

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

Honorable D. Craig Brown, Circuit Court Judge

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S.C. SUPREME COURT

KENDRIS RICHARD BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000102

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)
STATE,)

TRANSCRIPT OF RECORD
12-GS-21-01250

v.)

KENDRIS R. BROWN,)

DEFENDANT.)

April 5, 2013
Florence, South Carolina

BEFORE :

THE HONORABLE MICHAEL G. NETTLES, JUDGE

APPEARANCES:

E. L. CLEMENTS, III, ESQ.
Solicitor of the Twelfth Circuit

HENRY "SKIP" DUFFY, JR., ESQ.
Attorney for Defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

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(There were no exhibits submitted.)

1 MR. CLEMENTS: If it please the Court,
2 Your Honor, standing before you is Mr. Kendris
3 Richard Brown. He's represented by Skip Duffy. He
4 is indicted, Your Honor, on indictment 2012-01250.
5 It is a multiple count indictment, Your Honor, and
6 with multiple co-defendants. Your Honor, count one
7 is murder; count two is burglary in the first
8 degree. The other three counts are conspiracy,
9 armed robbery, and possession of a weapon during
10 commission of a violent crime, and those three
11 charges are being dropped, Your Honor. Mr. Brown is
12 pleading to count one murder without negotiation or
13 recommendation. He's pleading guilty to count two,
14 burglary first degree, which the State is
15 recommending a concurrent sentence on that count,
16 Your Honor. The other three counts are being
17 dropped pursuant to his charge since both count one
18 and count two carry up to a potential life sentence
19 so that's why we're dropped the remaining. He has a
20 mandatory minimum of 30 years on the murder and a
21 mandatory minimum of 15 years on the burglary first
22 degree. He is a juvenile, Your Honor. He has been
23 waived up through family court.

24 THE COURT: Under the new statutory scheme
25 burglary first carries 15 to —

1 MR. CLEMENTS: Life.

2 THE COURT: That's what I thought.

3 MR. CLEMENTS: And murder carries 30 to
4 life. And Your Honor, I guess for the record Skip's
5 proper name is Henry Duffy, Junior.

6 THE COURT: Mr. Duffy, do you represent
7 Mr. Brown?

8 MR. DUFFY: I do, Judge.

9 THE COURT: Have you explained to him the
10 offense of burglary first degree, the fact that he
11 could be incarcerated for a minimum mandatory of 15
12 years, maximum life; murder, a minimum mandatory 30
13 years, maximum life; and the fact that these fall
14 within a very special category of crimes in that
15 they're violent crimes, they adversely affect his
16 custody status, they're most serious offenses
17 subject to two and three strike rule. Have you
18 explained to him the collateral consequences of this
19 plea?

20 MR. DUFFY: I have, Judge.

21 THE COURT: And does he understand that
22 this is a non — both of these are non-parolable
23 offenses and he'll serve these sentences for all
24 practical purposes day for day?

25 MR. DUFFY: I have, Judge.

1 THE COURT: And how does he wish to plead?

2 THE DEFENDANT: I plead guilty.

3 THE COURT: All right. And do you agree
4 with his decision to do so, Mr. Duffy?

5 MR. DUFFY: I do, Your Honor.

6 THE COURT: Do you feel if called upon to
7 do so the State could prove him guilty beyond a
8 reasonable doubt?

9 MR. DUFFY: I do.

10 THE COURT: All right, let's place
11 Mr. Brown under oath if we could.

12 THE CLERK OF COURT: If you will, sir,
13 raise your right hand.

14 WHEREUPON,

15 **KENDRIS BROWN,**
16 having been duly sworn by the Clerk of Court,
17 testified as follows:

18 THE COURT: Mr. Brown, are you under the
19 influence of any drugs or alcohol here today?

20 THE DEFENDANT: No, sir.

21 THE COURT: Are you experiencing any kind
22 of physical or mental problem that could prevent you
23 from understanding what's going on here today?

24 THE DEFENDANT: No, sir.

25 THE COURT: I want you to pay very close

1 attention to Mr. Clements summarize the facts that
2 bring us here today and pay close attention 'cause
3 I'm gonna ask you about them.

4 Mr. Clements.

5 MR. CLEMENTS: Your Honor, first I'd like
6 to put on the record that on August 21st, 2012,
7 Judge A.E. Morehead, the third, presiding family
8 court judge for Florence County issued an order
9 waiving the case with Mr. Kendris Richard Brown to
10 the Court of General Sessions being that he was a
11 juvenile still under the age of 17; and but at that
12 time he waived him up to the court of general
13 sessions.

14 Your Honor, the offense occurred on
15 January 1st, 2012. It occurred at 909 Harmony
16 Street in the city of Florence. That is the home of
17 Michael Hawkins and Ashley Hawkins. Your Honor, I
18 have here Investigator Michael Robinson with the
19 Florence City Police Department who is the chief
20 investigator on this case. Also, Your Honor, we
21 have friends and family members of Michael Hawkins
22 and I would ask that they raise their hand when I
23 call their name. Tyrone Baker is a nephew. Betty
24 Johnson, a sister; Stephanie Briggs, niece; Ashley
25 Hawkins, daughter, who's also a victim of the

1 offense, she was in the home at the time. Miss
2 Henry I think is Tina Henry.

3 MISS HENRY: Tonya.

4 MR. CLEMENTS: Tonya Henry, I'm sorry.
5 Tonya Henry is his ex-wife. Tamesha Garner,
6 daughter; Ann Scott, a friend; Pat Gibson-Hye Moore,
7 best friend and also partner in the community in
8 many, many different projects they had in the
9 community. And Roggie (ph) Wise, brother, he's out
10 there; Dennis Wise, brother; Rosetta Wise, mother;
11 and Leroy, last name is —

12 MR. WELLS: Wells.

13 MR. CLEMENTS: Wells, the father. They're
14 all here. Your Honor, at the appropriate time I
15 believe that Miss Ashley Hawkins would like to
16 address the Court maybe, or one or two more.

17 THE COURT: All right, let's establish a
18 factual basis for this plea and let me speak with
19 Mr. Brown to determine whether the plea is
20 appropriate. Before we hear mitigation we'll hear
21 from the —

22 MR. CLEMENTS: Yes, sir, I just want to
23 let you know first to get that out the way who all
24 was here. Your Honor, this occurred on January 1st,
25 2012. Several young men have been charged in this,

1 Your Honor, one being Lakavius (ph) Harrison and
2 Michael Stevens have been charged. Jaquell McCullum
3 and Jacob White have also been charged, Your Honor.
4 But they were — a group of people gathered out that
5 hang out behind a home called Mama-son's house.
6 They have a fire barrel; sometimes they have a fire
7 there. A lot of people gather there. They were
8 gathered and several of them were discussing the
9 fact that they needed to get some money and they
10 didn't have any money so I know Michael Stevens and
11 Lakavius Harrison were deciding they were going to
12 go rob someone and they were talking about robbing a
13 fellow known as the shoe man who deals with
14 counterfeit shoes. It's been reported by some of
15 the co-defendants that Ian Casley said, don't do
16 that, we'll go, y'all need to go rob Coach Mike's
17 house. Michael Hawkins had a little store in his
18 house. We sold everything from potato chips to
19 snacks to cigars and liquor, soft drinks, whatever,
20 and always was believed to have a lot of money there
21 in the house. So they decided they were going to do
22 that.

23 Kendris Brown at some point joined the
24 conversation and what my understanding is
25 volunteered to take part in it, wanted to take part

1 in it. He is a runaway. I think he's got family
2 here. And he had kind of run away from them and was
3 hanging around in a bad element. So Mr. Brown had a
4 gun. Also it is believed that Lakavius Harrison had
5 a gun, and Michael Stevens did not have a gun. They
6 went to the house. They ascertained first that
7 Coach Mike was not in the front room so they knocked
8 on the door. Ashley Hawkins opened the door.
9 Several of them rushed in. And I think that Ashley
10 Hawkins said two of them had their face sort of
11 covered. I believe Michael Stevens did not. But
12 she recognized Lakavius Harrison for sure. And
13 Kendris Brown didn't stop. They told her to get on
14 the floor and started grabbing stuff. Well, Kendris
15 Brown went straight back to the back bedroom. And
16 according to the statements given by the other
17 codefendants, they heard pop, pop, pop, pop, pop and
18 they said time to go and they grabbed cases of
19 liquor and cigar boxes with money and whatever else
20 they could carry, and they took off and started
21 running down the path carrying stuff.

22 And Ian Casley was also identified. And
23 Jacob White and Jaquell McCullum were coming up the
24 path. They had heard a lot of the discussions prior
25 to it, and I think Jaquell McCullum was actually

1 invited to take part in it. He did not, said he
2 didn't want to take part in it, and they went
3 somewhere else. They were coming up the path and
4 they saw Stevens, they saw Brown, and they saw
5 Harrison. And Jacob Pete White said he also saw Ian
6 Casley running carrying cases of liquor, carrying
7 other things and Kendris looking like he was holding
8 a gun and they ran through the path. And Jaquell
9 McCullum and Pete went to Jaquell McCullum's home.
10 His family lives right beside where Michael Hawkins'
11 house was; they were right next door. And
12 everything started breaking loose.

13 The police were called. Things started
14 going on so Jaquell McCullum and Pete left, went
15 back down the path. They later got up with Kendris
16 Brown. He told them that he shot Coach Mike, and
17 they asked him, you know, pretty much why he did it.
18 He said, you know, I don't know, it was like him or
19 me. He jumped up. Evidently he was counting money
20 on his bed. And he said he felt like he was in a
21 movie, and he just started shooting is what the
22 co-defendant said his statement was to them. There
23 was a lot of money left. They left in a big hurry.
24 The co-defendants McCullum and White said that
25 Kendris Brown had money in all kind of pockets.

1 They went and got a motel room and then sent
2 somebody to go buy them some weed. They smoked it
3 up and then the next morning they said, told
4 Kendris, we can't hang around with you right now, we
5 won't be hanging with you, you've done this; so they
6 split up. But that Kendris Brown paid for the motel
7 room, paid for the weed, and he had — I think Jacob
8 P. White, to begin with he didn't believe Kendris
9 did that until he started pulling money out of all
10 his pockets and throwing it on the bed and he had a
11 whole lot of money.

12 We cannot determine through our
13 investigation that there was an agreement or a plan
14 to actually shoot anyone. They just were going to
15 rob. They wanted to go in. They knew that money
16 was kept in a cigar box in the front room and were
17 going to go in and grab some money because they
18 wanted — it was New Year's day and they wanted to
19 get money to get something to drink with so they
20 stole liquor and stole money. There was nothing
21 ever said anybody planned to shoot anybody. Kendris
22 Brown, we don't know if he was trying to impress
23 these older fellas 'cause he was the youngest, or he
24 was trying to get rank or what he was trying to do;
25 but he went straight to the back room which was not

1 the intent of what they said the robbery was, was to
2 rob out of the front room because Coach Mike wasn't
3 in the front room and they felt like they could
4 handle Ashley because of the intimidation and fear
5 factor more so than they could a grown man. But yet
6 Kendris Brown still went to the back room and Coach
7 Mike was shot in the shoulder, in the back, shot
8 several times all in the back, not from the front.
9 He did have a gun but it was in a holster. It was
10 in a chair up under some stuff; it was not in his
11 hand. When the room was examined it didn't look
12 like he had a weapon that he could get his hands on.
13 He had some in close proximity but not where he
14 could get his hands on it, and he didn't have his
15 hands on the weapon. And all his shots were in like
16 the side or the back. And there was money scattered
17 on the floor, there was money scattered on the bed,
18 and there were blood there. That's basically it.
19 Your Honor, I would defer to Investigator Robinson
20 if I misstated anything or if there's any additional
21 facts that she wants to add.

22 THE COURT: Investigator Robinson, I'll be
23 glad to hear from you if you'd like to say anything
24 or add anything.

25 THE INVESTIGATOR: Thank you, Your Honor.

1 I would only like to add that the co-defendants
2 expressly say as well as the victim that there was
3 no discussion. The victim heard footsteps running
4 to the back and then she heard five shots, four to
5 five shots. There was no discussion. There was no
6 argument. There was no fumbling or tumbling. Mr.
7 Hawkins was murdered five times in the back, and it
8 appears he was lying on his bed and was trying to
9 get up whenever he was shot and killed.

