowledge I had then, you know, seeing that
7 he did a just job, but after I got in the position where I
8 could do some research and look up some things in the law
9 library, you know, it just to me seemed like, you know, he
10 didn't do a very well job of explaining a whole lot of things
11 to me.

12 Q: Okay. Do you recall telling Judge Newman that you wanted
13 to plead guilty?

14 A: Yes, sir.

15 Q: And that you were indeed guilty; right?

16 A: Yes, sir.

17 Q: Okay. And do you recall the solicitor citing the facts
18 of what they would present if you went to trial? Do you
19 recall that?

20 A: Yes, sir.

21 Q: And you agreed with those facts as stated; right?

22 A: Yes, sir.

23 Q: Okay.

24 MR. GOURLEY: I beg the Court's indulgence, Your Honor.

25 THE COURT: Yes, sir.

ANDRE ROBINSON - CROSS BY MR. GOURLEY

1 BY MR. GOURLEY:

2 Q: Mr. Robinson, you do have prior convictions; correct?

3 A: Yes, sir.

4 Q: So this wasn't your first time in court for something
5 like this? Maybe not as serious a charge as this --

6 A: Yeah. It was not my first time, yeah.

7 Q: Okay.

8 A: It wasn't my first time in court before.

9 Q: Okay. Specifically, you have a burglary second charge;
10 is that right?

11 A: Yes, sir.

12 Q: Was that a plea or trial?

13 A: Plea.

14 Q: Okay. So you've been through the plea process before;
15 correct?

16 A: Yes, sir.

17 Q: Okay.

18 MR. GOURLEY: Your Honor, I don't have any additional
19 questions. Thank you, Mr. Robinson.

20 THE COURT: Any redirect?

21 MR. BROOKS: No, sir.

22 THE COURT: Mr. Robinson, you also indicated that you
23 said you later learned that murder was a day-for-day offense;
24 is that right?

25 THE APPLICANT: Yes, sir.

ANDRE ROBINSON - DIRECT BY THE COURT

1 THE COURT: All right. Do you remember Judge Newman
2 asking you a similar question at your plea? Do you remember
3 that?

4 THE APPLICANT: Yes, sir. He asked me did I know that
5 murder carried a 30 --

6 THE COURT: A 30-year sentence.

7 THE APPLICANT: Yeah.

8 THE COURT: And he also asked you a question do you
9 understand that the offense of murder is a non-parole-able
10 offense?

11 THE APPLICANT: Yeah.

12 THE COURT: And he asked do you understand that and you
13 said yes?

14 THE APPLICANT: Yes, sir.

15 THE COURT: All right. Okay. All right. Thank you,
16 sir. I appreciate it. Any -- any questions?

17 MR. BROOKS: No, sir.

18 THE COURT: Any questions?

19 MR. GOURLEY: No, Your Honor.

20 THE COURT: All right. You may step down, sir. Thank
21 you.

22 MR. BROOKS: We would call Mr. Harvin to the stand.

23 THE COURT: All right, sir. Please come around to be
24 sworn.

25 THE CLERK: Place your left hand on the Bible and raise

DOWARD HARVIN - DIRECT BY MR. BROOKS

1 your right hand. State your name, please.

2 THE WITNESS: Doward Harvin.

3 THE CLERK: Do you solemnly swear or affirm your
4 testimony to the Court shall be the truth, the whole truth,
5 and nothing but the truth, so help you God?

6 THE WITNESS: Yes, sir.

7 THE CLERK: Thank you. Have a seat up here, please.
8 Please state your full name and spell your last name for the
9 record.

10 THE WITNESS: My name is Doward Harvin. I'll spell my
11 first name because it's kind of difficult. D-o-w-a-r-d. Last
12 name, H-a-r-v-i-n.

