

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lancaster County

Honorable William Jeffrey Young, Circuit Court Judge

DAVID A. PATE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001261

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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S.C. SUPREME COURT

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State of South Carolina	)	In the Court of General Sessions
	)	Sixth Judicial Circuit
County of Lancaster	)	2014-GS-29-0221

State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Transcript of Record
	)	
David Adam Pate,	)	
	)	
Defendant.	)	
	)	
	)	

April 9, 2015
Lancaster, South Carolina

B E F O R E:

The Honorable Daniel D. Hall, Judge

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

Randy E. Newman, Jr., Assistant Solicitor
Attorney for Plaintiff

Michael H. Lifsey, Esquire
Attorney for Defendant

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

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TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 11:41 a.m.)

THE COURT: I'm ready whenever you are, Solicitor.

MR. NEWMAN: David Adam Pate.

(Whereupon, the defendant came forward.)

DAVID ADAM PATE, having been first duly sworn,
testified and stated as follows:

MR. NEWMAN: And may it please the Court?

THE COURT: All right, Solicitor.

MR. NEWMAN: Thank you, Your Honor. This is David
Adam Pate, represented by Attorney Mike Lifsey, here on
Case No. 2014-GS-29-221. He's indicted for murder.

Your Honor, it's my understanding he's here today to
plead guilty to murder. I believe, before we get into the
plea, there is a mental health issue. Your Honor, I -- he
was ordered to have an evaluation. I have a copy of that
eval. And I'll -- I'd hand that up.

THE COURT: All right. Let me talk to -- to Mr.
Lifsey. Mr. Lifsey, you represent David Pate; is ---

MR. LIFSEY: I ---

THE COURT: --- that correct?

MR. LIFSEY: I do, Your Honor.

THE COURT: And before we go any further into the --
this plea, it -- the Court's been made aware that there was
an -- possible issue of his mental status; is that right?

1 MR. LIFSEY: That is correct.

2 THE COURT: And -- and the -- I have before me a --
3 let's have this marked. We can call it Court's Exhibit.

4 (Whereupon, Court's Exhibit 1 was marked for
5 identification.)

6 THE COURT: I have before me what's been marked
7 Court's Exhibit 1, which appears to be a -- a competency-
8 to-stand-trial evaluation provided by the Department of
9 Mental Health. Mr. Lifsey, have you had an opportunity to
10 review this document?

11 MR. LIFSEY: I have, Your Honor.

12 THE COURT: All right. And tell me about your client.

13 MR. LIFSEY: Your Honor, I will tell you that I am --
14 another lawyer in our office was initially appointed to
15 represent Mr. Pate. No fault of Mr. Pate's, that lawyer
16 later left our office. I took over representation. The
17 prior attorney moved for him to be evaluated.

18 This is the result of that evaluation. I will tell
19 you, I believe my client's competent to stand trial. I've
20 had no problem communicating with him. I've -- I'll give
21 you some more details of my representation in a few
22 minutes.

23 But I will tell you that I -- I -- I believe he is
24 competent to stand trial. And I don't believe I have
25 anything to object to in regards to the competency

1 evaluation.

2 THE COURT: All right. And I'm -- am reading from the
3 summary -- or the conclusion on the medical -- on the
4 mental evaluation, signed by Dr. Frierson. And it states
5 (as read): "In summary, Mr. Pate has adequate factual and
6 rational understanding of the legal system and sufficient
7 present ability to consult with his attorney in the
8 preparation of a defense. Therefore, it is our opinion
9 that is -- he is currently competent to stand trial,
10 pursuant to *State v. Blair*" -- and in essence this is a
11 *Blair* hearing -- "about his" -- do you have -- and you have
12 no -- do you have any comments or ---

13 MR. LIFSEY: The only ---

14 THE COURT: --- about that ---

15 MR. LIFSEY: --- thing I ---

16 THE COURT: --- evaluation ---

17 MR. LIFSEY: --- would add, Your Honor -- and I have
18 neglected to mention to -- I -- I have personally spoken to
19 Dr. Frierson about this case on, I believe, two different
20 occasions. I -- I don't disagree at all with his
21 conclusions as to competency to stand trial. My client's
22 asked intelligent questions and is aware of his surrounding
23 and is aware of the court process and able to assist me in
24 his own defense, in my belief.

25 THE COURT: Okay. What -- what the Court will do is,

1 in essence, I need to make a finding as to his competency.
2 But let's do that after I ask him some preliminary
3 questions in how he answers the Court questions and then I
4 will -- I'll put that finding on the record.

5 MR. LIFSEY: And -- and, Your Honor, to that end, if
6 this is the appropriate time, I -- I would -- I would have
7 marked and hand up an affidavit of guilty plea that I
8 prepared -- he -- he signed after -- in -- in preparation
9 for this hearing ---

10 THE COURT: All right.

11 MR. LIFSEY: --- which may assist you in that ---

12 THE COURT: All right.

13 MR. LIFSEY: --- regard.

14 THE COURT: Let's mark that Court's Exhibit 2.

15 (Whereupon, Court's Exhibit 2 was marked for
16 identification.)

17 THE COURT: And -- and I need an indictment and
18 sentencing sheet. Thank you.

19 MR. NEWMAN: And, Your Honor ---

20 THE COURT: All right.

21 MR. NEWMAN: --- I didn't get to that point. But this
22 is a straight-up plea without recommendation from the
23 state.

24 THE COURT: Okay. All right. Thank you. Anything
25 else from -- Solicitor, before I ---

1 MR. NEWMAN: (Shook head from side to side.)

2 THE COURT: All right. Mr. Pate, let me ask you a few
3 questions. Well, let me ask you, Mr. Lifsey: You -- you
4 have stated to the Court that you have advised -- that --
5 that you represent Mr. Pate. Have you advised him of the
6 charges contained in the indictment and any -- and his
7 right to a jury trial and any waivers that he might
8 execute?

9 MR. LIFSEY: Yes, sir, I have.

10 THE COURT: And how does your client wish to plead,
11 guilty or not guilty?

12 MR. LIFSEY: Guilty, Your Honor.

13 THE COURT: Do you agree with that decision for him to
14 plead guilty?

15 MR. LIFSEY: I do.

16 THE COURT: All right. And let me just -- well, let
17 me talk to you just a little bit, Mr. Pate. How old are
18 you?

19 THE DEFENDANT: Twenty-five.

20 THE COURT: And what's your full name?

21 THE DEFENDANT: David Adam Pate.

22 THE COURT: David Adam Pate?

23 THE DEFENDANT: (No audible response.)

24 THE COURT: How far did you go in school?

25 THE DEFENDANT: I got my GED.

1 THE COURT: When's the last -- what's the last job you
2 had?

3 THE DEFENDANT: I don't know. Mechanic, I think.

4 THE COURT: Mechanic?

5 THE DEFENDANT: I don't remember.

6 THE COURT: How long you been in -- in the detention
7 center?

8 THE DEFENDANT: Like 16 months.

9 MR. LIFSEY: 504 days, by -- by the jail list to date,
10 Your Honor.

11 THE COURT: Do you -- are you married? Ever been
12 married?

13 THE DEFENDANT: No, sir.

14 THE COURT: Have any children?

15 THE DEFENDANT: No, sir.

16 THE COURT: All right. Do you understand that you
17 been -- I'm holding what's before me Indictment 2014-GS-29-
18 221. It says the State v. David Adam Pate. It's an
19 indictment for murder. The indictment alleges that David
20 Adam Pate did, at a wooded area off Old Landsford Road in
21 Lancaster County, on or about October the 18th, 2013,
22 feloniously, willfully, and of his malice aforethought kill
23 and murder Rickey James by stabbing him; and the victim did
24 die as a proximate cause therefore. And that's in
25 violation of 16-3-10. You're charged with murder. Do you

1 understand what you're charged with?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. And you understand that murder
4 carries a minimum sentence of 30 years and up to life?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. And that if the Court gave you
7 a 30-year sentence or any sentence other than life, you
8 would not be eligible for parole until you've served at
9 least 85 percent of that sentence. You understand that?
10 Is that right?

11 MR. LIFSEY: May we ---

12 THE COURT: Is that ---

13 MR. LIFSEY: May we approach?

14 THE COURT: Oh, I'm sorry.

15 MR. LIFSEY: Oh.

16 THE COURT: All right. Let me -- the lawyers
17 approach.

18 (Whereupon, a bench conference took place.)

19 THE COURT: I'm sorry, Mr. Pate. If you -- if I give
20 you something other than life, it is a day-for-day sentence
21 under the statutory scheme in South Carolina, which means
22 you would not be eligible for parole. You understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: I have what's been provided to me by Mr.
25 Lifsey what's been marked Court's Exhibit 2, an affidavit

1 of the defendant for a guilty plea. Have you ever seen
2 this document?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. And did -- did Mr. Lifsey go
5 over this document with you? It looks like there's one,
6 two, three, four, five pages to that document.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Did you go over every page on that
9 document?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And on the last page of that document, it
12 states that it's signed by me in the presence of my
13 attorney this 27th day of March, 2015, signed David Pate.
14 Is that your signature on -- on this document?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. And -- and there are check
17 marks and -- and -- throughout that document informs you of
18 all of your constitutional rights and your waivers. Did
19 you -- did you -- you understand all of those things that
20 your attorney read to you?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. The Court's going to make the
23 affidavit of defendant's guilty plea Court's Exhibit 2 as a
24 part of the Court record, along with Court's Exhibit 1,
25 which is the mental evaluation.

1 Mr. Pate, understanding that you've been charged with
2 Mr. Pate -- it carries from 30 years to life; it is a most-
3 serious offense. It is a day-for-day sentence, whatever I
4 give you, which means you would have no chance of parole,
5 based on what sentence I give you. And understanding that
6 -- you stated to the Court that you understand -- how do
7 you plead to this charge of murder, guilty or not guilty?