10 THE COURT: All right. Anything further
11 with regard to the facts?

12 MR. CLEMENTS: No, Your Honor. And in
13 regards to criminal history, we're unaware of any
14 criminal history for Mr. Brown.

15 THE COURT: Mr. Brown, you've heard those
16 facts. Are they true and accurate?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Are you indeed guilty of
19 burglary first degree?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Are you guilty of murder?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You stand before me pleading
24 guilty, but you don't have to plead guilty to
25 anything. You could exercise your right to a jury

1 trial. In that process the jury would determine
2 whether or not the State could actually prove you
3 guilty beyond a reasonable doubt. I would charge
4 the jury as a matter of law that you're presumed
5 innocent. No one could require that you take the
6 witness stand; however, if you wanted to you could.
7 You could subpoena witnesses on your own behalf. In
8 addition to that, you and your lawyer could
9 cross-examine the State's witnesses, have an
10 opportunity to eyeball them and confront them as
11 they testified against you. You realize by pleading
12 guilty you're giving up all these rights?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Still wish to plead guilty?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Are you indeed guilty?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: I understand there are no plea
19 negotiations other than what he's pleading to —

20 MR. CLEMENTS: That is correct, Your
21 Honor.

22 THE COURT: —and dismissal of related
23 charges; is that correct?

24 MR. CLEMENTS: That's correct, and
25 recommendation that the burglary run concurrent with

1 the murder.

2 THE COURT: Is that your understanding of
3 the plea negotiation, Mr. Duffy?

4 MR. DUFFY: It is, Judge.

5 THE COURT: Is that your understanding,
6 Mr. Brown?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Mr. Brown, are you satisfied
9 with your lawyer?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Have you understood all your
12 conversations with him?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Particularly those having to
15 do with the elements of this crime, potential
16 defenses, and your constitutional rights?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Have you understood the — do
19 you understand the three strike rule, do you
20 understand the nature of a violent offense, the fact
21 that these are most serious offenses, and the fact
22 that these sentences will be served for all
23 practical purposes day for day? You understand all
24 those things?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Any complaints against your
2 lawyer?

3 THE DEFENDANT: No, sir.

4 THE COURT: Has he done everything you
5 asked him to do?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Has he not done anything that
8 you asked him to do?

9 THE DEFENDANT: No, sir.

10 THE COURT: All right. You have any
11 complaints against law enforcement, your lawyer, or
12 this Court?

13 THE DEFENDANT: No, sir.

14 THE COURT: Has anybody promised you
15 anything, threatened you, pressured you, mistreated
16 you in any way, shape or form in an effort to get
17 you to plead guilty here today?

18 THE DEFENDANT: No, sir.

19 THE COURT: Has it been your decision to
20 plead guilty?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Are you indeed guilty?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You understood all my
25 questions?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Have your answers been
3 truthful?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand you have ten
6 days to appeal any decision I might render here
7 today?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Based on your testimony I find
10 there's a substantial factual basis for your plea,
11 that your decision was freely and voluntarily
12 entered into knowingly and intelligently with
13 consent of competent counsel with whom you say
14 you're satisfied. I'll accept your plea and I'll be
15 glad to hear from you and your lawyer but before
16 that I want to hear from the victims.

17 Mr. Clements.

18 MR. CLEMENTS: Yes, sir. If any of you
19 wish to address the Court if they would stand please
20 and state your name. First, Your Honor, would be
21 the victim that was there in the house, Ashley
22 Hawkins.

23 THE COURT: Ms. Hawkins, I know it's a
24 very difficult situation for you. I want to hear
25 anything that you would like to tell me. Just take

1 your time and I'll be glad to hear from you.

2 THE VICTIM: I would like to say that I
3 cannot express how badly this has changed my life.
4 I lost my father, I lost my best friend, and I will
5 never see him again. I feel like he should spend
6 the rest of his in jail because his family can still
7 see him. My aunt can never see her brother again.
8 My sister can never see her father again. And
9 that's — and he was such a great person. I have
10 nobody that my kids can call granddaddy. I have no
11 nobody to walk me down the aisle, and I have nobody
12 to watch me graduate. When I graduated from school
13 I had nobody to do that. And it took everything
14 from me. He was my world.

15 THE NEPHEW: Man...

16 THE VICTIM: They took everything from me.
17 He was my best friend. I was with him every day of
18 my life since I was born. And they took everything
19 for two hundred dollars, and he took all — they
20 took everything for two hundred dollars and that was
21 not worth it so I feel like all them should pay for
22 what they've done 'cause we're suffering for life
23 and we can't —

24 THE COURT: All right. Thank you so much.
25 And how old are you?

1 THE VICTIM: I just turned 20 a couple of
2 months ago.

3 THE COURT: I'm sorry for your loss, and I
4 will certainly take that in conversation. One thing
5 everybody needs to realize is that these are very
6 difficult, very difficult times for everybody. It's
7 difficult for the victims, difficult for the
8 victim's family. And I have an obligation to listen
9 to the facts and try to do what's right here. In
10 addition to that, I have an obligation to maintain
11 order in the court and there will not be anymore,
12 any outbursts. I know it's difficult. We're going
13 to be required to maintain a certain decorum.
14 That's my obligation. And these law enforcement
15 officers are gonna enforce that rule. There will be
16 no disruptions in this proceeding. I have an
17 obligation to do that and I will do that. So does
18 everybody understand that we aren't going to have
19 any outbursts. I want to hear from everybody. I
20 understand it's an emotional time but there will be
21 no outbursts. Does anybody feel as though they
22 can't maintain themselves; and if so, I'm gonna give
23 them this opportunity to leave the courtroom. Very
24 good.

25 (Member of victim's family leaves the courtroom.)

1 THE COURT: That's certainly
2 understandable; but once again, everybody
3 understands we've got to maintain a certain decorum
4 in these proceedings, and I want to hear from
5 everybody. I want to hear from all the victims. I
6 want to hear what they've got to say and I'll
7 recognize, Mr. Clements, you're recognized.

8 MR. CLEMENTS: Thank you, Your Honor. Any
9 other family member does wish to speak or family
10 friend, if you would stand and identify yourself for
11 the record please.

12 THE COURT: Yes, ma'am, your full name.

13 MS. JOHNSON: Betty Johnson, I'm his
14 sister. I'm sorry I cry, I'm sorry.

15 THE COURT: I'm not talking about — you
16 feel free to express your emotions in that regard.
17 We just aren't going to have any outbursts and you
18 take your time. I want to hear everything that you
19 got to say.

20 MS. JOHNSON: Similar to Ashley I, we lost
21 a lot. Mike was that kind of glue that keep my
22 family together. He was the strongest one in the
23 family. When our parents died Mike — when Mike
24 daddy died Mike wasn't even born yet. Mike daddy,
25 daddy died in February. Mike born in April so he

1 never got to see his father, but still yet, he
2 maintained a very fatherly attitude towards his
3 children when he grow up. He was a strong man and a
4 very loving man. I wish I'd had brought the letters
5 that was his basketball players gave me that because
6 of Michael he was able to get off the street and
7 he — when he graduated from college this year Mike
8 was a mentor to him. The night that Mike got killed
9 one of his basketball students, one of his
10 basketball players was there with us through the
11 whole thing, and I guess he hurts just as much as we
12 did. He was a strong person, and I can't see why
13 anybody would want to do something like that to him.

14 But to me, this was a very bad thing
15 because why would anybody go into a person's house
16 and into their bedroom and take their life. That
17 was the wrong thing to do. I think about Mike every
18 day of my life and it hurts so bad anybody to do
19 something like this because my belief you can never
20 take away from somebody something that you cannot
21 give back. Thank you.

22 THE COURT: All right, thank you. I'm
23 sorry for your loss and I'll certainly take that
24 into consideration.

25 Mr. Clements, anybody else would like to

1 speak? I'll be glad to hear anybody who would like
2 to speak. Yes, ma'am, your full name?

3 MISS MOORE: Pat Gibson-Hye Moore.

4 THE COURT: Yes, ma'am.

5 MISS MOORE: Michael and I were very
6 close; we were very good friends. He was with his
7 daughter every day, every day. He was a mentor to a
8 lot of young boys who didn't have a father so he was
9 a mentor to them. He was with us at Camp Beaver
10 every summer so Mike, we had a group, Lions for
11 Youth. They camped with people with the police
12 department out there, with these kids every summer.
13 He was with the South Carolina State Guard. He was
14 a volunteer at Southside Middle School helping with
15 basketball. He did Delmae Elementary, Moore
16 Intermediate School. And his daughter go to West
17 Florence, he went to West Florence. He was so
18 community oriented. He would take these boys, some
19 of them and just trying talk to them so they
20 wouldn't go down the wrong path 'cause he made some
21 bad decisions. He didn't want them to make the same
22 bad decisions. He was so respected in that
23 community. People miss him so much. He did —
24 unfortunately I'm so sorry for Ashley because he
25 won't see her get married. Fortunately I chose him

1 to give me away at my wedding so I — he did see me
2 get married, but he just — they just zapped
3 everything away from so many people. So many people
4 you wouldn't — you couldn't even imagine all the
5 people he's touched. He was on the City of Florence
6 Parks and Beautification commission. He was
7 community oriented, anything he'd do to help
8 somebody he would. He did tough love but he loved
9 and he loved dearly. He is so missed. They changed
10 everybody's life. I mean, everybody sitting here
11 their life was affected so harshly. His ex-wife, I
12 remember it was her birthday. I went with him to
13 tell him, you need to get her this, you need to get
14 her that, and he was laughing. But he listened. He
15 did so much.

16 Some things people didn't even know he
17 did. He helped so many. And just to zap him
18 away — even these kids, he would do cookouts at his
19 house and his back yard about twice in the summer
20 and just give it to them. But they chose to just go
21 in and take his life for no apparent reason because
22 they wanted some money and to get high. And I hope
23 they get high for the rest of their life in the
24 penitentiary, I mean, 30 years is not enough. In my
25 opinion 200 years is not enough for what they did,

1 for what they took away from so many people. He was
2 a volunteer for the City of Florence Bond Street
3 Community Center, Levy Park Community Center,
4 Northwest. He would just bring music out and play
5 and let them have a good time outside in the summer
6 time. We'd go and have outdoor summer camp before
7 Camp Beaver got started. He did so much for so many
8 people and affected so many lives, and it was just
9 for no apparent reason because they wanted to get
10 high.

11 THE COURT: Thank you so much.

12 MR. CLEMENTS: And Your Honor, Ashley had
13 one more thing to say.

14 THE VICTIM: He was the type person what
15 they took he would have gave it to him. He would
16 have. He always had me before I was 18, and he
17 always had me campaigning. Me and her, when we help
18 Steve Wukela and her campaign and Ed, and we got
19 paid for. He would have helped them. He would have
20 helped them come in. He would have helped them make
21 their own money so they wouldn't have had to do what
22 they had. So for them to take someone who was
23 helping people who would live after I was born,
24 after I was born he made a pack to help people and
25 just to take them out like that just help you. It

1 doesn't make no sense. That makes no sense.

2 MR. CLEMENTS: Anyone else?

3 (There was no response.)

4 MR. CLEMENTS: That's all, Your Honor.

5 THE COURT: All right. Mr. Duffy, you're
6 recognized.

7 MR. DUFFY: Thank you, Judge. Your Honor,
8 this is Kendris Brown. He's 16 years old. At the
9 time of the incident he was merely 15. I believe
10 he's had a very confusing time in his life. His
11 mother had, Camille had back surgery and couldn't
12 care for him and supervise him properly so he ran
13 away from home and began to hang out with the fast
14 crowd living life on the streets. He's a very
15 impressed young man, tried his best to fit in and
16 just got caught up with the wrong crowd, Judge, and
17 made some real bad decisions obviously. We just ask
18 that you take into account his very young age, his
19 lack of any prior criminal record, and we just ask
20 for a chance for him to get out from the other side
21 after he has a chance in being reformed.