13 MR. BROOKS: Are you ready, Judge?

14 THE COURT: Yes, sir. Go ahead.

15 DOWARD HARVIN, being first duly
16 sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. BROOKS:

19 Q: Mr. Harvin?

20 A: Yes, sir.

21 Q: How are you doing today?

22 A: I'm doing pretty well.

23 Q: You were appointed to represent this gentleman?

24 A: I was.

25 Q: Okay. Do you remember the gist of the case against him?

DOWARD HARVIN - DIRECT BY MR. BROOKS

1 A: Yeah. I remember Mr. Robinson's case very well. It was
2 actually a case that, unlike what Mr. Robinson just stated,
3 was one of those cases that a substantial amount of time went
4 into from my office. And -- yeah. So I remember it very
5 well.

6 Q: What was the gist of the case -- of the State's case
7 against him?

8 A: The State's case against him was basically that he
9 murdered his -- his second cousin over a dispute about a beer.
10 That he either smashed his cousin's head over a cinderblock or
11 smashed a cinderblock over his cousin's head multiple times,
12 over ten times. I think it was probably eleven is what our
13 forensic -- what the forensic -- the State's forensic
14 information showed, to the point that his cousin's face was
15 deformed. That the hair that his cousin had on his head had
16 been disconnected from his head and then the body was dragged
17 several feet from the location where the incident happened to
18 behind the nightclub of Hugo's Enterprise. At that time, Mr.
19 Robinson then leaves the scene, gets rid of his clothing,
20 mainly his boots, goes and washes other pieces of his items
21 while he is staying with his girlfriend.

22 The police did an investigation starting the next morning
23 after the owner of the nightclub came out and found his cousin
24 -- cousin's body. At that time, the police's investigation
25 led them to Mr. Robinson. In Mr. Robinson's first statement,

DOWARD HARVIN - DIRECT BY MR. BROOKS

1 he denied any involvement in the crime. After being
2 confronted with the police -- police's information and also
3 after speaking to his mother, Mr. Robinson then gives a
4 statement which -- which stated that he got into an
5 altercation with the victim and that the victim hit his head
6 one time on the cinderblock and that was pretty much it.

7 Q: Okay. So he had given somewhat of a confession?

8 A: Yes. But the confession didn't match up with the
9 physical evidence.

10 Q: Okay. Do you recall how long you had been on the case
11 before the plea?

12 A: It probably was six months, which is I will say probably
13 one of the faster murder pleas we have in our county.
14 Typically, it takes about a year -- year and a half.

15 But the reason that this kind of moved fast is because at
16 initial -- at the preliminary hearing when I met with Mr.
17 Robinson, he expressed that he wanted to waive his preliminary
18 hearing. Although I advised him that that was a bad idea, he
19 expressed that he wanted to do so. He wanted to plead guilty.
20 He had already expressed that to law enforcement actually.

21 So when I went to law enforcement to discuss the case,
22 they even expressed that Mr. Robinson was ready to enter a
23 guilty plea. And so that kind of put his case on the -- on a
24 fast track I guess, if there is such a thing, because he had
25 expressed to so many people he was ready to plead guilty.

DOWARD HARVIN - DIRECT BY MR. BROOKS

1 Q: And did he express that to you?

2 A: He did. He did. He also -- he did express as well at
3 that time the idea of the manslaughter conviction or
4 manslaughter plea.

5 Q: Did you talk to Kim Barr about that? The solicitor?

6 A: In detail. At one point, I thought she may have
7 considered it, but then once she reviewed the forensic
8 information that showed how gruesome the murder was and put
9 that into context with the fact that the body was hidden along
10 with the item used to kill Mr. Myron McCrae that that was not
11 considered. Although I begged and I pleaded, I didn't -- I
12 couldn't get her to -- to waver on that issue.

13 Q: Okay. Did you talk about the prospect of going to trial?

14 A: Absolutely, because I'm a trial attorney. I have no
15 qualms about trying a case whatsoever.

16 So the idea of going to trial, although a bad one, I
17 discussed with him because -- and the reason I discussed it
18 with him that it being a bad one was the photos were very
19 gruesome and, in my experience as a former prosecutor and my
20 experience as a criminal defense attorney, the State would be
21 able to bring in at least one of those gruesome photos. All
22 of them were gruesome. So one of them would elicit some type
23 of emotion either from the jury or the judge.

