

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Honorable Michael G. Nettles, Circuit Court Judge

JAMES JUNIOR LITTLE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-000840

APPENDIX

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S.C. SUPREME COURT

INDEX

INDEX	i
GUILTY PLEA HEARING TRANSCRIPT DATED NOVEMBER 12, 2014	1
APPLICATION FOR POST-CONVICTION RELIEF	21
RETURN.....	31
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED FEBRUARY 7, 2017.....	38
ORDER OF DISMISSAL.....	76
INDICTMENT.....	78

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**

COUNTY OF HORRY) CASE NO: 2014-GS-26-0436

PLEA

B E F O R E: The Honorable Larry Hyman
November 12, 2014

STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

JAMES JUNIOR LITTLE,

Defendant.

 **ORIGINAL**

APPEARANCES:

Monica Wooten, Esq.
For the State.

Edward Chrisco, Esq.
For the Defendant.

Court Reporter:

Natalie Dahl, RPR

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

(JAMES JUNIOR LITTLE, having been duly sworn,
testified as follows:)

MS. WOOTEN: State of South Carolina, County of
Horry versus James Junior Little, true bill indictment
2014-GS-26-00436 for leaving the scene of the accident
or hit-and-run, duties of a driver involved in an
accident with death. The State's offer at this time
is a straight-up plea, credit for time served plus
restitution, if any, and the victim will discuss that
wherever you deem appropriate.

THE COURT: Is this an arraignment or plea?

MS. WOOTEN: Plea.

THE COURT: Again, the recommendation of the
State is what?

MS. WOOTEN: Straight up, Your Honor.

THE COURT: Didn't you tell me there was an offer
earlier?

MR. CHRISCO: It's a plea under North Carolina
versus Alford. They are dropping the warrant of great
bodily injury. He lived for some portion for like a
day or so before he died, Your Honor.

THE COURT: But it's an Alford plea then to
leaving the scene of an accident not involving death?

MS. WOOTEN: Involving death, Your Honor. The

1 victim is present, Your Honor, Mr. Wess Boland,
2 Junior, the deceased victim's son, and his attorney
3 from Greensboro, North Carolina. I have the
4 sentencing sheet, if I may approach.

5 EXAMINATION

6 BY THE COURT:

7 Q Okay. Mr. Little, you are charged with the
8 offense of hit-and-run resulting in death that carries
9 up to 25 years. Has Mr. Chrisco had an opportunity to
10 explain to you what that offense means?

11 A Yes, sir.

12 Q And were you aware -- or you aware now -- that it
13 carries up to 25 years?

14 A Yes, sir.

15 Q I'm told that you wish to plead under North
16 Carolina versus Alford; is that right?

17 A Yes, sir.

18 Q Let me tell you what my understanding of that
19 plea is. That is a plea where you say I did not do it,
20 however, I acknowledge that the State has sufficient
21 evidence to convict me if I go to trial, and I just
22 want to enter a plea and end it here. That is
23 basically what that plea means; is that your
24 understanding?

25 A Yes, sir.

1 Q Do you realize that it carries the same effect as
2 any other guilty plea? It is a conviction; do you
3 understand that?

4 A Yes, sir.

5 Q And that is how you wish to proceed in this
6 matter?

7 A Yes, sir.

8 Q Did Mr. Chrisco go over all the evidence in the
9 case with you?

10 A Yes, sir.

11 Q Did he explain to you how that evidence would be
12 used against you if you had a trial?

13 A Yes, sir.

14 Q Do you understand that a trial is certainly an
15 option you have in this matter; in fact, it is an
16 absolute right that you have, no one can take that away
17 from you; you understand that?

18 A Yes, sir.

19 Q Do you know how a jury trial works, generally
20 speaking?

21 A Yes, sir.

22 Q Do you understand that this plea is a permanent
23 waiver, absolute waiver of your right to a jury trial?

24 A Yes, sir.

25 Q That is what you want to do?

1 A Yes, sir.

2 Q Mr. Little, let me tell you that if you enter a
3 plea of guilty, by way of illustration, it would be
4 things like your right to remain silent. If you had a
5 trial, you would not have to testify; you could, but
6 you don't have to. No one could make you. If you
7 chose not to, I would tell the jury they could not even
8 discuss that. They could not use it against you in any
9 way, form or fashion. Of course, you would have the
10 right to have an attorney with you all through that
11 trial, and at the end of the trial you would have the
12 right to have me tell the jury that they could not
13 convict you unless they were each and every one
14 convinced by the State's evidence of your guilt beyond
15 a reasonable doubt; do you understand that?

16 A Yes, sir.

17 Q Again, these are some of the rights that you have
18 that you are waiving if you enter a plea of guilty and
19 your general right to a jury trial; do you understand?

20 A Yes, sir.

21 Q That is what you want to do?

22 A Yes, sir.

23 Q All right. Tell me about Mr. Chrisco; are you
24 satisfied with his representation?

25 A Yes, sir, I am.

1 Q Do you think he's done everything that he could
2 in order to help you?

3 A Yes, sir he did -- has.

4 Q You are fully satisfied with him?

5 A Yes, sir.

6 Q He's met all of your expectations?

7 A Yes, he has.

8 Q I see here that you are 47 years of age; is that
9 right?

10 A Yes, sir.

11 Q How far did you go in school?

12 A Graduated.

13 Q You look like a working man, Mr. Little. What
14 kind of work do you do?

15 A I was operating heavy equipment. I worked in
16 logging wood before coming here about six months and I
17 switched to cooking.

18 Q Are you married, Mr. Little?

19 A No, sir.

20 Q Do you have children?

21 A No, sir.

22 Q Mr. Little, have you ever had any mental health
23 problems, addiction issues, physical problems, any kind
24 of an issue that might prevent you from understanding
25 what we're doing here today?

1 A No, sir.

2 Q Do you understand fully and completely what we're
3 doing here today?

4 A Yes, sir, I do.

5 Q Do you need to ask me any questions about this
6 process? I can't give you legal advice, but I'll be
7 happy to explain anything about this process that we're
8 going through.

9 A No, sir.

10 THE COURT: Listen carefully to Ms. Wooten, she
11 is going to tell me why you are charged with this
12 offense.

13 MS. WOOTEN: Thank you, Your Honor. On July 10,
14 2013, officers were called up to North Ocean Boulevard
15 within the city limits of Myrtle Beach, that city
16 being in Horry County, South Carolina. A victim was
17 unresponsive on the ground on the highway -- or
18 roadway. Due to the many witnesses that saw the
19 accident, witnesses stated that a black male driving a
20 red Chevrolet Cavalier fled from the scene of the
21 accident, and medics advised they believe the victim
22 was deceased at the scene.

23 What occurred was -- in the traffic report, the
24 defendant's -- the victim was traveling northbound on
25 Ocean Boulevard. The Defendant was traveling

1 eastbound, and when he turned out on to Ocean
2 Boulevard, he failed to yield the right-of-way to the
3 victim. The victim then lost control of his bicycle
4 and struck the curb, he went over the bicycle and
5 landed, I believe, on his neck and head and back area
6 out in the roadway. At that point, the Defendant did
7 leave the scene of the accident. He was -- due to the
8 many witnesses that saw it, he was immediately taken
9 to the hospital and passed away within -- around 48
10 hours after the incident.

11 The cause of death was a brain injury and blunt
12 force trauma due to the impact of the accident. The
13 reason why the -- thereafter, Your Honor -- and I
14 apologize this is kind of lengthy -- the time line
15 afterwards, the Defendant went straight to work at
16 K&W, but then he left saying he had a family
17 emergency. The manager, or his boss, did state to the
18 police that he was acting upset and nervous. Then
19 there was also statements from his girlfriend that
20 left to go find the Defendant, because he had called
21 and said he had hit someone, but didn't stop due to
22 not having a valid driver's license at that time.

23 He was, again, originally charged with
24 hit-and-run with great bodily injury, but because the
25 victim eventually passed away at the hospital, we'll

1 be going forward on that charge.

2 The victim was an avid bicyclist and a leading
3 safety instructor in North Carolina on bicycling.
4 Even though he was an older gentleman, he was probably
5 at his best health as a bicyclist at the time, so it
6 was unfortunate that he did not survive the crash.

7 The reason why he is charged with hit-and-run,
8 even though there wasn't an actual hit, is because in
9 the statute all that it requires is that a driver of a
10 vehicle is involved in an accident resulting in
11 personal injury or death and then he leaves that
12 accident without providing reasonable assistance or
13 identifying himself.

14 Within our Department of Public Safety standards,
15 a motor vehicle traffic collision is defined as at
16 least one motor vehicle in transport in which an
17 un-stabilized situation originates on a traffic-way or
18 at least one harmful event occurs on the traffic-way;
19 therefore, there is no collision actually required.