22 THE COURT: All right. Mr. Brown, what do
23 you have to say for yourself? I'll be glad to hear
24 anything that you got to say in mitigation, but I'm
25 gonna ask that you direct your comments directly to

1 me and not to the victim's family.

2 THE DEFENDANT: I ain't got nothing to
3 say.

4 THE COURT: All right, very good.
5 Anything further, Mr. Duffy?

6 MR. DUFFY: Judge, I know that he's been
7 in custody since January 7th of last year for a
8 total of 454 days by my calculation.

9 THE COURT: Mr. Brown, as I sit here and
10 watch this case develop, I didn't know anything
11 about it before I came in here this morning. But as
12 I listen to the Solicitor recite the facts that
13 became apparent to me that you're a 16 year old
14 child who came from probably not the very best
15 background, you have no criminal history. And I
16 anticipated it was going to be a very difficult
17 decision, and to some extent it is; but as you stand
18 before me you've shown no remorse. You've expressed
19 no remorse and this appears to me to be a cold
20 blooded premeditated senseless murder. And you
21 know, taking all of that in consideration this is
22 the sentence of the Court.

23 On indictment 2012-GS-21-1250 burglary
24 first degree, the sentence of the Court is that you
25 be committed to the State Department of Corrections

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for the rest of your natural life, sentence to run concurrent, credit for 454 days. With regard to indictment 2012-GS-21-01250, murder, the sentence of the Court is you be committed to the State Department of Corrections of a period of your natural life, sentence to run concurrent, credit for 454 days. Good luck to you.

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

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 22nd day of March, 2014.



FRANCES BAKIS-RAY, RPR

FORM 5

STATE OF SOUTH CAROLINA)
County of Florence)
Kendris Richard Brown)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

2014-CP-21-75

v.

APPLICATION FOR

State of South Carolina)
)
)
)
)

POST-CONVICTION RELIEF

2011 JAN 10 PM 2:51
CLERK OF COURT
FLORENCE COUNTY, S.C.

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LEE Correctional Institution
990 Wisacky Hwy, Bishopville South Carolina 29010
2. Name and location of Court which imposed sentence Florence County
180 N. Irby st Florence SC 29501
3. Name(s) of co-defendant(s) (if any) Lakavis Harrison - Juceb white
Michael stevens - Terquel McCallum
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-GS-21-01250E; Murder
 - (b) 2012-GS-21-01250A; Burglary First degree

CERTIFIED: A TRUE COPY
Christie Reed
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

(c) _____

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

(a) April 5, 2013 - Life

(b) _____

(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. N/A

ii. _____

iii. _____

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

i. _____

ii. N/A

iii. _____

(c) the date of each such result:

i. _____

ii. N/A

iii. _____

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

i. N/A

ii. _____

iii. _____

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

(a) I wasn't inform that I could appeal

(b) I was in lock up at sante John G I wasn't able to appeal

(c) _____

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

- (a) Applicant's sentence of life without parole,
- (b) imposed for a crime he committed when he was
- (c) a juvenile violates the Eighth Amendment to the U.S.C

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

- (a) Miller v. Alabama
- (b) Thompson v. Louisville
- (c) Jackson v Virginia

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? _____

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. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

- i. N/A
- 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) not appropriate issues for direct appeal.
- (b) These grounds rely on newly established Supreme
- (c) Court precedent in Miller v. Alabama, 567 U.S (2012)

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? NO
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NA
- (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. Skip McDuffe
1001 Evans Street, Florence SC 29501
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Sentencing & plea
 - ii. _____
 - iii. _____

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

A new trial
Reversed sentencing

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

NO

STATE OF SOUTH CAROLINA)
County of Florence)

VERIFICATION

I, Kendris R. Brown, 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.

Kendris R. Brown

SWORN to and subscribed before me this 30th day of December, 2013.

Michele Michele (L.S.)
Notary Public

My Commission Expires: 9-3-2014

2014 JAN 10 PM 2:57
COMMISSION EXPIRES
SEP 3 2014
FLORENCE COUNTY

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

I, Kentris Richard Brown, 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.

Kentris Brown
Applicant

SWORN or affirmed to and subscribed before me this
30th day of December, 2013.

Michelle Mitchell
Notary Public

My Commission Expires: 9-3-2014

2014 JAN 10 PM 2:57
CORRIE RUTHERFORD
COP & GS
FLORENCE COUNTY

CERTIFIED: A TRUE COPY
Amie Yael Spence
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)
 COUNTY OF FLORENCE)
)
)
 Kendris R. Brown, #355055,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 TWELFTH JUDICIAL CIRCUIT

2014-CP-21-0075

RETURN AND MOTION TO DISMISS

In response to the post-conviction relief application filed January 10, 2014, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the September 2012 term of the Florence County Grand Jury for murder, burglary first degree, armed robbery, possession of a weapon during the commission of a violent crime, and conspiracy (2012-GS-21-1250). Applicant was represented by Henry Duffy, Jr., Esquire. On April 5, 2011, Applicant pled guilty. The Honorable Michael G. Nettles sentenced Applicant to concurrent terms of life imprisonment for murder and first degree burglary. The other charges were dropped. Applicant did not appeal his plea or sentences.

II.

In his current application for post-conviction relief Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Applicant alleges his sentence of life without parole is unconstitutional because he was under eighteen years old when the crime was committed.

For the purposes of this Return, Respondent incorporates the Clerk of Court records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent submits the allegation related to Miller v. Alabama, ___ U.S. ___, 132 S. Ct. 2455 (2012) must be dismissed. On November 12, 2014, the South Carolina Supreme Court held sentences of life without the possibility of parole that were imposed on juveniles violated the Eighth Amendment under Miller and that those individuals are entitled to resentencing pursuant to the United States Constitution. Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). The South Carolina Supreme Court specifically ordered “any individual affected by our holding may file a motion for resentencing within one year from the filing of this opinion in the court of general sessions where he or she was originally sentenced.” Id. at 545, 765 S.E.2d at 578 (emphasis added). As such, any challenges under Miller are not properly heard in a PCR action and this allegation must be summarily dismissed.¹

IV.

The Respondent submits that any other allegations contained in this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

¹ Respondent notes this case has been held in abeyance pending the resolution of Aiken v. Byars. As the United States Supreme Court denied the petition for writ of certiorari on June 1, 2015, this matter is no longer stayed.

court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant pled guilty to the offense(s) he challenges in this Application on April 5, 2011. Applicant was therefore required to file his application before April 5, 2012. This Application was filed on January 10, 2014, well after the statutory filing period.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, Respondent moves to summarily dismiss the application because it was filed after the statute of limitations had expired.

Respectfully submitted,


ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. CROOM HUNTER
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
P.O. Box 11549
Columbia, S.C. 29211

October 22, 2015.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
)
 KENDRIS R. BROWN, #355055)
)
)
)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA)
)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS


2014-CP-21-0075

AFFIDAVIT OF SERVICE BY MAIL

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

Jonathan D. Waller, Esquire
1315 Blanding St.
Columbia, SC 29201

DATED this 22nd day of October, 2015


 Norma Bigbee, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
 COUNTY OF FLORENCE)
)
 Kendris Brown, SCDC No.355055,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 TWELFTH JUDICIAL CIRCUIT

2014-CP-21-0075

CONDITIONAL ORDER OF DISMISSAL

FILED
 15 OCT 21 PM 4:21
 CLERK OF COURT
 FLORENCE COUNTY, S.C.

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed January 10, 2014. Respondent filed a return requesting summary dismissal contemporaneous with a draft of this order. This Court also has before it the records as stated in and provided with the return. The Court finds as follows:

PROCEDURAL HISTORY

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the September 2012 term of the Florence County Grand Jury for murder, burglary first degree, armed robbery, possession of a weapon during the commission of a violent crime, and conspiracy (2012-GS-21-1250). Applicant was represented by Henry Duffy, Jr., Esquire. On April 5, 2011, Applicant pled guilty. The Honorable Michael G. Nettles sentenced Applicant to concurrent terms of life imprisonment for murder and first degree burglary. The other charges were dropped. Applicant did not appeal his plea or sentences.

CERTIFIED: A TRUE COPY
Cornice Reel Shreeve
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

II.

In his application for post-conviction relief, Applicant alleges his conviction was unlawful for the following reasons:

1. Applicant alleges his sentence of life without parole is unconstitutional because he was under eighteen years old when the crime was committed.

Respondent made a timely Return and Motion to Dismiss, asking this Court to dismiss the application as untimely and improperly filed. The Court had the benefit of reviewing the Florence County Clerk of Court's Records and all records and filings regarding this instant action.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

S.C. Code Ann. § 17-27-70(c) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." See also Rule 56(c), SCRCF. The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law in ruling on Respondent's motion to dismiss:

Juvenile Life Without Parole Claim

This Court finds the allegation related to Miller v. Alabama, ___ U.S. ___, 132 S. Ct. 2455 (2012) must be dismissed. On November 12, 2014, the South Carolina Supreme Court held sentences of life without the possibility of parole that were imposed on juveniles violated the Eighth Amendment under Miller and that those individuals are entitled to resentencing pursuant to the United States Constitution. Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). The South Carolina Supreme Court specifically ordered "any individual affected by our holding may file a motion for resentencing within one year from the filing of this opinion in the court of

general sessions where he or she was originally sentenced.” Id. at 545, 765 S.E.2d at 578 (emphasis added). As such, any challenges under Miller are not properly heard in a PCR action and this allegation must be summarily dismissed.¹

Untimely Filing

This Court finds that any other allegations contained in this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant pled guilty to the offense(s) he challenges in this Application on April 5, 2011. Applicant was therefore required to file his application before April 5, 2012. This Application was filed on January 10, 2014, well after the statutory filing period.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a

¹ This case has been held in abeyance pending the resolution of Aiken v. Byars. As the United States Supreme Court denied the petition for writ of certiorari on June 1, 2015, this matter is no longer stayed, and Applicant must file his motion for resentencing in the Court of General Sessions prior to June 1, 2016.

matter of law." Therefore, this Court must summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

CONCLUSION

The Court finds that the record before it creates no genuine issue of material fact and Respondent is therefore entitled to judgment as a matter of law.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this order upon him to show why this ruling should not become final. Applicant shall file any reasons he may have with the Florence County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: J. Croom Hunter, Esquire
Post Office Box 11549
Columbia, South Carolina 29211

FILED
2015 OCT 27 PM 4:11
CONNIE REED
CLERK OF COURT
FLORENCE COUNTY, S.C.

Applicant is cautioned that his response to this order must be actually received by the Chester County Clerk of Court and opposing counsel within twenty (20) days, and his failure to timely file and serve any response will result in the Court not considering any issues raised therein.

IT IS SO ORDERED THIS 27 DAY OF Oct., 2015.



THE HONORABLE D. CRAIG BROWN
Presiding Judge
Twelfth Judicial Circuit

Florence, South Carolina

CERTIFIED - A TRUE COPY
Connie Reed
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Kendris R. Brown, #355055,

2014-CP-21-0075

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on January 10, 2014, the Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the September 2012 term of the Florence County Grand Jury for murder, burglary first degree, armed robbery, possession of a weapon during the commission of a violent crime, and conspiracy (2012-GS-21-1250). Applicant was represented by Henry Duffy, Jr., Esquire. On April 5, 2011, Applicant pled guilty. The Honorable Michael G. Nettles sentenced Applicant to concurrent terms of life imprisonment for murder and first degree burglary. The other charges were dropped. Applicant did not appeal his plea or sentences.

II.

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

1. Applicant alleges his sentence of life without parole is unconstitutional because he

was under eighteen years old when the crime was committed.