8 THE DEFENDANT: Guilty.

9 THE COURT: You understand, by pleading guilty, you
10 give up certain rights. One is the right to remain silent.
11 And you -- you're not required -- you would -- if we had a
12 trial, you would not be required to testify against
13 yourself. You don't have to say anything about the charges
14 against you. But by pleading guilty, you're giving up that
15 right to remain silent. Do you understand that right?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you understand, by pleading guilty,
18 you're giving up your right to a trial by jury. And if you
19 give up your right to a jury trial, you give up your right
20 to assert any defenses that you might have at a jury trial.
21 Do you understand your right to a jury trial?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. We're going to talk about that
24 just a little bit, a jury trial and what those rights are.
25 You're telling me that you're giving up that right. And I

1 want to be sure that you understand the -- the -- all the
2 rights that you have under a jury trial.

3 One, if you had a jury trial, the state has to prove
4 that you are guilty, beyond a reasonable doubt, every
5 element of murder. The state would have to prove to -- to
6 juror -- unanimously to jurors that you are guilty, beyond
7 a reasonable doubt, of each of those elements. And -- and
8 you would have a right to -- through your lawyer, your
9 lawyer could confront, or cross-examine, any witnesses that
10 the state puts up -- people that they put up or talk about
11 the case, whatever evidence there is.

12 Your lawyer would have an opportunity to confront
13 those on your behalf. You would have an opportunity to see
14 them, to eyeball them, be here in the courtroom with them,
15 and to -- and they could cross-examine them. And -- and --
16 and you -- you understand that right?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Understanding that right, do
19 you wish to give up that right?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You would have a right to testify on your
22 own defense. If we had a jury trial and had 12 jurors here
23 in Lancaster County and all of them would have to be
24 unanimous in their verdict and you would have a right to
25 talk to them and testify on your behalf and tell them what

1 you -- what you wanted to tell them. And -- and -- but
2 nobody could make you testify at trial. In fact, if we had
3 a trial, again, the Court would tell you that you're not
4 required to testify and that the -- the jury would be told
5 that your failure to -- or your deciding not to testify
6 could not be used against you to determine your guilt or
7 innocent [sic]. Do you understand your right to either
8 testify or not testify?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. And are you giving up or
11 waiving that right?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You understand that if you have a jury
14 trial, 12 people would have to all unanimously agree; it
15 couldn't be a splits -- decision. You know, it couldn't --
16 couldn't have six for guilty and six not guilty. All 12
17 people would have to agree that the state has proved beyond
18 a reasonable doubt that you're guilty. Do you understand
19 that you -- that a jury has to be unanimous in a -- in your
20 trial?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. Understanding that, are you
23 giving up that right?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Understanding all your rights under a jury

1 trial, I ask you again: How do you wish to plea, guilty or
2 not guilty ---

3 THE DEFENDANT: Guilty.

4 THE COURT: --- to murder?

5 The solicitor has already told me that this is what's
6 called a straight-up plea, which means that you're pleading
7 as charged; that he tells me that there's been no
8 negotiations or no recommendations from the state; that
9 it's left entirely up to this Court to determine the
10 appropriate sentence for you. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Is it your understanding -- have there
13 been any promises or any threats or -- or have you been
14 coerced to get you to plead guilty, other than the -- and
15 -- and get you to be here today? Any threats or promises
16 or coercions?

17 THE DEFENDANT: No, sir.

18 THE COURT: All right. You got any complaints about
19 anybody? You got any complaints about your lawyer, or you
20 got any complaints about the solicitor or law enforcement,
21 the ---

22 THE DEFENDANT: No, sir.

23 THE COURT: --- court system?

24 THE DEFENDANT: No, sir.

25 THE COURT: All right. Have you had plenty of

1 opportunity to talk to -- it sounds like you've talked to
2 at least two lawyers. You've had a lawyer before Mr.
3 Lifsey. Are you satisfied with the way Mr. Lifsey has
4 represented you?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And have you had plenty of opportunity to
7 talk to him about the case and tell him everything you need
8 to tell him about the case?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Yes, sir, you've had plenty of
11 opportunity?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have y'all talked about any possible
14 defenses that you might have in the case?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right.

17 THE DEFENDANT: We did.

18 THE COURT: And -- and understanding -- have you had
19 plenty of time to talk to him -- is it still your desire to
20 go forward today and you don't need any more time to talk
21 to him?

22 THE DEFENDANT: I'm ready to plead guilty. I don't
23 need any more time to talk to him.

24 THE COURT: All right. Thank you. Are you under any
25 -- are you -- are you taking any kind of medication?

1 THE DEFENDANT: No, sir.

2 THE COURT: All right. Have you ever been treated for
3 any mental or emotional disorder?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. When was that?

6 THE DEFENDANT: I don't know.

7 THE DEFENDANT: Well, let me put this way. Your
8 lawyer's probably going to tell me a little bit about that,
9 maybe later on. Are you -- do you -- you understand what
10 we're doing here today?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you understand the -- the -- that you
13 were evaluated at Department of Mental Health -- that you
14 were -- you had an evaluation down there?

15 THE DEFENDANT: (Nodded head up and down.)

16 THE COURT: And that the -- the doctor at the
17 Department of Mental Health has indicated that you are
18 competent and you know what you're doing and you can assist
19 your lawyer at trial?

20 THE DEFENDANT: (Nodded head up and down.)

21 THE COURT: Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: I ask you again: Are you -- are you
24 pleading guilty today of your own free will and accord? Is
25 anybody -- it's -- it's -- it's anybody's decision but your

1 own?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Yes, sir, what?

4 THE DEFENDANT: I am pleading guilty of my own accord
5 without bribe or threat.

6 THE COURT: All right. Are you, in fact, guilty of
7 the -- the offense of murder?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Let me make two findings: I do find that
10 after review of his mental health -- the report and
11 discussion with his lawyer about his competency, I -- the
12 Court does find that he is competent to stand trial -- I
13 mean, to -- to -- to -- to -- to be here today. He is
14 competent to stand trial, and he is competent to go forward
15 with this hearing. There does not appear to be any
16 question at this point about his competency.

17 I also find that the -- the decision of this defendant
18 to plead guilty to murder to be freely, voluntarily,
19 intelligently made. He's had the representation of a
20 competent attorney in whom he says he is satisfied. And
21 I'm going to accept your plea.

22 Mr. Pate, you have ten days from today, if you believe
23 that there's some error that's made, you could appeal. You
24 would have to notify your lawyer within ten days, and they
25 would file the appropriate paperwork and the appropriate

1 folks would represent you on an appeal. But you must do
2 that within ten days. Do you understand that right?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right, Solicitor. Tell me about it.

5 MR. NEWMAN: Thank you, Your Honor. Your Honor, this
6 all started on October 18 of 2013. That's when the victim,
7 33 -- 33-year-old Rickey Wesley James -- he -- he sent the
8 last text to his girlfriend, Natasha Vincent, around 3:17
9 that morning.

10 On October 20th, after not hearing from Mr. James, Ms.
11 Vincent went to the Lancaster Police Department to file a
12 missing persons report. At that time the family began
13 placing flyers around town with his picture on it.

14 It was then on November 16 of 2013, Mr. Rayford
15 Chappell called 911 to report a body found in the woods.
16 Mr. Chappell said some children were playing in the woods,
17 found a dead body, and they ran to his home to alert him.
18 And that is the home where Pate lived. Mr. Chappell is Mr.
19 Pate's stepfather.

20 That body was found about 200 yards from the home,
21 down a path through the woods. What is the -- the old
22 Landsford Road, the old road bed, is now abandoned. It was
23 near the old Greenham Bridge. And that's here in Lancaster
24 County.

25 Body was covered in brush and limbs. The Lancaster

1 County Sheriff's Office Crime Scene responded, along with
2 deputies and investigators. They confirmed that there was
3 a partially nude, partially decomposed body of a black
4 male. There was also a rope tied around his neck, tied
5 down around his legs to his ankles. Near the body was a
6 Shargio-brand cigarette butt.

7 Investigators quickly learned that Mr. -- Mr. James
8 had been missing over a month. And the body was ultimately
9 identified as Mr. James.

10 Autopsy reports showed at least 39 sharp-force
11 skeletal defects on the skull, the neck, and the thorax.
12 Those defects were consistent with stab wounds and cut
13 marks.

14 Investigators showed the missing person flyer to Mr.
15 Chappell. He then told officers he had seen the man before
16 with his stepson. Said on that night, Mr. David Pate
17 walked away from the home with Mr. James. They walked
18 toward the woods, and only Mr. Pate returned.

19 Later in an interview, Mr. Chappell, along with Mr.
20 Pate's mother, told investigators that when -- when David
21 returned that night, he had blood and mud on his clothing.
22 His mother said he took off his jacket, threw it in the
23 washing machine with a whole box of washing powders. Mr.
24 Chappell then stated he saw David burning his clothes in a
25 fire pit outside the home.

1 Ms. Chappell also remembered David had on a hat that
2 night. It also had some bloodstains on it. She told him
3 she believed it was still in his closet.

4 Investigators then executed a search warrant on the
5 home. They found that hat with the blood on it. They sent
6 it to SLED DNA testing, and it was confirmed to be Mr.
7 James' blood on the hat. Officers also found a pair of
8 glean -- green and black Jordan tennis shoes that were
9 later identified to belong to Mr. James.

10 Also found in the home were multiple knives, some of
11 which were homemade by Mr. Pate, and 20 or so homemade
12 masks made by Mr. Pate. At that time Mr. Pate was already
13 in Lancaster County Detention Center on a disorderly-
14 conduct charge.

15 He was later interviewed. During that interview he
16 admitted to luring Mr. James into the woods with the intent
17 to kill him. He admitted to stabbing him multiple times,
18 and he admitted to killing Mr. James.

19 Your Honor, in the courtroom today: Investigator
20 Spencer McInvaille, Lancaster County Sheriff's Office;
21 Investigator Michael Bailey, Lancaster County Sheriff's
22 Office; and former solicitor Doug Barfield, representing
23 Lancaster County Sheriff's Office. Your Honor, the
24 victim's family is also present. [REDACTED] [REDACTED] is the
25 stepdaughter of the victim. Rashawn James is the brother

1 of the victim. Iwanda Holiday is the victim's wife;
2 Johnathan Jones, friend of the victim; and Antwan James,
3 brother of the victim.

4 Your Honor, I understand, at the appropriate time,
5 they would like to -- to speak. And we'll hold off on that
6 until sentencing phase.