20 Their definition of a collision is just an
21 accident, it doesn't actually have to be one object
22 hitting another.

23 The Defendant does have a prior record, and this
24 is the last thing I'll go over. The victim's son
25 wishes to state -- speak to Your Honor, whenever you

1 deem appropriate. His prior record: 1984, use of a
2 motor vehicle without owner's consent. 1985, use of
3 motor vehicle without the owner's consent. 1987,
4 reckless homicide. 1994, burglary second degree
5 non-violent. 1999, criminal domestic violence of a
6 high and aggravated nature, kidnapping, possession of
7 a weapon during a violent crime, assault and battery
8 with intent to kill, two counts, and criminal sexual
9 conduct second degree, which he was placed on the sex
10 offender registry. He served ten years for those
11 offenses. In 2011, assault and battery third. 2012,
12 resisting arrest, and 2013, assault and battery third
13 degree.

14 THE COURT: Okay. All right. Mr. Little, at
15 this point, I usually ask the Defendant if they agree
16 with the factual basis for the offense, but you are
17 pleading under North Carolina versus Alford, so I will
18 not ask you that, but I'll ask you if you understand
19 that the facts related to me by the State will serve
20 as the basis for my acceptance of a plea and for
21 sentencing; do you understand that?

22 MR. LITTLE: Yes, sir.

23 EXAMINATION (CONTINUED)

24 BY THE COURT:

25 Q All right, sir. Mr. Little, has anyone done

1 anything inappropriate in any form or fashion, anyone
2 tried to threaten, intimidate, force or coerce you,
3 promise you anything in order to get you to enter this
4 plea?

5 A No, sir.

6 Q Have you had all the time you need to think about
7 it?

8 A Yes, sir.

9 Q Do you need to discuss further with your
10 attorney, your family or anyone else?

11 A No, sir.

12 Q Are you pleading, Mr. Little, freely and
13 voluntarily?

14 A Yes, sir.

15 Q Again, have you had all the time you need to
16 think about this?

17 A Yes, sir.

18 Q Do you believe that this plea is in your best
19 interest?

20 A Yes, sir.

21 Q Mr. Little, you have ten days in which to appeal
22 what I do here today, and you do that by filing a
23 Notice of Intent to Appeal. Your failure to do so
24 would result in your waiver of your rights of appeal.
25 I'm sure you don't know how to do it or where to do it,

1 Mr. Chrisco certainly does and he will be happy to
2 assist you in getting that notice filed if you choose
3 to do so; thereafter, if you cannot afford an attorney
4 to go forward with your appeal, one would be appointed
5 for you; you understand?

6 A Yes, sir.

7 THE COURT: I find there is a substantial factual
8 basis for this plea, and it is made freely,
9 voluntarily, knowingly and intelligently and after the
10 advice of a very competent attorney with whom he says
11 he's satisfied, and I'll accept the plea.

12 I'll hear from the victims.

13 MS. WOOTEN: Thank you, Your Honor.

14 MR. VAUGHN: If Your Honor please, I'm Don
15 Vaughn, an attorney from Greensboro, North Carolina.

16 THE COURT: Good to see you.

17 MR. VAUGHN: Good to see you, too, Your Honor.
18 It is my privilege to represent the estate in this
19 matter. Speaking for the family is going to be Jim
20 Westmore, the son of the deceased. He is the city
21 manager of the City of Greensboro, former general
22 secretary of the Department of Transportation,
23 graduate of North Carolina State University, and he
24 will speak on the impact on the family.

25 THE COURT: All right.

1 MR. WESTMORE: Thank you, Your Honor, for giving
2 us time this morning. I appear on behalf of my mother
3 and my son and my wife. I'll gather myself just for a
4 minute.

5 Certainly it's been a long time since July 10,
6 2013. Your Honor, I'll never forget the phone call I
7 received that morning around 8 o'clock, 8:30, from the
8 Grand Strand Regional Hospital, a phone call you never
9 want to get, never thought or intended to get. I was
10 preparing that day to go to a United Way board
11 meeting. I was back in Greensboro.

12 To make this shorter than it needs to be, because
13 I'm very passionate about my father and what he meant
14 to me. The exhibit to your right is a picture that
15 was made three days before my father was hit and
16 killed. This is the actual jersey he had on that day
17 when he was riding along Ocean Boulevard, a route he
18 traveled many times. My father was an avid cyclist,
19 had been riding for over 30 years. He was training
20 for the state games in North Carolina, probably in the
21 best shape you've ever seen him in.

22 I'm a former cyclist and racer myself. We had
23 ridden the Fourth of July weekend down at the beach.
24 We all set a route that we would run from his house,
25 at , down to the air force base and

1 back.

2 He was a strong cyclist. He was always focused
3 on safety. He was certainly experienced in what he
4 did. He was always looking out for himself and those
5 who rode with him. He was actually a trainer of sorts
6 at the YMCA where he taught spinning classes and
7 cycling safety).

8 We miss him, Your Honor. Obviously it is a
9 tragedy for our family, a tragedy for Mr. Little and
10 his family. I think, from my perspective, the biggest
11 question we have in our minds today is why he fled the
12 scene, why he didn't have the compassion to stop to
13 help my father, as I understand from the emergency
14 service providers that were that day. We talked to
15 them when we got down to the beach on the 10th.

16 My father effectively lost his life there at
17 beach place. He was without oxygen for 15 minutes,
18 and that ultimately is what happened in terms of the
19 injuries that led to his death. So, Your Honor, I
20 would, on behalf of our family, certainly plead to you
21 and to this court the max sentence allowable by law
22 for Mr. Little. I will tell you on behalf of my
23 mother, myself and the rest of my family, we're strong
24 believers in our faith of God and have forgiven Mr.
25 Little for what happened that day and moved on from

1 here, but we do believe that there is some justice to
2 be served because he fled the scene and because he
3 didn't take responsibility for his actions that day,
4 which in my opinion could have led to a different
5 outcome for my father if he would have helped and
6 assisted and aided rather than laying in street for 15
7 minutes without consciousness or breath. It would
8 have let his vital organs sustain himself. Thank you
9 for having us today.

10 THE COURT: Thank you. He was not charged with
11 reckless homicide?

12 MS. WOOTEN: No, Your Honor, due to the elements
13 of the crime. I looked over every single one, and
14 this is the one that fit the best.

15 THE COURT: What time of the day?

16 MS. WOOTEN: This was at 8:20.

17 THE COURT: A.m.?

18 MS. WOOTEN: A.m.

19 THE COURT: Was there any indication of drinking
20 or anything like that?

21 MS. WOOTEN: Your Honor, we could not -- because
22 he fled the scene and went straight to work, by the
23 time we located the Defendant, we wouldn't have been
24 able --

25 THE COURT: But he went straight to work?

1 MS. WOOTEN: Straight to work and left saying he
2 had a family emergency, but the weather conditions
3 were fine, sunny day.

4 THE COURT: Nothing to indicate drinking?

5 MS. WOOTEN: Nothing to indicate that he was
6 drinking, and the only traffic violation was a failure
7 to yield. Due to the time that passed between the
8 incident and locating the Defendant, we could not
9 determine whether or not alcohol consumption --

10 THE COURT: Who had the right-of-way there?

11 MS. WOOTEN: I apologize?

12 THE COURT: Who had the right-of-way at the
13 intersection?

14 MS. WOOTEN: The bicyclist had the right-of-way.

15 THE COURT: Mr. Chrisco, I'll hear from you.

16 MR. CHRISCO: Thank you, Your Honor. I've been
17 doing this for one side or the other for 25 years,
18 never had a case where there was no contact. After
19 going over the discovery, explaining it to my client,
20 never know which way a jury would hear this, but the
21 biggest thing was that he did not stay there.

22 THE COURT: And that is a strict liability
23 offense, essentially.

24 MR. CHRISCO: Had he stopped and just got out, he
25 would have got a failure to yield, right-of-way and a

1 driving under suspension, that's it, and that would
2 have been his only concern. My client says that he
3 saw the bicycle, but he did not think that he had done
4 anything wrong. It is not normal in a driver's mind
5 to look at a bicycle and think in the same way as a
6 car. I know that is not right, but that is human
7 nature.

8 He got to work, which was 24 blocks from there --
9 where he was turning out of, he was turning out of
10 where -- let me go back a little bit. When he got out
11 of prison back in 2010, he was living in Loris and
12 going to church in Buck Sport. The good people there
13 at the church got him a job down in Georgetown, doing
14 the heavy equipment. He moved to Buck Sport and
15 worked at that job until that construction was
16 completed. When it was completed, he got a job with
17 K&W. He moved back to Loris with his mother. She's
18 older and he was taking care of her and he was
19 working. His girlfriend worked at the place he was
20 pulling out of that morning at 8:20. He had just
21 dropped her off at work and he drove 24 blocks from
22 there up to 79th Avenue to K&W. The more he got
23 thinking about it, he said the guy fell off, maybe I
24 should have stopped, that is when he talked to the
25 employer and that is when he left.

1 When the police apprehended him a couple hours
2 later, no indication that he was drinking alcohol at
3 all. He served 490 days at J. Reuben Long waiting for
4 this day to come. There are several things that are
5 odd about this. The bicyclist was wearing a helmet,
6 and I think the pedal or something in the report said
7 it hit the side of the sidewalk, and that is what made
8 the bicyclist tumble and then hit the ground in a
9 certain way. As the Prosecutor said, several
10 witnesses saw this, so it wasn't as if it was in the
11 middle of nowhere. There were several witnesses that
12 saw this and came to the aid of the bicyclist. Most
13 people, not knowing what to do. My client would be
14 one of those, not knowing what to do if someone was
15 laying there and not breathing except to call 911. I
16 think it was called immediately. It took several
17 minutes for them to get there.