Attached herewith and incorporated herein by reference are the records of the Florence County Clerk of Court regarding the subject convictions, Applicant's records from the Department of Corrections, and the plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

For purposes of this Return, Respondent interprets Applicant's allegation as ineffective assistance of counsel. Respondent asserts that Applicant's allegation of ineffective assistance of trial counsel is without merit. Respondent also asserts that Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used 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 v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding

would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Respondent submits that 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. As such, Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

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

[Signature on Following Page]

State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2014-CP-21-00075
)	
Kendris Richard Brown,)	
)	
Plaintiff,)	
)	
-vs-	)	Transcript of Record
)	
State of South Carolina,)	
)	
Defendant.)	
)	

November 9, 2016
 Florence, South Carolina

B E F O R E:

The Honorable D. Craig Brown, Judge

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

Jonathan Waller, Esquire
 Attorney for the Plaintiff

Lindsey McAllister, Esquire
 Attorney for the Defendant

Krystal J. Smith
 Court Reporter

I N D E X

3	<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
4	Kendris Brown	
5	Direct by Mr. Waller.....	6
6	Cross by Ms. McAllister.....	14
7	Applicant Rests.....	18
8	Henry S. "Skip" Duffee	
9	Direct by Ms. McAllister.....	19
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11	State Rests.....	36
12	Court Reporter Certification.....	41
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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

1 NOVEMBER 9, 2016

2 (WHEREUPON, the proceedings began at 11:19 a.m.)

3 THE COURT: All right. Is the State ready to proceed?

4 MS. MCALLISTER: May it please the Court, Your Honor.

5 This is Kendris Brown versus the State of South Carolina,
6 2014-CP-21-0075.

7 Mr. Brown filed his application for post-conviction
8 relief on January 10th of 2014. He is currently incarcerated
9 with the South Carolina Department of Corrections pursuant to
10 orders of commitment from the Florence County Clerk of Court.

11 He was indicted at the September 2012 term of the
12 Florence County Grand Jury for murder, burglary first degree,
13 armed robbery, possession of a weapon during the commission of
14 a violent crime, and conspiracy. He was represented on those
15 charges by Henry Duffee.

16 On Oct -- I'm sorry -- April 5th, 2011, he pled guilty
17 before Judge Michael Nettles, who sentenced him to concurrent
18 terms of life imprisonment for murder and burglary first
19 degree. The other charges were dismissed pursuant to that
20 plea. Applicant did not appeal his plea or his sentences.

21 There -- Your Honor, there was a conditional order of
22 dismissal that was filed in this case on October 28th, 2015.
23 Mr. Waller, who represents Mr. Brown, made a response to that
24 order of dismissal and an amendment to Mr. Brown's
25 application, and that is what we are here to go forward on

1 today. Mr. Brown is present in the courtroom and represented
2 by Mr. Waller.

3 THE COURT: All right. Mr. Waller?

4 MR. WALLER: Thank you, Your Honor, just -- just to
5 clarify, Mr. Brown pled guilty on April 5th of 2013.

6 MS. MCALLISTER: I'm sorry.

7 MR. WALLER: I think the 2011 is a typo.

8 THE COURT: All right.

9 MR. WALLER: Your Honor, Mr. Brown originally filed his
10 application raising an issue of the *Miller v. Alabama* case and
11 then the *Aiken v.* --

12 THE COURT: *Aiken v. Byers.* Yeah.

13 MR. WALLER: -- *Byers.* That application was amended to
14 include a claim of ineffective assistance of counsel, but
15 that's the only thing before the Court here -- before the
16 Court today, as the *Aiken v. Byers* issue is a separate General
17 Sessions issue.

18 If it please the Court, I would call Kendris Brown.

19 THE COURT: All right. Sir, if you would, come around to
20 be sworn, please?

21 Mr. Waller, can y'all -- come right over here, sir.

22 Place your left hand on the Bible; raise your right hand.

23 Can you move this over? It kind of impedes the ability
24 to --

25 THE BAILIFF: I'll get it.

KENDRIS BROWN - DIRECT BY MR. WALLER

1 THE COURT: Raise your right hand, please.

2 THE DEPUTY: You got it?

3 MR. WALLER: Yeah. I'm going to use it over here.

4 THE COURT: Go ahead, Madam Clerk.

5 THE CLERK: Do you swear to tell the truth, the whole
6 truth, and nothing but the truth, so help you God?

7 THE APPLICANT: I do.

8 THE CLERK: Okay. Have a seat and state your name for
9 the record.

10 THE APPLICANT: My name is Kendris Brown.

11 KENDRIS BROWN, being first duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. WALLER:

15 Q: Good morning, Mr. Brown. How are you today?

16 A: I'm doing good.

17 Q: Okay. Mr. Brown, I want to take you back to when you
18 were -- when you were first arrested. Okay? Do you remember
19 that day?

20 A: (No verbal answer.)

21 Q: Okay. You have to answer yes or no --

22 A: Yes.

23 Q: -- so the court reporter can take it down. Do you recall
24 what you were originally arrested for?

25 A: Yes.

KENDRIS BROWN - DIRECT BY MR. WALLER

1 Q: Okay. How many charges did you originally have?

2 A: Five.

3 Q: Okay. And who was your attorney on those charges?

4 A: Well, when I got waived up to General Sessions, Skip
5 McDuffee [sic].

6 Q: Okay. So you were in Family Court as a juvenile first;
7 is that right?

8 A: Yes, I was.

9 Q: Okay. And then you were -- how old were you when you
10 were arrested?

11 A: Sixteen.

12 Q: Okay. And so you were waived up from Family Court to
13 General Sessions?

14 A: Yes, I was.

15 Q: And Mr. McDuffee was -- or Duffee was appointed to
16 represent you or did you retain him?

17 A: He was appointed.

18 Q: Okay. When you were arrested, where were you -- where
19 were you housed? Were you at the -- were you at Effingham at
20 the detention center or were you in the Department of Juvenile
21 Justice?

22 A: I was at -- I was at the detention center at DJJ in
23 Columbia.

24 Q: Okay. So you were in Columbia?

25 A: (No verbal response.)

KENDRIS BROWN - DIRECT BY MR. WALLER

- 1 Q: Okay. When was the first time you met with Mr. Duffee?
- 2 A: When they had called me to come to court one day.
- 3 Q: Okay. About how long after you were arrested was that?
- 4 A: Like, a year and a half later.
- 5 Q: Okay. So for the first year and a half, you had not met
- 6 with Mr. Duffee?
- 7 A: No, I hadn't.
- 8 Q: Okay. Did you -- had you written him letters? Had he
- 9 written you any letters?
- 10 A: Yes, he have. I believe so.
- 11 Q: Okay. Did y'all talk on the phone?
- 12 A: No. No. No, we haven't.
- 13 Q: Okay. Did you -- did you have any of the -- the
- 14 discovery that the State would have provided to you? Did you
- 15 have any materials?
- 16 A: No, I don't.
- 17 Q: Okay. When you met with Mr. Duffee, what did y'all talk
- 18 about?
- 19 A: Well, I believe we just met, like, twice. I know the
- 20 first time we met, he basically just looked over my case,
- 21 explained to me everything, what would happen if I would have
- 22 took this plea or what would happen if I would have went to
- 23 trial.
- 24 Q: Okay. What did he say about going to trial?
- 25 A: He said pretty much if I went to trial I would have got a

KENDRIS BROWN - DIRECT BY MR. WALLER

1 60 -- 60 to a life sentence.

2 Q: Okay. When you say y'all went over everything, what do
3 you mean you went over?

4 A: Well, by me saying that, well, just being that one day he
5 basically explained to me, like, okay, I could take this plea
6 and join this program and I could basically do 15 years and go
7 home. Then -- then he said if I go to trial, I got a
8 possibility of getting a 60 to a life sentence.

9 Q: Okay. Did y'all have an opportunity -- opportunity --
10 excuse me -- to discuss the evidence that the State would
11 present against you?

12 A: We haven't.

13 Q: Okay. When you say he told you if you joined the
14 program, what program are you talking about?

15 A: He was just speaking about some program that I would have
16 to -- I don't know. Some program that he -- I pretty much
17 would have been -- been able to join once -- you know, once I
18 would have got sentenced and everything.

19 Q: Okay. You had several co-defendants; is that right?

20 A: Yes, I have.

21 Q: Okay. Did you and Mr. Duffee discuss your co-defendants?

22 A: We did. We did. We did a little bit, but he haven't
23 really sat down with me with my motion right in front of me
24 explaining everything. He haven't done that. He just -- he
25 just explained to me, okay, this is what's going on, you know.

KENDRIS BROWN - DIRECT BY MR. WALLER

- 1 Q: Okay. When you say your motion, what do you mean by your
2 motion?
- 3 A: Motion of discovery.
- 4 Q: Okay. When did you see that?
- 5 A: You know, statements, everything like that.
- 6 Q: Okay. When did you see that?
- 7 A: Well, when I -- I seen my motion when I was in Family
8 Court. Once I got waived up to General Sessions, I wasn't
9 able to look at my motion.
- 10 Q: Okay. Did you have a copy of it?
- 11 A: No, I didn't.
- 12 Q: Okay. So you had seen it when your case was still in
13 Family Court, but then when you got waived up to General
14 Sessions, you did not have a copy and Mr. Duffee did not
15 provide you a copy?
- 16 A: He did not.
- 17 Q: Okay. When did you ultimately make the decision to plead
18 guilty?
- 19 A: I think it been April 5th. I think it been April 5th,
20 like 10 days before my 17th birthday.
- 21 Q: Okay.
- 22 A: Basically, that's why he told me, you know, like I said,
23 what would happen if I would have took this plea or what would
24 have took place if I would have took it to trial.
- 25 Q: Okay. Did you want to go to trial?

KENDRIS BROWN - DIRECT BY MR. WALLER

1 A: I did. I did. I did want to go knowing that I kind of
2 -- I kind of had a little faith that, you know -- you know,
3 maybe -- maybe -- maybe I had a chance at freedom, but just
4 that the way he explained it to me. Now I know better, but
5 then I was kind of misled, you know.

6 Q: Okay. April 5th -- that was the day you actually pled
7 guilty; is that right?

8 A: Yes, that's it.

9 Q: Okay. And you said you were 16 at the time?

10 A: (No verbal answer.)

11 Q: Okay. What did y'all talk about as far as getting ready
12 or what would take place if you went to trial? What did y'all
13 do?

14 A: He never told me.

15 Q: Okay. Did you ask him any questions about what your
16 defense would be?

17 A: Well, he -- he never really had spoke on that. Like I
18 said, he never really had spoken to me about that. I just
19 seen him twice. Just two -- two times.

20 Q: Okay. How long roughly from when you were arrested until
21 when you pled guilty were you incarcerated?

22 A: Repeat that?

23 Q: When you got locked up first before you pled guilty, how
24 long was it before -- when you got locked up until when you
25 pled guilty?

KENDRIS BROWN - DIRECT BY MR. WALLER

1 A: A year.

2 Q: Okay. And you testified that you met with him twice?

3 A: Yeah. Well, as soon -- as soon as -- as soon as they had

4 -- they had waived me up to General Sessions, then, you know,

5 I met him.

6 Q: Okay.

7 A: We met twice.

8 Q: Okay. And he didn't get appointed to you while your case

9 was in Family Court; is that right?

10 A: No, he haven't.

11 Q: Okay. When you pled guilty, did y'all discuss offering

12 any mitigation evidence for the Court to consider?

13 A: Say that again?

14 Q: Did y'all discuss presenting the Court with anything to

15 try to get you the least sentence possible?

16 A: No, we haven't.

17 Q: Okay. Did you ask him or give him the names of any

18 family members or friends or anybody that might be able to

19 speak on your behalf?

20 A: No. See, that day -- the day -- the day I had went to

21 court, I wasn't aware and my family wasn't aware that, you

22 know, I had a court date that day. So we was kind of caught

23 by surprise.

24 Q: Okay. So you didn't know? When you got to court, you

25 didn't know you were going to plead guilty that day?

