

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Dillon County

Honorable Roger E. Henderson, Circuit Court Judge

RECEIVED

FEB 21 2017

S.C. SUPREME COURT

ISAIAH MARCUS BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001417

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

ALAN WILSON
Attorney General

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

CAITLIN BAZAN HASTINGS
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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ORIGINAL

1

STATE OF SOUTH CAROLINA)
COUNTY OF DILLON) COURT OF GENERAL SESSIONS

State of South Carolina,)
PLAINTIFF,)
-VS-)
Isiah Marcus Brown,)
DEFENDANT.)
_____)

GUILTY PLEA
2010-GS-17-494
2010-GS-17-616
2010-GS-17-617
2010-GS-17-618

BEFORE THE HONORABLE HOWARD P. KING, JUDGE

AUGUST 8, 2011

DILLON, SOUTH CAROLINA

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

Daniel Shipp, Esq.
For the State

William Grove, Esq.
For the Defendant

REMA K. GANTT THOMAS
CIRCUIT COURT REPORTER

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E X H I B I T S

THERE WERE NO EXHIBITS MARKED TO THIS PROCEEDING.

1 (The defendant, together
2 with counsel, was personally present in the
3 courtroom.)

4 THE COURT: All right, Mr. Grove, I
5 believe there has been a change in the defendant's
6 position and that he wishes to change his plea, is
7 that correct?

8 MR. GROVE: That's correct, Your Honor.

9 THE COURT: All right, do you have the
10 sentencing sheets, Mr. Daniel?

11 MR. SHIPP: Yes, sir.

12 THE COURT: Come around, please.

13 All right, Mr. Daniel, tell me what the
14 situation is with regard to the matter. Is the
15 defendant going to plead to all charges or any
16 change in the charges or any lesser charges, or is
17 he going to plead as indicted?

18 MR. SHIPP: Your Honor, Mr. Brown has
19 several other indictments from things that happened
20 at the jail after he was arrested on these charges.
21 He is only pleading to the four charges resulting
22 from the murder, and he is pleading straight-up as
23 indicted.

24 THE COURT: All right. And what about the
25 other charges? Are they going to be still there?

1 MR. SHIPP: They're still going to be
2 there for now. Mr. Grove and I actually haven't
3 even discussed that, because this has been our
4 focus.

5 THE COURT: All right.

6 All right, Mr. Grove, you've heard the
7 Solicitor announce that Mr. Brown now wishes to
8 plead guilty as indicted without negotiations. Is
9 that what you understand the situation to be?

10 MR. GROVE: That's correct, Judge.

11 THE COURT: And you've explained to him
12 the charges contained in the indictments, the
13 possible punishment, his constitutional rights,
14 including his right to a jury trial, is that
15 correct?

16 MR. GROVE: I certainly have.

17 THE COURT: And in your opinion, does he
18 understand those things?

19 MR. GROVE: I believe so, Judge.

20 THE COURT: And he's indicated to you that
21 he wishes to plead guilty?

22 MR. GROVE: Yes, Judge.

23 THE COURT: Do you agree with that
24 decision?

25 MR. GROVE: I do.

1 THE COURT: All right, you're Isiah Marcus
2 Brown. I know that, of course, Mr. Brown, because
3 we've gone through the process of selecting a jury
4 and have the jury ready to go forward with your
5 case. But before I can accept your plea of guilty,
6 I need to ask you a number of questions.

7 If you don't understand the questions or
8 the words I use, you tell me. I'll be glad to
9 explain them to you. You may talk with your lawyer
10 at any time as we go through this process. You
11 understand that?

12 MR. BROWN: Yes, sir.

13 THE COURT: How old are you?

14 MR. BROWN: Eighteen.

15 THE : And how far did you go in
16 school?

17 MR. BROWN: About 11th grade.

18 THE COURT: Have you ever been treated for
19 the abuse of alcohol or drugs or for mental illness?

20 MR. BROWN: No, sir.

21 THE COURT: Have you taken any medication,
22 drugs, or alcohol in the last 24 hours?

23 MR. BROWN: No, sir.

24 THE COURT: Are you today under the
25 influence of any medication, drugs, or alcohol?

1 MR. BROWN: No, sir.

2 THE COURT: Are you today aware of any
3 physical, emotional, or nervous problem that would
4 prevent you from understanding what you're doing
5 here today?