24 And so with the fact that he had given a statement that
25 did not line up with the physical evidence and the fact that

DOWARD HARVIN - DIRECT BY MR. BROOKS

1 he had a burglary conviction which could have been used to
2 attack his credibility, I thought -- I thought the State would
3 be able to put him there, put him there committing an act, and
4 then with the physical evidence they would be able to show
5 what that act was and how violent it was, which would cause a
6 jury to convict him on that and then cause a -- cause a judge
7 to give him a substantially greater sentence, even a life
8 sentence possibly.

9 Q: Okay. You explained all that to him?

10 A: I did.

11 MR. BROOKS: I beg the Court's indulgence, Your Honor.

12 THE COURT: Yes, sir.

13 MR. BROOKS: No other questions, Judge.

14 THE COURT: All right. Cross-examination?

15 MR. GOURLEY: Just very briefly, Your Honor. May it
16 please the Court.

17 CROSS-EXAMINATION

18 BY MR. GOURLEY:

19 Q: Mr. Harvin, how many times did you meet with Mr. Robinson
20 prior to the trial -- or the plea?

21 A: Prior to the plea, we met at the preliminary hearing, the
22 bond hearing, and then once at the prison, and then on the day
23 of the plea. So in Williamsburg County he wasn't just brought
24 over and taken into the courtroom. So we talked before he
25 even entered a plea.

DOWARD HARVIN - CROSS BY MR. GOURLEY

1 And one of the reasons why we did that -- and I'm sorry
2 if I'm oversharing, but I just want to make sure --

3 Q: No problem.

4 A: -- I explain myself. One of the reasons why we had a
5 conference before he pled was because his mother, through
6 several conversations with her, felt conflicted because the
7 person killed was her nephew. And so I had to get in contact
8 with his father to get him the clothing for court and so
9 forth.

10 And so his father wanted to talk to him before -- before
11 he went in and also I wanted to talk to him again before we
12 went in to explain, you know, kind of what the atmosphere
13 would be like in the court knowing that the victim was going
14 to say something -- the victim's family was going to say
15 something. So we met, to my recollection, at least four
16 times.

17 Q: Okay. And during those meetings, did y'all have the
18 opportunity to discuss the difference between a manslaughter
19 case and a murder case?

20 A: Yeah, and I mean in fairly good detail. What I -- what I
21 think Mr. Robinson wanted my statements to change as far as
22 what the law was and the law is pretty -- pretty clear I
23 think. While I'm sympathetic that, you know, he's serving a
24 30-year sentence, I think that his sentence could have been a
25 life sentence pretty easily given the gruesome nature of the

DOWARD HARVIN - CROSS BY MR. GOURLEY

1 offense, especially since, you know, it was a family member.
2 You know, it could have -- that whole case could have went
3 left real quick or -- sorry. Instead of saying left, it
4 could've went bad real quick.

5 Q: Did you explain to Mr. Robinson that murder carried day
6 for day or was a non-parole-able offense?

7 A: Yes.

8 MR. GOURLEY: Your Honor, I don't have any other
9 questions. Thank you, Mr. Harvin.

10 THE COURT: All right. Let me ask one -- one question.
11 In the guilty plea transcript in talking to the judge, the
12 solicitor also indicated regarding the facts that when they're
13 talking about the statements and then they did the forensics
14 and received the photos and autopsy report and the statement
15 saying it's clear the victim did not die from a single blow,
16 and the State also said from the medical examiner, the
17 pathologist report indicated that there were twelve gashes to
18 the head, that he had also been stabbed with a blunt sharp
19 object, and there was evidence that he had been choked as
20 well. So besides the beating, there were other wounds to the
21 body; correct?

22 THE WITNESS: Yes, Your Honor.

23 THE COURT: All right. And apparently they interviewed
24 the applicant here, the defendant there, again and he at least
25 admitted when they talked to him the last time that he struck

DOWARD HARVIN - DIRECT BY THE COURT

1 the victim at least a few times?

2 THE WITNESS: Yes.

3 THE COURT: About the head and body?

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: All right, sir. Thank you. I appreciate it.