KENDRIS BROWN - DIRECT BY MR. WALLER

- 1 A: Not until I seen him.
- 2 Q: Okay.
- 3 A: I seen him and then he sat me down and started talking.
- 4 Q: Okay. Did you -- you pled guilty and you got a life
- 5 sentence. Did you ask Mr. Duffee to appeal -- file an appeal
- 6 on your behalf?
- 7 A: See -- see -- see, around that time, after that -- after
- 8 I got sentenced, I haven't have heard from him or spoken to
- 9 him after that, but I was trying to appeal that. But, you
- 10 know, I wasn't -- I wasn't informed about, you know, the
- 11 proper steps to take to appeal that.
- 12 Q: Okay.
- 13 A: Knowing I was a juvenile.
- 14 Q: Okay. Did you ask Mr. Duffee? Had y'all ever talked
- 15 about an appeal?
- 16 A: No, we haven't.
- 17 Q: Okay.
- 18 A: We haven't. All we did -- I got sentenced and that was
- 19 the last time -- the last time I seen him, the last time I
- 20 heard from him.
- 21 Q: Okay. Mr. Brown, I've asked you all the questions that I
- 22 have. Is there anything you think I've left out or that the
- 23 Court needs to be aware of on Mr. Duffee's representation of
- 24 you? Just -- just what -- what happened between the two of
- 25 y'all?

KENDRIS BROWN - DIRECT BY MR. WALLER

1 A: You know, I just -- I just feel like, you know, he kind
2 of took advantage of me knowing that I was kind of -- I pretty
3 -- I pretty much didn't know, you know, the proper steps to
4 take knowing that, you know, I was young. I still is young,
5 but, you know, I was kind of -- I was kind of deaf to what I
6 was supposed to know and, you know, my legal procedures and,
7 you know, everything that I really supposed to know. He
8 basically took advantage of me.

9 Q: Okay.

10 MR. WALLER: Thank you, Mr. Brown. Please answer any
11 questions Ms. McAllister has.

12 THE COURT: Cross-examination.

13 MS. MCALLISTER: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. MCALLISTER:

16 Q: Do you remember the day that you came to court to plead
17 guilty?

18 A: Yes, I do.

19 Q: Do you remember having some conversation with the judge
20 during your guilty plea?

21 A: Yes.

22 Q: Do you remember the judge asking you some questions?

23 A: (No verbal response.)

24 Q: Is that a yes?

25 A: Yes.

KENDRIS BROWN - CROSS BY MS. MCALLISTER

1 Q: Okay. Do you remember that the judge went over with you
2 what your charges were and what you were facing in terms of a
3 possible sentence?

4 A: Yes.

5 Q: Okay. And do you remember that the judge told you you
6 were facing up to a life sentence?

7 A: I really don't remember that.

8 MS. MCALLISTER: Your Honor, may I approach the witness?

9 THE COURT: Yes, ma'am.

10 BY MS. MCALLISTER:

11 Q: Would it refresh your memory to see a transcript from
12 that day as to what the judge told you? Does that refresh
13 your memory?

14 A: Yeah, I see it.

15 Q: So did the judge explain to you that you were facing a
16 possible life sentence?

17 A: Yes.

18 Q: All right. And do you recall the judge asking you some
19 questions about that in terms of what you wanted to do that
20 day and did you want to plead guilty?

21 A: Yes. He did ask me that.

22 Q: And do you recall what you told him?

23 A: Yeah. Yes, I do. I recall.

24 Q: What did you tell him?

25 A: But, you know, that's -- at the same time, he kind of --

KENDRIS BROWN - CROSS BY MS. MCALLISTER

1 he basically took advantage of me. I'm pretty sure you know
2 that.

3 Q: Okay. I'm asking you about the judge. Do you recall
4 telling the judge that you wished to plead guilty?

5 A: Yes, I did.

6 Q: Okay. Do you recall that the solicitor who was
7 prosecuting the case against you kind of read out the facts as
8 to what happened and why you were facing these charges?

9 A: Yes.

10 Q: Okay. And do you remember telling the judge that you
11 agreed with those facts, that they were indeed true?

12 A: Well, yeah. Yes.

13 Q: Okay.

14 A: Yes, I did say that, but, you know -- yeah.

15 Q: And do you under -- and do you recall being asked whether
16 or not you were satisfied with Mr. Duffee as your attorney?

17 A: Yes, I did state that, but, you know, that wasn't -- that
18 wasn't part of -- well, he didn't keep his word what he told
19 me.

20 Q: Okay. That -- the question I'm asking you is do you
21 remember telling the judge that you were satisfied with Mr.
22 Duffee as your attorney?

23 A: Yes.

24 Q: Okay. And do you remember telling the judge that you had
25 some conversations with Mr. Duffee and that you understood

KENDRIS BROWN - CROSS BY MS. MCALLISTER

1 those conversations?

2 A: Yes.

3 Q: And do you remember telling the judge that you
4 specifically discussed the elements of the crimes that you
5 were charged with, potential defenses, and the -- your
6 constitutional rights with Mr. Duffee?

7 A: Yes.

8 Q: Okay. And -- and you told the judge that you did not
9 have any complaints against your attorney at that time?

10 A: Yes.

11 Q: And you told the judge that Mr. Duffee had done
12 everything you asked him to do?

13 A: Yes, I did state that.

14 Q: Okay. And you told the judge that it was your decision
15 that day to plead guilty?

16 A: Yes.

17 Q: And you told the judge that you wished to plead guilty
18 that day?

19 A: (No verbal response.)

20 THE COURT: Is that a yes or a no?

21 THE APPLICANT: Yes.

22 THE COURT: Thank you.

23 MS. MCALLISTER: Your Honor, I would call the Court's
24 attention to page 15, 16, and 17 of the transcript.

25 THE COURT: All right.

KENDRIS BROWN - CROSS BY MS. MCALLISTER

1 BY MS. MCALLISTER:

2 Q: And do you recall that the judge asked if you had
3 anything to say to him as to -- as to mitigation? Do you
4 remember that?

5 A: Yes, I do.

6 Q: Do you recall what you said to the judge?

7 A: Yes.

8 Q: What did you say to the judge?

9 A: I ain't got nothing to say.

10 MS. MCALLISTER: Thank you, Your Honor. That's all I
11 have at this time.

12 THE COURT: Any redirect?

13 MR. WALLER: No further questions, Your Honor.

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

15 MR. WALLER: The applicant has no further witnesses, Your
16 Honor.

17 THE COURT: All right. Ms. McAllister?

18 MS. MCALLISTER: Your Honor, the State would call Skip
19 Duffee.

20 THE COURT: All right. Sir, if you would, come around to
21 be sworn.

22 THE CLERK: Raise your right hand. Do you swear to tell
23 the truth, the whole truth, and nothing but the truth, so help
24 you God?

25 THE WITNESS: I do.

HENRY "SKIP" DUFFEE - DIRECT BY MS. MCALLISTER

1 THE CLERK: Have a seat and state your name for the
2 record.

3 THE WITNESS: I am Henry Shealer Conduras [phonetic]
4 Duffee Jr., Esquire if you like. I go by Skip.

5 HENRY "SKIP" DUFFEE, being first
6 duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. MCALLISTER:

9 Q: Mr. Duffee, how long have you been practicing law?

10 A: Seven years now. It's a good number.

11 Q: And how much of that time have you spent practicing
12 criminal law?

13 A: I practiced with Richard Strobel for four and a half
14 years and clerked with him for a summer, and we went through
15 hundreds of clients annually, not limited to just criminal
16 defense work, but state and federal.

17 Q: Okay. And at the time that you came up to this case, how
18 much experience did you have doing criminal work?

19 A: I think about four and a half years.

20 Q: Do you recall -- you were -- were you appointed on this
21 case?

22 A: I was by Judge Russo.

23 Q: Okay. And can you -- can you tell us a little bit about
24 how these charges arose and how the applicant came to be
25 arrested?

HENRY "SKIP" DUFFEE - DIRECT BY MS. MCALLISTER

1 A: I -- I would just rely on the facts as elaborated by Ed
2 Clements. I do not know every salient detail. It's been
3 about three and a half years I guess. I remember there was
4 something about Coach Michael Hawkins, who is a big member in
5 the community, and there was an armed robbery and he was shot
6 counting money on his bed and killed, and pretty much
7 everybody pointed the finger at Kendris and there was really
8 no ray of sunshine in the case.

9 Q: When you say everybody, do you mean the co-defendants or
10 --

11 A: Right.

12 Q: -- eyewitnesses or --

13 A: It just seemed -- it was a maelstrom of -- an avalanche
14 of evidence against him.

15 Q: Okay. Do you recall discussing the charges and the
16 evidence with Mr. Brown?

17 A: Somewhat, yeah. Just going through the motions of how it
18 looked generally. It was -- it was so bad there was nothing
19 really to pick apart or play with.

20 Q: You mean -- when you say nothing to pick apart, you mean
21 in terms of the State's evidence?

22 A: Right.

23 Q: Okay. Did Mr. Brown offer any defenses to you to
24 investigate?

25 A: No. And we talked about what witnesses and I guess maybe

HENRY "SKIP" DUFFEE - DIRECT BY MS. MCALLISTER

1 -- I had gotten in touch with his mother and grandmother and
2 had contacted them and kept them updated throughout with phone
3 calls and just kind of to get, like, a picture of the home
4 life of Kendris.

5 And it's -- it's sort of the familiar picture of the
6 father had stepped out and the mother was ex-military and
7 disabled from her service and the grandmother -- neither the
8 grandmother nor the mother I think could keep tabs on Kendris.
9 He would leave home and just kind of started running with the
10 wild crowd and that's sort of the familiar story, which I
11 brought up I guess in the hearing.

12 Q: Okay. So in terms of an investigation, what else did you
13 do? Did you have --

14 A: There was a Bankers box, about a stack this high of
15 transcripts. I got that from Kathy Elmore. They were
16 basically just typed transcripts of all the interviews,
17 interrogations of the witnesses, talk about, you know, the
18 motel room and I guess Kendris was praying to God for
19 forgiveness, and then basically just everybody coming out
20 against and there was a lot of talk from Ashley Hawkins about
21 who she remembered seeing in the home, money in pockets, and
22 things like this.

23 It was -- it was -- it was a lot to go through and -- but
24 also I think -- well, I don't have those before me. Those are
25 in the possession of the Solicitor's Office in at least DVD

HENRY "SKIP" DUFFEE - DIRECT BY MS. MCALLISTER

1 format.

2 Q: Okay. And you were able -- but you were able to see what
3 was in the solicitor's file?

4 A: Right. In addition to the Rule 5 and Brady I had
5 requested, I got that in addition from Kathy Elmore, who had
6 worked on the juvenile matter before -- prior to being waived
7 up.

8 Q: Okay. When you met with Mr. Brown, was he cooperative
9 with you?

10 A: The first meeting we had when he came to the courthouse,
11 we discussed some, but just as I had learned from Ms. Elmore,
12 the previous attorney, I think he was very scared or shy or
13 just unsure from speaking to other people. Maybe he had been
14 informed not to talk. I could not get much information about
15 him about which way to go.

16 I suppose my next move then as a result of that first
17 meeting was to then contact the family multiple times and just
18 kind of find out about him and the neighborhood or whatever,
19 and then talking with Ms. Elmore and what she knew and also
20 talking to the Solicitor's Office and the investigators, and
21 also the second meeting I had with Kendris where I felt more
22 -- a little more sure footing with my understanding of the
23 case.

24 Q: Okay. Was there ever -- was there ever a time that --
25 that Kendris -- I'm sorry. Was there ever a time that the

HENRY "SKIP" DUFFEE - DIRECT BY MS. MCALLISTER

1 Solicitor's Office gave you a plea offer?

2 A: That was never formally discussed.

3 Q: Is that because the Solicitor's Office did not want this
4 to plead or because -- do you know why?

5 A: I felt that it might have been for political reasons of
6 not exciting the community, which had already begun to lash
7 out at certain people I think over the murder of a high-level
8 community member such as Coach Michael Hawkins, who was,
9 again, very active. I guess teaching kids basketball and doing
10 community activities he spearheaded.

11 In the judge's chambers of Michael Nettles, it was
12 revealed that it was possible for there to be a plea result or
13 to get a plea sentence something less than life, and I think
14 -- off of the top of my head, I can't remember if it was 30 to
15 40 years, and so that was the ray of sunshine that I grabbed
16 hold of thinking this is it because, you know, with the guilty
17 plea and the political situation in the community, the
18 truncated discussion of the facts at the guilty plea hearing
19 was far more preferable to a Charles Manson type trial where
20 the entire community was dragged through the mud and the only
21 hope we had was to crack jokes or, you know, just go through
22 and not present any witnesses and defense and hope for some
23 luck with some kind of one-two punch on the final argument.
24 That was really the only hope in the case was the guilty plea.