7 I'll give you his record, Your Honor. It goes back to
8 2008. Burglary ---

9 THE COURT: All right. Let -- let me stop right there
10 just a ---

11 MR. NEWMAN: Okay.

12 THE COURT: --- minute and ask Mr. Pate a question.
13 Mr. Pate, you've heard the solicitor tell the Court the --
14 the -- what the state believes happened and how it led to
15 your arrest. Do you disagree in any way with what he has
16 told the Court?

17 THE DEFENDANT: No, I do not.

18 THE COURT: All right. All right. I'll be glad to
19 hear his rap sheet.

20 MR. NEWMAN: Your Honor, he has a 2008 burglary,
21 second-degree violent; 2010 malicious injury to property;
22 use of vehicle without permission; fail to stop for a blue
23 light; attempted burglary; public disorderly. Has a 2011
24 third-or-subsequent property crime; burglary, third-degree;
25 and public disorderly, two counts; assault and battery,

1 first-degree. In 2012, public disorderly; 2012
2 shoplifting. And that's the extent of his record, Your
3 Honor.

4 THE COURT: All right. You -- do you -- do you
5 disagree or agree -- is that -- the -- do you disagree with
6 anything on your record that's been given to the Court?
7 Tell the Court.

8 THE DEFENDANT: No, sir.

9 THE COURT: All right. Well, let's do this. Let me
10 hear from the victim's family at this time.

11 MR. NEWMAN: Okay. And, Your Honor, we -- we do have
12 a -- a excerpt of an interview we would like to play at the
13 ---

14 THE COURT: All right.

15 MR. NEWMAN: --- appropriate time.

16 THE COURT: Well, let's ---

17 MR. NEWMAN: But ---

18 THE COURT: --- let's do this: Let's -- let's hear
19 from the -- the victim's family, and then I'll hear from
20 Mr. Lifsey. And then -- then we'll -- we'll see -- see the
21 excerpt prior to sentencing.

22 MR. NEWMAN: Yes, sir.

23 MR. LIFSEY: Your Honor, I'm going to step ---

24 THE COURT: That'd be ---

25 MR. LIFSEY: --- over here, Judge ---

1 THE COURT: Yeah.

2 MR. LIFSEY: --- so you can see a -- see a little
3 better.

4 THE COURT: If -- if you would state your name for us,
5 please.

6 MR. RASHAWN JAMES: Rashawn James.

7 THE COURT: All right. I'll be glad to hear from you,
8 Mr. James.

9 MR. RASHAWN JAMES: Really, I don't know where to
10 start. It's -- it's -- it's hard. My brother was -- as
11 the solicitor gave me the reviews of what was going on in
12 the case, he said -- supposedly, he said, "I killed him
13 because he came in the woods with me. And why would
14 somebody going to talk to me look like this?"

15 But my brother was the type of person who had been
16 strangers with nobody. Like, everybody was treated fairly
17 with him. His only weakness was that he drunk. And when
18 he get -- started to drink, he -- he start to trust people
19 too much.

20 But besides that, he was a good guy. I mean, he
21 caused harm to no one. I really don't understand why he
22 did it, you know. I mean, I hope he suffers. You know, I
23 hope he feels my pain.

24 You know, I just -- I never felt this way about a
25 person. I -- I was brought up not to hate anybody. But I

1 hate him. You know, I wish I had a chance at him. I'm --
2 I just hate him.

3 And I hope that you give him all he can get, like,
4 just let him suffer. And I'm just coming from behind SCDC,
5 and he going to suffer back there. I just hope he knows he
6 going to suffer back there.

7 Just give him all you can give him, Your Honor.
8 That's all I ask for, I mean. He was a good guy. He got a
9 daughter. He went to church faithfully. He has a wife.

10 And it's killing me. It's killing me for years
11 because I raised my brother. We ain't had no daddy. And
12 just anger, you know; it was just -- just -- I don't really
13 know what to say. You know, it just -- I just pray that
14 you just give him all he can have and let him suffer
15 because he -- he feels like didn't get no wrong.

16 He's -- he -- he is the definition of the devil. You
17 know, he feel like he just did something -- somebody for no
18 reason, like I can just take a person's life, like, just
19 because. And I just pray he suffer for the rest of his
20 life. Thank you, Your Honor.

21 THE COURT: All right. Thank you, Mr. James. Sorry
22 for your loss.

23 And if you'd state your name, please.

24 MR. ANTWAN JAMES: Antwan James.

25 THE COURT: I'll -- I'll be glad to hear from you, Mr.

1 James.

2 MR. ANTWAN JAMES: Your Honor, can I ask you a
3 question? I don't -- I would like if the defendant can
4 turn around and look at me ---

5 THE COURT: No.

6 MR. ANTWAN JAMES: --- when I ---

7 THE COURT: We're ---

8 MR. ANTWAN JAMES: --- talk to him.

9 THE COURT: We're ---

10 MR. ANTWAN JAMES: Right.

11 THE COURT: I -- I know that would probably be a wish
12 that you might like. But we're going to -- he -- he needs
13 to be looking at the Court the whole time. I'll ---

14 MR. ANTWAN JAMES: He can't ---

15 THE COURT: --- be glad ---

16 MR. ANTWAN JAMES: --- never ---

17 THE COURT: --- to hear from you.

18 MR. ANTWAN JAMES: He can't never see my pain if he
19 won't look in my eyes. See, this man cut his tongue. It's
20 a cloven tongue. That's a serpent tongue. Killed a man
21 that walked with God. I done -- I done did the time.

22 This man slay my brother for no reason. He admitted
23 it. He admitted it. People like that ain't posed to live
24 on the earth. People like that are devils, man. You a
25 devil, man. And you going to suffer. You're going to

1 suffer, for they say God is a vengeance -- a vengeful God.

2 THE COURT: Thank you, Mr. James.

3 MR. ANTWAN JAMES: (Unintelligible outburst.)

4 (Whereupon, Mr. Antwan James exited the courtroom.)

5 THE COURT: All right. Is there anyone ---

6 MR. NEWMAN: I think ---

7 THE COURT: --- else, Solicitor?

8 MR. NEWMAN: Is that -- is that all the family?

9 That's it for the family ---

10 THE COURT: Okay.

11 MR. NEWMAN: --- Your Honor.

12 THE COURT: All right. All right. Let's -- and --
13 and you -- you have the 15-minute video, and then you want
14 to speak to -- to sentencing.

15 MR. NEWMAN: Right.

16 THE COURT: All right. I'll be -- Mr. Lifsey, I'll be
17 glad to hear from you and then from your client or anybody
18 on his behalf.

19 MR. LIFSEY: Thank you. Your Honor, I -- I represent
20 David Pate. I will tell you that, as I mentioned earlier,
21 another lawyer was initially appointed after his arrest.
22 But that lawyer ultimately left our office.

23 I -- I started representing him -- I think it was in
24 -- probably May of last year. So I've really represented
25 him almost a -- almost a year. My initial -- my notes

1 indicate that my initial meeting with him was May 21st of
2 2014. So I -- I've gotten to know him a good bit over the
3 last -- almost a year.

4 I will tell you that I've reviewed the discovery that
5 was provided to me by the state. I believe the state has
6 given me complete discovery. I've reviewed the videotapes,
7 including the one that I believe -- or a portion of the one
8 you're going to see.

9 And I will tell you, it's disturbing. And this is a
10 disturbing case. But I do believe that -- that the state
11 has complied with discovery in giving me everything that
12 they are supposed to and -- by law.

13 I will tell you that -- that obviously, our office
14 made efforts and has explored mental health defenses in
15 this case. Your Honor, he was a little confused when you
16 asked him about prior mental health treatment because I
17 think the way I phrased the question to him originally was
18 any treatment for abuse of alcohol, drugs, or mental
19 illness.

20 He's never actually been in a mental health facility
21 at all. He's gotten -- he's been at Morris Village, and
22 he's been in Holmesview, receiving substance abuse
23 counseling and treatment. I think substance abuse use was
24 involved in this case. But to the best of my knowledge,
25 he's never been in a -- in a mental facility, other than

1 being interviewed by -- as to competency to stand trial.

2 He also -- our -- I won't get into all the details.

3 But we -- we consulted in regards to criminal
4 responsibility. I don't believe we have any defense of
5 insanity or -- or lowered culpability. So we have explored
6 mental health defenses in this case.

7 It's been an interesting case because, as I said, I
8 didn't have it at first. And when I got it -- you know, I
9 -- I guess I been doing this 24 years. And -- and I've --
10 you know, I've represented -- I've probably lost track of
11 how many murder cases I've represented -- murder
12 defendants, but certainly, dozens and dozens and dozens.

13 And they're all very different. Despite the
14 similarities sometimes of crimes, they're all different. I
15 didn't know what to expect when I went to talk to Mr. Pate
16 because, you know, the crime itself is pretty horrific.
17 The allegations are horrific. And his statement, while
18 fully admitting what he did, is -- is, in some parts,
19 disturbing to watch.

20 But -- but I will tell you, he has been as easy a
21 client to deal with as I have ever represented, certainly
22 on any serious charge. In fact, I'll tell you, all the
23 murder cases I've represented, I don't think I've ever had
24 a client that was less trouble, that was less problem to
25 talk to.

1 I will tell you, he's been incarcerated since --
2 since, I guess, 16 months or so, since 504 days, however
3 much that adds up to. I've -- I've spoken to the -- the
4 jail administrator and the folks at the Lancaster County
5 Jail. He has been a model inmate. I mean, those are my
6 words, not theirs.

7 But they will tell you that he's not caused problems.
8 He says "yes, sir," and "no, sir." He says "thank you"
9 when they bring him his food. He's just not a -- a
10 troublemaker. I tell you that to take that into
11 consideration when you're considering his sentence.

12 He's 25 years old, Judge. Any sentence you give him,
13 by law in South Carolina, is going to require him to do a
14 day-for-day sentence. You can't give him less than 30
15 years in prison. And I'm -- so even if you gave him the
16 minimum sentence that you could under the law, he -- he
17 would be 50 -- between 54 and 55 when he is released from
18 prison. I -- I think that is a -- I think all of us are
19 different people at 55 than we were at 25.