6 MR. BROOKS: No other questions, Your Honor.

7 THE COURT: All right, sir. So no further presentation
8 by the applicant, Mr. Brooks?

9 MR. BROOKS: No, sir.

10 THE COURT: All right. From the State?

11 MR. GOURLEY: Nothing from the State, Your Honor.

12 THE COURT: Nothing from the State? All right. Any --
13 any argument, Mr. Brooks?

14 MR. BROOKS: Judge, we would just rest on my client's
15 testimony and ask the Court to grant him post-conviction
16 relief and for a new trial.

17 THE COURT: All right, sir. From the State?

18 MR. GOURLEY: Your Honor, I believe Mr. Harvin's
19 testimony accurately or adequately refutes Mr. Robinson's
20 allegations of ineffective assistance of counsel. He said he
21 met with him at least four times prior to trial. Furthermore,
22 the plea colloquy I believe was sufficient in this case to
23 adequately refute any misunderstandings on Mr. Robinson's
24 behalf.

25 THE COURT: All right.

1 MR. GOURLEY: Thank you, Your Honor.

2 THE COURT: All right. Thank you. In -- in this
3 particular matter, in evaluating a post-conviction relief
4 application regarding a guilty plea, there is obviously the
5 two-pronged test to evaluate the claims of ineffective
6 assistance of counsel. And the defendant has to show -- the
7 applicant has to show that his attorney's performance was
8 deficient such that it fell below an objective standard of
9 reasonableness.

10 And secondly, the applicant or defendant must establish a
11 reasonable probability that, but for the unprofessional
12 errors, the result of the proceeding would have been different
13 and that there was prejudice to him. Now, in this -- and it's
14 also just so that the courts have defined under the guilty
15 plea that, but for counsel's errors, there's a reasonable
16 probability that he would not have pled guilty and instead
17 would've insisted on going to trial.

18 Now, here the applicant has set forth certain reasons
19 that he didn't understand the difference between murder and
20 manslaughter, that he didn't understand that it was a day-for-
21 day crime, that he was not fully informed by his counsel.
22 Even if that was correct -- and I'm not saying that and I'll
23 state that more clearly in just a moment.

24 It is clear at the guilty plea that the trial judge here,
25 Judge Newman, specifically questioned the applicant about all

1 of these issues. He went into the fact that murder is a non-
2 parole-able offense. He went into the issue about intentional
3 and unintentional and that there could have been an accident
4 or anything as he said in the plea or anything of that nature
5 which would amount to a legal defense.

6 And the Court specifically asked the defendant/the
7 applicant -- and you do not wish to present any defense to the
8 charge, and the defendant/the applicant says no, sir. And he
9 says -- and you are pleading guilty to intentionally killing
10 Myron McRae after he had discussed the differences with the
11 applicant, and the defendant says yes, sir. And then right
12 after that is when he talks about murder being a non-parole-
13 able offense and the defendant/the applicant says he
14 understands that. So even if the attorney hadn't talked to
15 him about it, the judge clearly went over all that with the
16 applicant.

17 Now, I do find that -- based upon the testimony, I do
18 find that his attorney did what was required of him, fully
19 informed the applicant of all of the ramifications of the
20 plea, the potentialities of the plea, what was involved,
21 what's the difference between murder and voluntary
22 manslaughter.

23 So, therefore, I respectfully deny the request for the
24 PCR application. I do not find that in this particular matter
25 that the attorney's performance fell below the standard as

1 required. And further, if there were any deficiencies, which
2 I do not find, but if there were any deficiencies in what the
3 attorney did, those were fully covered by the trial judge and
4 it's clear that Mr. Robinson had a clear understanding of what
5 he was doing, what the ramifications of the plea were, and
6 that he made a knowingly -- knowing and intelligent plea to
7 the intentional crime of murder and, therefore, the
8 application is denied. Thank you very much.

9 MR. GOURLEY: Thank you, Judge.

10 THE COURT: Mister Attorney General, I would ask that you
11 do a proposed order to that effect and forward it to me within
12 ten days, please, sir.

13 MR. GOURLEY: Yes, sir.

14 THE COURT: Thank you.

15 (Whereupon, the proceedings ended at 2:23 p.m.)

16

17 --- END REQUESTED TRANSCRIPT ---

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1 State of South Carolina)
2) Certificate
3 County of Florence)
4

5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 28 constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 Common Pleas for Williamsburg County, South Carolina, held in
13 Sumter, South Carolina, on the 14th day of July, 2015.

14 I do further certify that I am neither of kin, counsel,
15 nor interest to any party hereto.
16

17 s/Krystal J. Smith

18 Court Reporter

19
20 Florence, South Carolina

21 January 27, 2016
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

Andre Antonio Robinson, #319391,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2014-CP-45-027

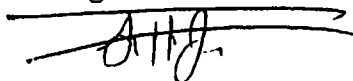
ORDER OF DISMISSAL

FILED
CLERK OF COURT
THIRD JUDICIAL CIRCUIT
SEP 16 AM 10:35

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on January 15, 2014 and amended on October 15, 2014. Respondent made its return on September 24, 2014. An evidentiary hearing into the matter was convened on July 14, 2015, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Charles Brooks, III, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. The Applicant was true bill indicted at the October 2012 term of the Williamsburg County Grand Jury for Murder (2012-GS-45-0269). Doward Harvin, Esquire, represented Applicant. On March 5, 2013, Applicant pled guilty as indicted before the Honorable Clifton Newman. Judge Newman sentenced Applicant to a thirty year term of imprisonment. Applicant did not appeal his sentence or conviction.



ALLEGATIONS

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

1. Ineffective assistance of counsel
 - a. "Failure to investigate evidence on defenses"
2. Involuntary guilty plea
 - a. "was not informed"

Applicant amended his application on October 15, 2014, alleging that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. Failure to investigate and ask about defenses.
2. Involuntary guilty plea
 - a. Failure to advise of elements of murder.

SUMMARY OF TESTIMONY PRESENTED

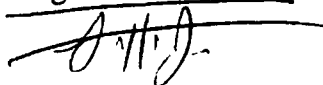
At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Doward Harvin, Esquire. (hereinafter "Plea Counsel"). This Court also had before it a copy of the plea transcript, the Williamsburg County Clerk of Court records, Applicant's South Carolina Department of Correction records, the PCR application, and return.

Applicant testified that he pled guilty to murder and received a thirty year sentence. Applicant stated that the victim was his cousin. Applicant said victim was basically a close family member. Applicant stated that he pled guilty because he did not want to put his family through the emotional turmoil of a trial. Applicant stated that he pled guilty to murder, but he was not informed of the elements of murder. Applicant stated that he did not understand the exact definition of malice. Applicant stated that he did not know murder was a day for day offense and he would be required to serve a full thirty years. Applicant stated that he would not have pled guilty if he had known all of this information prior to his plea.

However, Applicant recalled the plea court advising him that the unintentional killing of his cousin would amount to a defense to murder. Applicant recalled telling the plea court that he wanted to waive any defenses and plead guilty. Applicant recalled telling the plea court that he did not have any defenses to the charges. Applicant recalled the plea court advising him that murder was the intentional killing of another person with malice. Applicant recalled telling the plea court that he understood the elements of murder. Applicant recalled waiving his constitutional rights during his plea. Applicant recalled telling the plea court that no one was promising or threatening him to get him to plead guilty. Applicant recalled telling the plea court that he wanted to plead guilty. Applicant recalled telling the plea judge that he was guilty. Applicant recalled agreeing with the factual context relayed by the solicitor during his plea.

Applicant stated Plea Counsel met Applicant one time at county prison. Applicant stated Plea Counsel told Applicant to write down his version of events for their review and Plea Counsel never returned to meet with Applicant. Applicant stated that he did not feel that their one meeting was a sufficient amount of time to investigate and review his case. Applicant stated he was forty five years old at the time he pled guilty. Applicant recalled reviewing discovery with Plea Counsel. Applicant stated that this was not his first time in General Sessions court and he had a previous conviction for burglary-second degree.

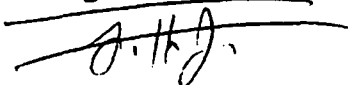
Following both direct and cross examination, this Court asked Applicant additional questions. In response to this Court's questions, Applicant stated that the plea court did advise him that murder carried a day for day sentence. Applicant further stated that the plea court advised him of the elements of murder. Applicant stated that the plea court advised him of the definition of malice.

A handwritten signature in black ink, appearing to be "J. H. J.", written over a horizontal line.

Following Applicant's testimony, Plea Counsel was called to testify. Plea Counsel stated Applicant's case where he faced a substantial amount of time. Plea Counsel stated that the State accused Applicant of murdering his second cousin over a single beer. Plea Counsel stated the victim had multiple lacerations to his head. Plea Counsel stated that Applicant hit victim over the head with a cinder block approximately eleven times. Plea Counsel stated Applicant also stabbed victim. Plea Counsel stated Applicant then drug victim several feet behind the club where victim was killed. Plea Counsel stated Applicant left the scene, disposed of and washed his clothing. Plea Counsel stated that Applicant initially denied his involvement in the crime, but later confessed when confronted with the evidence against him. Plea Counsel stated Applicant confessed to only hitting victim in the head one time. Plea Counsel stated the evidence contradicted Applicant's version of events.

Plea Counsel stated that he met with Applicant several times. Plea Counsel stated that he represented Applicant for approximately six months prior to his plea. Plea Counsel stated that this was one of the faster murder cases he has ever had. Plea Counsel stated that the case moved quickly at Applicant's request. Specifically, Plea Counsel stated that Applicant wanted to waive his preliminary hearing and plead guilty. Plea Counsel stated the case was fast tracked at the bequest of Applicant.

Plea Counsel stated that he attempted to get a plea offer for manslaughter. However, Plea Counsel stated the Assistant Solicitor refused to offer anything less than murder due to the gruesome nature of the crime. Plea Counsel referenced the multiple lacerations to the head, the fact that the body was hidden, and the weapon was hidden. Plea Counsel stated that he begged and pleaded for an offer less than murder.

A handwritten signature, possibly reading "J. H. J.", is written over a horizontal line.

Plea Counsel stated that he and Applicant discussed the potential for a trial. Plea Counsel stated that a trial was a bad idea, due to the overwhelming evidence against Applicant. Plea Counsel stated that the photographs of the murder scene were gruesome. Plea Counsel opined that the Assistant Solicitor would have been able to introduce at least one of the several photographs of the scene. Plea Counsel noted the physical evidence was against Applicant. Plea Counsel stated that he explained the elements of murder and the fact that murder was a non-parolable offense.

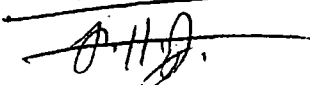
Plea Counsel stated Applicant's family was conflicted. Plea Counsel recalled that Applicant's mother had a tough time dealing with this case. Plea Counsel recalled that Applicant's father spoke on his behalf. Plea Counsel stated that he advised Applicant about the atmosphere of the plea and what questions the plea court would ask.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process



that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

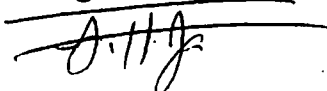
The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

ALLEGATIONS

1. Ineffective assistance of counsel for failing to investigate and advise of possible defenses.

Applicant alleges that he received ineffective assistance of counsel due to plea counsel's failure to investigate and advise of potential defenses. This Court finds Applicant's allegation is



meritless. First, this Court finds credible Plea Counsel's testimony that he met with Applicant at least four separate times. Plea Counsel testified that Applicant wanted to fast track this case and pled guilty. As a result of Applicant's wishes, Plea Counsel and Applicant waived his preliminary hearing and pled guilty some six months after Applicant was originally charged. Plea Counsel further stated that he advised Applicant of the difference between murder and manslaughter. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms.

Furthermore, this Court finds Applicant can show no prejudice as he presented no credible evidence to support his allegation that Plea Counsel failed to investigate and advise of potential defenses. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). Based off of the foregoing, this Court finds Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel's performance. This Court finds Applicant's allegation should be denied and dismissed with prejudice.