25 Q: Okay. I want to back up a little bit. There was never a

HENRY "SKIP" DUFFEE - DIRECT BY MS. MCALLISTER

1 formal -- was there ever a formal plea offer made?

2 A: No, not -- not in open court.

3 Q: Was there ever --

4 A: It could not be had.

5 Q: Was there ever a time when the Solicitor's Office

6 withdrew the life -- the LWOP, the life without parole?

7 A: No. That was always on the table. The general statutory

8 scheme for murder one, burglary, however that interacts --

9 it's been a bit since I dove through the books. I probably

10 knew at the time. The general range was on the table.

11 Q: The range from --

12 A: For the statute.

13 Q: Was -- okay. So -- so the Solicitor's Office never made

14 an offer for him to plead guilty to any specific amount of

15 time?

16 A: Correct. To -- in open court.

17 Q: Okay. Was this a big -- was this a big case in terms of

18 notoriety?

19 A: Yes.

20 Q: Okay. And did that figure into your strategy for how to

21 deal with this case?

22 A: Correct.

23 Q: Okay. And that's what you meant when you said a Charles

24 Manson style trial?

25 A: It would have been insane.

HENRY "SKIP" DUFFEE - DIRECT BY MS. MCALLISTER

1 Q: You mean the evidence and the witnesses that the State
2 had to present?

3 A: There was nothing to play with. We would have been
4 slammed. We would have been laughed at and we would have had
5 to just cut jokes to play with anything. It was a brick wall.

6 Q: Okay. And why was that? Was there just --

7 A: There was so many discussions and interrogations of all
8 the times that Kendris admitted to the killing, saying it was
9 him or me, praying in front of people in the motel room,
10 showing the money, discussing the final moments of something
11 like that.

12 There was just -- there was nothing good. I didn't want
13 that to be paraded around. I wanted it snuffed as quickly as
14 possible in a truncated discussion of the facts by Solicitor
15 Clements and that would be it; so there would not be wailing
16 from the victims in the gallery, you know, none of that.
17 Let's not have it. Let's, you know, go for this.

18 Q: Okay. Did you advise Mr. Brown in terms of -- did you
19 advise Mr. Brown about that strategy to try to minimize the --
20 the circus I guess for lack of a better word?

21 A: Explicitly. It was clear to him as well from our
22 discussion.

23 Q: You believed from your discussions with Mr. Brown that he
24 understood your strategy?

25 A: Yes.

HENRY "SKIP" DUFFEE - DIRECT BY MS. MCALLISTER

1 Q: Okay. And did you believe that he agreed with that
2 strategy?

3 A: Yes.

4 Q: Okay. Did you -- did you ever advise Mr. Brown as to --
5 as to mitigation when it came to the -- to the plea -- to the
6 guilty plea?

7 A: Yes.

8 Q: What did you tell him?

9 A: I said it would be nice if you apologize to the victim's
10 family. They're going to be out there. It's your choice.
11 You don't have to apologize, but it would be really nice and
12 it would mean something to them and maybe to the judge, but
13 it's your choice.

14 Q: And did he apologize?

15 A: I was kind of surprised at the tail end of the hearing
16 going as it did and there was some -- a bit of a hush as he
17 made that comment and then the rejoinder from Judge Nettles,
18 who -- I guess I was in, you know, sort of like a just shocked
19 state at that. At that point, I almost don't -- as I'm
20 rereading Nettles at the end of that transcript, it -- or
21 maybe I've just forgotten.

22 I've been through so much, but he really appears to have
23 made his decision on that -- on that final statement such that
24 that was one of the most determinative points for him. He
25 said it was a very difficult decision. He thought it was

HENRY "SKIP" DUFFEE - DIRECT BY MS. MCALLISTER

1 going to be and then having heard that, he made up his mind to
2 go for life.

3 Q: Okay. So that's your -- that's your recollection of --
4 of Judge -- of Judge Nettles' comments? Is that what you're
5 saying?

6 A: We went -- we went into that plea hearing with every
7 possibility open to get something less than life. There was
8 no doubt about it in my mind or else I would have played
9 Russian roulette with the kid because it -- because it meant
10 something to me, this case. It was not just a number. But
11 yes, that is my recollection of why Judge Nettles -- and
12 listening to the audio of that portion of the hearing would be
13 further informative in the matter too.

14 Q: Did you speak in mitigation for Mr. Brown?

15 A: I did. And I was really kind of shocked when I read the
16 *Aikens v. Byers* categories because they pretty much went
17 through a lot of the things I said, and these are insights I
18 gained from speaking with his mother and grandmother. A kid
19 who, you know, was impressed with certain other young men and
20 other organizations in the area, and he began to hang out with
21 them and they could not rein him in to the home and he would
22 run away frequently, being very impressionable at that age,
23 and looking I suppose for a father figure in these other young
24 men, who were a pretty wild crowd, and --

25 MS. MCALLISTER: I beg the Court's indulgence a moment,

HENRY "SKIP" DUFFEE - DIRECT BY MS. MCALLISTER

1 Your Honor.

2 BY MS MCALLISTER:

3 Q: Did you hear Mr. Brown testify earlier about an offer to
4 join some type of program?

5 A: The YOA eligibility? I don't know how anybody could be
6 eligible for YOA upon, you know, murder one.

7 Q: Okay. So as far as you know, there was no offer for him
8 to join some type of program?

9 A: I've helped people get into YOA before with Richard --
10 with Strobel, and I think he had maybe asked me and then in
11 the haze, the fog of memory, maybe it's come up now. I'm not
12 attacking Kendris or anything, his recollection, but, you
13 know, it was very clear to me and it is now, as I'm sure it
14 was then, that had I been asked about YOA eligibility, if I
15 did not know off the top of my head, I would have looked that
16 up.

17 But I wouldn't have told somebody who's looking at life
18 in prison, you know, hey, oh, yeah, there's a safety net over
19 here and maybe -- no, no. I mean nobody's eligible for YOA
20 when you're up on murder in the first degree.

21 Q: Okay. Do you -- I think you said you talked to his
22 family at various points --

23 A: Yes.

24 Q: -- about this case?

25 A: And I did notify them prior to the hearing and I do not

HENRY "SKIP" DUFFEE - DIRECT BY MS. MCALLISTER

1 know why they did not come that day, but I did notify them
2 prior to the hearing because I knew I would see them at some
3 point afterwards and didn't want to be, you know, embarrassed
4 or whatever.

5 Q: In these meetings that you had with Mr. Brown, did you
6 bring copies of discovery to him, if you had it? At that
7 time, did you go over whatever you had in your file?

8 A: So we -- we had -- I mean first off -- okay. You've got
9 a 15 -- 16-year-old kid and an attorney and you've got a stack
10 of maybe about a thousand pages. I would do the review and
11 then I would come to him with my insights into the review of
12 1,000 pages of paper to discuss.

13 MS. MCALLISTER: I beg the Court's indulgence one moment.
14 That's all I have at this time, Your Honor.

15 THE COURT: Cross-examination.

16 MR. WALLER: Thank you, Your Honor.

17 THE COURT: Hold on just a minute.

18 (WHEREUPON, there was a pause in the proceedings.)

19 THE COURT: All right. Go ahead, Mr. Waller.

20 MR. WALLER: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. WALLER:

23 Q: Mr. Duffee, you keep referencing murder one or murder in
24 the first degree. Can you explain that a little bit more?

25 A: You know, that's where you got the premeditated crime and

HENRY "SKIP" DUFFEE - CROSS BY MR. WALLER

1 it's deliberative. It's basically where you point the pistol
2 at the back of a guy's head and you pull the trigger four,
3 five, six times, and it's for the money and you have time to
4 think about it. This case would be a great discussion of what
5 murder charges look like.

6 Q: Okay. Would you have -- would you have gone over what
7 you've described as murder in the first degree and other
8 degrees with Mr. Brown?

9 A: He was not charged with any of the -- there was no
10 possibility of it being lowered. He went into a -- he was
11 accused of going into a man's home to burglarize it while his
12 daughter was held down and the community activist was counting
13 money on the bed from his candy and snack sales activities,
14 liquor and maybe some other substances. I don't know. And he
15 rushed up on him and the pistol popped five times, but it was
16 a .22 pistol or something. I don't know if it was ever
17 recovered. I don't see how that could be qualified as
18 anything but premeditated, deliberative murder or however --
19 however you describe it, it would be -- it would be -- it
20 would be murder one and I don't see -- any other state could
21 characterize that as such.

22 Q: Okay. You testified earlier that you -- in going over
23 the evidence or the discovery that the Solicitor's Office
24 provided you, you were going through the motions?

25 A: Right.

HENRY "SKIP" DUFFEE - CROSS BY MR. WALLER

1 Q: Okay. What do you mean by that?

2 A: What an attorney is required to do ethically, legally,
3 review all the evidence in the file as to requesting the Rule
4 5 and Brady, to meet with the client. If the client is not
5 much help, I would meet with the family. I would talk with
6 other people involved in the case, such as Attorney Kathy
7 Elmore, who had handled the juvenile case. I spent a good
8 time with her. I got the remainder of the file with her,
9 which was that Bankers box of transcripts.

10 I also went to the Solicitor's Office and spoke with Ed
11 Clements and I believe certain other persons involved in the
12 case, involved in other cases. I think I also spoke with
13 maybe Jim Hoffmeyer, who had one of the codefendants I
14 believe, and I spoke with him at some length.

15 I spoke with everyone I could to try and find out as much
16 information as I could about the case and then I circled back
17 around to Kendris Brown at those point in times where I could
18 have as much discussion as possible, namely just prior to the
19 day of reckoning when he was certainly most interested in the
20 matter and able to talk and have a thought about it.

21 Q: Okay. You testified that your first meeting with him was
22 at the courthouse?

23 A: Correct.

24 Q: Okay. Do you recall when that was?

25 A: That was around the time of the appointment.

HENRY "SKIP" DUFFEE - CROSS BY MR. WALLER

1 Q: Why was he at the courthouse?

2 A: I don't -- I don't know why. I can't -- I can't recall.
3 Maybe that was when he was being waived up maybe. I can't
4 say.

5 Q: Okay. When, if you recall, was your second meeting?

6 A: That would have been after I had thoroughly researched
7 the case and discussed with everyone else involved and then
8 went to the 16-year-old Kendris Brown to make a decision what
9 witnesses do you think we can call or do you want to plead
10 guilty.

11 Q: Did y'all have any other meetings?

12 A: Not that I recall.

13 Q: Okay. You testified regarding a plea offer, that there
14 wasn't one made in open court. Was there one made and
15 extended to you that wasn't in open court?

16 A: There was no official plea offer. There was simply a
17 discussion in Judge Nettles' chambers with Ed Clements and
18 myself and Judge Nettles, by which it was understood that
19 there was a possibility that Mr. Brown could receive something
20 as low as 30 to 40 years or life.

21 Q: Okay. So there was no plea offer extended to you from Ed
22 Clements or any other solicitor prior to walking into court or
23 prior to being in the judge's chambers just immediately prior
24 to walking into court?

25 A: There had been some discussion between Ed and myself, but

HENRY "SKIP" DUFFEE - CROSS BY MR. WALLER

1 I could not guarantee it as an offer. It was not a formal
2 plea offer. It was just a possibility within the statutory
3 range that, say, the prosecution would be comfortable if the
4 judge seen the remorse of the defendant, decided to extend
5 mercy to the defendant, and granting some sentence less than
6 life.

7 Q: Was it a recommendation the State was going to make?

8 A: There was no recommendation by the State. There was no
9 other formal statement of the State on the record. It was
10 only an informal remark made in the judge's chambers and by
11 the solicitor, who told me himself, as an honest man, word is
12 good, that, you know, this is possible. I'd be comfortable
13 with it. I'll tell the judge. The judge heard it and the
14 judge understood that, you know, this is a possible range.