6 MR. BROWN: No, sir.

7 THE COURT: You heard your attorney tell
8 me that he has explained to you the charges against
9 you, the possible punishment, and your
10 constitutional rights and that you understand these
11 things. Is that correct?

12 MR. BROWN: Yes, sir.

13 THE COURT: All right, let's take a look
14 at each one of these indictments and talk about each
15 one individually. First of all, Indictment Number
16 2010-GS-17-494 is an indictment for murder.

17 And it charges that you did in Dillon
18 County on or about March 22, 2010, willfully,
19 feloniously, and intentionally kill Benny Anderson
20 with malice aforethought, and the charge is one of
21 murder. Do you understand that charge?

22 MR. BROWN: Yes, sir.

23 THE COURT: Do you understand that for
24 that offense that you can get from 30 years to life?

25 MR. BROWN: Yes, sir.

1 THE COURT: The next indictment is an
2 indictment for armed robbery and charges that you
3 did also on that same date, March 22, 2010, while
4 armed with a deadly weapon, take and carry away the
5 personal property of Benny Anderson from or in the
6 immediate presence of Benny Anderson, and the charge
7 is one of armed robbery. Do you understand that
8 charge?

9 MR. BROWN: Yes, sir.

10 THE COURT: Do you understand that for
11 that offense, you can from 10 years to 30 years in
12 prison?

13 MR. BROWN: Yes, sir.

14 THE COURT: You understand, of course,
15 that both murder and armed robbery are considered
16 most serious offenses, which means that if you were
17 to get out of prison at some point in time and you
18 were to have another most serious offense that you
19 would be facing mandatory life in prison. You
20 understand that?

21 MR. BROWN: Yes, sir.

22 THE COURT: Also, they are considered
23 violent offenses, and I'm sure Mr. Grove has
24 explained to you what is meant by violent offenses.
25 Is that correct?

1 MR. BROWN: Yes, sir.

2 THE COURT: Also charged with the
3 indictment is the crime of possession of a weapon
4 during the commission of a violent crime, on that
5 same date that you did have in your possession
6 either a knife or a gun, and it was possession of a
7 pistol or possession of a firearm during the
8 commission of a violent crime. Do you understand
9 that?

10 MR. BROWN: Yes, sir.

11 THE COURT: And I haven't looked it up,
12 but my recollection is that that's a five-year
13 offense. Do you agree with that?

14 MR. GROVE: Yes, sir.

15 MR. SHIPP: Yes, Judge. I believe now it
16 has been amended that it can be sentenced
17 concurrently or consecutively. Previously, it was
18 mandatory consecutive. But under the new law --

19 THE COURT: Yes.

20 Do you understand that that crime carries
21 up to five years in prison? You understand that?

22 MR. BROWN: Yes, sir.

23 THE COURT: And, finally, the final
24 indictment is Indictment Number 2010-GS-17-616, and
25 it charges that you, along with another, did engage

1 in a criminal conspiracy to commit a violent crime,
2 that is, the crime of armed robbery. And that is a
3 charge of conspiracy for which you could get up to
4 five years in prison. You understand that?

5 MR. BROWN: Yes, sir.

6 THE COURT: All right, now, Mr. Brown,
7 when you plead guilty, you give up important
8 constitutional rights. You give up your right to
9 remain silent, that is, your right against self-
10 incrimination, your right to say nothing at all.

11 You cannot be compelled to testify and
12 provide evidence against yourself. You give up your
13 right to have a jury trial, that is, your right to
14 have a jury decide whether or not you're guilty
15 beyond a reasonable doubt.

16 The jury would base their decision upon
17 evidence which the State presents and on any
18 evidence which you might wish to introduce. In a
19 trial, you would be presumed innocent, and the State
20 would have to produce evidence that would convince
21 all 12 members of the jury of your guilt beyond a
22 reasonable doubt.