20 He was -- his mother is here in the courtroom, Leigh
21 Chappell. Ms. Chappell, will you just raise your hand so
22 the judge sees you?

23 MS. CHAPPELL: (Raised hand.)

24 MR. LIFSEY: Frankly, Your Honor, I -- I -- she's too
25 emotional to speak today. As a parent this is a -- you

1 know, just an awful thing. And -- and she loves her child.
2 And I know she regrets what happens here. And as a parent
3 she has empathy for the -- the family of the victim in this
4 case.

5 She and I talked this morning at length about whether
6 to speak or not. And frankly, she's just, I think,
7 overcome by emotion and just very difficult. But she did
8 want you to know, so I'm conveying to you on her behalf,
9 that she loves her son and -- and -- and she is very, very
10 sorry that this day has come and that -- that -- that he --
11 we are here today.

12 Your Honor, you know, the -- the state took a pretty
13 hard line on this case, which I -- I'm not criticizing at
14 all. These are -- these are difficult facts, and I don't
15 criticize them at all. But frankly, from my perspective as
16 a defense lawyer, when you have someone charged with murder
17 and the state's taken a pretty hard line, I always assume
18 that's going to be a jury trial. Because the stakes are so
19 enormous, because the time involved is so long, I -- I just
20 assumed that we're going to try this case.

21 And -- and frankly, that's what I have done from the
22 beginning and prepared and was going to try it. But my
23 client wrote me a -- a couple of months ago and -- and said
24 basically that he didn't want to belabor this; that he knew
25 he was guilty and he wanted to get this behind him and he

1 wanted to plead guilty.

2 And I went out there and I talked to him, and I
3 explained to him: "Are you sure? Because, you know,
4 they're not -- they're not offering you anything. I mean,
5 they're not making you any kind of sweetheart deal to plead
6 guilty."

7 And he just told me, "I know I'm going to get a lot of
8 time, and I know I'm going to prison. And I want to get
9 this behind me."

10 And, Your Honor, you know, I think that's a factor
11 that Your Honor should take into account when deciding what
12 is the appropriate sentence in this case. Now, I know some
13 might say -- and I don't know what the solicitor is going
14 to say next, and -- and that's fine. But some might say
15 why should you reward somebody for -- for admitting what he
16 did.

17 Well, first of all, you should do it because everybody
18 doesn't do it. I mean, most people -- very few people
19 plead guilty and admit of what they have done without some
20 sort of incentive from the state to do so. He has done so
21 without any incentive from the state.

22 Secondly, you know, this is a excruciatingly painful
23 proceeding as it is right now. And I think you saw that
24 from the emotions from the victims. I will tell you, as
25 bad as this is, I think had we gone to trial, it would be

1 much worse. I say that -- I mean, you -- you heard -- and
2 I don't want to belabor it and make it worse.

3 But you heard brief mention of the fact that the body
4 had been in the woods a long time. I mean, had we gone to
5 trial in this case, I think cause of death would've been
6 something we would've discussed. I think the state
7 would've certainly attempted to discuss that in detail with
8 a pathologist. I think I would have argued to try to prove
9 whether or not they could prove *corpus delicti* when there's
10 only a confession and difficulty proving cause of death.

11 I don't think I would've succeeded in that. But I
12 think that would've been my duty as a defense lawyer to
13 explore that. And -- and I am confident that that would've
14 made this already horrendous experience for the victim's
15 family even more horrendous by having to endure that.

16 You know, I don't envy judges, certainly not in
17 sentencing. This is a very difficult decision you have to
18 make. Obviously, justice/retribution/deterrents are all
19 factors to be considered.

20 But I think mercy is something that should be
21 considered as well. Now, the state may say -- and -- and I
22 understand it -- that, you know, why should -- he doesn't
23 deserve mercy. The argument could be made.

24 But I read a quote Joyce Meyer wrote once that said:
25 "Mercy is the stuff you give to people that don't deserve

1 it."

2 I'd ask the Court to consider in this case a sentence
3 in the range of 30 to 35 years. Now, I would ask you for
4 30, but I acknowledge without hesitation that he's got some
5 criminal history and that these facts are bad. But if you
6 gave him a sentence in that range, if you gave him 35
7 years, I mean, he'll be 60 years old when he's released
8 from prison. I mean, that's longer than he has been alive.

9 It just seems to me -- I -- I don't know -- I think
10 one of the victims mentioned that he's not going to have a
11 good time in the Department of Corrections. There's
12 probably some truth to that. So if you gave him a sentence
13 in the neighborhood of 30 to 35 years, if he survives his
14 incarceration, he would be about 60 years old when he is
15 released.

16 Now, I don't know what kind of person David Pate would
17 be at 60 years old. But I believe that, first of all, he
18 would be a very different person. I believe that the bulk
19 of his good and healthy years on this earth would've been
20 spent in the South Carolina Department of Corrections.

21 So, Your Honor, in a very difficult case with
22 horrendous facts, I ask the Court to apply some degree of
23 mercy in recognition of the fact that my client didn't have
24 to plead guilty, didn't have to stand up here and admit
25 what he did, and could've made this already awful ordeal on

1 the family of the victim much, much worse than it is. And
2 I'd ask you to consider all those things, and -- and thank
3 you for considering those ---

4 THE COURT: All right.

5 MR. LIFSEY: --- things when you decide what your
6 sentence is in this case, Your Honor.

7 THE COURT: All right. Thank you, Mr. Lifsey. Do you
8 have anybody else that'd like to speak on behalf of Mr.
9 Pate?

10 MR. LIFSEY: No, sir.

11 THE COURT: Mr. Pate, is there anything you want to
12 tell the Court?

13 THE DEFENDANT: No, sir.

14 THE COURT: All right. I'll be glad to hear from the
15 state.

16 MR. NEWMAN: Thank you, Your Honor. I do have a
17 excerpt from a interview from when he was incarcerated.
18 You know, I'll play a snippet of that. On -- you know, and
19 I will tell you, before this interview, he did have a visit
20 with his mother in the jail. And, of course, those are
21 recorded.

22 And one of the quotes in that meeting with his mother
23 just stood out to me, and I wanted to relay that to the
24 Court. He -- he told his mother -- she -- she asked him,
25 "What do you remember about what happened that night?"

1 And he said, "I remember everything that happened,
2 every little thing. I made it a point to remember, because
3 I enjoyed it." That's what he told to his mother.

4 MR. LIFSEY: Your Honor, may we have a seat at the
5 table ---

6 THE COURT: Yeah.

7 MR. LIFSEY: --- then ---

8 THE COURT: Let's do ---

9 MR. LIFSEY: --- since we ---

10 THE COURT: --- this -- yeah. Just sit at the table
11 -- this is going to be about 15 minutes?

12 MR. NEWMAN: Yes, sir.

13 THE COURT: Yeah. He -- he can have a seat at the
14 table and then . . .

15 (Off the record briefly.)

16 (Whereupon, a portion of video was played in the
17 courtroom.)

18 THE COURT: Solicitor, just stop. Stop.

19 (Whereupon, the video playback was ended by Mr.
20 Newman.)

21 THE COURT: The Court -- the Court is satisfied his --
22 the Court has seen enough and heard enough.

23 MR. LIFSEY: Your Honor, you would like us to approach
24 back up ---

25 THE COURT: Yes. Let's ---

1 MR. NEWMAN: Your Honor, I would like to clarify: The
2 female voice in the video is the defendant's mother, who
3 was present during the interview. Also, I will put this
4 video in -- into evidence as Court -- Court's exhibit and
5 note that we started at 1326 and ended at 1340.

6 (Whereupon, Court's Exhibit 3 was marked for
7 identification.)

8 MR. NEWMAN: Your Honor, just before -- just after we
9 stopped the video, he said something very disturbing and --
10 and -- he said, "I went back the next morning to cover him
11 up some more but didn't want anybody to see him because I
12 might want to kill someone else there."

13 Your Honor, at this time, I ask you to hear from Mr.
14 Spencer McInvaille, investigator.

15 THE COURT: All right. I'll be glad to hear from him.
16 (Whereupon, Mr. McInvaille came forward.)

17 THE COURT: All right. Your name?

18 MR. MCINVAILLE: Spencer McInvaille, investigator ---

19 THE COURT: I'll ---

20 MR. MCINVAILLE: --- with the sheriff's office.

21 THE COURT: I'll be glad to hear from you.

22 MR. MCINVAILLE: Yes, sir. I -- I don't think there's
23 anything that I can explain that you haven't heard.

24 Throughout that video, that just tells you how horrific
25 this was. Mr. Pate, through his criminal history, you can

1 see he's never been a productive member of society. And we
2 still have to worry about if he is back out here in our
3 county, that our citizens have to worry about being harmed
4 from him again. As stated, he -- he says he'd like to do
5 it again and -- and enjoyed what he did.

6 Life's the only thing that makes sense here to -- to
7 -- to us. I -- I just -- I -- I can't explain what we just
8 -- what we just heard. Even from that day, watching it
9 again, from sitting across from him, it's -- you know, it
10 -- you just can't explain that.

11 THE COURT: All right. All right. Thank you.
12 Anybody else, Solicitor?

13 MR. NEWMAN: I -- I believe that's all, Your Honor.

14 THE COURT: All right.

15 MR. NEWMAN: And I -- I just -- I'll finish up with,
16 you know -- Your Honor, he obviously has no respect for
17 human life. This is an evil person standing before you.
18 And if anybody ever deserves life in prison, it's David
19 Pate. Thank you.

20 THE COURT: All right. Thank you. Anything else, Mr.
21 Lifsey?

22 MR. LIFSEY: No, sir, Your Honor.

23 THE COURT: All right. Just a moment.

24 (Off the record briefly.)

25 THE COURT: All right. You know, the legislature in

1 South Carolina has -- gives the -- when it comes to
2 sentencing, often puts ranges on certain offenses. And on
3 the crime of murder, they have the range of 30 years to
4 life. Often interpreting and trying to apply those -- the
5 punishment, it's often looked that the -- the -- the
6 minimum, even though 30 years -- it's often hard to say
7 that's a minimum -- but that is what the legislature would
8 probably have intended to be murders with less -- with
9 somewhat less egregious factors. And then, life is
10 generally reserved for those where there are very egregious
11 factors.

12 It -- what's been presented to the Court -- the
13 defendant is to be commended for pleading guilty. However,
14 it appears that this -- this murder even yet seems to be
15 completely senseless, remorseless, emotionless. There is a
16 benefit to the defendant in that he -- he gets to -- he's
17 still living. He -- there is -- you know, whoever he is,
18 as long as he's breathing, there's still some hope for him.

19 The sentence of the Court is that you -- on Indictment
20 2014-GS-29-221, *State v. David Adam Pate*, having pled
21 guilty to the murder, sentence of the Court is he be
22 committed to the Department of -- State Department of
23 Corrections for a determinate term of life. Thank you.

24 (Whereupon, there was an outburst from the gallery in
25 the courtroom.)

1 THE COURT: Hold -- please hold your emotions, your --
2 your applause. You can do that outside the courtroom. All
3 right. Thank y'all.

4 (Whereupon, the proceeding was concluded at 12:43 p.m.)

5 --- END OF TRANSCRIPT OF RECORD ---
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CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR LANCASTER COUNTY, SOUTH CAROLINA, ON THE 9TH
DAY OF APRIL, 2015.

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



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

DECEMBER 23, 2015

Fisch

DOCKET NO. 2014-GS-29-221

FILED
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OF COURT

2014 FEB -6 PM 2:30

CLERK OF COURT
LANCASTER, SC

WITNESSES

Rumbaugh - LCSO #13-42337

Doyle

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2014

ARREST WARRANT NUMBER/DOA

2013A2910101387 (DOA-11-22-13)

THE STATE
vs.

David Adam Pate

ACTION OF GRAND JURY

S. B. Willey
Foreperson of Grand Jury
Date: 6 Feb 2014

VERDICT

TRUE BILL

Foreperson of Petit Jury
Date:

FEB 06 2014

Indictment for
Murder

SC Code: §16-3-10
CDR Code: 0116
Class: Felony, EXM

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on February 6, 2014, the Grand Jurors of Lancaster County present upon their oath:

MURDER

That David Adam Pate did at a wooded area off Old Landsford Road, in Lancaster County on or about October 18, 2013, feloniously, willfully, and of his malice aforethought kill and murder Ricky James by stabbing him and the victim did die as the proximate cause thereof then and there, in violation of Section 16-3-10 of the *Code of Laws of South Carolina*.

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



Douglas A. Barfield, Jr., SOLICITOR

44

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Lancaster

VS.

David Adam Pate

AKA:

Race: WHITE Sex: M Age: 25

DOB:

Address:

City, State, Zip: Lancaster, SC 29720

DL#:

SID#:

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

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS2900221

A/W#: 2013A2910101387

Date of Offense: 10/18/2013

S.C. Code § : 16-03-0010; 16-03-0020

CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of LIFE days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

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

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2753

4-9-15

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Lancaster)

David Adam Pette #341659
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2015 CP 29 01379

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Perry Correctional Institution
2. Name and location of Court which imposed sentence 430 oaklawn rd Pelzer SC 29969 Lancaster County Clerk of Court
3. Name(s) of co-defendant(s) (if any) NO
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) Murder
 (b) _____
 (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) April 9th 2015 "999 years" LIFE
 (b) _____

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OFFICE OF CLERK
OF COURT
2015 OCT 16 AM 11:23
CLERK OF COURT
LANCASTER, SC

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty xxx
- (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. N/A
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Trial Counsel did not inform me that I could appeal a guilty plea
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) see attached Memorandum
 - (b) see attached memorandum
 - (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attached memorandum
 - (b) See attached memorandum
 - (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 - (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. N/A
 - ii. N/A
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. N/A
 - iii. _____
 - iv. _____
 - (c) the disposition thereof:
 - i. N/A
 - ii. N/A
 - iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. N/A
- ii. N/A
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. N/A
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
N/A
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. N/A
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. N/A
- 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) This is the first opportunity that I have gotten to raise these
issue.
- (b). _____
- (c). _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
 - (b) your trial, if any? No trial was held
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No appeal filed
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A
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. Mike Litsey Head public defender of Lancaster County
 - ii. _____
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Represented me at my plea and sentencing
 - ii. _____
 - iii. _____
19. State clearly the relief you seek in filing this application:
Guilty pleas vacated and this case remanded to Lancaster County for a new trial
20. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA

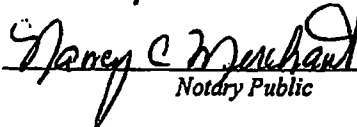
County of

VERIFICATION

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



SWORN to and subscribed before me this 23rd
day of September, 2015.

 (L.S.)
Notary Public

My Commission Expires: 1-23-2023

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

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

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



Applicant

SWORN or affirmed to and subscribed before me this
23rd day of September, 2015.



Notary Public

My Commission Expires: 1-23-2023

State of South Carolina
County of Lancaster

In the Court of General Sessions
6th Judicial Circuit

David Adam Pate #341659
Applicant

Case No: 2015 CPJ 01379

Memorandum of law
In support of application
For Post Conviction relief

vs
State of South Carolina
Respondent

FILED
OFFICE OF CLERK
OF COURT
2015 OCT -6 AM 11-23
CLERK OF COURT
LANCASTER, SC

Comes now the applicant named above, who ask this Honorable Court to grant him post-Conviction relief in this matter because his rights to effective assistance of Counsel as guaranteed to him under the sixth amendment of the United States Constitution and Article I, § 14 of the South Carolina Constitution and his rights to Due Process of Law as guaranteed to him under the fourteenth amendment of the United States Constitution and article I, § 3 of the South Carolina Constitution has been violated.

The applicant contends that his arguments and citation to pertinent case laws will justify this Court in granting the requested relief.

5/
David Adam Pate #341659
P.C.I A-4-4
430 Oaklawn rd
Pelzer SC 29669

Counsel was ineffective in advising the applicant to Plead guilty where Counsel failed to conduct a reasonable investigation of the facts and circumstances surrounding this case which rendered the applicant's Plea of guilty not knowingly, voluntarily or intelligently made, and Denied him Due process of law

The applicant was arrested on Nov 10th 2013 on the charge for which he pled guilty to on April 9th 2015 and Counsel was appointed to represent him and there was a motion for discovery was filed.

The applicant ~~contends~~ ^{Contented} that Counsel was ineffective when he advised the applicant to plead guilty when Counsel did not have ~~any~~ ^{any} of the discovery material in his possession to enable him to decide a guilty plea would have been the best course of resolving this matter. Counsel's failure to investigate this matter before ~~advising~~ he decided on presenting a guilty was very prejudicial to the applicant.

In And v Catoe, 642 S.E.2d 590, 597 (S.C. 2007) the Supreme Court stated that "without a doubt, '[a] criminal defense attorney has a duty to investigate, but this duty is limited to a reasonable investigation'." It was unreasonable for Counsel not to investigate the facts ~~and circumstances~~ of this case before advising the applicant to plea guilty. Cannot be viewed as strategic but rather as negligence

In And v Catoe, the Court went on to explain "while the scope of a reasonable investigation depends on a number of issues,

54. at a minimum Counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." *Id.*, at 597

Counsel also hoodwinked the applicant in believing that he would receive 35 year sentence if he plead guilty. Well the plea hearing judge apparently did not know anything about ~~the~~ plea agreement for 35 years, ~~there fore~~ therefore the judge sentenced applicant to 999 years "LIFE", when it should have only been 35 years.

The applicant contends that Counsel's representation fell below an objective standard of reasonableness, and there is a ~~reason~~ reasonable possibility that but for Counsel's errors, the applicant would not have pleaded guilty but would have insisted on going to trial", Wolfe v state 326 S.C. 158, 485 S.E. 2d 367 (1997) accord Hill v lockhart 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed 2d 203 (1985)

Conclusion

The applicant believes that an evidentiary hearing is necessary in this matter to present his grounds on ineffective assistance of Counsel. See Sharper v State, 279 S.C. 264, 305 S.E. 2d 247 (1983).

The applicant reserves the right to amend his original application pursuant to S.C. Code § 17-27-90 in which it is required that all grounds for relief available to the applicant is to be raised in the original, supplement or amended application.

Also, the applicant request this Court appoint Counsel to represent him in this matter pursuant S.C. Code § 17-27-60 of the uniform Post-Conviction Procedure Act and Rule 71.1(d) of the South Carolina Rules of Civil Procedure.

Respectfully Submitted

This 9 day of September 2015

s/ David Pate

David Adam Pate # 341659

P.C.I. A-1-4

430 oak lawn rd

Pelzer SC 29166



GWENDOLYN DORN CHILES
Clerk of Court, McCormick County

133 S. Mine Street, Room 102
McCormick, SC 29835

864-852-2195
(Fax) 864-852-0071

To: SCDC Inmates

From: McCormick County Clerk of Court

Re: Procedures for filing inmate litigation in McCormick County

Effective immediately:

The attached Civil Action Coversheet must accompany all civil cases upon filing.

When an inmate submits an action for filing without payment of the full filing fee of \$150.00, South Carolina Code Section 2-27-100 requires the inmate to file a certified copy of his trust account with his action, along with any payment to be submitted. If the inmate does not have a trust account, a notarized statement from SCDC must be submitted stating the inmate does not have a trust account. If an inmate submits documents that are not in accordance with Section 24-27-10, all documents will be returned to the inmate for proper compliance.

If full payment of the filing fees is received at the time of filing, a certified copy of the trust account is not required, and the Clerk of Court will file the documents and assign a common pleas case number. If copies are to be returned, they must be submitted at the time of filing.

If partial payment or no payment is received with the certified copy of the trust account or notarized statement, the Clerk of Court will submit the documents to the Administrative Judge for Common Pleas for an order directing the Clerk of Court to file the documents and collect the filing fee in accordance with Section 24-27-100. Once the order is issued, the Clerk of Court will file the action, assign a common pleas case number and forward copies of the order to the SCDC Financial Accounting Branch for collection of the full filing fee of \$150.00.

Even if an action is dismissed, the inmate is responsible for the full payment of the filing fees in accordance with Section 24-27-100 and 24-27-150.

In Civil Court, parties, if action is pro se, or their attorneys are required to know and comply with the Rules of Civil Procedures, which are embodied in the Code of Laws of South Carolina, 1976, as amended. The Clerk's Office cannot give legal advice.

FILED
OFFICE OF CLERK
OF COURT
2015 OCT -6 AM 11:23
CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

David Adam Pate, #341659,

2015-CP-29-1379

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on October 6, 2015, the Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Lancaster County Clerk of Court's orders of commitment. Applicant was indicted at the February 2014 term of the Lancaster County Grand Jury for murder (2014-GS-29-221). Applicant was represented by Michael H. Lifsey, Esquire. On April 9, 2015, Applicant pled guilty as indicted. The Honorable Daniel D. Hall sentenced Applicant to a term of life imprisonment. Applicant did not appeal his sentence or conviction.

II.

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

1. Ineffective assistance of counsel, in that:
 - a. Counsel failed to conduct a reasonable investigation
 - i. Which rendered the applicant's plea of guilty not knowingly, voluntarily, or intelligently made
 - b. Counsel advised applicant to plead guilty when counsel did not have any

- of the discovery material
- c. "Counsel also hoodwinked the applicant in believing that he would receive 35 year sentence if he plead guilty"

Attached herewith and incorporated herein by reference are the records of the Lancaster 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 allegations as claims of 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.

Applicant also alleges that he did not plead guilty freely and voluntarily. The State submits this allegation has no merit. 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, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The State submits the transcript reflects that the plea was knowingly and voluntarily entered with a full understanding of the charge and consequence of the plea. Boykin, supra; Dover, supra. Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal

inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The State submits the Applicant should not be allowed to depart from the truth of the statements he made during his guilty plea hearing.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to this claim, the Respondent submits that the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it should, therefore, be treated as such.

V.

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

VI.

WHEREFORE, Respondent requests an evidentiary hearing solely for the purpose of determining whether Applicant's trial counsel was ineffective.

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

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

March 1st, 2016

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

DAVID ADAM PATE, #341659,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

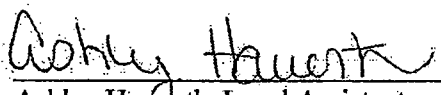
2015-CP-29-1379

AFFIDAVIT OF SERVICE BY MAIL

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

Mr. Nathan James Sheldon, Esquire
 Shaw Law Firm
 PO Box 36250
 Rock Hill, SC 29732

DATED this 1st day of March, 2016.


 Ashley Haworth, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF LANCASTER
4 2015-CP-29-01103

5 David Pate

6 vs.

7 State of South Carolina

8

9 Lancaster, South Carolina

10 January 11, 2017

11 Before the Honorable William Jeffrey Young

12

13 APPEARANCES

14 For the State: Patrick Schmeckpeper

15 For the Defendant: Nathan Sheldon

16

17 Reported by: Michael C. Watkins

18 Official Court Reporter

19

20

21

22

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25

1	David Pate:	3
2	Michael Lifsey:	9
3	Certificate:	24
4		
5	NO EXHIBITS	
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1 MR. SCHMECKPEPER: The first case of the morning is
2 David Pate versus State of South Carolina, 2015-CP-29-1379.
3 The applicant was indicted in April of 2014 in Lancaster
4 for murder, he was represented by Mike Lifsey. The
5 applicant pled guilty on April 9th, 2015 in front of Judge
6 Daniel Hall and was sentenced to life in prison. The
7 applicant did not appeal. Your Honor, at this time we
8 would turn matters over to opposing counsel so he could
9 call his case.

10 MR. SHELDON: Your Honor, may it please the Court? We
11 would call David Pate to the stand.

12 THE COURT: Come forward, please.

13 The witness, DAVID PATE, was first duly sworn and
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. SHELDON:

17 Q And Mr. Pate, make sure you speak up so myself and the
18 court reporter and the Judge can hear you.

19 MR. SHELDON: May it please the Court, Your Honor?

20 THE COURT: Yes.

21 Q Mr. Pate, please state your name for the record.

22 A David Pate.

23 Q And Mr. Pate, you're currently incarcerated in SCDC;
24 is that right?

25 A Yes, sir.

DAVID PATE - DIRECT

1 Q And you're actually in the state protected custody
2 right now?

3 A Yes, sir.

4 Q And you're serving a life sentence.

5 A Yes, sir.

6 Q Were you represented by Mr. Lifsey in this case?

7 A Yes, sir.

8 Q Originally were you charged with murder and possession
9 of a weapon during a violent crime?

10 A Just murder.

11 Q Just murder. And what sentence did you receive for
12 that murder?

13 A Life.

14 Q Talk to us a little bit about when did Mr. Lifsey
15 first get involved in the case?

16 A Well, I had two lawyers before I had him. I had --
17 to tell you the truth I don't remember their names, I had
18 a male first and then a female, then him.

19 Q All from the public defender's office?

20 A Yes, sir.

21 Q So the same office was representing you throughout the
22 case.

23 A Yes, sir.

24 Q And did you and Mr. Lifsey have substantial
25 conversations about this case and what your options were

DAVID PATE - DIRECT

1 and things like that?

2 A Yeah, we spoke. I was kind of speedy about it
3 because I was trying to get out of the county so quickly
4 really, so I just I kind of asked him what would be the
5 best options, you know.

6 Q Why did you want to get out the county so quickly?

7 A Because they had me in a cell for myself for no
8 reason, I don't know why.

9 Q So did you request that Mr. Lifsey try to expedite the
10 process to get you to --

11 A I asked him what would be the quickest way to get out
12 of the county, and I left it up to him to pick the Judge
13 and so forth, because he said that the Judge that he
14 picked would most likely not give me life.

15 Q Well, we're going to get to that in a minute. But
16 between you and your conversations with Mr. Lifsey, you
17 were acknowledging responsibility for the act, from the --

18 A Yes.

19 Q So this case was never in a trial posture or anything
20 like that.

21 A No.

22 Q And so did Mr. Lifsey -- were there any plea offers or
23 anything like that in this case?

24 A At the last moment I think that there was a plea with
25 no less than 40 is what I was assuming.

DAVID PATE - DIRECT

1 Q So basically a minimum cap of 40 up to life?

2 A Yes, sir.

3 Q And did that -- did you turn that plea down?

4 A Yes. Because I figured it would be better off if it
5 would be an open plea, because that would be at least 30.

6 Q So you -- basically the first offer was 40 to life,
7 but a straight up plea would have been 30 to life anyways.

8 A Yeah, I figured that would be my best option.

9 Q What conversations did you have with Mr. Lifsey about
10 the open plea?

11 A Little to none.

12 Q Did you understand what an open plea meant?

13 A Yes. It could be anywhere between the minimum and
14 the maximum.

15 Q But did Mr. Lifsey make any statements or any
16 guarantees to you about what sentence you would get?

17 A A guarantee, no.

18 Q What exactly was your understanding when you were
19 going to go before the judge of what was going to happen?

20 A I knew that if I would have went to trial I would
21 have probably got life, so I figured my best option would
22 be an open plea, because that was a ten year difference
23 between the plea they was offering, so I left it up to
24 him. And I said, "What Judge would you think would be
25 best and what date?" And I left it up to him. He picked

DAVID PATE - DIRECT

1 the Judge, he figured since he knew the Judge somehow or
2 another that he felt strongly that he would not give me
3 life, we were looking for 35 years, so that's why I left
4 it up to him to do that.

5 Q So your goal was to try to come up with something less
6 than life but hopefully 35.

7 A Yes, sir.

8 Q Did you have time to review all of the discovery with
9 Mr. Lifsey and things like that?

10 A We really never talked about anything in discovery
11 really, like we didn't talk a whole lot. I mean, we
12 talked but not a whole lot.

13 Q But in terms of discovery, your relationship with Mr.
14 Lifsey was such that you were going to accept
15 responsibility, so -- is that --

16 A Yeah. I was guilty through and through, yeah.

17 Q And then what about -- were you evaluated and things
18 like that?

19 A I had two mental evaluations.

20 Q Did you have any issues with anything that happened at
21 the mental evaluation or anything?

22 A No, sir.

23 Q So what relief -- are you seeking -- do you want your
24 sentence vacated today?

25 A If possible.

DAVID PATE - DIRECT

1 Q What would you like to have happen if the Judge were
2 to vacate the sentence?

3 A Just -- I want a number. I don't want life, I just
4 want a number, something reasonable. I don't want the
5 minimum, of course. Like I said, I done it, I just want
6 something manageable that I might have a chance to get out
7 one day.

8 Q And you understand that the only remedy available at
9 PCR like we discussed is for the Judge to remand the case
10 and start over from the beginning, there's no such thing as
11 sentence reduction or anything.

12 A Yes.

13 Q Do you have any other complaints about Mr. Lifsey or
14 anything like that?

15 A No, sir.

16 MR. SHELDON: Thank you, Your Honor.

17 THE COURT: Yes, sir?

18 MR. SCHMECKPEPER: Just briefly, Your Honor.

19 CROSS EXAMINATION

20 BY MR. SCHMECKPEPER:

21 Q Mr. Pate, I just have a couple of questions. Do you
22 remember your actual guilty plea proceedings?

23 A Not really, I mean, thankfully.

24 Q Off the top of your head do you remember the Judge
25 telling you what the maximum and minimum sentences were?

DAVID PATE - CROSS

1 A Yes.

2 Q Do you remember him explaining that it was 30 to life?

3 A Yes.

4 Q And your attorney told you -- Mr. Lifsey explained to
5 you that this was 30 to life, and the life was a
6 possibility if you pled guilty.

7 A Yes.

8 MR. SCHMECKPEPER: I have no further questions.

9 MR. SHELDON: No redirect, Your Honor.

10 THE COURT: Thank you, you may step down.

11 MR. SHELDON: Your Honor, that's the applicant's case.

12 THE COURT: Thank you.

13 MR. SCHMECKPEPER: State calls Mike Lifsey.

14 The witness, MICHAEL LIFSEY, was first duly sworn and
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. SCHMECKPEPER:

18 Q Good morning, Mr. Lifsey.

19 A Good morning.

20 Q I just have a couple of questions for you. You were
21 appointed in this case; is that correct?

22 A Yes, sir, our office was appointed originally on this
23 case. Mr. Pate is correct, there were a couple of other
24 lawyers for various reasons that had it initially and I
25 became involved later.

MICHAEL LIFSEY - DIRECT

1 Q How long did you have this case prior to the plea?

2 A I can't -- you know, I can't remember exactly, it was
3 months, months and months, six or eight months, maybe even
4 a year, I can't remember. It was a good long time.

5 Basically what happened procedurally with his lawyers is
6 William Frick was originally appointed to represent him,
7 William left our office to run for office and we gave it
8 at some point to -- I think we gave it to William
9 initially because William represented him on prior
10 charges, and then a lawyer named Amy Raney had it briefly
11 and Amy left. And at that point, I mean, I knew, knock on
12 wood, I wasn't going anywhere so I took it at that point.

13 Q And just for the record, could you explain your
14 background in criminal practice?

15 A I've been licensed to practice law since 1991. Other
16 than the first three or four years when I was in a small
17 town private practice, other than that I've been either a
18 prosecutor or a public defender since that time. I was
19 named the circuit public defender for this circuit in
20 2009.

21 Q And roughly, I know you might not remember exactly,
22 how many times did you meet with him?

23 A Four or five times probably at least, maybe more than
24 that. His situation was, you know, there really wasn't a
25 whole lot to talk about from the standpoint of -- I mean,

MICHAEL LIFSEY - DIRECT

1 when I met him I remember going out there and I remember
2 getting background, introducing myself to him and finding
3 out about him and his background. As far as the facts of
4 the case, he never disputed them, he admitted he did it,
5 he was forthright with me just like in his recorded
6 confessions to law enforcement. I met with him every
7 couple of months, I guess, just to see if -- just to touch
8 base with him and make sure -- there was no plea offer for
9 ages and ages and ages on this case. Part of that, I
10 think, was due to the -- it was a pretty horrific murder
11 and pretty horrific defendant based on things he said to
12 law enforcement, so there was no plea offer. The other
13 factor that factored in was it was right at the end of the
14 term of Solicitor Barfield and the beginning of the term
15 of Solicitor Newman. And I think -- my memory is
16 Solicitor Barfield, of course, had a lot of other things
17 on his plate too, but I think he kind of felt like he
18 would let the new solicitor handle it. When Solicitor
19 Newman got in it took him awhile to get up to speed with
20 it. He was a young elected solicitor and this was, as I
21 said, a pretty horrific high profile case, he didn't make
22 much of a plea offer, didn't make one at all for awhile.
23 And then if my memory is correct that right before sort of
24 toward the end of this saga he offered him to let him
25 plead to murder with a floor of 40, you know, which, of

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1 course, really isn't much of an offer considering that 40
2 to life is worse than 30 to life. I'm not blaming the
3 solicitor, he doesn't have a constitutional right to a
4 plea bargain anyway, but that's sort of a sequence of
5 events.

6 Q I know you said the facts weren't with him. Did you
7 understand going into that plea that there was a chance
8 that he would get a life sentence, a real chance he could
9 get a life sentence.

10 A Yes, sir. Like I say, I don't want to delve into the
11 facts as you know, but it was horrific not just from the
12 crime itself, because you had a multiple stabbing, 30
13 something times at least that they could prove. They
14 couldn't prove the details because of the delay in finding
15 of the body, and then you had a body that had deteriorated
16 significantly by the time they found it, which in my
17 experience is never something that lends itself to an easy
18 resolution of cases. Then you had -- the worst part of
19 this case really was his confession. On the one hand I
20 give him plenty of credit for being forthright, usually --
21 you know, sometimes confessions benefit clients, but his
22 confession was not just a confession of the crime, it was
23 a confession to his desire to kill other people,
24 his inkling -- things he wanted to do to the body just --
25 it was pretty horrific, no remorse at all. And so those

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1 factors combined to make this a really bad case. So where
2 we found ourselves was --

3 Q And is the confession something that was before the
4 sentencing judge?

5 A Yes. He confessed to -- law enforcement recorded his
6 confession. A portion of it was played to the -- at the
7 time of his plea, thankfully the Judge stopped it at some
8 point, it got too graphic and horrific. But anyway, so
9 you have a situation where, yes, a life sentence was a
10 very real possibility. And I felt -- our normal -- our
11 residence circuit Judge, Brian Gibbons, is a Judge who
12 I've been in front of a good number of times and known him
13 for a long time, and I felt very confident based on -- I
14 felt very confident that the life sentence was a most
15 likely outcome with Judge Gibbons. So for a long time
16 this case really was just in a holding pattern because
17 there was no real plea bargain, no real incentive for the
18 client to plead. On the other hand, the thing didn't get
19 scheduled for trial for a number of reasons, including the
20 change in solicitor's offices, so it was just sort of
21 sitting there. And then my client -- I think he wrote
22 me -- I know talking to him at one time he discussed
23 wanting to have a speedy trial, which was very unusual
24 because I had not -- that had not been an issue, so I
25 remember talking and I said, "Why do you want a speedy

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1 trial?" And he said, "I'm tired of being out here in the
2 county. I know I've got to do a bunch of time, I want to
3 get on down the road to SCDC." And I'm like, "Well, if
4 that's what you want to do we can plead guilty to the case
5 if your are goal is to get on down the road." And I spoke
6 to the solicitor about it, and the only -- once again,
7 there wasn't much of a plea offer. The concessions was
8 they let us pick a judge. I don't get the pick of the
9 entire judiciary of South Carolina, I get the pick of who
10 is scheduled to come to Lancaster County the next few
11 months. Judge Hall was scheduled, Judge Hall was new to
12 the bench at that time. Judge Hall is a man I've known or
13 a long time, he and I shared an office in the solicitor's
14 office together in York County. I always found Judge Hall
15 as someone that when he made plea offers as a solicitor
16 was someone who did what he thought was right without a
17 whole lot of concern for whether the press or anybody
18 complained about it or the media or even law enforcement,
19 he did what he thought was right. I didn't have much of a
20 basis to know how his judicial sentencing was because he
21 was fairly new to the bench, but my thought was -- I can't
22 remember who was scheduled in the next few months, but I
23 remember we had Gibbons a lot, who I felt confident would
24 give him life, and the other one or two judges I think we
25 had to pick from, my thought was we had at least some

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1 possibility of getting something other than a life
2 sentence from Judge Hall. Of course, I think Judge Hall
3 did what he felt was right in the case, but that's what
4 happened.

5 Q And I guess my only real question is whether or not
6 you conveyed -- the real potential for a life sentence to
7 the applicant?

8 A Yes, we discussed it at detail. He was -- this
9 defendant is an intelligent person, he is not
10 unintelligent at all, one of the more interesting people I
11 have ever represented. I had conversations with him that
12 were smart, he was evaluated and nothing in his evaluation
13 suggested any kind of intellectual disability. He
14 understood the seriousness of this situation. Now, he
15 certainly did not want to receive a life sentence, he
16 wanted to receive a number, no, not letters, numbers as my
17 clients say sometimes. But no, I think he fully
18 realized -- and I did a plea affidavit and it should be in
19 the record somewhere, it was introduced into evidence,
20 so -- but he fully understood that life was a possibility.
21 Like I say, we were certainly asking, and I asked -- in
22 the transcript I think I asked for a 30 to 35 year range.
23 He and I discussed realistically, you know, the minimum
24 you're going to get on a murder is 30 by statute, he had a
25 criminal history and he wasn't going to get 30, I can't

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1 imagine any judge even if I could pick the entire
2 judiciary that would have given him that. So we picked
3 the number 35 to really kind of push for because that was
4 more than the minimum and not life. When you get much
5 above -- that's the problem, when you get much above 35, I
6 mean, you're really dealing with probably a life sentence
7 anyway, so it was a tough situation. He understood what
8 he was getting into, and I hate it for him but we did it
9 because he wanted to plead guilty.

10 Q And you explained to him the State's case against him,
11 you went over discovery with him?

12 A Yes. He's right, we didn't go into details. With
13 some clients I sit there and I go page by page and picture
14 by picture, I did not do that with him because -- well,
15 first of all I'm assuming, and he never told me otherwise,
16 but I believe that was done with his other counsel,
17 either -- certainly either Mr. Frick or Ms. Raney, I
18 think, did that with him extensively. Also he never had
19 any issues with what happened. He was -- basically you
20 have a client telling me he had done it, and then you had
21 a confession to law enforcement recorded in an
22 excruciatingly painful detail about how he did it, so it
23 just didn't -- I didn't go over in great, great detail
24 with him the discovery, but there was never any request --
25 this was never going to be a factually contested case.

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1 This was a is there any way we can find some way for him
2 to not get life in prison. Now, obviously we failed at
3 that because he got life in prison, but sometimes you have
4 to lay in the bed you made.

5 MR. SCHMECKPEPER: Thank you, Mr. Lifsey, I don't have
6 anymore questions.

7 MR. SHELDON: May it please the Court, Your Honor?

8 THE COURT: Yes, sir.

9 CROSS EXAMINATION

10 BY MR. SHELDON:

11 Q Mr. Lifsey, I just want to briefly talk to you about
12 kind of the plea itself. You mentioned that he had been
13 evaluated; is that right?

14 A That's correct.

15 Q And how many different evaluations did he undergo?

16 A You know, he said two. I know he was evaluated as to
17 competency and as to criminal responsibility, I don't know
18 if they did those differently. I don't think I was
19 representing him when he went down for his -- I don't
20 believe -- I may have attended -- I always generally,
21 absent some reason I cannot, I attend the evaluations of
22 my client. I don't remember attending two different
23 evaluations but that may have happened, there may have
24 been a competency and a criminal responsibility
25 separately.

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1 Q In terms of the evaluation themselves whether it be
2 competency or criminal responsibility or a combination of
3 both, you obviously got those evaluations back; is that
4 right?

5 A Yes, sir.

6 Q And sort of have -- you don't really have a Blair
7 hearing, but you have a finding of competency at the plea
8 itself, you kind of address that issue first based off of
9 the report, or the Judge does and then kind of go into the
10 plea.

11 A Well, we should have. We need to have a Blair
12 hearing. I think the solicitor introduced it a little
13 differently and the judge, who was very new to the bench,
14 didn't use the language of "Now we're going to have a
15 Blair hearing," but I think that was his intention and I
16 think we effectively had a Blair hearing. The Judge
17 received the report and the Judge made a finding that he
18 was competent to stand trial.

19 Q So we have -- and there was a competency finding by
20 Judge Hall, I believe.

21 A Yes, sir.

22 Q But it was the same day as the plea, right?

23 A That's correct.

24 Q Is there -- in terms of -- but even though somebody
25 may be competent to stand trial, there are still things in

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1 reports that can be beneficial at pleas.

2 A That is very true.

3 Q And the report at this point has already obviously
4 been received as a Court Exhibit by the Judge, is there
5 anything in the evaluation itself that would have been
6 beneficial to point out to the Judge by way of mitigation
7 as opposed to actual competency or criminal responsibility?

8 A I don't think so. I have the report and I haven't
9 reviewed it obviously really since the time of the plea.
10 My memory is the report diagnosed him as having antisocial
11 personality disorder, narcissism and discussing other
12 factors that none of which seemed particularly helpful to
13 me.

14 Q But with the egregiousness of this case, or the
15 horrificness (phonetically) of this case I think as you put
16 it, would it not have helped explain some of what is going
17 on?

18 A I don't -- certainly some mental health reports have
19 done that. I don't remember this report having anything
20 that was particularly helpful in it. Now, once again, it
21 has been a long time and I have not reviewed it in detail
22 this morning, but I remember the report basically not
23 being particularly helpful to us.

24 Q And maybe I'm not being very clear. The report is not
25 helpful to you --

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1 A Yes, sir.

2 Q -- that's fine, but the Judge already has it so the
3 damage has been done at that point.

4 A Well, that's correct. But I don't know how not to do
5 that.

6 Q But I guess my question is, was there -- based on your
7 experience, was there no reason to bring the actual
8 assessor, the actual doctor or therapist or whomever
9 assessed to the hearing to help clarify some of the report?

10 A I didn't see any real need to do that. I will tell
11 you that I talked to Dr. Frierson, who is the doctor who
12 conducted the evaluation, a couple of times about this
13 case, and nothing that Dr. Frierson told me was helpful or
14 beneficial to my client.

15 Q So at the plea you made a decision not to bring -- if
16 there was something helpful, would you bring a doctor to
17 the courtroom?

18 A Absolutely. Well, I would have depending on the
19 circumstances. Sometimes I bring -- sometimes I get a
20 report, sometimes I bring doctors to the courtroom, I did
21 not do so in this case.

22 Q But like some real possibility as you put it, it's
23 important that a lawyer do everything they absolutely can.

24 A Absolutely.

25 Q It doesn't matter if we're here for three days doing a

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1 plea.

2 A Well, that's very correct, yes, sir.

3 Q And did you ever get a number as opposed to letters
4 from the solicitor's office by way of offer?

5 A No, sir. I believe he is correct, I was trying to --
6 no, sir. I think he was correct, my memory -- for ages,
7 like I say, we did not get any offer at all, and the new
8 solicitor was very reluctant to make an offer at all. And
9 I think probably at the urging of the deputy solicitor
10 just to try to move it we finally got the floor of 40,
11 which, as I said, that's worse than pleading straight-up.

12 Q Was there -- so I'm assuming the new solicitor we're
13 talking about, Solicitor Newman, the old solicitor in
14 charge of the case at the time it happens is Solicitor
15 Barfield; is that right?

16 A Yes.

17 Q Did you ever approach Solicitor Barfield and ask for a
18 number?

19 A I did. Let me put it this way, I asked for an offer
20 from Solicitor Barfield, but -- and this is may be beyond
21 your scope. Generally with Doug Barfield as solicitor, on
22 murder cases we usually didn't get offers at all until it
23 was very close to being tried. The pattern with Solicitor
24 Barfield was in my experience, I'm not saying this is in
25 every single cases, but in the majority of cases, murder

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1 cases and homicide cases I handled with him, he just
2 wouldn't make an offer for a long time until he really
3 geared up to get ready to try it or be close to some
4 resolution, and then you generally got a "Here is an offer
5 and if he doesn't take it we're going to trial on this
6 day," which I think is probably -- would have eventually
7 happened in this case, except then your sort of
8 complicated by it getting right near the end of his term
9 of office. So I think it probably would have been in the
10 late part -- this plea was in April of 2015, I think the
11 late part of 2014 probably would have been where it would
12 have been resolved with Solicitor Barfield, but I think --
13 and I'm not trying to speak for him, but I got the
14 impression toward the very end he just said, "Well, I'll
15 let the new solicitor deal with this." And it was a good
16 case for the new solicitor to deal with, pretty
17 overwhelming evidence of guilt.

18 Q So when you approached Solicitor Barfield about an
19 offer he respectfully declined to make one.

20 A Yes, sir. And I don't know if he expressed it in the
21 terms of "I'm not going to make you an offer," or
22 usually -- and I don't remember individually as to this
23 case, but usually what happened with Doug was, "Well, let
24 me take a look at it and I'll see what I can get you."
25 And, of course, we didn't get an offer. I don't mean that

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1 negatively at all to him, because one, God, at one time we
2 had 24 pending homicides in Lancaster County and he
3 handled almost all of them because he didn't have the
4 staff that he felt confident in giving them to them. I
5 don't remember if it was "I've decided I'm not going to
6 make an offer" as much as, "I'll get you an offer as soon
7 as I can on it," which never came.

8 MR. SHELDON: Thank you, Your Honor, I don't have
9 anymore questions.

10 THE COURT: Any redirect?

11 MR. SCHMECKPEPER: Nothing, Your Honor.

12 THE COURT: Thank you, you may step down.

13 MR. SCHMECKPEPER: And that's it from the State, Your
14 Honor.

15 THE COURT: I'll take this matter under advisement and
16 I'll let you know when I've made my ruling.

17 (End of the hearing.)

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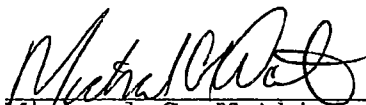
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1 I, the undersigned, Michael C. Watkins,
2 Official Court Reporter for the Sixth Judicial
3 Circuit of the State of South Carolina, do hereby
4 certify that the foregoing is a true, accurate and
5 complete transcript of the proceedings had and
6 evidence introduced in the trial of the captioned
7 case relative to appeal in the Court of Common Pleas
8 for Lancaster County, South Carolina, on the 11th
9 day of January, 2017.

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

12
13 June 20, 2017

14
15 
16 Michael C. Watkins

17 Court Reporter
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STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

David Adam Pate,
S.C.D.C. No. 341659

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS

) SIXTH JUDICIAL CIRCUIT

) C.A. No. 2015-CP-29-1379

) ORDER OF DISMISSAL
(with prejudice)**RECEIVED**

JUN 02 2017

S.C. SUPREME COURT
FILED
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OF COURT
MAY 15 PM 3:30
CLERK OF COURT
LANCASTER, SC

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on October 6, 2015. Respondent subsequently filed its responsive pleadings. An evidentiary hearing into the matter was convened on January 11, 2017, at the Lancaster County Courthouse. The Applicant was present and testified in his defense. The Applicant's plea counsel, Michael H. Lifsey, Esquire, also testified. The Applicant was represented by Nathan J. Sheldon, Esquire. Respondent was represented by Patrick Schneckpeper, Esquire, of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Lancaster County Clerk of Court's orders of commitment. Applicant was indicted at the February 2014 term of the Lancaster County Grand Jury for murder (2014-GS-29-221). Applicant was represented by Michael H. Lifsey, Esquire. On April 9, 2015, Applicant pled guilty as indicted. The Honorable Daniel D. Hall sentenced Applicant to a term of life imprisonment. Applicant did not appeal his sentence or conviction.



Allegations

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

1. Ineffective assistance of counsel, in that:
 - a. Counsel failed to conduct a reasonable investigation
 - i. Which rendered the applicant's plea of guilty not knowingly, voluntarily, or intelligently mad
 - b. Counsel advised applicant to plead guilty when counsel did not have any of the discovery material
 - c. "Counsel also hoodwinked the applicant in believing that he would receive 35 year sentence if he plead guilty"

At the evidentiary hearing, the Applicant proceeded solely on the allegation that counsel was ineffective in advising him that he would not receive a life sentence if he pled guilty.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject guilty pleas, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and the legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2015), this Court has made the following findings of fact and conclusions of law based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

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). With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Advice Regarding Sentencing

The Applicant alleged counsel was ineffective in advising him that the judge he had picked would most likely not give him a life sentence. This Court finds he has failed to meet his burden. The Applicant testified that his attorney did not guarantee any specific outcome, but thought the judge would not give him a life sentence. Counsel testified at the evidentiary hearing that he conveyed to the Applicant that life was a very real possibility. During the plea hearing,

the Applicant acknowledged that murder carried a minimum sentence of thirty years and a maximum sentence of life. Tr. p. 10.

Inasmuch as the Applicant testified that his attorney guaranteed him a specific sentence, this Court finds he is not credible. This Court finds counsel's contrary testimony – that he conveyed the very real possibility of a life sentence – to be credible. Regardless, even if counsel inappropriately guaranteed the Applicant that he would not be sentenced to life imprisonment, "any possible misconceptions on [the Applicant's] part were cured by the colloquy during the actual guilty plea hearing," where the judge "asked [the Applicant] about the range of sentences." Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997). The Applicant also told the guilty plea judge he had not been promised anything to get him to plead guilty. Tr. p. 15. Because the Applicant has not presented any reliable evidence in support of his allegation, this Court finds he has failed to meet his burden. This allegation is therefore denied.

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, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.



CONCLUSION

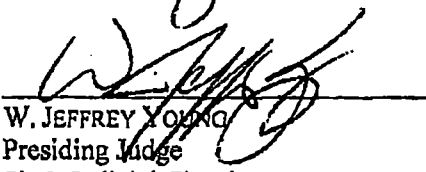
Based on the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRPC; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED

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

AND IT IS SO ORDERED this 10 day of May, 2017.


W. JEFFREY YOUNG
Presiding Judge
Sixth Judicial Circuit

Sumter, South Carolina