15 Q: Okay.

16 A: There was not a formal plea offer.

17 Q: Okay. What preparation did you do to get ready for
18 mitigation?

19 A: I reviewed the entire file. I discussed -- I'll just
20 refer back to the previous conversation we had. So --

21 Q: Okay. I need you to answer my question, Mr. Duffee.
22 What -- what --

23 A: I've already answered this question.

24 THE COURT: Hold on a second. Let him finish his
25 question, Mr. Duffee, and then I'll make a decision whether or

HENRY "SKIP" DUFFEE - CROSS BY MR. WALLER

1 not you need to go forward in answering. Go ahead, Mr.
2 Waller.

3 MR. WALLER: Thank you, Your Honor.

4 BY MR. WALLER:

5 Q: Mr. Duffee, what -- what preparation did you make in
6 mitigation before sentencing?

7 THE COURT: Answer the question, please.

8 A: I met with the mother and grandmother and found out about
9 the client's life. That was about all that could be hoped for
10 in terms of gathering information regarding the mitigation.

11 Q: Okay. I believe you testified earlier that you -- that
12 you informed them of the plea and they didn't appear?

13 A: Correct.

14 Q: Is that what you testified to? Okay. When did you
15 inform them of the plea?

16 A: Multiple times.

17 Q: Okay. Do you recall when? How far ahead?

18 A: It would've been prior to the plea.

19 Q: Do you recall how far in advance?

20 A: Multiple times in the days leading up to the plea.

21 Q: When was the decision made to enter the plea?

22 A: The decision was made by Kendris. I don't remember the
23 date.

24 Q: Was it before the meeting in chambers with Judge Nettles
25 and Solicitor Clements?

HENRY "SKIP" DUFFEE - CROSS BY MR. WALLER

1 A: It was around that time, yes.

2 Q: Okay. Was that the same day as he pled guilty?

3 A: I don't remember the day, but it -- that sounds about
4 right.

5 Q: Okay. Did you make any objections or post -- post-
6 sentence motions based on Judge Nettles sentencing Mr. Brown
7 singly based on his lack of showing remorse? Did you consider
8 that?

9 A: I, you know, reviewed what happened and I did not see any
10 grounds to make any such motions whatsoever.

11 MR. WALLER: I beg the Court's indulgence, please.

12 THE COURT: All right.

13 MR. WALLER: No further questions, Your Honor.

14 THE COURT: Any redirect?

15 MS. MCALLISTER: No, Your Honor.

16 THE COURT: Sir, you may step down.

17 THE WITNESS: Thank you, Judge.

18 THE COURT: Mr. Duffee, I'm going to ask that you have a
19 seat behind the Attorney General's Office. I want you to
20 remain here for the present -- for the time being. Anything
21 further?

22 MR. WALLER: Your Honor, that was the State's witness.

23 THE COURT: I understand. I'm asking you though.

24 MR. WALLER: Nothing further, Your Honor.

25 THE COURT: Anything further from you, Ms. McAllister?

1 MS. MCALLISTER: No, Your Honor.

2 THE COURT: All right. I'm going to stand down for just
3 a minute. I'm going to ask that you all remain here. I'm
4 going to look at something real quick.

5 (WHEREUPON, there was a break in the proceedings from
6 12:06 p.m. until 12:48 p.m.)

7 THE COURT: All right. Let me ask you something, Mr.
8 Duffee. When Mr. Strobel retired, who -- where did Ms.
9 Shurling go?

10 THE BAILIFF: She stepped out, sir.

11 THE COURT: This -- would you tell her to come back in
12 here, please?

13 MR. DUFFEE: Do you want me to approach, Judge, you said?

14 THE COURT: No, sir, you're fine. Ms. Shurling, I'm
15 going to ask Mr. Duffee while we're in here --

16 MS. SHURLING: Yes.

17 THE COURT: When Mr. Strobel retired, who retained his
18 files from cases? I see you came in here today, for instance,
19 with a file and you're no longer with him and he's not working
20 anymore for various reasons, my understanding some health
21 reasons.

22 But the next PCR we were supposed to have here today
23 involved a case that Ms. Shurling is handling and she's had
24 difficulty locating the file. Were those files given to some
25 other lawyer in care of, so to speak, or where are the old

1 files? Do you know?

2 MR. DUFFEE: Here -- here is my recollection of those
3 events and knowledge of phone calls and things like that. So
4 Mr. Strobel and I split ways I believe sometime prior to the
5 4th of July, 2013, and I went down to Charleston eventually. I
6 do not know exactly where the contents are and who the safe
7 keeper was.

8 THE COURT: Okay.

9 MR. DUFFEE: I do know that Julie Moose of Turner Padget
10 called me at some point in 2014 and asked for recommendations
11 as to who might purchase those files or take over active case
12 files. She might know something. Other than that, either
13 Richard's wife, Nancy Strobel, who lives down in Florida I
14 believe, may be with him.

15 THE COURT: Okay.

16 MR. DUFFEE: Also, Richard's longtime secretary, Misty
17 Chavis, may know.

18 THE COURT: Where is she now? Do you know?

19 MR. DUFFEE: That I -- I mean these are people -- I
20 honestly would not know.

21 THE COURT: Okay.

22 MR. DUFFEE: Maybe -- I would guess in Florence.

23 THE COURT: Ms. Shurling, you can contact Julie Moose at
24 Turner Padget.

25 MS. SHURLING: Fortunately, I'm on the board for the

1 Women Lawyers Association with Ms. Moose and I can contact her
2 on that.

3 THE COURT: And as well as the Supreme Court, as well as
4 what we discussed --

5 MS. SHURLING: Absolutely, Your Honor.

6 THE COURT: -- in chambers about contacting the Supreme
7 Court because I would think that there's some kind of policy
8 and procedure.

9 MR. DUFFEE: Judge, Brown Johnson is another attorney who
10 knew Richard for a long period of time. He may have some
11 knowledge too.

12 THE COURT: Brown Johnson? Do you know him, Ms.
13 Shurling?

14 MS. SHURLING: I've never even heard that name.

15 THE COURT: He's an attorney here in town. He works with
16 McLean, Joe McLean and that group.

17 MS. SHURLING: Thank you. I'll write that name down
18 before I leave.

19 THE COURT: Because, you know, now that you say that, Mr.
20 Duffee, it seems like Brown Johnson has been in court over
21 here. It's been a while now, but he did come over here on
22 occasion for matters with Mr. Strobel, who was retained.

23 MS. SHURLING: Great.

24 THE COURT: Okay. All right.

25 MS. SHURLING: And he practices here in the Florence

1 area?

2 THE COURT: He does. Brown Johnson does.

3 MS. SHURLING: Okay.

4 THE COURT: Thank you. You're free to go. Thank you,
5 Mr. Duffee.

6 MR. DUFFEE: Thank you, sir.

7 THE COURT: All right. I'll let you all know on Mr.
8 Brown's case.

9 MR. WALLER: Thank you, Your Honor.

10 THE COURT: Okay. Thank you.

11 THE COURT: (To the applicant) The reason I had you
12 taken out of here earlier is because you failed to stand
13 continuously when you were told to stand in the courtroom and
14 out of respect that's what you're supposed to do is stand.

15 You don't have to respect me. Okay? That's fine. But
16 you stand out of respect for people that have fought and died
17 for this country and are continuing to fight and die for this
18 country. That's why you stand.

19 And when you don't do that, it's disrespectful. I told
20 you I was going to hold you in contempt. I'm not going to do
21 that, but certainly have the authority to do that and, in
22 fact, I have seen judges hold individuals that were seated out
23 in the audience in contempt of court and give them 30 days in
24 jail for not standing when they're supposed to stand.

25 You don't -- I understand you're in a bad situation. I

1 understand that. Okay? But that doesn't take away the
2 necessity nor the requirement that you give respect in certain
3 situations. I've done my very best to treat you with the
4 utmost respect in here today, as I do everybody that walks in
5 those doors into the courtroom in front of me, people that may
6 not necessarily deserve respect, but do so anyway because
7 that's what I'm called to do. And I've tried to do the very
8 same to you today. Okay?

9 Good luck to you.

10 (WHEREUPON, the proceedings ended at 12:53 p.m.)

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

Certificate

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 40, 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 Florence County, South Carolina, on the 9th
13 day of November, 2016.

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

16
17 Krystal J. Smith

Court Reporter

18
19
20 Florence, South Carolina
21 June 1, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE)	
KENDRIS BROWN, #355055,	)	C/A NO.: 2014-CP-21-0075
)	
Applicant,)	
v.	)	RESPONSE TO CONDITIONAL
	)	ORDER OF DISMISSAL AND
STATE OF SOUTH CAROLINA,	)	AMENDMENT TO APPLICATION
)	
Respondent,)	
)	

The Applicant, by and through his Attorney Jonathan D. Waller, would respectfully respond to the State’s Conditional Order of Dismissal by submitting the below stated information in support of his Application for Post-Conviction Relief and would also make the following amendments to Applicant’s Application.

1. Untimely Filing

The State has filed a motion to dismiss for failing to comply with the filing procedures of the Uniform Post-Conviction Relief Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) requires an Application for relief to be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower from an appeal or the filing of the final decision upon an appeal, whichever is later. The State contends that Applicant was required to file his application before April 5, 2012, however, Applicant did not in fact even plead guilty until April 5, 2013. The one year statute of limitations, when applied to Applicant, requires that his Application be filed before April 5, 2014. Given that his Application was filed on January 10, 2014, Applicant was well within the statutory limits on filing.

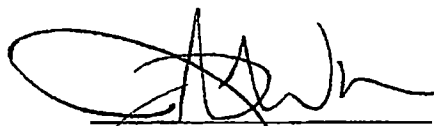
2. Amendment

Applicant would amend his Application for Post-Conviction Relief filed January 10, 2014, by adding the following specific allegations of ineffective assistance of counsel:

- a. Counsel was ineffective in failing to advise client of possible sentences, evidence, and procedures of trial that ultimately led to client making an unintelligent and unknowing decision to enter a plea of guilt.

The Applicant would respectfully submit that he is entitled to an evidentiary hearing based upon his amended PCR Application and that the Conditional Order of Dismissal be vacated as Applicant filed his Application within the statutory deadlines.

Respectfully submitted,



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Attorney for the Applicant
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(803) 708-6767

November 10, 2015
Columbia, South Carolina

CERTIFIED: A TRUE COPY

Christine [unclear] Stearns

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE FLORENCE COUNTY TWELFTH JUDICIAL CIRCUIT

Kendris Brown, #355055,

2014-CP-21-0075

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

FILED
CLERK DEC 30 PM 3:05
FLORENCE COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 10, 2014. Respondent made its Return on November 5, 2015. An evidentiary hearing into the matter was convened on November 9, 2016 at the Florence County Courthouse. Jonathan D. Waller, Esquire, represented Applicant. Lindsey A. McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Henry "Skip" Duffee, Jr., Esquire, also testified. This Court had before it a copy of the records of the Florence County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return, and the guilty plea transcript.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the September 2012 term of the Florence County Grand Jury for murder, burglary first degree, armed robbery, possession of a weapon during the commission of a violent crime, and conspiracy (2012-

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GS-21-1250). Applicant was represented by Henry "Skip" Duffee, Jr., Esquire. On April 5, 2011, Applicant pled guilty. The Honorable Michael G. Nettles sentenced Applicant to concurrent terms of life imprisonment for murder and first degree burglary. The other charges were dropped. Applicant did not appeal his plea or sentences.

In his original Application, Applicant alleged that he is being held in custody unlawfully because his sentence of life without parole is unconstitutional because he was under age eighteen at the time the crime was committed. Applicant has filed for a resentencing hearing pursuant to Aiken v. Byars, which remains pending, and that allegation was not addressed at this hearing. However, Applicant also filed an Amended Application for Post-Conviction Relief on November 10, 2015, alleging that he is being held in custody unlawfully for the additional reason listed below, which is the only claim that Applicant prosecuted at the PCR hearing:

1. Counsel was ineffective in failing to advise client of possible sentences, evidence, and procedures of trial that ultimately led to client making an unintelligent and unknowing decision to enter a plea of guilt.