18 Your Honor, we just ask the Court to consider the
19 amount of time that he has served and the
20 circumstances of the case.

21 MR. LITTLE: Yes, sir. I would -- in regards to
22 whether I would consider it my fault or not, or
23 regards to the fact that my was license suspended, had
24 I known or even thought that the gentleman had gotten
25 hurt, I would have stopped.

1 THE COURT: Why was your license suspended?

2 MR. LITTLE: It was suspended for two DUIs prior
3 to going to prison. I was going at one time to ASAP
4 in Georgetown until I moved back to Loris with my
5 parents and could no longer afford it. I was going to
6 get my license back.

7 THE COURT: How about this prior reckless
8 homicide?

9 MR. LITTLE: That was -- I had a wreck with a car
10 back in '84, and the victim died. I apologize for my
11 bad decision.

12 THE COURT: You are not pleading to reckless
13 homicide, you are pleading to leaving the scene.
14 There is no indication that there was impairment or
15 anything involved, and there are some circumstances
16 that would mitigate; however, your record is horrible.

17 Sentence of the Court is you are to be confined
18 to the State Department of Corrections for a period of
19 ten years. Thank you, sir. Credit for time served.

20 (Whereupon, the proceedings concluded.)

21

22

23

24

25

CERTIFICATE OF REPORTER

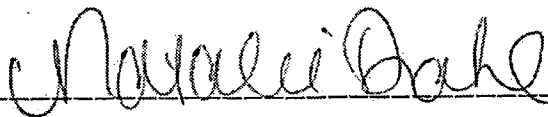
State of South Carolina)

County of Horry)

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the matter of the captioned case, relative to appeal, in the Court of General Sessions for Horry County, South Carolina, on the 12th day of November, 2014.

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

November 9, 2015

A handwritten signature in cursive script, reading "Natalie Dahl", is written over a horizontal line.

Natalie Dahl, RPR

Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Horry)

IN THE COURT OF COMMON PLEAS

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

James Junior Little 255863)

v.)

State of South Carolina)

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 JRLDC
2. Name and location of Court which imposed sentence Horry County 15th Circuit
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014GS2600436
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 11-12-14 / 10 yrs.
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒ _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 12-22-14
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) No Autopsy
- (b) Involuntary Guilty Plea
- (c) Ineffective Assistance of Counsel

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

- (a) questionable cause of death
- (b) Counsel did not explain elements of crime to defendant
- (c) No investigation, Counsel allowed defendant to plea to a crime he did not commit

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

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

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

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

no

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) No Autopsy

(b) Involuntary Guilty Plea

(c) Ineffective Assistance of Counsel

} First time filing P.C.R.

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Ed Chrisco-Horry County Public Defenders Office
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. plea
 - ii. sentencing
 - iii. appeal

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

vacated sentence

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

no

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, 15 7570, 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.

James Little

SWORN to and subscribed before me this 14th
day of October, 2015.

S. Outlaw (L.S.)
Notary Public

My Commission Expires: 2/24

CLERK OF COURT
2015 OCT 20 AM 9:19

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

15

7570

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
14th day of October, 2015


Notary Public

My Commission Expires: 2/24

CLERK OF COURT
2015 OCT 20 AM 9:19
CLERK OF COURT

STATE OF SOUTH
CAROLINA

COUNTY OF HORRY

JAMES JUNIOR LITTLE
255863

V.

STATE OF SOUTH
CAROLINA

IN THE COURT OF
COMMON PLEAS

15

7570

APPLICATION FOR
FUNDS FOR AN
INVESTIGATOR/
MEDICAL EXPERT

2015 OCT 20 AM 9:19
CLERK OF COURT
HARRIS COUNTY

Applicant requests that funds be allotted from the court to provide for the hiring of an investigator/medical expert for the defense.

SIGNED James Junior Little
DATE: 10-14-15

Witness to and subscribed before me
this 14th day of October
S. Ouler
Notary Public of South Carolina
My Commission Expires 7/1

STATE OF SOUTH
CAROLINA

) IN THE COURT OF
) COMMON PLEAS
)

COUNTY OF HORRY

15

7570

JAMES JUNIOR LITTLE
255863

) APPLICATION FOR
) APPOINTMENT OF
) LEGAL COUNSEL

v.

STATE OF SOUTH
CAROLINA

HORRY COUNTY
2015 OCT 20 AM 9:19
CLERK OF COURT

Due to indigency, applicant requests that
legal counsel be appointed to represent him.

SIGNED: James Junior Little
DATE: 10-14-15

Subscribed and sworn to before me on

the 14th day of October 2015

S. Smith
(Notary Public of South Carolina)

My Commission Expires 2/1/17

Enclosed is a stamped envelope. Would you kindly send me a copy of my PCR once it has been stamped and filed. Thank you.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
OF THE FIFTEENTH JUDICIAL CIRCUIT

James Junior Little,
S.C.D.C. No. 255863,

Case No.: 2015-CP-26-7570

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed October 20, 2015 the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Horry County Clerk of Court's orders of commitment. The Horry County Grand Jury indicted the Applicant at the February 2014 term of General Sessions for leaving the scene of an accident involving death (2014-GS-26-00436). Edward Chrisco, Esquire represented the Applicant.

On November 12, 2014 the Applicant pled guilty as indicted pursuant to North Carolina vs. Alford¹ without a negotiated sentence. The Honorable Larry B. Hyman, Jr. sentenced the Applicant to ten (10) years' imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals on November 17, 2014. The Court of Appeals affirmed the Applicant's conviction and sentence on December 22, 2014 for failure to provide a sufficient guilty plea explanation, as required by Rule

¹ North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160 (1970).

203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules. State v. James Little, Op. No. 2014-002439 (S.C. Ct. App. filed). Applicant submitted an explanation on or about January 2, 2015, which the Court considered as a motion for reconsideration, and subsequently denied on February 19, 2015. The Remittitur was sent on March 31, 2015.

II.

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

1. Ineffective assistance of counsel.
 - a. "Counsel did not explain elements of crime to defendant."
2. Involuntary guilty plea.
 - a. "No investigation, Counsel allowed defendant to plea to a crime he did not commit."
3. "No Autopsy."
 - a. "Questionable cause of death."

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

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

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance

well within the standard of “reasonableness within professional norms” for a defense attorney.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland

v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983).

IV.

The Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a 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, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at

1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

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

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

V.

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

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VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

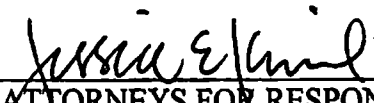
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JESSICA E. KINARD
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

Feb 22, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

JAMES JUNIOR LITTLE, #255863)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2015-CP-26-7570

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:

James K. Falk, Esquire
38 Broad St., Suite 350
Charleston, SC 29401

DATED this 22nd day of February, 2016.


 Norma Bigbee, Legal Assistant
 For Respondent

1 State of South Carolina) Court of Common Pleas
2 County of Horry) 2015-CP-26-07570

3

4

James Junior Little)

5)

6 vs.)

7 State of South Carolina)

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ORIGINAL

BEFORE:

Honorable Michael G. Nettles, Judge.

APPEARANCES:

James K. Falk, Esq.

Attorney for the Applicant

Shelby Winters, Esq.

J. Rutledge Johnson, Esq.

Attorneys for the State

Teresa J. F. Bautz, RPR

Official Court Reporter

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
James J. Little				
Mr. Falk	6	--	23	--
Ms. Winters	--	15	--	--
William Edward Chrisco				
Mr. Falk	27	--	--	--
Ms. Winters	--	34	--	--

E X H I B I T S

NO.	DESCRIPTION	ID	EV
No exhibits submitted.			

1 (The hearing commenced at approximately
2 11:59 a.m.)

3 MR. FALK: We're going to go forward.

4 THE COURT: Very good.

5 MR. JOHNSON: Your Honor, if I may, this is Shelby
6 Winters, another student of the Charleston School of
7 Law, a third year law school student. And she will be
8 handling Mr. Little's case today.

9 THE COURT: All right, let's hear from Mr. Falk,
10 and give us a summary of the grounds that you wish to
11 pursue here today.

12 MR. FALK: Your Honor, this is that statute that
13 we have in South Carolina about leaving the scene of an
14 accident that results in a fatality. And as you know,
15 the statute carries zero to 25. And there were some
16 factual issues that my client pled guilty pursuant to
17 Alford on a open-ended -- on a no recommendation, just
18 straight up pled guilty to Alford -- under Alford, and
19 received a ten-year sentence.

20 I believe that there possibly were some issues
21 that could have been exploited had he gone to trial. I
22 don't think that my client was fully aware of some of
23 these facts when he made his plea. So we would be, in
24 effect, asserting that it was not a knowing, voluntary
25 plea.

1 Some of the facts are whether or not the incident
2 resulting in the death of the other person would have
3 been considered an accident under the statute, whether
4 or not the fact -- whether or not the fact that the
5 victim died was actually a direct consequence of my
6 client's actions and would be determined under the
7 statute.

8 There was no autopsy report. It was also
9 represented to him that the victims were not
10 necessarily looking for any time, they maybe just
11 wanted some compensation for the injuries. The
12 victim's family was not looking for them to, you know,
13 ask for any real time.

14 And my client went in to plead that day thinking
15 that this was going to be something, possibly time
16 served. He was apprised that the victims would not be
17 out for anything more than possibly restitution, but
18 certainly not asking for what they asked for during the
19 sentencing hearing. And at the end of the day, my guy
20 got ten years.

21 THE COURT: All right. Ms. Winters, would you
22 wish to say anything before we proceed forward with the
23 witness?

24 MS. WINTERS: Yes, your Honor.

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

1 MS. WINTERS: May it please the Court, my name is
2 Shelby Winters. This is James Junior Little versus the
3 State of South Carolina, it's Case No. 2015-CP-26-7570.
4 Mr. Little was indicted at the February 2014 term of
5 the Horry County Grand Jury for leaving the scene of an
6 accident involving death. On November 12th, 2014,
7 Mr. Little pled guilty as indicted.

8 He's sentenced by the Honorable Larry B. Hyman,
9 Jr., and sentenced to confinement for a period of ten
10 years. He filed a notice of appeal at the South
11 Carolina Court of Appeal, November 17th, 2014. The
12 Court of Appeals affirmed Mr. Little's conviction and
13 sentence on December 22nd, 2014, for failure to provide
14 a sufficient guilty plea explanation.

15 Mr. Little submitted an explanation on or about
16 January 2nd, 2015, which the Court considered as a
17 motion for reconsideration and subsequently denied on
18 February 19th, 2015.

19 The remittitur was thereafter issued on
20 March 31st, 2015. Mr. Little filed a timely PCR on
21 October 20th, 2015, and the State filed its return
22 February 22nd, 2016. And he's represented here today
23 by Mr. James K. Falk.

24 THE COURT: All right. Excellent procedural
25 history, thank you very much. Mr. Falk, you're

JAMES J. LITTLE-DIRECT BY MR. FALK

1 recognized.

2 MR. FALK: We would like to call my client to the
3 stand.

4 THE COURT: Yes, sir, Mr. Little if you could come
5 forward. I'm going to ask if you could to place your
6 left hand on the Bible and raise your right hand as the
7 clerk administers the oath.

8 JAMES JUNIOR LITTLE, after being duly sworn,
9 testified as follows:

10 THE CLERK: Please be seated.

11 THE COURT: Mr. Little, have a seat in the witness
12 chair. I'm going to ask that you pull up real close to
13 that microphone, speak loudly, clearly and slowly in
14 order that we can hear everything that you have to say.
15 Let's start with your full name, Mr. Little.

16 THE APPLICANT: James Junior Little.

17 THE COURT: Thank you, Mr. Little. Mr. Falk.

18 DIRECT EXAMINATION

19 BY MR. FALK:

20 Q Mr. Little, who represented you on your criminal
21 charges?

22 A Mr. Ed Chrisco.

23 Q And how did you -- how did he come to represent
24 you; was he appointed?

25 A Yes, sir, appointed.

1 Q Okay. He was a public defender?

2 A Yes, sir.

3 Q Can you go through with me your communications
4 that you had with him.

5 A I saw him about three times. First time he didn't
6 have anything because we didn't have a motion. The
7 second time he come to see me, he wanted to talk about
8 pleading guilty.

9 Q Okay. Let me just back up a little bit. So at
10 this time when you saw him, where were you?

11 A At jail.

12 Q Were you given a bond in this case?

13 A Yes, sir.

14 Q What was -- do you recall what your bond was?

15 A My bond was, total was like quarter of a million.

16 Q 250,000?

17 A Yes, sir.

18 Q Did you move to -- did you ask him to file a bond
19 reduction motion?

20 A Yes, sir, I asked him for a bond reduction.

21 Q Was any one ever filed?

22 A No, sir, not that I know of.

23 Q Okay. So he never provided you notice that he
24 filed something on your behalf?

25 A No, sir.

JAMES J. LITTLE-DIRECT BY MR. FALK

1 Q You were never brought to court on a bond
2 reduction hearing?

3 A No, sir.

4 Q All right. And so after your arrest, did you see
5 him at the preliminary hearing?

6 A No, sir.

7 Q Was there a preliminary hearing in your case?

8 A When I went there, they said I didn't have a -- my
9 lawyer wasn't there, so they didn't have one.

10 Q So they brought you to -- so they brought you to
11 court for a preliminary hearing?

12 A Yes, sir.

13 Q And it did not go forward that day?

14 A Because my lawyer wasn't there, no, sir.

15 Q Okay. All right. So had you met him before the
16 preliminary hearing? You said you saw him one time;
17 when was that, before or after the --

18 A That was --

19 Q -- you were in court for the preliminary hearing?

20 A Actually the preliminary hearing, I think, is the
21 first time I saw him.

22 Q Okay, all right. Now, you said he came to see you
23 in the court, I mean, while you were in the Horry
24 County Detention Center?

25 A Yes, sir.

1 Q And do you recall what that conversation was
2 about?

3 A The last time --

4 Q No, the first time.

5 A Oh, the first time, he said he didn't have
6 anything to say because he didn't have a motion. So he
7 couldn't really do anything.

8 Q So how long do you think that conversation lasted,
9 that meeting lasted with him?

10 A Maybe 15 minutes.

11 Q Okay. And then you said he came back in a second
12 time?

13 A Yes.

14 Q And about how much time elapsed between that; was
15 that the next day, was it the next week?

16 A Probably it was months down the road. I don't
17 know, I stayed in jail like 17 months.

18 Q 17 months in the detention center?

19 A Yes.

20 Q Okay. And at that second meeting, what happened?

21 A He talked about would I want to plead guilty.

22 Q Had you gotten your Rule 5 materials by then, your
23 discovery materials?

24 A Yes.

25 Q And why was he suggesting that you plead guilty?

JAMES J. LITTLE-DIRECT BY MR. FALK

10

1 A He was saying there was no -- no win, he says that
2 a jury is going to find me guilty.

3 Q Okay. Did he discuss with you any -- what was
4 your understanding of what -- you were driving your car
5 that day when the --

6 A Yes.

7 Q Okay. And what was your understanding of that
8 accident, how it happened?

9 A I pulled out on -- from Beach Place onto the
10 boulevard. And I saw -- then I went around Mr. Jimmy
11 something.

12 Q Okay.

13 A I can't remember his -- but went around him. And
14 I went on, and I happened to look back and I saw him,
15 looks like he fell. But I didn't hit him or anything
16 or -- I just went around him.

17 Q Do you recall whether or not there's any
18 discussion of whether or not your car ever made any
19 contact with his bicycle?

20 A With Mr. Chrisco?

21 Q Yeah.

22 A Yes. At first he asked me, he asked me about
23 that. But then he says that the law doesn't make any
24 difference, says my nexus was the cause of the
25 accident, so jury is going to find me guilty.

1 Q Okay. And so then when did you meet with -- so
2 when y'all discussed the plea, what was your -- what
3 was the outcome of that discussion about a possible
4 plea in this case?

5 A He know I was not going to plead because I -- I
6 don't see where I was guilty or anything. And you
7 don't expect anyone that fall off a bicycle barely
8 moving and die or anything.

9 Q Um-hum.

10 A So I couldn't see myself being guilty, or I didn't
11 see myself as the cause of the accident because I
12 didn't do anything, I went around him.

13 Q Um-hum.

14 A So I told him I didn't see myself as the cause of
15 it.

16 Q There were other cars in traffic that day, I mean?

17 A No, sir, I don't think there was any other cars.

18 Q Okay. All right. So you told him that you wanted
19 to go to trial?

20 A Yes.

21 Q All right. Then when was your next conversation
22 after that?

23 A My next conversation with him was when I filed --
24 he wouldn't come see me, I kept sending letters. I
25 called, he wouldn't come see me. So I wrote the Bar

JAMES J. LITTLE-DIRECT BY MR. FALK

1 Association, and then tell them I don't feel that I was
2 being represented, that I been in jail over a year
3 then. And so they said, no, it was nothing they could
4 do. It sounded liked a disciplinary committee. So I
5 wrote the disciplinary committee. Then he comes to see
6 me.

7 Q And what was that conversation like?

8 A It was fussing and arguing.

9 Q About what?

10 A Because he was up under investigation saying I got
11 the people investigating him.

12 Q Okay. And did you talk about your case?

13 A Yes. He said he's going to get me in court, and
14 he got me in there the next week.

15 Q Okay. Did he ever talk to you about -- had he any
16 conversations with the victim's family?

17 A Yes. He told me that -- on the day of the trial,
18 he said that all they wanted was they want -- didn't
19 want me -- I done been in jail going on 17 months. He
20 said they weren't worried about any more time, they
21 were just worried about --

22 MS. WINTERS: Objection, Your Honor. Hearsay.

23 THE COURT: Sustained.

24 MR. FALK: Thank you. Let me rephrase the
25 question. I'll move on to another subject.

1 Q Okay. So you knew that you were pleading to an
2 open plea; is that correct?

3 A With the understanding that I was going to get
4 time served and restitution.

5 Q And where did you get that understanding that you
6 would get time served and restitution?

7 A Mr. Chrisco.

8 Q Okay. And that was based on conversations that
9 you had with him; is that correct?

10 A Yes.

11 Q Okay. And had he told you -- did he lead you to
12 believe that he had -- I think you've already testified
13 he led you to believe that he had conversations with
14 the victim's family; is that correct?

15 A Yes.

16 Q Okay. And still, even though he had those
17 conversations with the victim's family, after your
18 conversations with him you still believed that time
19 served was going to be the outcome of your plea; is
20 that correct?

21 A Yes.

22 Q All right. Was there ever an offer to make
23 restitution in this case?

24 A Well, and during the trial?

25 Q Or?

JAMES J. LITTLE-DIRECT BY MR. FALK

1 A Or the at --

2 Q At any point in this process.

3 A Well, he said that --

4 Q And I guess you're not supposed to say exactly
5 what he said. But did you ever believe that
6 restitution might have been an issue in this case?

7 A Yes.

8 Q Okay.

9 A He said between 10 to 20,000.

10 Q All right. Did you ever make an offer for
11 restitution?

12 A No.

13 Q Okay. So what was your understanding of pleading
14 pursuant to Alford, North Carolina versus Alford?

15 A He says I'm not pleading guilty to the charge, I'm
16 just pleading that I'm guilty because I'm getting a
17 good deal.

18 Q Okay. And he told you that you were getting a
19 good deal?

20 A Yes.

21 Q And that was all in the same conversation thinking
22 this was going to be time served; is that correct?

23 A Yes.

24 Q Because you had already been in there for 17
25 months?

1 A Yes.

2 Q Okay.

3 MR. FALK: One moment, Your Honor.

4 Q Based on all your conversations that you had with
5 him, did you ever believe that a ten-year sentence was
6 a possible outcome from this, from your plea?

7 A No, sir.

8 MR. FALK: I have no further questions at this
9 time, thank you. Answer any questions that they have.

10 THE COURT: Ms. Winters, you're recognized.

11 MS. WINTERS: Thank you.

12 CROSS-EXAMINATION

13 BY MS. WINTERS:

14 Q Mr. Little, you understand that you are here today
15 under oath to tell the whole truth and nothing but the
16 truth, just as you were at your guilty plea; right?

17 A Yes.

18 Q Mr. Little, you understand the offense of hit and
19 run resulting in death; correct?

20 A I didn't -- I don't hit and run. My understanding
21 that first was that you got to hit someone.

22 MR. FALK: Objection, Your Honor. I think she's
23 mischaracterizing. He's guilty of leaving the -- he
24 pled guilty to leaving the scene of an accident and not
25 necessarily hit and run. That's our whole point is

JAMES J. LITTLE-CROSS BY MS. WINTERS

1 that there was no contact.

2 MS. WINTERS: May I rephrase the question, Your
3 Honor?

4 THE COURT: Yes.

5 Q Mr. Little, do you understand the offense of
6 leaving the scene of an accident?

7 A Yes.

8 Q And do you understand that this offense and its
9 elements; right?

10 A Yes, I think so. May I ask something?

11 THE COURT: No. She asks the questions, you
12 provide the answers.

13 Q And that's a yes?

14 A Yes.

15 Q And at this plea, you understood the effect of
16 pleading guilty under North Carolina versus Alford; is
17 that correct?

18 A Yes.

19 Q Isn't it true that you understood the consequences
20 of this plea, and that is how you wanted to proceed?

21 A I'm not sure what you're asking.

22 Q I'm asking that, did you at the time of your
23 guilty plea, did you understand the consequences of
24 entering a plea under North Carolina versus Alford, and
25 that's how you wanted to proceed at that time?

1 A I think, yes.

2 Q At this plea, the judge covered all of your
3 constitutional rights concerning a trial; isn't that
4 correct?

5 A Yes.

6 MR. FALK: Your Honor, I would object. That's
7 assuming facts not in evidence. I'm not sure he would
8 know what all his constitutional rights are.

9 THE COURT: Well, he was there and he -- he was
10 there and the questions were asked. I'll allow her to
11 ask the question.

12 MS. WINTERS: Your Honor, may I approach the
13 witness?

14 THE COURT: Yes.

15 Q Please let the record reflect that this is a plea
16 transcript dated November 12th, 2014. I direct your
17 attention to page five, line two through 20.

18 Mr. Little, would you please read line two through
19 20 that's highlighted.

20 A Let me tell you, you enter a plea of guilty, by
21 way of illustration, it would be things like your right
22 to remain silent. If you had a trial, you would not
23 have to testify, but you don't have to. No one could
24 make you. If you choose not to, I would tell the jury
25 that they could not even discuss that. They could not

JAMES J. LITTLE-CROSS BY MS. WINTERS

1 use it against you in any way, form or fashion. Of
2 course, you would have the right to have an attorney
3 with you all through that trial.

4 And at the end of that trial you would have the
5 right to have me tell the jury that they could not
6 convict you unless they were, each and every one,
7 convinced by the State's evidence of your guilt beyond
8 a reasonable doubt; do you understand that? Yes, sir.

9 Again, these are some of your rights that are
10 waiving if you enter a plea of guilty and your general
11 right to a jury trial; do you understand? Yes, sir.

12 Q Thank you. And again, Mr. Little, those were the
13 rights to present defenses, right to call witnesses on
14 your behalf and right to cross-examine any witnesses
15 against you; isn't that correct?

16 A Yes.

17 Q What you just read, okay. And you waived those
18 rights; correct?

19 A Yes.

20 Q Mr. Little, and you did not want a trial because
21 you were willing to accept the plea offer; right?

22 A Upon my lawyer --

23 MR. FALK: Objection. Again, there's no plea
24 offer.

25 THE APPLICANT: Right.

1 THE COURT: It was an offer to plead guilty versus
2 trial is what she's saying.

3 MR. FALK: Okay.

4 MS. WINTERS: My apologies.

5 Q Okay, Mr. Little, nobody promised you anything to
6 get you to plead guilty under North Carolina versus
7 Alford, and nobody threatened you; isn't that correct?

8 A No.

9 MS. WINTERS: Your Honor, may I approach the
10 witness?

11 THE COURT: Yes.

12 Q Again, this is the transcript dated November 12th.
13 Please refer to page 10, line 25, through page 11,
14 lines one through five. Can you please read line 25 on
15 page ten and lines one through five on page 11, please.

16 A All right, sir. Mr. Little, has anyone done
17 anything inappropriate in any form or fashion, did
18 anyone try to threaten, intimidate, force or coerce you
19 or anything in order to get you to enter this plea?
20 No, sir. Have you had all the time you need to think
21 about it? Yes, sir.

22 Q Thank you. Mr. Little, you also stated that you
23 said you were satisfied with Mr. Chrisco's services at
24 the plea; isn't that correct?

25 A Yes.

1 Q And he did everything he could in order to help
2 you?

3 A Are you asking me that?

4 Q Yes. In your opinion, did Mr. Chrisco do
5 everything that he could in order to help you? That's
6 what you testified to at your plea.

7 A No, he did not.

8 Q Okay.

9 MS. WINTERS: Your Honor may I approach the
10 witness?

11 THE COURT: Yes.

12 Q Please refer to page six, lines one through three.
13 And Mr. Little, can you please read lines one through
14 three.

15 A Do you think he's done everything he could in
16 order to help you? Yes, sir, he did, he has.

17 Q Thank you. And Mr. Little, Mr. Chrisco met all of
18 your expectations; correct? That's what you also
19 testified to at the plea.

20 A But he didn't.

21 Q Is that what you testified to at the plea, though?

22 A Yes.

23 Q Okay. And you were fully satisfied with
24 Mr. Chrisco's advice; correct?

25 A No.

1 MS. WINTERS: Your Honor, may I approach the
2 witness.

3 THE COURT: Yes.

4 Q Again, this is the transcript. I refer you to
5 page six. Mr. Little, can you please read line four
6 through five.

7 A You're fully satisfied with him? Yeah.

8 Q Thank you. But you're not satisfied with
9 Mr. Chrisco's --

10 A No.

11 Q Okay. When you had your chance to talk at the
12 plea, you didn't stop the judge and say, hey, judge,
13 I'm not satisfied with Mr. Chrisco's representation;
14 did you?

15 A No.

16 Q Okay. Mr. Little, you also testified that you had
17 all the time you needed to talk about your plea; right?
18 Had all the time you needed to talk about the plea?

19 A Yes, I testified to that.

20 Q Okay. No one tried to threaten or coerce you, no
21 one made you do this; isn't that correct?

22 A Correct.

23 Q And Mr. Little, you pled freely and voluntarily;
24 correct?

25 A It wasn't voluntarily. It was...

JAMES J. LITTLE-CROSS BY MS. WINTERS

1 MS. WINTERS: Your Honor, may I approach the
2 witness?

3 THE COURT: Yes.

4 Q Please refer to page 11, lines 12 through 14 of
5 the transcript. Mr. Little, can you please read lines
6 12 through 14.

7 A Are you pleading, Mr. Little, freely and
8 voluntarily? Yeah.

9 Q Thank you. Mr. Little, you admit you were
10 involved in an accident with the deceased; right?

11 A I was not a part of an accident. I didn't see
12 myself as a part of it.

13 Q Isn't it true on page 18, lines 23 through 25,
14 that you testified that, had I known or even thought
15 the gentleman had gotten hurt, I would have stopped?

16 A Yes.

17 Q Okay.

18 A But I was not part of the accident.

19 Q And according to your testimony, as I said, you
20 admit that had you known the victim was hurt, you would
21 have stopped; isn't that true?

22 A Yes.

23 Q Okay. Mr. Little, you've been in the criminal
24 system before and you have killed someone before; isn't
25 that correct?

1 A Have killed someone. Reckless homicide.

2 Q Yes. Isn't that correct?

3 A I didn't kill anyone, but yes, I was reckless
4 homicide, yes.

5 Q So you were charged with reckless homicide; is
6 that correct?

7 A Yes.

8 MS. WINTERS: No further questions, Your Honor.

9 MR. FALK: Redirect?

10 THE COURT: Yes.

11 REDIRECT EXAMINATION

12 BY MR. FALK:

13 Q What is your understanding of what was the cause
14 of the victim's death in this case? He went to the
15 hospital; is that your understanding?

16 A Yes.

17 Q And do you know if he had a heart attack when he
18 was at the hospital; do you know?

19 A I got my paper says they -- the family withdrew
20 the care.

21 Q Okay.

22 A They pulled the plug.

23 Q And were you aware of that when you entered your
24 plea, that the family removed life sustaining aid?

25 MS. WINTERS: Objection, Your Honor.

JAMES J. LITTLE-REDIRECT BY MR. FALK

1 THE COURT: Sustained. He has no way of knowing
2 what the medical procedures were or what he died of.

3 Q Was there an autopsy in this case?

4 A No, sir, there was no autopsy.

5 MS. WINTERS: Objection, Your Honor, relevance.

6 MR. FALK: Your Honor, I think his understanding
7 of some of the facts and some of investigation that his
8 lawyer did is relevant to whether or not he pled, and
9 if there's other facts that he has subsequently found
10 that may have been --

11 THE COURT: I'll allow you to ask if there's an
12 autopsy.

13 Q Were you under any understanding whether or not
14 there was an autopsy?

15 A No, sir, there wasn't.

16 Q Your lawyer never made you aware of one; is that
17 correct?

18 A Right.

19 Q Okay. But you said that you read somewhere in
20 your Rule 5 materials?

21 A Yes, sir.

22 Q That was in the Rule 5 materials?

23 A Yes, sir. The family withdrew the care.

24 Q And that's your only basis for knowing that is
25 because you saw that in the materials that were

1 provided?

2 A Yes, sir. Yes, sir.

3 Q Okay. What do you think that your lawyer should
4 have done to investigate this case further?

5 A Found out what he died from. The thing was I
6 don't really know why, because people take everyday and
7 they are in comas and on life support. And they pull
8 out and make it. I don't know why, I don't know what
9 happened, what caused it. They said they wanted money,
10 and they just kind of -- all this stuff is something
11 else and...

12 Q I believe the attorney for the State asked you
13 whether or not you understood the consequences of your
14 plea. What did you think the consequences were, would
15 be?

16 A Time served and restitution.

17 Q Okay. Based on your conversations with your
18 lawyer prior to entering your plea, were you surprised
19 when a member of the victim's family said, Your Honor,
20 I would on behalf of our family certainly plead to you
21 and to this Court that a maximum sentence allowable by
22 law for Mr. Little. Did that come as a surprise to
23 you?

24 A Yes, sir.

25 Q And why did that come as a surprise to you?

JAMES J. LITTLE-REDIRECT BY MR. FALK

1 A Because my understanding from Mr. Chrisco was that
2 they were wanting restitution.

3 Q Okay.

4 A I asked, the restitution for what. He said,
5 funeral costs, hospital bills.

6 Q Okay.

7 MR. JOHNSON: Your Honor, I will object on behalf
8 the State and ask you to strike that from the record.
9 This is outside the scope of cross-examination.
10 Ms. Winters did not ask anything about restitution and
11 what the victim was thinking and whatnot. We would ask
12 you to strike this testimony from the record, Your
13 Honor.

14 THE COURT: I'll allow him some leeway.

15 MR. JOHNSON: Thank you.

16 MR. FALK: I have no further questions.

17 THE COURT: You may step down.

18 (Witness excused.)

19 THE COURT: You may call your next witness.

20 MR. FALK: We will call Mr. Chrisco to the stand.

21 THE COURT: Mr. Chrisco, if you could please come
22 forward. Mr. Chrisco, take your time and place your
23 paperwork down. Place your left hand on the Bible, and
24 raise your right hand as the clerk administers the
25 oath.

1 WILLIAM EDWARD CHRISCO, after being duly sworn,
2 testified as follows:

3 THE CLERK: You may be seated.

4 THE COURT: Direct.

5 DIRECT EXAMINATION

6 BY MR. FALK:

7 Q Mr. Chrisco, could you explain how you came to
8 represent Mr. Little in this case.

9 A I was appointed by the Court.

10 Q Okay. Are you a public defender, or were you on
11 appointed counsel?

12 A I am the chief public defender.

13 Q Okay, thank you. How would you characterize your
14 conversations with my client?

15 A Normal.

16 Q How often did you come and see him in the jail?

17 A I set protocol in place at the office when I
18 became the chief public defender back in 2009, that
19 every month all attorneys would see their clients. And
20 those that didn't have enough time and also set up an
21 amount that they could see or a maximum amount. And
22 those that they could not see, they had to see them
23 first the next month before they saw any other clients.
24 And that's how I saw Mr. Little.

25 Q And Mr. Little testified that he was in custody

WILLIAM EDWARD CHRISCO-DIRECT BY MR. FALK

1 for 17 months?

2 A And I probably saw him at least a dozen times.

3 Q Okay, thank you. What were your discussions with
4 him regarding his criminal responsibility for the death
5 of the victim?

6 A I remember the first conversation I had had with
7 him, first saw him, I said, I don't have anything, this
8 is kind of like a meet and greet. I said, there's no
9 use of me listening to your side of the story now until
10 I get the evidence in the case, so we can compare.

11 And then the next time I saw him, he did have
12 discovery. And I had not read the discovery at that
13 time, so we just briefly talked about what his story
14 was. And then the next time we met, we went through,
15 and there were a lot of holes in the case; in other
16 words, there were a lot of good things about the case
17 that would help him.

18 And then, all my years of representing someone for
19 hit and run or leaving the scene of the accident, I had
20 never encountered a case where someone -- where there
21 was no contact. And so I researched the law and
22 realized that you didn't have to, you had to just set
23 things in motion.

24 And there were three witnesses that stated that he
25 abruptly turned, and the bicycle was heading in his

1 direction. And the bicycle person had to swerve, hit
2 the curb, wearing a helmet, fell off and hit the curb.
3 I think the guy was like 56 years old. Later found out
4 that he was a -- he entered events, biking events where
5 they would bike like 200 miles, 300 miles.

6 And there was one coming up, and he was training
7 for it. There was one coming up and I think in North
8 Carolina he was training for.

9 Here's my philosophy when I talk with a client.
10 It doesn't matter what I think, it matters what he
11 thinks. And I ask the person, do they want a trial or
12 do they want to plead guilty. It's just that simple.
13 Pick one. I don't care which one you pick.

14 Q Were you aware that there was evidence in the Rule
15 5 materials that the family had removed life sustaining
16 aid for the victim?

17 A Yes.

18 Q Did you -- would that possibly be one of the holes
19 in the case that you were talking about?

20 A That wouldn't necessarily be. Problem I had with
21 the case was I never got a autopsy report, and I
22 requested an autopsy report at least three or four
23 times and never got one. And we were -- they brought
24 him to court that day to be arraigned, not to be tried,
25 it was to be arraigned. And I told the solicitor of

WILLIAM EDWARD CHRISCO-DIRECT BY MR. FALK

1 the case that they couldn't arraign him because you
2 were not offering him anything. What was he turning
3 down, it was no offer.

4 She asked me would he plead. And I went back and
5 I said to him, do you want to plead. And I said, it's
6 a straight up plea. You could get 25 years. I never
7 tell them what the minimum is, I always tell them what
8 the maximum is, unless there is a minimum where you
9 start at ten. A zero, this one started at zero. I
10 said, you can get up to 25 years.

11 And so we talked, and he says that I talked to him
12 about the victim. I didn't even know that the victim
13 was even there that day until we did the plea and an
14 attorney stepped up, I think, from Greensboro
15 representing the family. And I think the son was
16 there.

17 Q But did you have any maybe communication through
18 the solicitor's office about the victims and how they
19 felt about the case?

20 A No.

21 Q Going back to this statute, there's a different
22 sentencing range if you -- whether or not the injury is
23 a serious injury versus causing death; is that not
24 correct?

25 A Correct.

1 Q Okay. So if when looking at the criminal statute
2 and criminal responsibility, whether or not he's
3 responsible for causing serious injury or causing
4 serious death --

5 A I think the statute says great bodily injury.

6 Q Great bodily injury. So that could have been an
7 issue possibly at trial; could it not, as far as
8 sentencing range?

9 A It could have been an issue, but it was my belief
10 that they could bring in a doctor to state that the
11 sudden trauma of him hitting the curb with the side of
12 his helmet at his head could possibly have caused brain
13 swelling, and that's -- that would be great bodily
14 injury.

15 Q But not necessarily death?

16 A No.

17 Q Do you know if an autopsy was ever performed?

18 A I never got an autopsy report, and I told my
19 client we never received one. I said we can go to
20 trial, I said, but I'll ask for an autopsy report
21 before we do go to trial, before we pick a jury.

22 Q You were here obviously when my client was
23 testifying --

24 A I was.

25 Q -- a moment ago. And he had testified that he

WILLIAM EDWARD CHRISCO-DIRECT BY MR. FALK

1 believed that a time served sentence was realistic in
2 this case?

3 A I never mentioned time served. I say, you can get
4 up to 25 years, it's a straight up plea. And he says
5 that he wasn't guilty. I said, so you want a trial.
6 And then he said, well, no, I don't really want a
7 trial. And I said, well, I said, there's no purgatory
8 here, that you got to go one way or the other.

9 And then I explained to him that he could plead,
10 but it would be under North Carolina versus Alford.
11 And I explained that to him and that -- but there was
12 really no -- there was really, I mean -- in hindsight,
13 there was really no -- they were dropping one charge
14 and the great bodily injury charge. Because they had
15 two warrants against him, one for great bodily injury.

16 And then when the person died, they got it for
17 death. And technically he could have went on with two.
18 So that was the incentive was for the great bodily
19 injury to be dismissed. And he'd plead just to the
20 one. Do you understand what I just said?

21 Q Yeah. I wasn't sure if -- I would have to do the
22 research. I don't know that you could get charged for
23 both the great bodily injury and the death out of the
24 same --

25 A The fact that he had lived several days after

1 that, that would support the great bodily injury, and
2 then the death would be another one because that would
3 be the cause of the death.

4 Q When you said you'd done some research about
5 whether or not an accident could be from a no contact,
6 was that under this statute?

7 A It was just under the general, just general
8 statute.

9 Q Right.

10 A It just stands to reason that if you swerve and
11 make somebody swerve, you might not hit them, but they
12 might swerve and hit a brick wall.

13 Q Um-hum.

14 A And you would be the cause of that accident.

15 MR. FALK: One moment, please.

16 Q Did you ever recommend to him that he plead?

17 A I told him that the choice was his. He could
18 either plead guilty or he could go to trial. That was
19 his choice. Pick one, doesn't matter to me. And
20 whatever he chose for, that's what we would do.

21 Q And when would the trial have been, would it have
22 been that day?

23 A No. No, not without an autopsy report. It
24 wouldn't have been until after we got one of those and
25 then time for me to prepare the case.

WILLIAM EDWARD CHRISCO-CROSS BY MS. WINTERS

1 MR. FALK: No further questions.

2 THE COURT: All right. Cross-examination, Ms.

3 Winters.

4 MS. WINTERS: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MS. WINTERS:

7 Q Good afternoon, Mr. Chrisco.

8 A Good afternoon.

9 Q Was it ultimately Mr. Little's decision to plead
10 guilty under North Carolina versus Alford?

11 A He pled under North Carolina versus Alford.

12 There's no pleading guilty, it's just pleading under
13 North Carolina versus Alford.

14 Q Okay. And was there any coercion on Mr. Little to
15 plead under North Carolina versus Alford?

16 A Didn't matter to me what he did.

17 Q Did you feel that you had spent enough time
18 preparing for Mr. Little's case to adequately represent
19 him?

20 A At that point, yes.

21 Q Okay. Would you have proceeded to trial had
22 Mr. Little insisted on going forward?

23 A At some future date.

24 MS. WINTERS: No further questions, Your Honor.

25 THE COURT: Any redirect?

1 MR. FALK: No, Your Honor.

2 THE COURT: All right. Any further witnesses?

3 MR. FALK: No further witnesses.

4 THE COURT: All right. You may step down,

5 Mr. Chrisco.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: You're free to leave.

8 (Witness excused.)

9 THE COURT: Any witnesses on behalf of the State?

10 MS. WINTERS: No, Your Honor.

11 THE COURT: Mr. Falk, be glad to hear from you in
12 summary.

13 MR. FALK: Your Honor, obviously there's disputed
14 testimony. My client testified that he was certainly
15 led to believe that the victims were not agitated to
16 the point that when they testified in court and that it
17 was realistic that he would get a time served sentence.
18 His trial counsel testified that he believed that there
19 were certainly issues in this case that had they gone
20 forward with may have been -- I think his testimony was
21 there were gaps in this case.

22 And my client, his testimony is that he pled
23 guilty based on the representations by his lawyer that
24 a realistic time served sentence would be there and
25 certainly that the victims would not come in there and

1 ask for the maximum sentence. And as a result of that,
2 he got a ten-year sentence.

3 THE COURT: Very good. Ms. Winters, you're
4 recognized.

5 MS. WINTERS: Your Honor, the State would ask this
6 Court to dismiss Mr. Little's application for
7 post-conviction relief. Pursuant to Strickland versus
8 Washington, judicial scrutiny of counsel's performance
9 must be highly deferential. It is all too tempting for
10 a defendant to second guess counsel's assistance after
11 conviction or adverse sentence.

12 It is all too easy for a Court examining counsel's
13 defense after it has proved unsuccessful to conclude
14 that a particular act or omission of counsel was
15 unreasonable. A fair assessment of attorney
16 performance requires that every effort be made to
17 eliminate the distorting effects of hindsight, to
18 reconstruct the circumstances of counsel's challenged
19 conduct, and to evaluate the conduct from counsel's
20 perspective at the time.

21 Mr. Little's challenge to the constitutionality of
22 his conviction is without merit. There is no
23 ineffective assistance of counsel. Mr. Chrisco
24 properly advised him. And, once again, Your Honor, we
25 would just ask that this Court dismiss this

1 application. Thank you.

2 THE COURT: Very good, thank you. All right. Mr.
3 Falk, could I have a number where I could reach you?

4 MR. FALK: Yes, Your Honor. (843)

5 THE COURT: And, Mr. Johnson, once again, could
6 you give that to me again.

7 MR. JOHNSON: May I approach, Your Honor?

8 THE COURT: Yes.

9 (Discussion off the record.)

10 THE COURT: We're going to stand at ease until
11 2 o'clock. 2 o'clock, thank you.

12 (WHEREUPON, a brief recess was taken at
13 12:47 p.m.)

14 (End of Transcript of Record.)

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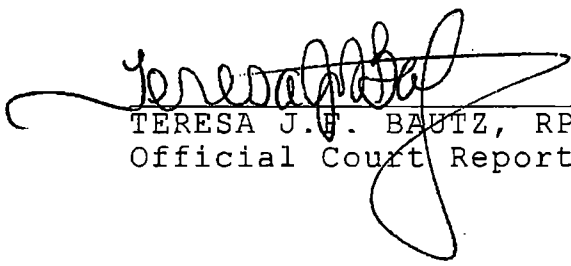
25

1 CERTIFICATE OF REPORTER
2

3 STATE OF SOUTH CAROLINA)
4 COUNTY OF HORRY)

5
6 I, TERESA J.F. BAUTZ, Official Court
7 Reporter for the Fifteenth Judicial Circuit of the
8 State of South Carolina, do hereby certify that the
9 foregoing is a true, accurate and complete Transcript
10 of Record of the proceedings had and evidence
11 introduced in the trial of the captioned case, relative
12 to appeal, in the Court of Common Pleas for Horry
13 County, South Carolina, on the 1st day of August, 2017.
14

15 I FURTHER CERTIFY that I am neither of
16 kin, counsel nor interest to any party hereto.
17
18

19
20 
21 TERESA J.F. BAUTZ, RPR
22 Official Court Reporter
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
)
)

James Junior Little, #255863,

) 2015-CP-26-7570
)

Applicant,

) ORDER OF DISMISSAL
)

v.

State of South Carolina,

Respondent.

2017 MAR -6 PM 1:51
CLERK OF COURT
Horry County

This matter comes before the Court by way of an application for Post-Conviction Relief (PCR) filed October 20, 2015. Respondent made its Return on February 22, 2016. An evidentiary hearing into the matter was convened on February 7, 2017 at the Horry County Courthouse. James K. Falk, Esquire, represented Applicant. Shelby Winters, student at the Charleston School of Law and J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. William Edward Chrisco, Esquire, also testified. This Court had before it a copy of the records of the Horry County Clerk of Court, records from the South Carolina Department of Corrections, the PCR application, Respondent's Return and the plea transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. The Horry County Grand Jury indicted

Applicant at the February 2014 term of General Sessions for leaving the scene of an accident involving death (2014-GS-26-00436). William Edward Chrisco, Esquire, represented Applicant.

Applicant pled guilty as indicted pursuant to North Carolina vs. Alford, 400 U.S. 25, 91 S. Ct. 160 (1970), without a negotiated sentence. On November 12, 2014, the Honorable Larry B. Hyman, Jr. sentenced Applicant to confinement for a period ten (10) years.

A notice of appeal was filed at the South Carolina Court of Appeals on November 17, 2014. The Court of Appeals affirmed Applicant's conviction and sentence on December 22, 2014 for failure to provide a sufficient guilty plea explanation, as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules. State v. James Little, Op. No. 2014-002439 (S.C. Ct. App. filed). Applicant submitted an explanation on or about January 2, 2015, which the Court considered as a motion for reconsideration, and subsequently denied on February 19, 2015. The Remittitur was sent on March 31, 2015.

In his original Application for post-conviction relief filed on October 20, 2015, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Counsel did not explain elements of crime to defendant."
2. "Involuntary Guilty Plea"
 - a. "No investigation, Counsel allowed defendant to plea to a crime he did not commit."
3. "No Autopsy"
 - a. "Questionable cause of death."

At the hearing, Applicant proceeded on his claims of ineffective assistance of plea counsel and involuntary guilty plea.

SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified that Counsel was appointed to him as a Public Defender. Applicant stated that he asked Counsel for a bond reduction but was not aware if Counsel filed for one. Applicant testified that he did not have a preliminary hearing and spent seventeen (17) months in jail. Applicant stated he was bonded out for \$250,000 dollars.

Applicant testified that he and Counsel met three (3) times in jail discussing a guilty plea. Applicant testified that he saw the victim in the roadway, but he does not admit to hitting the victim. Further, Applicant did not admit to causing the accident and therefore was not going to plead guilty. Thereafter, Applicant testified that Counsel did not come to see him and so he filed a complaint with the Office of Disciplinary Counsel (ODC). Applicant also claimed Counsel was argumentative and that Counsel stated that he would see Applicant in court.

Applicant testified Counsel explained the elements of leaving the scene of an accident involving death and what that offense meant. Applicant then testified that Counsel properly explained his plea pursuant to Alford and that Applicant understood the consequences of that plea. Applicant stated he went along with Counsel's advice and understood that his plea was an open plea, but thought he would receive a sentence of time served. Applicant claims that Counsel had conversations with the victim's family discussing restitution in the amount of \$10,000 to \$20,000 dollars and credit for Applicant's time served. Applicant testified that he understood that he was pleading guilty pursuant to Alford and that it was a good deal, however, Applicant claims he thought he was only getting time served.

On cross-examination, Applicant admitted he was under oath to tell the whole truth and nothing but the truth just as he was at his guilty plea pursuant to Alford. Applicant admitted that he understood the offense of leaving the scene of an accident involving death and its elements. He also

testified he understood the effect of pleading guilty and its consequences of entering into his guilty plea pursuant to Alford. At the guilty plea, Applicant agreed to the facts as the State presented them under Alford. Applicant testified under oath at his guilty plea that he understood his constitutional rights. However, Applicant testified at the PCR hearing that he did not understand his constitutional rights. During his guilty plea, Applicant testified that there were no promises made to get him to plead guilty and that no one threatened or coerced him to plead guilty. However, Applicant testified at the PCR hearing that he was threatened to plead guilty. Also, at Applicant's guilty plea he admitted that he pled freely and voluntarily. At the PCR hearing, Applicant testified that his guilty plea was not pled freely and voluntarily. During his guilty plea, Applicant admitted that he was fully satisfied with Counsel and did not need any more time with Counsel prior to pleading guilty. Conversely, during the PCR hearing, Applicant testified that he was not satisfied with Counsel's representation. Applicant claimed that he did not see himself as the cause of the accident. Lastly, Applicant admitted that he has killed someone before in a motor vehicle incident.

On re-direct examination, Applicant testified that he did not get a copy of victim's autopsy. Applicant stated that he discovered that the victim's family withdrew care in the Rule 5 materials in which the victim passed away within forty-eight (48) hours after the accident. Therefore, Applicant stated that Counsel should have investigated how the victim died. Applicant further testified that he was surprised by the Solicitor's comments and recommendation during his sentencing, because he thought he was getting only time served.

Counsel Chrisco testified that he is the 15th Judicial Circuit Chief Public Defender. He was appointed to represent Applicant. Counsel testified that he saw Applicant frequently and had as many as twelve (12) meetings with Applicant in jail. Counsel stated that his first conversation with

Applicant was a meet and greet. Counsel's second conversation with Applicant was about discovery and Applicant's version of the facts. Counsel stated that his third conversation with Applicant consisted of the holes in the State's case and what evidence would be presented and used against Applicant.

Counsel testified that he has never encountered a "no contact" case in a hit and run accident. However, pursuant to the statute, the events just have to start in motion. Counsel stated that there were three witnesses who claimed that in order for the victim to avoid Applicant, the victim had to swerve and as a result, the victim hit the curb. Counsel testified that it is a common practice of his to ask his clients what they think is in their best interest, a trial or a plea. Counsel stated that he was aware the victim's family had removed life support. Counsel also testified that he requested the autopsy report but never received it.

Counsel testified that Applicant went to court to be arraigned and was told the maximum penalty for leaving the scene of an accident involving death is imprisonment no more than twenty-five (25) years and a fine no more than twenty-five thousand dollars. Counsel testified that he never mentioned a time served sentence to Applicant, but that Counsel did advise Applicant of the twenty-five (25) year maximum penalty and that the plea was in fact a straight up plea.

Counsel testified that Applicant never wanted a trial and that Counsel sufficiently explained to Applicant that he could plea under Alford. Counsel also stated that the Solicitor's Office dropped the charge of great bodily injury when the victim passed away. Lastly, Counsel testified that it was ultimately Applicant's choice to plea or pursue a trial. Counsel claimed that he would have had time to prepare for trial had that been Applicant's decision.

On cross-examination, Counsel testified that it was Applicant's decision to plead under Alford. Counsel testified that there was no coercion upon Applicant to plead guilty. Counsel also testified that he felt he prepared adequately and sufficiently for Applicant's case. Finally, Counsel testified that he would have continued to prepare for trial if Applicant wanted to proceed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible.

This Court also finds Counsel provided effective assistance of counsel in this case. Counsel advised Applicant of all of the charges and the sentences the charges carried. Applicant admitted nobody threatened him to plead guilty, and there were no promises other than the negotiations to entice him to plead guilty. This Court finds Applicant made the decision to plead guilty on his own accord with the help of learned counsel. Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone else.

This Court finds Counsel's testimony with regard to advising Applicant of his potential exposure to twenty-five year' imprisonment, while in contradiction to Applicant's testimony, to be credible on this issue and Applicant's testimony not credible.

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of Applicant.

This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied and dismissed with prejudice.

Involuntary Guilty Plea

Applicant alleges that his plea was involuntary. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (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 as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial's errors, the defendant would not have pled guilty, but would have insisted on going to trial. See 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).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See

Bovkin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Bovkin the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. *Id.* at 243, 89 S.Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. *Id.* Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

This Court finds that Applicant's plea was entered into freely, voluntarily and knowingly. This Court further finds that Applicant was given plenty of contact with Counsel and he was fully aware of his rights. Applicant admitted nobody threatened him to plead guilty and there were no promises other than the negotiations to entice him to plead guilty. This Court finds Applicant made the decision to plead guilty on his own accord with the help of learned counsel. Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone else. Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty.

Accordingly, this Court finds the Applicant has not met the burden of proof to illustrate that his plea was made involuntary. Therefore, these allegations are denied and dismissed with prejudice.

CONCLUSION

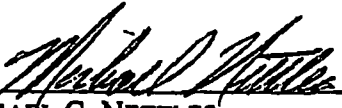
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice. This Court also finds as to all other allegations that Applicant failed to present evidence of such claims and thus, this Court deems them abandoned.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 1 day of March, 2017.


MICHAEL G. NETTLES
Presiding Judge
Page 10 of 11

Fifteenth Judicial Circuit

Florence, South Carolina

MAILED
3-6-11 *100*

WITNESSES

S Clothier Myrtle Beach Police Department

DOCKET NO. 2014-GS-26-00436

The State of South Carolina

County of Horry

Monica M. Wooten

13H03575

COURT OF GENERAL SESSIONS

FEBRUARY, 2014 TERM

ARREST WARRANT NUMBER

2013A2620601645

CDR: 2463 56-05-1210(A)(3)

DOA: 7/16/2013

THE STATE

vs.

James Junior Littles

B/ M

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: FEB 20 2014

VERDICT

ATTORNEY: Chrisco, William Edward

Indictment for

LEAVING SCENE OF ACCIDENT

Foreperson of Petit Jury

Date:

Jimmy A. Richardson, II, Solicitor

ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on February 20, 2014, the Grand Jurors of Horry County present upon their oath:

LEAVING SCENE OF ACCIDENT

CDR: 2463 56-05-1210(A)(3)

That **James Junior Littles** did in Horry County on or about July 10, 2013, while operating a motor vehicle, become involved in an accident which resulted in the death of Jimmy Ray Westmoreland, and did leave the scene of the accident without first rendering aid and/or information, in violation of Section 56-05-1210(A)(3), S. C. Code of Laws, 1976, as amended.

ORIGINAL

FILED
 HORRY CO. CLERK
 2014 NOV 12 PM 5:01
 MELANIE HUGGINS
 CLERK OF COURT
 COPI
 FILED CL

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


 JIMMY A. RICHARDSON, II
 FIFTEENTH CIRCUIT SOLICITOR