2. Involuntary guilty plea for failing to advise of the elements of murder and definition of malice.

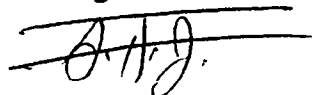
This Court notes Applicant argued his plea was involuntary due to Plea Counsel's failure to advise him of the elements of murder and the definition of malice. This Court finds Applicant's allegation is meritless.

This Court notes that in order to find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his



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

Applicant claims he did not plead guilty knowingly and voluntarily. This Court finds this contention without merit. This Court finds the record reflects Applicant was advised of the waiver of his constitutional rights by the plea court. (Pl. p. 3-4). This Court finds very credible Counsel's testimony regarding his preparation and advice concerning the case and the amount of time Applicant was facing. The record reflects Applicant admitted his guilt to the plea court. (Pl. p. 4 lines 17-18). This Court finds Applicant's intent to plead guilty was made clear to the plea judge. Applicant was fully informed of the nature and consequences of his plea by his attorney and was advised further by the plea court. (Pl. p. 3 lines 5-8). The plea court advised Applicant of the maximum possible punishment and the specifics of the murder charge. (Pl. p. 3 lines 5-8; p. 5 lines 8-23; p. 5 line 24—p. 6 line 8). The plea court also had an extensive colloquy with Applicant on whether he was satisfied with Counsel where he concluded he was fully satisfied.

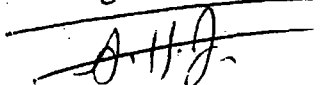


This Court also finds the plea court expressly took into consideration the competency evaluation submitted in formulating the sentence. (Pl. p. 4 line 19—p. 5 line 7). This Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made. (Pl. p. 11 line 6-7). This allegation is denied and dismissed with prejudice.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

[Signature block on following page]

A handwritten signature, possibly reading "A. H. J.", is written over a horizontal line.

CONCLUSION

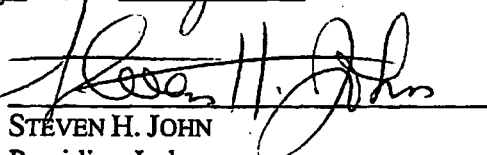
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

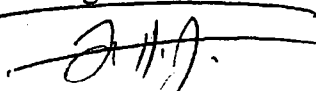
IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 4th day of August, 2015.


STEVEN H. JOHN
Presiding Judge
Third Judicial Circuit

at Chambers, South Carolina



WITNESSES

Justin Whack
Williamsburg County Sheriff

ARREST WARRANT NUMBER

2012A4510100224

ACTION OF GRAND JURY

TRUE BILL

Date 10/25/12

Mark D. Jones

Foreperson of Grand Jury

Date: 10/25/12

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-45-0269

The State of South Carolina

County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

OCTOBER

TERM

2012

THE STATE

vs.

ANDRE ANTONIO ROBINSON

Indictment for

Murder

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

FILED

12 OCT 25 PM 12:55

CAROLYN F. WILLIAMS
CLERK OF COURT
KINGSTREE, S.C.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)

INDICTMENT FOR

Murder

At a Court of General Sessions, convened on October 25, 2012 the Grand Jurors of WILLIAMSBURG County present upon their oath:

COUNT ONE - MURDER

That Andre Antonio Robinson did in Williamsburg County, on or about September 8, 2012, willfully, feloniously, and intentionally kill the victim, Myron McCray, with malice aforethought, either express or implied, by means of repeatedly striking the victim in the head with a cynder block and cut him with a knife or knife like object, and the victim did die as a proximate result thereof between the dates of September 8, 2012 and September 9, 2012 in Williamsburg County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

FILED
 12 OCT 25 PM 12:55
 CAROLYN E. WILLIAMS
 CLERK OF COURT
 KINGSTREE, S.C.

A CERTIFIED TRUE COPY

Sharon W. Stagers
 SHARON W. STAGGERS
 CLERK OF COURT
 WILLIAMSBURG COUNTY



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

Solicitor

Ernest A. Fin