II. SUMMARY OF TESTIMONY

Applicant's Testimony

At the evidentiary hearing, Applicant testified that Counsel represented him at his plea and that they met twice prior to the plea. Applicant stated that Counsel did explain "everything" regarding a plea or going to trial and that Counsel advised Applicant that he would be facing a long sentence if he went to trial. Applicant testified that Counsel discussed issues regarding his codefendants with him, but Counsel did not discuss the State's evidence or review discovery with him. Applicant testified that he saw a copy of his discovery in Family Court, but Applicant stated he

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did not see it again after he was waived up to General Sessions and Counsel was appointed in place of his juvenile public defender. Applicant testified that he wanted a trial, but Counsel never discussed defenses with him, and he did not know what case they would present. Applicant also testified that Counsel told him there was program where he could "do fifteen years and go home." Applicant further testified that Counsel did not discuss mitigation evidence with him and that his family and friends were not present at the plea because they weren't aware of the court date.

On cross-examination, Applicant claimed that Counsel "did not keep his word" regarding "what he told [Applicant]" before the plea. However, Applicant admitted that during his guilty plea, he testified he was satisfied with Counsel, that he understood all of his conversations with Counsel, and, specifically, that Counsel went over all of the elements of his charges and his constitutional rights. Applicant also testified that he told the judge that Counsel had done everything Applicant had asked him to do, and he had no complaints with Counsel's representation. Applicant further testified that he recalled that the judge reviewed the facts on which these charges were based, and Applicant admitted that the facts were true and told the judge that he wished to plead guilty. Applicant stated that when the judge asked him if he had anything to say on his own behalf, Applicant answered, "I ain't got nothing to say."

Counsel's Testimony

Counsel testified that at the time of this case, he had been practicing law for four and a half years and that he handled hundreds of clients annually, including both state and federal cases. He stated that he first met with Applicant shortly after he had been waived up to General Sessions, and at that time, Applicant seemed to be scared or untrusting of Counsel, and Counsel did not get much information from him. Counsel testified that there was a "maelstrom" of evidence against Applicant,

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including multiple witnesses and codefendants who would testify against him and that Applicant did not offer any defenses for investigation. Counsel testified that he received a banker's box full of transcripts from statements and interviews. Counsel explained that did go over the evidence with Applicant by pulling out the most relevant parts and summarizing. On cross-examination, Counsel also testified that he did everything he felt he was legally and ethically required to do for his client, including going over the evidence and elements of the crimes with Applicant, speaking with his family and his attorney from Family Court, and engaging in discussions with the Solicitor's office and counsel for Applicant's codefendants. Counsel testified that his second meeting with Applicant took place after he had a chance to speak with these collateral contacts.

Counsel stated that he never considered going to trial and that his strategy was to try to get Applicant less than a life sentence by being able to present a "truncated version of the facts" at a guilty plea and avoiding a highly publicized trial in a case that was well known in the community. Counsel testified that he discussed this strategy with Applicant and that Applicant was in agreement. Counsel stated multiple times that there was no official plea offer made before the hearing or in open court. Counsel testified that the only indication that less than a life sentence might be possible was during a conversation in the judge's chambers before the plea where the Solicitor made "informal remarks" indicating that the State would be comfortable with a sentence in the range of thirty to forty years. Counsel further stated that he was not sure what program Applicant was referring to, but there was no YOA offer due to the nature of the charges and if Applicant had asked him about that, he would have told Applicant it wasn't possible.

Counsel also testified that he notified Applicant's family of the date of the plea several times in the week leading up to it, and he did not know why they were not present. He stated that he spoke

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in mitigation on Applicant's behalf using information that he had gathered from Applicant's mother and grandmother. Counsel also testified that he advised Applicant that it would be nice for Applicant to apologize to the victims' family, and he was surprised when Applicant did not do so.

III. 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 (2003).

Applicable Law

Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

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The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 U.S. 668, 688 (1984)). 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 the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). 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) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

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Findings of Fact

This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible. This Court also finds Counsel provided effective assistance of counsel in this case. Counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on two occasions, during which Counsel discussed the pending charges, the elements of the charges, Applicant's constitutional rights, Applicant's version of the facts, and lack of possible defenses. Counsel credibly testified that there was never a formal plea offer for any sentence less than life. Furthermore, this Court finds credible Counsel's testimony that his strategy was to try for less than life through a guilty plea and that Counsel discussed this strategy with Applicant, who agreed with it. *See Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992))).

The record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. The plea judge also explained the charges to Applicant, including the maximum penalties on each. The judge informed him he could be sentenced to up to life on both charges. The plea judge also went through each of Applicant's constitutional rights and questioned Applicant as to whether he understood those rights and wished to give them up to plead guilty. Applicant agreed that he did. Applicant admitted he was guilty of these offenses and agreed with the facts presented by the State at the plea. Applicant told the plea court that he was satisfied with his attorney and that Counsel had done everything that Applicant had asked of him. This Court finds that Applicant understood the terms of the plea and the possible sentence.

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel’s performance. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance.

This Court also finds that the record fully supports the knowing and voluntary nature of Applicant’s guilty plea. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (holding 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.”). In addition, Applicant has presented no evidence or valid reasons why he should be allowed to depart from the truth of his statements made at the plea. See Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (“[Admissions] made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975))).

For these reasons this Court finds Applicant has failed to satisfy his burden of proving ineffective assistance. Accordingly, this allegation is denied and dismissed.

DCB
P. 8/7/10

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 evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

IV. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice. This Court also finds as to all other allegations that Applicant failed to present evidence of such claims and thus, this Court deems them abandoned, with the exception of Applicant's petition for resentencing pursuant to Aiken v. Byars, which is still pending.


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

DCB
8-9-10

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED.



THE HONORABLE D. CRAIG BROWN
Presiding Circuit Court Judge
Twelfth Judicial Circuit

12-21, 2016

Florence, South Carolina

2016 DEC 30 PM 3:05
COURT REPORTER
DEPT. OF CORRECTIONS
1000 W. BROADWAY, SC

FILED

DCB
P: 10/10

WITNESSES

Michael Robinson Florence Police Department

Ed Clements, III

ARREST WARRANT NUMBER

2012GS2101250E 2012GS2101250A
2012GS2101250B 2012GS2101250C
2012GS2101250D

M379315	M379316	M379317
M379318	M379319	
M379274	M379275	M379276
M379277	M379278	
M379309	M379310	M379311
M379312	M379313	
M379279	M379280	M379281
M379282	M379283	

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-21-01250

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2012

THE STATE

vs.

KENDRIS RICHARD BROWN

LAKAVIS ANTONIO HARRISON

JAQUELL ANTONIO MCCULLUM

MICHAEL STEVENS

JACOB PETE WHITE

Indictment for

**MURDER,
BURGLARY FIRST DEGREE,
ARMED ROBBERY,
POSSESSION OF WEAPON DURING
COMMISSION OF VIOLENT CRIME,
AND
CONSPIRACY**

Wanda K. Spaulding
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.
CERTIFIED: A TRUE COPY

2012 SEP - 6 AM 11:06
CONNIE REEL-SHEARIN
CLERK C.P. & G.S.
FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

INDICTMENT FOR

**MURDER, BURGLARY FIRST DEGREE,
 ARMED ROBBERY, POSSESSION OF WEAPON
 DURING COMMISSION OF VIOLENT CRIME,
 AND CONSPIRACY**

At a Court of General Sessions, convened on SEPTEMBER 06, 2012 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- MURDER

CDR: 0116 16-03-0010, 0020, 16-01-0060

That KENDRIS RICHARD BROWN, LAKAVIS ANTONIO HARRISON, JAQUELL ANTONIO MCCULLUM, MICHAEL STEVENS, and JACOB PETE WHITE did in Florence County on or about January 01, 2012, feloniously, willfully and with malice aforethought kill one Michael Hawkins, by means of forcibly entering his residence and shooting him multiple times, and that the said Michael Hawkins did die as a proximate result thereof; in violation of Sections 16-03-0010, 0020, and 16-01-0060, S.C. Code of Laws, 1976, as amended.

COUNT TWO- BURGLARY FIRST DEGREE

CDR: 0079 16-11-0311, 16-01-0060

That KENDRIS RICHARD BROWN, LAKAVIS ANTONIO HARRISON, JAQUELL ANTONIO MCCULLUM, MICHAEL STEVENS, and JACOB PETE WHITE did in Florence County on or about January 01, 2012, enter the dwelling of Michael Hawkins, located at [REDACTED], Florence, SC, without consent and with the intent to commit a crime therein; and/or said defendant entered or remained in said dwelling in the nighttime; and/or when effecting entry or while in the dwelling or in immediate flight therefrom, he or another participant in the crime were armed with a deadly weapon or explosive; and/or caused physical injury to a person who is not a participant in the crime; and/or used or threatened the use of a dangerous instrument; and/or displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; and/or the said KENDRIS RICHARD BROWN, LAKAVIS ANTONIO HARRISON, JAQUELL ANTONIO MCCULLUM, MICHAEL STEVENS, and/or JACOB PETE WHITE has two or more prior convictions for Burglary or Housebreaking or a combination of both; in violation of Sections 16-11-0311 and 16-01-0060, S.C. Code of Laws, 1976, as amended.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR MURDER, BURGLARY FIRST DEGREE, ARMED ROBBERY, POSSESSION OF WEAPON DURING THE COMMISSION OF VIOLENT CRIME, AND CONSPIRACY, WITH THE AFORESAID NAME(S) OF KENDRIS RICHARD BROWN, LAKAVIS ANTONIO HARRISON, JAQUELL ANTONIO MCCULLUM, MICHAEL STEVENS, AND JACOB PETE WHITE SHOWN THEREON:

COUNT THREE - ARMED ROBBERY

CDR: 0139 16-11-0330(A), 16-01-0060

That KENDRIS RICHARD BROWN, LAKAVIS ANTONIO HARRISON, JAQUELL ANTONIO MCCULLUM, MICHAEL STEVENS, and JACOB PETE WHITE did in Florence County on or about January 01, 2012, while armed with a deadly weapon, or while alleging, either by actions or words, that they were armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: handguns, did feloniously rob Michael Hawkins and/or Ashley Hawkins, at their residence located at [REDACTED], Florence, SC, by means of force or intimidation, goods or monies of the said Michael Hawkins and/or Ashley Hawkins; in violation of Sections 16-11-0330(A) and 16-01-0060, S.C. Code of Laws, 1976, as amended.

COUNT FOUR- POSSESSION OF WEAPON DURING COMMISSION OF VIOLENT CRIME

CDR: 0549 16-23-0490

That KENDRIS RICHARD BROWN, LAKAVIS ANTONIO HARRISON, JAQUELL ANTONIO MCCULLUM, MICHAEL STEVENS, and JACOB PETE WHITE did in Florence County on or about January 01, 2012, were in possession of a firearm, or did visibly display what appeared to be a firearm, or visibly displayed a knife, to wit: handguns, during the commission of a violent crime, to wit: Murder, Burglary First Degree and/or Armed Robbery; in violation of Section 16-23-0490, S.C Code of Laws, 1976, as amended.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR MURDER, BURGLARY FIRST DEGREE, ARMED ROBBERY, POSSESSION OF WEAPON DURING THE COMMISSION OF VIOLENT CRIME, AND CONSPIRACY, WITH THE AFORESAID NAME(S) OF KENDRIS RICHARD BROWN, LAKAVIS ANTONIO HARRISON, JAQUELL ANTONIO MCCULLUM, MICHAEL STEVENS, AND JACOB PETE WHITE SHOWN THEREON:

COUNT FIVE- CONSPIRACY

CDR: 0049

16-17-0410

That KENDRIS RICHARD BROWN, LAKAVIS ANTONIO HARRISON, JAQUELL ANTONIO MCCULLUM, MICHAEL STEVENS, and JACOB PETE WHITE did on or about January 01, 2012, unlawfully, willfully, knowingly, wickedly and feloniously unite, combine, conspire, confederate, agree between and among themselves, and have tacit understanding with each other and with divers other persons whose names are unknown to the Grand Jurors for the purpose of committing the crime of Murder, Burglary First Degree, and/or Armed Robbery; in violation of Section 16-17-0410, S.C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR