

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Berkeley County  
Honorable Brooks P. Goldsmith, Circuit Court Judge

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S.C. SUPREME COURT

BRITTANY LYN SWANGER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001980

---

APPENDIX

---

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STATE OF SOUTH CAROLINA     )  
                                  )  
COUNTY OF BERKELEY         ) CASE NO.: 2012-GS-08-01694

STATE OF SOUTH CAROLINA     )  
                                  )  
VS.                                )  
                                  )  
BRITTANY LYN SWANGER,        )  
                                  )  
DEFENDANT.                    )  
\_\_\_\_\_

PLEA

held before the Honorable Kristi L. Harrington  
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit  
in the Berkeley County Courthouse  
Moncks Corner, South Carolina  
on Wednesday, March 25, 2015, Commencing at 10:10 a.m.

\_\_\_\_\_  
SUSAN "MIA" PERRON, CVR-CM-M  
Circuit Court Reporter - 9th Judicial Circuit  
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## EXHIBITS

[None]

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PROCEEDINGS

THE COURT: Are you Brittany Swanger?

MS. SWANGER: Yes, ma'am.

THE COURT: Please swear the defendant.

THE CLERK OF COURT: Please raise your right hand.

[Whereupon, Ms. Swanger is duly sworn by the clerk of court as follows: do you solemnly swear or affirm the testimony you'll give the Court in this matter will be the truth, the whole truth, and nothing but the truth, so help you God]

THE WITNESS: I do.

THE COURT: Mr. Seaton, you represent Ms. Swanger?

MR. SEATON: Yes, ma'am. It's my pleasure to do so.

THE COURT: And the victim's family has been notified?

MS. WILLIAMS: They have, Your Honor.

Tim Bennett is the son of the decedent, who is the victim in this case. He has been notified, and he supports the plea. He actually wanted Ms. Swanger to get less time than the negotiated amount of time we have, but the State is not comfortable with that so we have negotiated fifteen years.

THE COURT: Ms. Swanger, you are here to plead guilty on 2012-GS-08-1694, which is a true billed

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1 indictment for murder. The State is allowing you to  
2 plea to the lesser included voluntary manslaughter. I  
3 can sentence you from two to thirty years.

4 Do you understand that's the possible punishment?

5 MS. SWANGER: Yes, ma'am.

6 THE COURT: Knowing that, do you still wish to go  
7 forward here today?

8 MS. SWANGER: Yes, ma'am.

9 THE COURT: This is a violent and a most serious  
10 offense.

11 Do you understand what those classifications mean?

12 MS. SWANGER: Yes, ma'am.

13 THE COURT: Mr. Seaton, you've explained that to  
14 your client and you believe that she understands what  
15 those two classifications mean for her?

16 MR. SEATON: Yes, ma'am.

17 I'm comfortable that she understands and  
18 appreciates -- she's been over in our county jail now  
19 980-some days.

20 THE COURT: Ms. Swanger, the violent provision has  
21 to do with sentencing and how much time you may serve.  
22 I always tell defendants that they should plan to serve  
23 -- and the negotiated plea is for fifteen years -- that  
24 you should plan to serve that day for day.

25 Do you understand?

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1 MS. SWANGER: Yes, ma'am.

2 THE COURT: And as to the most serious, that's  
3 commonly what we call the strikes. Do you understand  
4 that a combination in the future --

5 How old are you?

6 MS. SWANGER: I'm twenty-six, ma'am.

7 THE COURT: In the future, should you commit  
8 another crime that is classified as serious or most  
9 serious, that that could subject you to life without the  
10 possibility of parole.

11 Do you understand what that classification means?

12 MS. SWANGER: Yes, ma'am.

13 THE COURT: You tell me you are twenty-six. Tell  
14 me about yourself. Are you married? Have children?

15 MS. SWANGER: I have a daughter. She's nine. I'm  
16 from Ohio. About a month ago, my little sister died.  
17 I've been trying to -- I've been trying to get my GED  
18 since I've been in here.

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

20 MS. SWANGER: Ninth grade.

21 THE COURT: And you do not have your GED?

22 MS. SWANGER: No, ma'am, I do not.

23 THE COURT: Have you ever been treated for the  
24 abuse of drugs or alcohol?

25 MS. SWANGER: Do what?

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1 THE COURT: Ever been treated for the abuse of  
2 drugs or alcohol?

3 MS. SWANGER: No, ma'am, I have not.

4 THE COURT: Ever been treated for mental illness?

5 MS. SWANGER: Since I've been here, yes.

6 THE COURT: Tell me about that. Do you have a  
7 diagnosis?

8 MS. SWANGER: No. But whenever my little sister  
9 died, I got real bad depression. They put me on Remron,  
10 and it seemed to help.

11 THE COURT: Are you taking that as prescribed?

12 MS. SWANGER: Yes, ma'am.

13 THE COURT: And are you currently on that today?

14 MS. SWANGER: Yes, ma'am.

15 THE COURT: Does that affect your ability to  
16 understand what we're doing here today?

17 MS. SWANGER: No, Your Honor, it does not.

18 THE COURT: Does it help you think more clearly?

19 MS. SWANGER: It stabilizes me.

20 THE COURT: Mr. Seaton, any concerns about the  
21 depression that your client has shared?

22 MR. SEATON: No, Your Honor, other than the remorse  
23 of this terrible thing you're about to hear about.

24 THE COURT: Ms. Swanger, you do not have to plead  
25 guilty. By pleading guilty you are giving up certain

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1 rights, your right to a jury trial, your right to have a  
2 jury determine your guilt beyond a reasonable doubt  
3 based upon the evidence the State presents as well as  
4 any evidence you may introduce, your right against self-  
5 incrimination, your right to say nothing at all, your  
6 right to confront and be confronted by the witnesses  
7 against you, as well as the right to call witnesses on  
8 your behalf. By pleading guilty here today, you give up  
9 any defense that you may have to this charge.

10 Do you understand those rights?

11 MS. SWANGER: Yes, ma'am.

12 THE COURT: And do you waive those rights at this  
13 time?

14 MS. SWANGER: I do.

15 THE COURT: The negotiation is for fifteen years  
16 active time. You understand that after hearing the  
17 facts and your prior record, if I cannot accept that, I  
18 will allow you to withdraw this plea.

19 Do you understand?

20 MS. SWANGER: Yes, ma'am.

21 MR. SEATON: Do you understand that?

22 THE COURT: And what that means to you is I can't  
23 give you any more time, but I also cannot give you any  
24 less time. Do you understand?

25 MS. SWANGER: Yes, ma'am.

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1 THE COURT: Knowing that, do you still wish to  
2 enter into this plea?

3 MS. SWANGER: Yes, ma'am.

4 THE COURT: Have you been satisfied with the  
5 services of Mr. Seaton?

6 MS. SWANGER: I have very greatly, Your Honor.

7 THE COURT: Any complaints about the way he has  
8 handled this case?

9 MS. SWANGER: No, Your Honor.

10 THE COURT: You have the right to appeal this plea  
11 and the sentence that I will impose, but you or your  
12 attorney must do so within ten days.

13 Do you understand?

14 MS. SWANGER: Yes, ma'am.

15 THE COURT: Please listen to the facts, and then  
16 I'll have some additional questions for you.

17 Ms. Williams?

18 MS. WILLIAMS: Thank you, Your Honor. May it  
19 please the Court.

20 Briefly, in the way of background, the seventy-one-  
21 year-old victim, Roy Bennett, had a pending case with  
22 the AG's office for the possession of child pornography.  
23 This is important because he had a prior relationship  
24 with a woman named Jamie Mallory, who he was giving  
25 money to regularly. Why he was giving the money is up

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1 for speculation, but it was either because she was  
2 willing to take those charges or because she was bribing  
3 him because they had had a previous relationship that  
4 was inappropriate, because of her age, in the past. Her  
5 boyfriend and his friend were going in and out of the  
6 victim's house collecting checks like almost daily. In  
7 the meantime -- so the last check they get is the night  
8 before the murder.

9 The next day the codefendant of Mr. Swanger, Robert  
10 Clark, who also knew the victim -- because he was also  
11 in a relationship with Jamie Mallory -- and the other  
12 codefendant, Robert McFadden, they, the night before the  
13 murder, meet up with Ms. Swanger. And they're all  
14 smoking crack. At some point they run out of money the  
15 next morning and Mr. Clark decides that the victim would  
16 be a good place to get some money. He knows that these  
17 other people that he -- Ms. Mallory and her boyfriend  
18 have been going in and out of the house getting checks  
19 from the victim.

20 All of these people, the codefendants in this case,  
21 Ms. Mallory and her crew, all live in crack hotels  
22 around Rivers Avenue, basically. The last time Jamie  
23 Mallory's group is seen going in the house is the night  
24 before. The next morning, Ms. Swanger and the two  
25 codefendants go in presumably to rob him. And they go

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1 into the house. And no one sees them going in, but  
2 people see them leaving. This is important when I  
3 explain why we're doing this plea.

4 The day of the murder, Mr. Clark decides that  
5 Ms. Swanger should go in and pretend that she works for  
6 the victim's attorney. She goes in. She knocks on the  
7 door. She pretends that she works for him. She sits  
8 down and says, I work for your attorney, he told me to  
9 get a statement from you, knowing that they're going to  
10 rob him.

11 A few minutes later, the two codefendants come to  
12 the door with their faces covered, force their way in,  
13 and start demanding guns out of the safe, and valuables  
14 in the house, and money. The victim refuses. The  
15 situation escalates, and they wind up putting a bag over  
16 his head, binding his hands and feet, and suffocating  
17 him to death with the plastic bag and duct-tape.

18 I think it would be accurate to say that although  
19 Ms. Swanger did not realize that the robbery was going  
20 to escalate into a murder, that at some point she is an  
21 active participant in trying to get him to open the safe  
22 to get the money.

23 By her own account, she kind of pushes him a little  
24 bit and participates in the robbery. I think it's also  
25 accurate to say that she was very frightened of the

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1 other two codefendants during the course of this and  
2 participated in it partly because she was frightened of  
3 them. But she was an active participant.

4 One of the problems that the State has with this  
5 case is that there was a neighbor that identified the  
6 other people as leaving the home right after the murder.  
7 And so that was always going to be an issue for us.

8 One of the things that helped us get past --

9 THE COURT: All right. What is the relationship  
10 with Ms. Swanger and Ms. Mallory?

11 MS. WILLIAMS: She doesn't know them.

12 That was the benefit of having her involved. Ms.  
13 Swanger is the only person of all of these people that  
14 didn't know Ms. Mallory, her boyfriend, and their  
15 friend, who had gone into the home the night before.  
16 Mr. Clark was a previous boyfriend of Ms. Mallory. He  
17 knew her boyfriend. The other guy had seen them in drug  
18 situations and knew them.

19 Ms. Swanger was kind of a new person into this  
20 group of people and she just kind of got mixed up  
21 somking crack with the wrong people at the wrong time,  
22 quite frankly. She didn't know Mallory and the other  
23 people that were identified coming out of the home the  
24 night before.

25 She came forward very quickly, after she was

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1 apprehended, and started cooperating. She gave us very  
2 valuable information about the crime, where we could  
3 find certain things. She gave us phone numbers of  
4 people that could corroborate her version of events.  
5 And I thought from the beginning that her testimony  
6 would be very powerful because she didn't know any of  
7 these other people so there would be no reason for her  
8 to cover up for them.

9 Having said that, we worked very hard to get to a  
10 resolution on this case, with her case, and also with  
11 the codefendants. Last term the codefendants, both  
12 Mr. Clark, who is represented by David Schwacke, and  
13 Mr. McFadden, who is represented by Bo Seaton, pled  
14 guilty to voluntary manslaughter for thirty years  
15 suspended to twenty, to run concurrent with twenty years  
16 on a burglary first and grand larceny, because they also  
17 stole the victim's truck. They both had substantial  
18 records, violent crimes in their history, many, many  
19 felonies over a long period of time. Ms. Swanger has a  
20 shoplifting. That is her only previous record.

21 I think that there is a factual basis for her guilt  
22 based on a felony murder theory, but I do think that she  
23 deserves the consideration of this plea. But for her,  
24 we might not have been able to get the other cases  
25 resolved. And from what I have seen personally, she has

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1 shown true remorse from the first time we met with her  
2 all the way until now.

3 I would respectfully ask you to accept the plea.  
4 As I said before on the record, the decedent's son, Tim  
5 Bennett, from day one -- he read her story I think in  
6 the newspaper and has always been very sympathetic to  
7 her case, as though he felt like she sort of got swept  
8 up in something that she was in over her head for. So I  
9 did check with him several times before today, and he is  
10 very much in support of this plea, as is the decedent's  
11 ex-wife and his sisters.

12 THE COURT: Ms. Swanger, you heard the facts, Is  
13 that what you did?

14 MS. SWANGER: Yes. Yes, Your Honor.

15 THE COURT: I find a substantial factual basis for  
16 your plea. Your decision to plead guilty has been  
17 freely, voluntarily, knowingly, and intelligently made.  
18 You've indicated to the Court you have had the advice  
19 and counsel of a competent attorney with whom you've  
20 told the Court you are satisfied. I hereby accept your  
21 plea of guilt.

22 Mr. Seaton, happy to hear from you.

23 MR. SEATON: Your Honor, anything that I say I'll  
24 refrain from using names because I don't know those  
25 things to be accurate and factual. I know what's on the

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1 public records with Mr. Bennett. I know the pending  
2 charges of his demise.

3 In getting to know Ms. Swanger, I guess the proper  
4 -- if you look at her background, from what she tells  
5 me, having been violently abused by her father through  
6 the years, the violence, the having to run away when her  
7 younger sister was about to become her father's next  
8 sexual victim. She's pretty much been on her own since  
9 she was about thirteen until now.

10 She got involved in -- as she told you, with some  
11 drug use. And she's the perfect psychological drug  
12 Ottoman. She was waiting to -- in fact, nothing like  
13 this.

14 It's my understanding that this hotel, she met  
15 these guys, that the people there had been extorting  
16 Bennett. You know, obviously they're not over there  
17 spending the night or in rooms. They're buying drugs.  
18 And so the issue I guess became, when you smoke crack, I  
19 guess where's the next money coming from. I don't know.

20 But it got revealed to these two guys about this  
21 shakedown on Mr. Bennett, who lived out in Otranto, and  
22 obviously had been perpetrating sexual crimes on young  
23 girls in and around in our community for a long time.  
24 And he was victim of blackmail, if you want to call him  
25 a victim. I find that a loose word in this situation.

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1 But this is what Brittany tells me. And I think I  
2 mentioned to you --

3 I've told Anne this numerous times. Every time I  
4 go in front of a parole board for the robbery-murder,  
5 one member of the board will always ask my client, why  
6 did y'all go there? Why did you go there? Went there  
7 to rob. Did you do that? Yeah. Well, why did you have  
8 to kill him?

9 She says that this guy wanted her to pose as a  
10 secretary, take his statement, so they could gain  
11 entrance to the house. She said, I had no idea, other  
12 than we were going to get some money and maybe steal  
13 some items.

14 I don't think that stealing of items was even  
15 discussed at that point. But after they tied him up, he  
16 insisted that she go get a plastic bag and put over this  
17 man's head. She said, I'm not going to do that, I can't  
18 do that. He said, you will or I'll put a plastic bag  
19 over your head and tie you up and you'll die right along  
20 beside him. Horrible way to die. Horrible way to live.

21 Horrible way to abuse children in our community.  
22 And this child is still a child, in my mind. But as I  
23 say, she's a perfect drug Ottoman. She's been sexually  
24 abused, on the street now for almost thirteen, fourteen  
25 years, and she had a hell of a substance abuse problem.

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1 She's now been with us in our State system 900 and how  
2 many days? 983 or something like that, which I've told  
3 --

4 MS. WILLIAMS: 952.

5 MR. SEATON: 952.

6 -- which I've told her she'll automatically get  
7 credit for.

8 But I got up this morning -- and it doesn't get  
9 daylight until about 7:10 now. But I told Brittany,  
10 bless her heart, the only thing she's got is your mercy  
11 and my help. She's totally alone in the world. She has  
12 developed a friend, Karen Petrie --

13 Ms. Petrie, would you stand up?

14 -- who comes to the jail and has got her started in  
15 bringing her GED materials. And the teacher says she's  
16 doing wonderful. So the child is trying to improve  
17 herself. She's been over there all this period of time,  
18 not one bit of trouble. Almost three years, as of this  
19 July. No problems with her.

20 But she's the only one that seemed to have a  
21 conscience -- or she was the only one. She immediately  
22 -- not immediately. But in a couple of days, when she  
23 could get away from this crowd, the first confrontation  
24 she told it all, everything she knew. She signed a  
25 sworn statement. There was nothing to go to trial

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1 about, other than a few-bit material facts.

2 And I thought it interesting. I've got a briefcase  
3 full of CDs to the jail from phone calls and letters and  
4 -- from the codefendant. And they went from telling her  
5 they're going to kill her, to how much -- Tattoo, I  
6 think is his name -- how much he loves her, same man who  
7 wanted to put a bag over her head and smother her to  
8 death who now is madly in love with her. I wonder why?  
9 Because of her testimony. And she's remained steadfast,  
10 rigid.

11 She knows she's got a hell of an uphill battle.  
12 Pardon my French, Judge. But she wants to become a vet  
13 tech. She's still young enough she can get out of this,  
14 Judge.

15 But I ask you to accept the recommendation. I told  
16 her, I said, now, Brittany, the judge has nothing to do,  
17 other than the sentencing. How they're going to treat  
18 you in the Department is up to your behavior. Because  
19 it's violent, be expecting perhaps eighty-five percent  
20 before you're eligible; you may get a lessor break; or  
21 if you do something substantial, certainly can petition  
22 the parole board to do something maybe a little  
23 different, maybe not under this administration but --

24 Judge, this is a horrible story. It's a horrible  
25 story. But I think that one thing Ms. Williams

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1 emphasized that I think is important: when you get a  
2 letter from the so-called victim's son, who wanted her  
3 to get less time, who better would know the character of  
4 this deceased. But it's not us, for us, except in times  
5 of war, to have to take lives, or maybe from police  
6 officers --

7 THE COURT: Let me hear from Ms. Swanger. What do  
8 you wish to tell me?

9 MS. SWANGER: He said it was -- I got caught up  
10 with the wrong people at the wrong time, and every day I  
11 wish it wouldn't have happened. I wish that they  
12 wouldn't have killed him: But you can't change the  
13 past. You can just move on.

14 I really want to be there for my daughter, for my  
15 family. I really want to be somebody. I don't want to  
16 do drugs no more. I know you guys hear this a lot, but  
17 I don't want to do drugs any more. I'm so over it. I  
18 want to be a mom, a sister, a daughter, a granddaughter.  
19 I want to, you know -- and be somebody. I want to be  
20 important. I'm going to -- I don't want to live this  
21 life anymore.

22 MR. SEATON: Tell her, before you get out of  
23 control, that you had a stillborn child, also.

24 MS. SWANGER: Yes.

25 THE COURT: Let's let Ms. Swanger talk for herself.

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1 MR. SEATON: Okay.

2 THE COURT: You know, I've heard for the past ten  
3 minutes about her being a victim.

4 I just want Ms. Swanger to realize that you  
5 telling, when you went over to the jail, that was the  
6 first step of you stopping to be a victim.

7 MS. SWANGER: Yes.

8 THE COURT: So I want to hear -- I don't want to  
9 hear about you being a victim anymore. I'm sorry for  
10 all of those things. But let's rewrite your story,  
11 Ms. Swanger.

12 MS. SWANGER: Yes, ma'am.

13 THE COURT: Let's rewrite it. All right? The next  
14 fifteen years of your life are going to be in the  
15 department of corrections. I'm going to go along with  
16 the negotiation. But I want to hear from you how you're  
17 going to rewrite the story.

18 MS. SWANGER: I'm going to take every opportunity  
19 in every courtroom I can get into, whenever I do get --  
20 do get to CDC, get my GED. Try to get into college and  
21 whatever programs they have available. I'm going to  
22 work my butt off -- excuse my French, too -- to be a  
23 better person, be all that I can be.

24 THE COURT: All right Ms. Swanger, I'm going to go  
25 along with the negotiation.

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1 Anything further from the State?

2 MS. WILLIAMS: Not from the State, Your Honor.

3 THE COURT: Ms. Swanger, I don't need to lecture  
4 you or state to you how tragic this was.

5 MS. SWANGER: No, ma'am.

6 THE COURT: You made the first step in turning  
7 it around. And as I understand it -- I've heard  
8 Ms. Williams and Mr. Seaton tell it -- but for you,  
9 the outcome would have been significantly different.

10 It's the order of the Court on 2012-GS-08-1694 that  
11 you be committed to the State Department of Corrections  
12 for a term of fifteen years. I'll give you credit for  
13 952 days. I am going to order ATU.

14 All right. Thank you.

15 MR. SEATON: Thank you, Your Honor.

16 MS. WILLIAMS: Thank you, Your Honor.

17 THE COURT: Good luck to you, Ms. Swanger.

18 MS. SWANGER: Thank you.

19 [PLEA CONCLUDES AT 10:32 A.M.]

20

21

22

23

24

25

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C E R T I F I C A T E

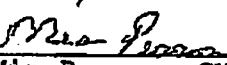
STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the guilty plea held before the Honorable Kristi L. Harrington, on Wednesday, March 25, 2015.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 8th day of April, 2015.

  
\_\_\_\_\_  
Mia Perron, CVR-CM-M  
Circuit Court Reporter  
9th Judicial Circuit

MIA PERRON, CVR-CM-M

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## FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF

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

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2016-CP-08-190

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 Berkley County
2. Name and location of Court which imposed sentence Berkley County
3. Name(s) of co-defendant(s) (if any) Hardy Clarke and Robert McFadden
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2012-SC-01694
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) 2015
  - (b) 15 years

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

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

*Attached*

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) My lawyer talked me into pleading guilty and this is the first appeal I've submitted.

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? N/A
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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

- (a) the name and address of each attorney who represented you:

i. Greer Seaton

ii.       

iii.       

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

i. Bond

ii. Sentencing

iii.       

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

a reduced sentence or probation because I don't believe I deserve all the time I received.

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

No

STATE OF SOUTH CAROLINA

County of Lexington

VERIFICATION

I, Berting Swager, 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.

Berting Swager

SWORN to and subscribed before me this 3rd  
day of January, 2016.

Kewonica Moore (L.S.)  
Notary Public

My Commission Expires: 8/14/2024

**KEWONICA MOORE**  
Notary Public, State of South Carolina  
My Commission Expires 8/14/2024

2016 JAN 26 PM 4:23  
CLERK OF COURT  
LEXINGTON, SC

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

I, Keonica Moore, 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.

*Keonica Moore*  
Applicant

SWORN or affirmed to and subscribed before me this  
3 day of January, 2014.

*Kevin M. P.*  
Notary Public

My Commission Expires: 8/14/2024

**KEWONICA MOORE**  
Notary Public, State of South Carolina  
My Commission Expires 8/14/2024

JAN 26 PM 4:23  
CLERK OF COURT  
SOUTH CAROLINA  
JAN 26 PM 4:23

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

### Question 10

- 1) I was up for 7 days high on crack prior to the crime.
- 2) Randy Clarke threatened my life when I told him he shouldn't kill Mr. Bennett.
- 3) I was high on crack at the time of the crime.
- 4) When police questioned me I was forthcoming and cooperative.
- 5) Even the solicitor said I was instrumental in putting Robert and Randy in prison.
- 6) The victim's son was against me getting a lot of time.
- 7) My lawyer lied to me and told me I'll be eligible for parole next year.

State concisely and in the same order the facts which support each of the grounds set out in (1st)

Question 11

1. I was up for 7 days on drugs prior to the crime therefore I was not of sound mind to be making any decisions about what I was doing at the time.
2. Randy Clarke threatened my life when I told him not to kill Mr. Bennett so I was too scared for my life to be able to prevent him from killing Mr. Bennett.
3. I was high on crack at the time of the crime therefore not in my right mind.
4. When police questioned me I told them everything they wanted to know.
5. The solicitor that prosecuted my case even stated that I was instrumental in putting two dangerous criminals behind bars.
6. Even the victim's son knew I didn't kill his dad and was against me getting alot of time.
7. My lawyer lied to me and told me if I could

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Brittany Swanger, #363443,

2016-CP-08-190

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

FILED  
2016 JUN 15 PM 1:25  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

Respondent, making its Return to the application for post conviction relief (PCR) filed January 26, 2016, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. The Applicant was indicted by the September 2012 term of the Berkeley County Grand Jury for one (1) count of Murder (2012-GS-08-1694). Grover Seaton, Esquire represented the Applicant. On March 25, 2015, the Applicant pled guilty to one (1) count of the lesser included offense of Voluntary Manslaughter. The Honorable Kristi Lea Harrington sentenced the Applicant to incarceration of a negotiated sentence for fifteen (15) years. The Applicant did not appeal her conviction or sentence.

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

## II.

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

1. "My lawyer lied to me and told me I'll be eligible for parole next year."
2. "My lawyer talked me into pleading guilty and this is the first appeal I've submitted"
3. "I was up for 7 days high on crack prior to the crime"
4. "Randy Clarke threatened my life when I told him he shouldn't kill Mr. Bennett"
5. "I was high on crack at the time of the crime"
6. "When police questioned me I was forthcoming and cooperative"
7. "Even the solicitor said I was instrumental in putting Robert and Randy in prison"
8. "The victim's son was against (sic) me getting alot (sic) of time"

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

## III.

For purposes of this Return, Respondent interprets Applicant's first allegation to be an allegation of ineffective assistance of counsel. In a post-conviction relief action, Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result."

Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced 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, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

## IV.

The Applicant's second allegation is that her guilty 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 presented at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, an Applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621 (1977). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975) overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4<sup>th</sup> Cir. 1985). This Court finds that the Applicant presented no reasons to show that she should be allowed to depart from the truth of the statements she made during his guilty plea hearing.

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 counsel's errors, the defendant would not have plead guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to

this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

V.

The Respondent construes the remaining allegations as allegations of prosecutorial misconduct. Prosecutorial misconduct is not an issue for post conviction relief. Rather, this allegation is a direct appeal issues that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is the Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

VI.

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

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on Applicant's allegations.

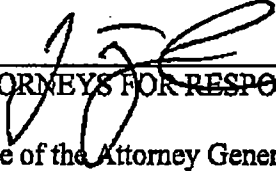
Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

JOHANNA C. VALENZUELA  
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON  
Assistant Deputy Attorney General

By:   
~~ATTORNEYS FOR RESPONDENT~~

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

June 13, 2016.

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

BRITTANY SWANGER, #363443

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2016-CP-08-0190

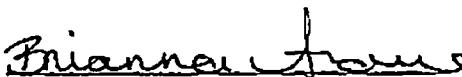
AFFIDAVIT OF SERVICE BY MAIL

2016 JUN 15 PM 1:25  
FILED  
MARY P. BROOKIN  
CLERK OF COURT  
BERKELEY COUNTY S.C.

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

Lance S. Boozer, Esquire  
807 Gervais Street, Suite 203  
Columbia, South Carolina 29201

DATED this 13<sup>th</sup> day of June, 2016.

  
Brianna Arnone, Legal Assistant  
For Respondent

|                         |   |                            |
|-------------------------|---|----------------------------|
| STATE OF SOUTH CAROLINA | ) | THE COURT OF COMMON PLEAS  |
|                         | ) |                            |
| COUNTY OF BERKELEY      | ) | DOCKET NO. 2016-CP-08-0190 |
|                         | ) |                            |
|                         | ) |                            |
| BRITTANY LYN SWANGER    | ) |                            |
|                         | ) |                            |
| Applicant               | ) |                            |
|                         | ) |                            |
| vs.                     | ) |                            |
|                         | ) |                            |
| STATE OF SOUTH CAROLINA | ) |                            |
|                         | ) |                            |
| Respondent              | ) |                            |
|                         | ) |                            |
|                         | ) |                            |
|                         | ) |                            |
|                         | ) | TRANSCRIPT OF RECORD       |

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April 17, 2017  
Moncks Corner, S. Carolina

B E F O R E:

THE HONORABLE BROOKS P. GOLDSMITH, JUDGE

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

LANCE S. BOOZER, ESQ.  
Attorney for the Applicant

ALICIA OLIVE, ESQ.  
Attorney for the State

JOYCE C. RUEGER, CVR-M  
Circuit Court Reporter

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No exhibits were introduced

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## INDEX TO EXHIBITS

No exhibits were introduced

Brittany Swanger v State of S. C.  
Post Conviction Relief Hearing  
April 17, 2017

PROCEEDINGS

MS. OLIVE: May it please the court, Your Honor?

This is Brittany Swanger, 2016-CP-08-0190. She was indicted in September 2012 for murder. She was represented by Grover Seaton, III. On March 25, 2015 she pleaded guilty to the lesser included offense of voluntary manslaughter. Pursuant to a negotiated agreement, she received fifteen years. The Honorable Kristi Harrington sentenced her to fifteen years for that charge.

She did not appeal her conviction or sentence. She filed this application for post conviction relief on January 26, 2016 alleging several allegations of ineffective assistance of counsel. She is present in the courtroom today and represented by Lance Boozer. I'll turn it over to Mr. Boozer at this time.

THE COURT: Mr. Boozer?

Brittany Swanger v State of S. C.  
Post Conviction Relief Hearing-Brittany Swanger-Direct Examination by Mr. Boozer  
April 17, 2017

1 MR. BOOZER: Thank you, Your Honor. If it pleases  
2 the court, Judge we can go ahead and call Ms. Swanger to  
3 the stand?

4 THE COURT: Certainly.

5 [Whereupon, the witness comes forward]

6 [Whereupon, the witness is duly sworn by the Clerk  
7 of Court]

8 CLERK OF COURT: You may be seated. State your  
9 full name and spell your last name for the record.

10 THE WITNESS: Brittany Swanger, S-W-A-N-G-E-R.

11 MR. BOOZER: Thank you, Your Honor.

12 - - - - -

13 BRITTANY LYN SWANGER,

14 Having been first duly sworn,

15 Was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. BOOZER:

18 Q. Ms. Swanger, how are you doing today?

19 A. I'm doing well, you?

20 Q. I'm doing fine, thank you for asking. Do you know  
21 why it is that you're here today and why you're in court?

22 A. Yes, sir. To -- for a PCR hearing and I'm going to  
23 be accepted or denied for the PCR.

24 Q. Okay. And right now, what are you currently serving  
25 a sentence for?

Brittany Swanger v State of S. C.  
Post Conviction Relief Hearing-Brittany Swanger-Direct Examination by Mr. Boozer  
April 17, 2017

1 A. Fifteen years for voluntary manslaughter.  
2 Q. And what were you originally charged with?  
3 A. Murder.  
4 Q. All right. And do you understand that once you have  
5 filed a PCR application that the only thing that this  
6 court can do for you is basically grant you a new trial  
7 on that original charge.  
8 This court can't modify your sentence or reduce your  
9 time or make you parole eligible or anything like that.  
10 Do you understand that?  
11 A. Yes, sir.  
12 Q. And we discussed, sort of, that there are some risks  
13 involved in that, is that right?  
14 A. Yes, sir.  
15 Q. And understanding and knowing that the only thing  
16 that you can do is get a new trial, do you still want to  
17 move forward with your PCR application?  
18 A. Yes, sir.  
19 Q. Okay. Now, who represented you for your prior case?  
20 A. Mr. Grover Seaton.  
21 Q. All right. Now you filed a PCR application and in  
22 that application you have a number of different  
23 allegations that we've discussed but you have really one  
24 allegation which is what you've indicated led you to  
25 plead guilty, is that right?

Brittany Swanger v State of S. C.  
Post Conviction Relief Hearing-Brittany Swanger-Direct Examination by Mr. Boozer  
April 17, 2017

1 A. Yes, sir.

2 Q. All right. Well, let's talk about that. You've  
3 indicated in your PCR application that you believe your  
4 lawyer misled you and told you you'd be eligible for  
5 parole ---

6 A. --- yes, sir ---

7 Q. --- is that your main allegation?

8 A. Yes, sir.

9 Q. Okay. Are any of the other allegations that you  
10 have listed things that you want to bring to this court's  
11 attention or are you just focused on that one?

12 A. I'm pretty much focused on that one.

13 Q. Okay. Now, in your -- well, let's talk about that a  
14 little bit. When you say you thought you'd be eligible  
15 for parole. What have you since learned since you've  
16 been incarcerated?

17 A. That I'm not eligible for parole and that my release  
18 date will be 2025.

19 Q. Okay. What was your discussion, if any, that you  
20 had with your lawyer prior to your plea about any sort of  
21 parole eligibility?

22 A. He told me that I had to do a quarter of my time  
23 before I was eligible for parole and then whenever I went  
24 in front of a parole board to tell them -- they were  
25 going to ask me if I felt any remorse for my crime and he

Brittany Swanger v State of S. C.  
Post Conviction Relief Hearing-Brittany Swanger-Direct Examination by Mr. Boozer  
April 17, 2017

1 told me to tell them that I didn't do it, that I was just  
2 there and that that's what I should tell the parole board  
3 because he was telling me I was eligible for parole.  
4 Q. Do you know when you may have had this discussion  
5 with your lawyer?  
6 A. Probably, whenever he brought me the plea agreement.  
7 I don't know what date it was, but it was probably a  
8 month or so before I actually went to court.  
9 Q. Okay. Other than that discussion, did you have any  
10 other discussion with your lawyer about any sort of  
11 parole eligibility?  
12 A. Yes, right before court.  
13 Q. Okay, what was that?  
14 A. Just that he -- just pretty much insinuated that I  
15 was eligible for parole and what to tell the parole  
16 board.  
17 Q. Okay, when you say insinuated, what led you to  
18 believe that he was making those insinuations or what was  
19 he telling you specifically, if anything?  
20 A. Well he was telling me what to tell the parole board  
21 whenever I got up for parole.  
22 Q. And so you have since learned that you are not  
23 parole eligible?  
24 A. Correct.  
25 Q. All right. At the time of the plea, to your

Brittany Swanger v State of S. C.  
Post Conviction Relief Hearing-Brittany Swanger-Direct Examination by Mr. Boozer  
April 17, 2017

1 knowledge, did the judge in sentencing you make any  
2 statements on the record about whether or not you would  
3 be parole eligible?

4 A. No sir, she did not. But she did say be prepared to  
5 serve your whole time and asked if I was made any  
6 promises. I said no, but I was still under the  
7 assumption that I was going to be eligible for parole.

8 Q. Okay. Had you known that you were not going to be  
9 eligible for parole, would you have gone and entered the  
10 plea?

11 A. No, sir. I would not.

12 Q. Okay. What would you have done had you known you  
13 would not be eligible for parole?

14 A. I would have denied the plea and if they didn't give  
15 me another one I would have went to trial.

16 Q. Okay. And, I think you just touched on it, but why  
17 didn't you raise that with the judge and tell the court  
18 that you were under the impression that you would be  
19 parole eligible?

20 A. I've never been in big trouble like this before. I  
21 didn't know to do that.

22 Q. Okay. Now this is, of course -- well, let me ask  
23 you this. Did your attorney tell you anything other than  
24 what you said about the quarter of the sentence or what  
25 not? Did he give you any specific date as to when you

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1 may be coming up for parole or ---  
2 A. --- he said 2000 ---  
3 Q. --- hang on one second ---  
4 A. --- sorry ---  
5 Q. --- or when you would be coming up and go before the  
6 parole board?  
7 A. He said 2016 because that would be about a quarter  
8 of my time.  
9 Q. Okay. And when was your plea?  
10 A. 2015.  
11 Q. And when was the arrest?  
12 A. 2012.  
13 Q. Okay. So you served a significant amount of time  
14 prior to your plea?  
15 A. Yes, sir.  
16 Q. All right. Now obviously this is your day in court  
17 for your PCR hearing. Is there anything that you feel  
18 that we haven't covered or that we're leaving out as far  
19 as your PCR application or any of your allegations or any  
20 of your attorney's representation?  
21 A. No, sir.  
22 Q. Okay. Please answer any questions that Madame  
23 Attorney General may have for you.  
24 A. Yes, sir.  
25

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Post Conviction Relief Hearing-Brittany Swanger-Cross-Examination by Ms. Olive  
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1 CROSS-EXAMINATION

2 BY MS. OLIVE:

3 Q. Good morning.

4 A. Good morning.

5 Q. You testified that the judge did mention something

6 to you about planning to serve all of your time?

7 A. Yes, ma'am.

8 Q. Didn't she tell you that you should plan to serve

9 fifteen years day for day?

10 A. Yes, ma'am.

11 Q. Okay. And this, again, was a negotiated plea?

12 A. Yes, ma'am.

13 Q. And you understand, and the judge informed you that

14 voluntary manslaughter was punishable from anywhere from

15 two to thirty years?

16 A. Yes, ma'am.

17 Q. And you were originally indicted for murder which

18 was punishable by thirty years to life?

19 A. Yes, ma'am.

20 Q. Okay. And you provided a statement to the

21 authorities in this case?

22 A. Yes, ma'am.

23 Q. Okay. And was that part of the reason why your

24 attorney was able to work out a deal for you?

25 A. I'm not sure the reasons.

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1 Q. Okay. Did your attorney, Mr. Seaton, discuss with  
2 you -- did he discuss your case with you?  
3 A. Yes, ma'am.  
4 Q. Did he discuss with you the evidence against you?  
5 A. Yes, ma'am.  
6 Q. And were you one of the first -- were you the first  
7 to come forward in this case?  
8 A. I was the first to tell the story, yes.  
9 Q. And you agreed with the facts that the Solicitor  
10 provided to the court on the day of your plea?  
11 A. Yes, ma'am.  
12 Q. And you told the judge that you were satisfied with  
13 your attorney?  
14 A. Yes ma'am, I did. But I was still under the  
15 assumption I was going to be parole eligible.  
16 Q. Even though the judge had told you to be prepared to  
17 serve your time day for day?  
18 A. Yes, ma'am. I didn't think that that meant that I  
19 was not parole eligible though.  
20 Q. And the judge also informed you that this was a  
21 violent and most serious offense.  
22 A. Yes, ma'am. I didn't -- I had no idea what that  
23 meant at the time.  
24 Q. But she asked you if you understood what that  
25 classification meant and you said you did.

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1 A. I know, but I understood that it was a very serious  
2 charge, a very serious crime. But I didn't understand  
3 that because it was violent and most serious that I was  
4 not eligible for parole.

5 Q. But you didn't tell the judge that, you just said  
6 that you ---

7 A. --- I didn't -- I wasn't schooled, I guess, enough  
8 to ask the judge these questions.

9 Q. Thank you. That's all the questions I have.

10 MR. BOOZER: Just briefly, Your Honor.  
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Brittany Swanger v State of S. C.  
Post Conviction Relief-Brittany Swanger-Redirect Examination by Mr. Boozer  
April 17, 2017

REDIRECT EXAMINATION

BY MR. BOOZER:

Q. Ms. Swanger, you were just asked a moment ago about a question that the court asked you at the plea and that was whether you understood that this was a violent and most serious offense.

And you were asked whether you understood what those classifications meant, to which you responded yes, yes ma'am. Did you and your attorney have any discussions about what a violent offense meant or the most serious offense or what those classifications actually meant?

A. I don't believe we did.

Q. Okay. What level of education do you have?

A. I now have my G-E-D, but I only had an eighth grade level of education at the time.

Q. Okay. Prior to this appearance, had you faced or pled guilty to or been convicted of any felonies?

A. In Ohio I had a theft of a credit card and a forgery of a drug document.

Q. How about in South Carolina, though?

A. No, sir.

Q. Okay.

MR. BOOZER: Thank you, Your Honor.

MS. OLIVE: No further questions, Your Honor.

THE COURT: All right. Thank you ma'am, you may

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April 17, 2017

1 step down.

2 THE WITNESS: Thank you.

3 [Whereupon, the witness is excused and exits the  
4 witness stand]

5 THE COURT: Call your next witness, Mr. Boozer.

6 MR. BOOZER: No further witnesses, Your Honor.

7 THE COURT: Madame Attorney General?

8 MS. OLIVE: Your Honor, the State would call  
9 Grover Seaton.

10 [Whereupon, Mr. Seaton comes forward]

11 MR. SEATON: Good morning again, Your Honor.

12 THE COURT: Good morning, sir.

13 [Whereupon, the witness is duly sworn by the Clerk  
14 of Court]

15 CLERK OF COURT: Please state your full name.

16 THE WITNESS: Grover Cleveland Seaton, III.

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Post Conviction Relief Hearing-Grover Seaton-Direct Examination by Ms. Olive  
April 17, 2017

1 GROVER CLEVELAND SEATON, III,  
2 Having been first duly sworn,  
3 Was examined and testified as follows:  
4 DIRECT EXAMINATION  
5 BY MS. OLIVE:  
6 Q. Good morning, Mr. Seaton.  
7 A. Good morning.  
8 Q. Do you recall at what point you were -- were you  
9 appointed or retained in this case?  
10 A. What happened was a local lawyer was appointed,  
11 Dennis Rhoad. Dennis did not do criminal work and he  
12 asked Brady Vannoy and myself to take it over. Mr.  
13 Vannoy continued to assist me in representation until he  
14 was deployed to the Middle East in Afghanistan.  
15 Q. And at that time you took over -- you assumed full  
16 representation of Ms. Swanger?  
17 A. Yes, ma'am. But that was after the agreement was  
18 entered into between Ms. Williams as a representative for  
19 the State of South Carolina, Mr. Vannoy, myself, and of  
20 course Ms. Swanger had executed that agreement reducing  
21 the charge for murder to manslaughter.  
22 And Ms. Williams was pretty much set on thirty years  
23 until we got some assistance from the deceased's brother  
24 who acted -- who asked for leniency for her. And upon  
25 the circumstances we entered a negotiated sentence for

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1 fifteen years.

2 Q. And so you and Mr. Brady were instrumental in  
3 assisting -- well, in developing ---

4 A. --- we feel like we saved her life, ma'am. This  
5 could have easily been a death penalty case.

6 Q. Did you, in your conversations with Ms. Swanger, did  
7 you advise her concerning the risks and benefits of  
8 pleading guilty versus going to trial in this case?

9 A. Of course.

10 Q. Okay. DO you recall how many times you would have  
11 met with Ms. Swanger?

12 A. Numerous. If my memory is correct, we assisted in  
13 getting her some assistance for broken teeth, a teacher  
14 to help her with her G-E-D, and I saw her on a regular  
15 basis when we had a kind of friendly jail that I could go  
16 in and out of and give her smoke breaks and take some  
17 food to her.

18 Q. Did you file discovery in this case?

19 A. Yes, ma'am.

20 Q. Did you review that discovery with Ms. Swanger?

21 A. Yes, ma'am.

22 Q. Did you discuss with her the State's evidence  
23 against her?

24 A. Yes, ma'am. As my -- I brought my file, nobody has  
25 asked to see it, but if my memory is correct three things

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1 happened before that I -- that were monumental before I  
2 got involved in the case; photo line-up, D-N-A, and her  
3 full cooperation with Hanahan Police Department and a  
4 very horrendous murder in which she was part of.  
5 Q. And you said full cooperation; did she provide a  
6 statement to law enforcement?  
7 A. That's my understanding, ma'am.  
8 Q. Would that have factored into your negotiations  
9 concerning a plea agreement?  
10 A. Well of course it would factor in. But along with  
11 science and physical evidence and other things that  
12 placed her at the crime of a scene [sic] along with two  
13 co-defendants, to go to trial in my opinion would have  
14 been very deleterious to Ms. Swanger.  
15 And there was possibility, I believe the purported  
16 victim and I'll call him that loosely because he was a  
17 sexual pervert with small children who was being  
18 blackmailed in the community; I think that's the only  
19 thing that prevented the State from seeking the death  
20 penalty. This was a very horrible death.  
21 Q. And you communicated that to Ms. Swanger?  
22 A. Ma'am?  
23 Q. You communicated that to Ms. Swanger in advising her  
24 ---  
25 A. --- yes, ma'am. I think she was in jail, it was

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1 either 822 or 922 days prior to so we had plenty of time  
2 to talk about the evidence and what to do. And she was  
3 more concerned with minimizing her sentence, making  
4 something of her life.

5 I think she expressed she wanted to be a vet tech,  
6 she had a child. She had had a previous child that had  
7 died and I believe another relative and she had no family  
8 and she was pretty much a street -- for these two other  
9 guys involved in this crime, the basis of which was  
10 drugs.

11 Q. Did you discuss with her her criminal liability for  
12 her involvement in this case?

13 A. Yes ma'am, of course. Ms. Williams and I, who's  
14 seated behind you from the Solicitor's office, she was  
15 initially pretty much set that the only thing that  
16 because of all the mitigating -- not all but the key  
17 mitigating factors that she was willing to back off the  
18 murder indictment and consider manslaughter. And then  
19 after numerous meetings with her and with her staff they  
20 agreed to a fifteen year cap negotiated sentence --  
21 excuse me fifteen years negotiated sentence.

22 Q. Did you explain the terms of that agreement to Ms.  
23 Swanger?

24 A. Yes, ma'am. So did the trial judge. It appears in  
25 the transcript. You like for me to read it?

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1 Q. Speaking of the transcript, Ms. Swanger testified  
2 that the judge did inform her that she would be serving  
3 fifteen years day for day ---  
4 A. --- that's the only way she could accept the  
5 sentence. I further advised her that she might be  
6 eligible for 85 percent of services, the record  
7 indicates, or other mitigating factors she could be  
8 released, such as a death in the family, her becoming ill  
9 or other factors.  
10 It's not the first time the parole board let someone  
11 go from out from under the 85. The two year strike rule  
12 was explained to her on the record and what it meant. I  
13 don't think we have to dicker with words as counsel did  
14 about a serious crime. And on the two strike rule, that  
15 was what that meant is she would be incarcerated to life  
16 without parole.  
17 Q. Did you explain that to her?  
18 A. Of course, ma'am. It's explained to her in the  
19 record. All of which I'll be delighted to read.  
20 Q. Did you make any promises to her concerning her  
21 parole eligibility?  
22 A. Absolutely not. I'm not the parole board.  
23 Q. Did you explain to her that they would be the ones  
24 that would make that decision?  
25 A. Ma'am I simply explained to her that the first time

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1 she would be eligible for parole if some unusual  
2 circumstances would be 85 percent of the fifteen year  
3 negotiated plea, period. That's in the trial record.  
4 Q. Thank you. Lastly, Mr. Seaton, based on your review  
5 of the evidence, your discussions with Ms. Swanger, what  
6 did you advise her concerning the likelihood that she  
7 would have been found not guilty had she proceeded to  
8 trial?

9 A. I probably saw it a little bit differently. I  
10 talked about the proof that beyond a reasonable doubt  
11 that the State had and with the physical evidence and her  
12 confession and her other co-defendants and their  
13 activities on phone conversations, some 350 or 60 of them  
14 to and from the jail, that the likelihood that anybody  
15 could not see beyond a reasonable doubt didn't exist in  
16 my opinion, or Mr. Brady's opinion.

17 Q. Thank you that's all the questions I have.

18 THE COURT: Mr. Boozer?

19 MR. BOOZER: Thank you, Your Honor.  
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Brittany Swanger v State of S. C.  
Post Conviction Relief Hearing-Grover Seaton-Cross- Examination by Mr. Boozer  
April 17, 2017

1 CROSS-EXAMINATION

2 BY MR. BOOZER

3 Q. Mr. Seaton, how you doing?

4 A. I'm doing fine, sir. I've taken my medication.

5 Q. I'm sorry?

6 A. I've taken my medication, I'm here.

7 Q. Okay. You've heard Ms. Swanger, obviously, testify

8 today and she indicated that you had indicated to her

9 that she would be serving a quarter of the sentence

10 before she'd be eligible for parole. Do you recall any

11 conversation ---

12 A. --- that's absurd, sir. I never made any such

13 statement.

14 Q. Okay.

15 A. And Ms. Swanger knows that.

16 Q. Do you recall what specifically what specific

17 conversation, if any, you may have had with her about

18 parole eligibility?

19 A. Sir, to sum it all up without guessing, why don't we

20 go to the trial record ---

21 Q. --- but apart from the trial record, do you recall

22 anything specific ---

23 A. --- you asked me what I recall ---

24 Q. --- okay ---

25 A. --- and I can certainly recall what's in writing

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Post Conviction Relief Hearing-Grover Seaton-Cross- Examination by Mr. Boozer  
April 17, 2017

1 when I explained to her ---

2 Q. --- but, but my question isn't what's in writing or  
3 what was done at the trial. My question is if anything  
4 prior to trial and if you don't recall that's fine. But  
5 that would just be my question.

6 A. Sir, over the couple hundred days that I saw her, or  
7 more, I never changed one application of the 85 percent.

8 Q. Okay. And then, well let's then jump to the plea  
9 transcript and I'm looking specifically at page 18 which  
10 may have been what you were about to reference. Do you  
11 have a copy of that sir?

12 A. Right in front of me, sir.

13 Q. Okay.

14 [Whereupon, the witness reviews document]

15 Q. And this appears ---

16 A. --- this is picking up on line 18: Because it's  
17 violent be expecting perhaps 85 percent before you're  
18 eligible. You may get a lesser break, or if you do  
19 something substantial certainly can petition the parole  
20 board to do something maybe a little less different,  
21 maybe not under this administration.

22 Q. Okay. So in there you're saying that expect to do  
23 the 85, but something else could happen. Do you recall  
24 what specifically you're referencing there?

25 A. I just, on direct examination said, on illness,

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Post Conviction Relief Hearing-Grover Seaton-Cross- Examination by Mr. Boozer  
April 17, 2017

1 terminal illness; she was not in good health. She was a  
2 recovering addict, she had a child, there are other  
3 things that can -- the parole board on a humanitarian  
4 basis can consider that I've been involved in and that's  
5 what I referenced, sir.

6 Q. Okay. And did you ever make any sort of statement  
7 to her about she may be parole eligible in 2016?

8 A. Let me look at you when I say this; absolutely not.

9 Q. Okay.

10 A. And she knows that.

11 MR. BOOZER: Beg the court's indulgence, Your Honor?

12 THE COURT: Yes, sir.

13 [Whereupon, Mr. Boozer confers with his client]

14 Q. [Mr. Boozer] Thank you, Mr. Seaton, that's all the  
15 questions I have.

16 THE COURT: Redirect?

17 MS. OLIVE: Nothing further from the State, Your  
18 Honor.

19 THE COURT: Thank you, sir. You may step down.

20 THE WITNESS: Yes, sir.

21 [Whereupon, the witness is excused and exits the  
22 witness stand]

23 MS. OLIVE: No further witnesses form the State,  
24 Your Honor.

25 THE COURT: State rests. Anything in reply?

Brittany Swanger v State of S. C.  
Post Conviction Relief Hearing-Grover Seaton-Cross- Examination by Mr. Boozer  
April 17, 2017

1 MR. BOOZER: Nothing further, Your Honor.

2 THE COURT: I'd be glad to hear arguments.

3 MR. BOOZER: Do you have a preference on order  
4 since I'm standing here? Thank you.

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Brittany Swanger v State of S. C.  
Post Conviction Relief Hearing-Closing Argument by Mr. Boozer  
April 17, 2017

1 CLOSING ARGUMENT

2 BY MR. BOOZER:

3 If it pleases the court? Judge obviously Ms.  
4 Swanger's main allegation is that she believes she was  
5 given incorrect parole eligibility advice. Obviously  
6 counsel disagrees with that assertion. Judge, I think if  
7 Your Honor takes into consideration her testimony she did  
8 spend a significant amount of time in county detention  
9 prior to this plea. So much so, I guess it was getting  
10 close to two and a half or three years.

11 As Mr. Seaton testified, her concern in this was  
12 about minimizing her sentence. I think certainly you can  
13 glean from that that she may have been under some sort of  
14 impression that she would be parole eligible if she went  
15 in and took this plea. I think that there is some aspect  
16 of the transcript which does reflect, plan on serving 85  
17 percent, plan on doing day for day. I don't know that  
18 it's specifically laid out that this -- you will not be  
19 eligible for parole.

20 In this instance and in fact in counsel's colloquy  
21 with the court and some of the statements it sounds like  
22 that there is a little bit of a window that is opened up  
23 that she may have some other relief. Judge, I do think  
24 that if there is going to be -- there is no duty, I  
25 believe to advise a defendant about the matters of parole

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Post Conviction Relief Hearing-Closing Argument by Mr. Boozer  
April 17, 2017

1 eligibility. But I think that there is a duty if you do  
2 undertake that advisement that it has to be correct  
3 advice. I believe that would be her position.

4 And secondly, her position is since she received  
5 that correct advice, had she known she would not be  
6 parole eligible until the 85 percent of her sentence had  
7 been completed, she wouldn't have pled guilty and would  
8 have gone forward with the trial. She certainly does run  
9 a risk in going back to trial, but apparently she is  
10 ready and willing to take that risk and we've certainly  
11 discussed that. But Judge that's her position and that's  
12 why we would ask the court to grant this application.

13 THE COURT: I understand, Mr. Boozer. Thank you.

14 MR. BOOZER: Thank you, Your Honor.

15 THE COURT: Attorney General?

16 MS. OLIVE: Thank you, Your Honor.

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Brittany Swanger v State of S. C.  
Post Conviction Relief Hearing-Closing Argument by Ms. Olive  
April 17, 2017

CLOSING ARGUMENT

MS. OLIVE:

As Your Honor well knows a PCR applicant has to show deficiency as well as a prejudice in an ineffective assistance of counsel claim. Your Honor, the State would argue that Ms. Swanger's testimony is completely incredible.

She testified that she was never -- Your Honor, the record reflects that the judge did tell her that she was -- to plan to serve day for day, fifteen years. She understood that she was entering into a negotiated plea. At no time did she tell the judge she wished to withdraw her plea or that she did not understand what day for day meant, Your Honor.

Further, trial counsel testified that he never advised her that she would be parole eligible within a certain amount of time. He told her 85 percent, but he never made any promises to her concerning parole eligibility. And regardless of what he informed her of, that was cured by the trial -- by the plea judge's colloquy.

Further, she's shown no prejudice in this case, Your Honor. As you can glean from the guilty plea transcript, as well as from Mr. Seaton's testimony, there was overwhelming evidence against her. She provided a

Brittany Swanger v State of S. C.  
Post Conviction Relief Hearing-Closing Argument by Ms. Olive  
April 17, 2017

1 statement. There were co-defendants as well. She in  
2 this particular case, the facts of the case, she was the  
3 person who acted as a person -- excuse me as an employee  
4 of the victim's attorney to gain entry into his home. At  
5 which point they, you know, asked for the victim to open  
6 his safe. He eventually complied and it eventually led  
7 to the murder of the victim, Your Honor.

8 She denied having -- she denied knowing that the  
9 murder was going to take place, but regardless she was  
10 involved in these actions that led to the murder. She  
11 knew that they were planning to rob him. And, it's our  
12 position there's overwhelming evidence against her in  
13 this case, so her testimony in this case where she would  
14 have chosen to proceed to trial on a murder charge where  
15 she was facing 30 years to life versus taking this  
16 negotiated plea where she received fifteen years;  
17 especially where her attorneys were able to obtain the  
18 favorable statement from the victim's brother in this  
19 case which helped to reduce the sentence she was facing.

20 As Mr. Seaton testified, the State was unwilling to  
21 offer anything less than thirty years and they were able  
22 to obtain a more favorable plea offer -- a negotiated  
23 plea offer of fifteen years. So, it's our position that  
24 her testimony that she would have proceeded to trial but  
25 for this alleged erroneous advice concerning parole

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Post Conviction Relief Hearing-Closing Argument by Ms. Olive  
April 17, 2017

1 eligibility is incredible. So, it's our position that  
2 she has failed to show either deficiency or prejudice.

3 THE COURT: Thank you, Ms. Olive.

4 MS. OLIVE: Thank you.

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Brittany Swanger v State of S. C.  
Post Conviction Relief Hearing-Ruling by The Court  
April 17, 2017

1 RULING

2 BY THE COURT:

3 The court agrees with the position taken by the  
4 Attorney General in this case and doing so notes on page  
5 15 of the transcript indirectly referred to by -- during  
6 this hearing, but the trial judge describing to the  
7 defendant, the applicant, about the consequences and the  
8 sentence specifically says: You should plan to serve  
9 that day for day. Do you understand? The answer was  
10 yes.

11 Again, on page 20, the court once again says  
12 addressing Ms. Swanger: The next fifteen years of your  
13 life are going to be in the Department of Corrections. I  
14 just don't see that it's -- I find that the applicant has  
15 failed to meet applicant's burden of proof. Ms. Olive,  
16 will you please prepare the order.

17 MS. OLIVE: Thank you, Your Honor.

18 MR. BOOZER: Thank you, Your Honor.

19 \*\*\*\*\*END OF TRANSCRIPT OF RECORD\*\*\*\*\*  
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Brittany Swanger v State of S. C.  
Post Conviction Relief Hearing-Certificate of the Court Reporter  
April 17, 2017

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official  
Circuit Court Reporter for the Ninth Judicial Circuit of  
the State of South Carolina, do hereby certify that the  
foregoing is a true, accurate, and complete Transcript of  
Record of the proceedings had and evidence introduced in  
the trial of the captioned case, relative to appeal, in  
the Court of Common Pleas for Berkeley County, South  
Carolina on the 17<sup>th</sup> day of April, 2017.

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

June 26, 2017



Joyce C. Rueger, CVR-M  
Court Reporter

 COPY

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

Brittany Lyn Swanger, SCDC No. 363443,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2016-CP-08-0190

ORDER OF DISMISSAL

CLERK OF COURT  
BERKELEY COUNTY, S.C.

17 SEP 20 PM 4:09

*[Handwritten signature]*

This matter comes before the Court by way of an application for post-conviction relief filed January 26, 2016, by Brittany Lyn Swanger (Applicant). Respondent made its Return on June 13, 2016, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened April 17, 2017, at the Berkeley County Courthouse. Applicant was present at the hearing and represented by Lance S. Boozer, Esquire. Assistant Attorney General Alicia Olive from the South Carolina Attorney General's Office appeared on behalf of the State. At the conclusion of the hearing, this Court denied the application from the bench. This order follows.

#### PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. During its September 2012 term of court, the Berkeley County Grand Jury indicted Applicant for murder (2012-GS-08-1693). Grover Seaton, III, Esquire, represented her. Assistant Solicitor Anne Williams prosecuted the case on behalf of the State. By plea agreement signed by Applicant, her counsel, and the prosecuting Assistant Solicitor and filed on March 20, 2013, Applicant agreed to assist the State in the prosecution of her co-defendants in exchange for

*[Handwritten signature]*

a guilty plea for a negotiated term of thirty years imprisonment. Thereafter, the State and Applicant reached a new plea agreement in which Applicant agreed to plead guilty to the lesser-included offense of fifteen years imprisonment in exchange for a negotiated term of fifteen years imprisonment.

On March 25, 2015, Applicant appeared in the Berkeley County Court of General Sessions before the Honorable Kristi L. Harrington, circuit court judge, and pled guilty to the lesser-included offense of voluntary manslaughter. At the hearing, Applicant informed the plea court she understood she could receive a sentence between two years to thirty years for voluntary manslaughter and that she understood and expected to serve every day of her fifteen year negotiated sentence. (Plea Tr. 5-6). Applicant told the plea court she was "very greatly" satisfied with counsel's services and had no complaints as to the manner in which he handled her case. (Plea Tr. 9). Counsel told the plea court he had informed Applicant she should expect to serve eight-five percent of her sentence before becoming parole eligible unless something substantial occurred. (Plea Tr. 18). Pursuant to negotiations between Applicant and the State, Judge Harrington sentenced Applicant to fifteen years imprisonment and informed her again that "[t]he next fifteen years of your life are going to be in the department of corrections." (Plea Tr. 20-21). Applicant did not appeal her guilty plea or sentence.

#### **FACTUAL HISTORY**

These charges arise from the home invasion and subsequent murder of a seventy-one year old victim. Applicant and two co-defendants spent the evening of July 14, 2012, smoking crack cocaine in a motel room. When they ran out of crack cocaine and money, Applicant and her co-defendants decided to rob the victim, of whom they were aware through mutual friends and knew



kept a large amount of money in his home. Then they drove to the victim's home in Hannahan, where they tricked him and gained entry into his home by Applicant pretending to be a legal secretary for his attorney. Once inside, they demanded access to his safe until the victim eventually acquiesced. At some point, they decided to kill the victim and they tie the victim's hands behind his back with duct tape, bind his legs, and secure a plastic bag over his head with duct tape; thereafter, the victim suffocated to death. (Plea Tr. 9-12).

Applicant came forward very quickly and agreed to cooperate with the State. She provided law enforcement with "very valuable information about the crime" and gave statements implicating herself and her co-defendants in the murder. (Plea Tr. 12-13). At the plea hearing, Applicant agreed with the facts as presented by the State. (Plea Tr. 14).

#### ALLEGATIONS RAISED

In his application, Applicant alleged she is being held in custody unlawfully based on allegations of:

- 1) "I was up for 7 days high on crack prior to the crime."
- 2) "Randy Clarke threatened my life when I told him he shouldn't kill [the victim]."
- 3) "I was high on crack at the time of the crime."
- 4) "When police questioned me I was forthcoming and cooperative."
- 5) "Given the solicitor said I was instrumental in putting Robert and Randy in prison."
- 6) "The victim[']s son was against me getting a lot of time."
- 7) "My lawyer lied to me and told me I'll be eligible for parole next year."

At the start of the evidentiary hearing, Applicant only proceeded forward on the allegation that her counsel misadvised her about parole eligibility and abandoned all other grounds for relief.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on her own behalf. Applicant testified at the time of her guilty plea, she thought she would be eligible for parole shortly after entering the Department of Corrections. She testified she has since learned she is not eligible for parole and her release date is in 2025. (PCR Tr. 6-7). She testified plea counsel gave her the following information regarding parole eligibility:

He told me that I had to do a quarter of my time before I was eligible for parole and then whenever I went in front of a parole board to tell them -- they were going to ask me if I felt any remorse for my crime and he told me to tell them that I didn't do it, that I was just there and that's what I should tell the parole board because he was telling me I was eligible for parole.

(PCR Tr. 6-7). She elaborated counsel told her she would be eligible for parole in 2016 based on her pre-trial detention. (PCR Tr. 8-9). She testified this conversation took place "probably a month or so before [she] actually went to court." (PCR Tr. 7). She then qualified her previous testimony and said counsel "insinuated that [she] was eligible for parole." (PCR Tr. 7). She testified she was still under the assumption that she is was eligible for parole despite the plea court telling her she should be prepared to serve her entire sentence. (PCR Tr. 7-8). Applicant testified she would not have pled guilty if she knew she would not be eligible for parole. (PCR Tr. 7-8).

Applicant testified the plea court told her she should be prepared to serve every day of her fifteen year sentence and acknowledged this was a negotiated guilty plea. (PCR Tr. 10-11). She also acknowledged she was facing thirty years to life imprisonment for murder and two years to thirty years imprisonment for voluntary manslaughter. (PCR Tr. 10). She testified she

discussed her case and the State's evidence with counsel and that she agreed with the State's recitation of facts at her guilty plea. (PCR Tr. 11). She testified she told the plea court she was satisfied with counsel, but explained she was still under the assumption she would be parole eligible. (PCR Tr. 11). She acknowledged the plea court told her voluntary manslaughter is a violent and most serious offense, but she did not understand the consequences of those classifications. (PCR Tr. 11-13).

Plea counsel Grover Seaton, III, testified next. He testified he took this case over from a local appointed attorney who did not practice criminal defense. (PCR Tr. 15). He testified Applicant and the State entered into a written agreement allowing her to plead to the lesser-included offense of voluntary manslaughter. (PCR Tr. 15). He testified the prosecutor was adamant on a thirty year sentence until the victim's family asked for leniency for Applicant and then the State agreed to reduce the negotiated sentence to fifteen years. (PCR Tr. 15, 18). Counsel testified this case could have easily been a death penalty case and he feels like he saved her life. (PCR Tr. 15). He testified he met with Applicant numerous times and explained all the risks and benefits of pleading guilty versus proceeding to trial, as well as the State's evidence. (PCR Tr. 16). He testified there was an abundance of evidence implicating Applicant and he co-defendants, including Applicant's statements to law enforcement, and proceeding to trial would have been "very deleterious." (PCR Tr. 17, 20). He testified Applicant's primary concern was minimizing her sentence and trying to make something of her life once released. (PCR Tr. 17-18).

Counsel testified he advised Applicant the plea offer was for a negotiated fifteen year sentence and that she would not be eligible for release until she served at least eight-five percent



of her fifteen year sentence. (PCR Tr. 19-20, 22). He adamantly denied making Applicant any promises regarding parole eligibility or advising her she would be eligible for relief after serving one-quarter of her sentence. (PCR Tr. 19-23).

#### **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 hearings. 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. Specifically, this Court finds plea counsel's testimony credible and finds Applicant's testimony not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).



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

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant has failed to carry her burden in this action. Applicant alleges plea counsel was ineffective for misadvising her that she would be eligible for parole after serving one-quarter of her sentence. The record clearly refutes this allegation. During her guilty plea, the plea court repeatedly advised Applicant she should expect to serve every day of her fifteen year sentence and Applicant indicated to the court that she understood. (PCR Tr. 5-6, 20-21). Additionally, Counsel told the plea court he had informed Applicant she should expect to serve eight-five percent of her sentence before becoming parole eligible unless something substantial occurred. (Plea Tr. 18). Moreover, counsel's credible testimony also refutes this allegation. Counsel unequivocally testified he advised Applicant she would not be eligible for early release until she had served eighty-five percent of her fifteen year sentence and adamantly denied he ever advised her that she would be



eligible for early release after serving one-quarter of her sentence. (PCR Tr. 19-23). This Court finds counsel properly advised Applicant regarding parole eligibility and the anticipated time she would be required to serve within the Department of Corrections.

The Court finds plea counsel adequately conferred with Applicant, reviewed all pertinent discovery materials with Applicant, was able to secure an extremely favorable plea negotiation on Applicants behalf despite the horrific circumstances of the crime, and fully advised Applicant of all aspects of her guilty plea. Ultimately, this Court finds plea counsel was thoroughly competent in his representation of Applicant and in his advice to Applicant that a guilty plea was in her best interest. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

#### CONCLUSION

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

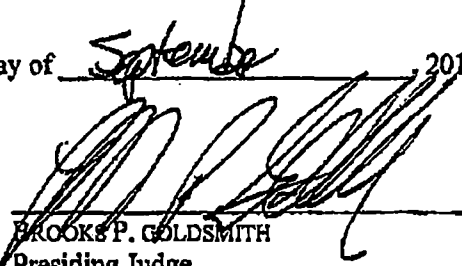
This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's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



**IT IS THEREFORE ORDERED:**

1. This application for post-conviction relief must be denied and dismissed with prejudice; and
2. Applicant Brittany Lyn Swanger (SCDC No. 363442) shall remain in the custody of the State.

AND IT IS SO ORDERED this 11 day of September, 2017.

  
BROOKS P. GOLDSMITH  
Presiding Judge  
Ninth Judicial Circuit

\_\_\_\_\_, South Carolina

AMW2012-07-01146

## WITNESSES

Hanahan Police Department

AGENCY CASE NUMBER

201227996

ARREST WARRANT NUMBER

2012A0820300026

DATE OF ARREST

July 19, 2012

ACTION OF GRAND JURY

True Bill

Person of Grand Jury  
Date: 9-19-12

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS0801694

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

September Term 2012

THE STATE

Vs

BRITTANY LYN SWAGNER

DOB [REDACTED]

W/F

Indictment for

Murder

MAJESTY COURT  
CLERK OF COURT  
BERKELEY COUNTY, S.C.  
12 SEP 19 PM 12:12

FILED

48

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BERKELEY )

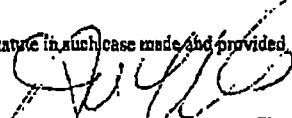
INDICTMENT

At a Court of General Sessions, convened on September 19, 2012 the Grand Jurors of Berkeley County present upon their oath:

Murder

That Brittany Lyn Swagner did in Berkeley County on or about July 15, 2012, willfully, knowingly, unlawfully, and with malice aforethought, kill one Roy Bennett in concert with others by means of Asphyxiation with a plastic bag and that Roy Bennett did die as a proximate result thereof in Berkeley County on or about July 15, 2012; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

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

  
 ANNE M. WILLIAMS  
 ASSISTANT SOLICITOR