23 Third, you give up your right to confront
24 the witnesses against you, that is, the right to
25 require the witnesses against you to come into court

1 and testify, have your lawyer cross-examine those
2 witnesses, and the right to subpoena and call
3 witnesses on your own behalf. You understand those
4 constitutional rights?

5 MR. BROWN: Yes, sir.

6 THE COURT: Do you understand that when
7 you plead guilty, you waive or give up those
8 constitutional rights and there will not be a jury
9 trial?

10 MR. BROWN: Yes, sir.

11 THE COURT: Understanding, then, the
12 nature of the charges against you as I have outlined
13 them to you and the consequences of a guilty plea,
14 how do you wish to plead to these charges, guilty or
15 not guilty?

16 MR. BROWN: Guilty.

17 THE COURT: Do you understand that when
18 you plead guilty, you are admitting the truth of the
19 charges against you?

20 MR. BROWN: Yes, sir.

21 THE COURT: Now, you may have defenses to
22 these charges. I don't know whether you do or not.
23 Do you understand that if you plead guilty, you
24 waive or give up any defenses that you may have to
25 these charges?

1 MR. BROWN: Yes, sir.

2 THE COURT: You also may have given an
3 incriminating statement in this case. Again, I
4 don't know whether you have or not. But do you
5 understand that when you plead guilty, you waive or
6 give up your right to contest or challenge whether
7 or not that statement was freely and voluntarily
8 given in accordance with your constitutional rights?

9 MR. BROWN: Yes, sir.

10 THE COURT: Now, in your case, the jury
11 has already been selected. We have got them coming
12 back tomorrow if we need them. Do you understand
13 that if you plead guilty that that jury will be
14 excused and will not take any part in the decision
15 in this case?

16 MR. BROWN: Yes, sir.

17 THE COURT: But that they are here and can
18 hear the evidence in this case and make a decision,
19 if that's what you want. You understand that?

20 MR. BROWN: Yes, sir.

21 THE COURT: And you are waiving your right
22 to a jury trial, is that correct?

23 MR. BROWN: I'm pleading guilty, sir.

24 THE COURT: Sir?

25 MR. BROWN: I'm pleading guilty, sir.

1 THE COURT: Okay, all right. And the
2 State has advised me that there are no plea
3 negotiations in this matter. Has anyone promised
4 you anything or held out any hope of reward to get
5 you to plead guilty?

6 MR. BROWN: No, sir.

7 THE COURT: Has anyone threatened you or
8 used force to get you to plead guilty?

9 MR. BROWN: No, sir.

10 THE COURT: Has anyone used any pressure
11 or intimidation to cause you to plead guilty?

12 MR. BROWN: No, sir.

13 THE COURT: Have you had enough time to
14 make up your mind as to whether or not you wanted to
15 plead guilty?

16 MR. BROWN: Yes, sir.

17 THE COURT: And are you pleading guilty of
18 your own free will and accord?

19 MR. BROWN: Yes, sir.

20 THE COURT: You're represented in this
21 case by Mr. Grove. Are you satisfied with the
22 manner in which Mr. Grove has advised and
23 represented you?

24 MR. BROWN: Yes, sir.

25 THE COURT: Have you talked with him for

1 as often and as g as you feel necessary for him
2 to properly represent you?

3 MR. BROWN: Yes, sir.

4 THE COURT: Do you need any more time to
5 talk with Mr. Grove?

6 MR. BROWN: No, sir.

7 THE COURT: Have you understood your talks
8 with him?

9 MR. BROWN: Yes, sir.

10 THE COURT: Has he done everything for you
11 that you feel he could have or should have done on
12 your behalf?

13 MR. BROWN: Yes, sir.

14 THE COURT: Has he done anything you feel
15 he should not have done?

16 MR. BROWN: No, sir.

17 THE COURT: Is that a "no"?

18 MR. BROWN: Yes, sir.

19 THE COURT: Let me ask you that question
20 again. Has he done anything you feel he should not
21 have done?

22 MR. BROWN: No, sir.

23 THE COURT: Okay. And you're completely
24 satisfied with his services?

25 MR. BROWN: Yes, sir.

1 THE COURT: Do you have any complaint that
2 you want to make about your lawyer, the Solicitor,
3 or any of the police officers?

4 MR. BROWN: No, sir.

5 THE COURT: Have you understood my
6 questions?

7 MR. BROWN: Yes, sir.

8 THE COURT: Have your answers to me been
9 truthful?

10 MR. BROWN: Yes, sir.

11 THE COURT: Is there anything you would
12 like to ask me about what we've been over?

13 MR. BROWN: No, sir.

14 THE COURT: And do you understand that you
15 have the right to appeal the guilty plea and
16 sentence of the Court and that you must do so within
17 10 days?

18 MR. BROWN: Yes, sir.

19 THE COURT: All right, Mr. Solicitor, you
20 want to give me the facts or background, please?

21 MR. SHIPP: Thank you, Your Honor, may it
22 please the Court. And, Your Honor, I'd ask for some
23 patience. This is going to take a minute.

24 It's important that the Court understand
25 the full realm of what took place here. And please

1 keep in mind, Judge, as I'm telling you what
2 happened, the facts as we understand them came from
3 this defendant and one other defendant and by way of
4 their statements.

5 On the evening of March 22, 2010, Isiah
6 Brown, Matthew Cade, and Mikal Bethea conspired to
7 rob a drug dealer at Dover Village Apartments. It
8 is our belief that Isiah Brown provided the gun that
9 was to be used in that armed robbery and was
10 subsequently used in the murder.

11 The three young men go to Dover Village
12 Apartments. They know what apartment they're going
13 to. This guy's a drug dealer that at least one of
14 them had had some dealings with in the past.

15 The plan was for Matthew Cade to knock on
16 the door. The drug dealer knew him best of the
17 three. Isiah Brown and Mikal Bethea were around the
18 corner. The plan was for them to barge in whenever
19 the drug dealer opened the door.

20 At this point, it is our belief that Isiah
21 Brown had the gun. The drug dealer never came to
22 the door when the door was knocked on, so that plan
23 fell through. At that point, Benny Anderson, Jr., a
24 victim in this murder case who was known as BJ to
25 his family and friends, pulled up in a fairly nice

1 car with rims on it.

2 He was coming to Dover Village Apartments
3 to see a friend of his, Elise Wheeler, who was is
4 known as Lisa. The car backed into one of the
5 parking spaces there at the apartment complex. Lisa
6 came down, sat in the passenger seat, and they were
7 talking.

8 They sat there for 15 or 20 minutes
9 talking, BJ and Lisa. At some point when they were
10 pulling in or shortly after BJ had pulled his car
11 into the apartment complex, we believe Mikal Bethea
12 said -- we believe Mikal, who, again, is one of the
13 defendants here, said, "Well, let's go hit that guy
14 and run his pockets, see what he's got."

15 That plan was hatched. All three --
16 according to the statements, all three agreed that
17 they would rob BJ. The statements tell us that at
18 that time, after they figured out that the doors
19 were unlocked because someone else had approached
20 the car to say hello to somebody and they opened the
21 door, Mikal took the gun from Isiah.

22 Mikal and Isiah approach -- I'm sorry,
23 Mikal approaches the driver's side door. Matthew
24 Cade, the plan was for him to go to the driver's
25 side also, but he didn't. He just kind of stayed

1 back behind the car a little ways.

2 Isiah Brown went to the passenger's side
3 to make sure she couldn't get out of the car. At
4 that point, the door was opened. Mikal pointed the
5 gun at BJ. He ran his pockets. He took five
6 dollars from him. He then asked for his wallet.

7 BJ gave up the wallet. They looked
8 through the wallet and didn't find anything in it,
9 so they threw it down in the parking lot, at which
10 time Mikal told BJ to get out of the car. BJ said,
11 "I don't have any reason to get out of the car. I'm
12 not getting out of the car."

13 And it was at that time that Mikal fired
14 two shots, hitting BJ. Both shots ultimately caused
15 his death a little while later at the hospital. The
16 three boys then run away. They shake hands, say
17 "See you tomorrow," and they separate.

18 They were all three arrested the next day
19 without incident, and I will tell you that now is a
20 good time to say that James Hayes with the Dillon
21 Police Department, he was the investigating officer
22 on the case.

23 The police department, the Sheriff's
24 Department, and SLED all contributed to this
25 investigation, and they all did a fine job. It's

1 unfortunate, of course, that they had to conduct
2 such an investigation, but they did their duty and
3 they did it well.

4 The investigation continued. Obviously,
5 the gun was a target of their investigation. A
6 juvenile named Shaquille Crowley was incarcerated at
7 DJJ for some totally unrelated crimes here in Dillon
8 County. Mr. Crowley was here about 10 days after
9 this happened.

10 He was being interviewed on these other
11 crimes, and he said, "I know something about Isiah
12 Brown's case." Isiah Brown at the time was a
13 juvenile. So, of course, he was being held at DJJ
14 in Columbia and had run into Mr. Crowley.

15 Mr. Crowley wrote a statement saying that
16 Isiah Brown had hidden the gun used in this murder
17 in the attic of his grandmother's house. Also
18 throughout the course of the investigation, I
19 actually received two letters from inmates at the
20 jail, one letter per inmate.

21 And these letters said that Isiah Brown
22 confessed to actually pulling the trigger in the
23 case. And both of these letters gave exquisite
24 detail, and this is stuff that had I chosen to call
25 them, this would have come out at trial.

1 They have very detailed information as to
2 the crime, where it happened, what color the car
3 was. They actually said that Isiah told them that
4 he had wiped the gun down for prints with a green
5 bandanna, wrapped the gun in that green bandanna.
6 He said that he put the bullets -- the left-over
7 bullets -- in a stocking cap and wrapped those up,
8 and they were in the attic of the house.

9 Well, law enforcement took that
10 information, got a search warrant for the house,
11 found the gun in the attic wrapped in a green
12 bandanna, just like we were told it was going to be.
13 And the bullets were wrapped in a stocking cap, just
14 like we were told it was going to be.

15 I will say that Mr. Brown did give a
16 statement initially to the police wherein he was, I
17 believe, mostly truthful with what had happened. He
18 then contacted law enforcement, asked them to go to
19 Columbia to give another statement, and he did that.

20 At that time, that was a video statement
21 that lasted about 56 minutes. He was mostly honest
22 in that interview. He was not honest about the
23 whereabouts of the gun. At this point, law
24 enforcement already had the gun.

25 He didn't know that, but law enforcement

1 already had the gun. He still denied knowing
2 anything about the gun, denied bringing it, denied
3 knowledge of its whereabouts.

4 During that interview, he gave some
5 information pertaining to the gang that he's in. He
6 talked about some ranking things. He talked about
7 how they wore bandannas. He talked about the colors
8 of the bandannas, what they mean.

9 He went into some detail about those
10 things. Your Honor, it is important that I say here
11 that this victim, Benny Anderson, Jr., was 19 years
12 old. He had never been in any trouble. He had
13 graduated from Mullins High School, wasn't even from
14 here, didn't know anybody here.

15 Well, he knew a few people, but he didn't
16 hang out here. He was about to start with the
17 Marines, and obviously his life was significantly
18 cut short. And, Your Honor, I don't need to tell
19 you how serious this is.

20 The State was prepared to proceed in this
21 case under the accomplice liability hand of one
22 theories. And obviously we believe we would have
23 been successful. The reason that there is no offer
24 in this case is simple.

25 This is a murder case that doesn't deserve

1 an offer. How d you put a number on -- how do you
2 put a number of years for punishment on somebody's
3 life? Who's to say, had Isiah Brown not brought
4 this gun, not introduced this gun to these three,
5 maybe we wouldn't be standing here today?

6 We don't know. What we do know is that we
7 have a victim who is no longer with us, and we have
8 a victim's family who is with us, and they've got to
9 deal with this. With me today is Benny Anderson,
10 Sr., BJ's father; his sister, Marqueta; and his
11 mother, Delores. And they would like to be heard at
12 the appropriate time.

13 THE COURT: All right, sir.

14 Give me just a minute. Let me take care
15 of a couple of matters, and I'll get right back with
16 you, okay?

17 All right, the Court finds that there is a
18 substantial factual basis for the pleas in all four
19 cases, that is, in the murder, the armed robbery,
20 the conspiracy, and the possession of a weapon
21 during the commission of a violent crime.

22 I find that the defendant has freely,
23 voluntarily, knowingly, and intelligently entered
24 into these pleas, that he has been advised by
25 counsel with whom he says he is satisfied, and the

1 Court will accept the pleas.

2 Now let me address the victims just a
3 minute. I want to tell you, first of all, that
4 there is nothing that the Court can really do today
5 that will make your loss any easier. I do hope that
6 these proceedings today will bring some closure to
7 the matter for you.

8 I will also tell you that as the family of
9 the victim in this case, you have the right, of
10 course, to be kept advised of everything that's
11 going on under the Victim's Rights Act. And I'm
12 sure the Solicitor's Office has kept you advised of
13 what's going on with this matter.

14 You also have the right to be present
15 whenever there's anything in court that deals with
16 this matter, and you have the right to address the
17 Court. So I will be glad to hear from you. And if
18 there's anything that you would like to tell you, if
19 you'll just your name to your Court Reporter, I'll
20 be glad to hear from you, all right.

21 MS. ANDERSON: My name is Delores
22 Anderson. I'm the mother of Benny Anderson. And I
23 just wanted to say that I miss my son so much. It's
24 been hard, and it's still hard. It's been over a
25 year, and it's still hard.

1 But I st want to say that I just hope
2 justice is done so I can have some closure for my
3 son. I go every day just about to the graveyard
4 just to talk to him. It's so hard. But I just -- I
5 just want some good, because nobody has to go
6 through something like this.

7 It's so hard for everybody, anybody. My
8 family, it's hard for them, too. My family was
9 here, but they left because they didn't think they
10 was going to get to it today. But I just want some
11 justice, that's all.

12 THE COURT: Okay, thank you.

13 Yes, sir?

14 MR. ANDERSON: My name is Benny Anderson
15 the first. I sadly miss my son. I'm sorry that he
16 had to die over four or five dollars. He had a
17 bright future ahead of him. It was snatched from up
18 under him for no reason at all. I am just looking
19 for justice.

20 THE COURT: Okay, thank you, sir.

21 MR. SHIPP: That's it.

22 THE COURT: All right, thank you two for
23 being here. And as I told you, I certainly
24 empathize with your loss. And I do hope that these
25 proceedings will bring some closure to this matter

1 for you and you will be able to go forward.

2 Mr. Grove?

3 MR. GROVE: Thank you, Judge. I believe
4 the reason we went through the process of drawing a
5 jury today was largely in part because Isiah and I
6 for the past while have wrestled with the idea of
7 accomplice liability.

8 We were -- I certainly understand the
9 State's position with this plea, Judge. We were
10 hopeful for anything else. But things being as they
11 are, and the facts of the case being such, and the
12 law, especially the hand of one, hand of all
13 covering as much ground as it does, we weren't left
14 with many good options, none in fact, this
15 essentially being the lesser of two evils.

16 And before I get too far into it, don't
17 misinterpret anything that I say to undermine the
18 seriousness of the situation or the loss that I'm
19 sure the victim's family is feeling and continues to
20 feel. But hopefully a little perspective into
21 Isiah's life can be considered as well.

22 He is 18, as you heard, hasn't had much of
23 a childhood really. And he understands that largely
24 in part he has himself and his friends to blame for
25 that. He's been continuously incarcerated since

1 March 23, 2010.

2 He spent his 17th and 18th birthdays
3 there. He actually outgrew the clothes that he was
4 going to wear today while he sat in jail, because
5 he's young enough that he is enough continuing to
6 grow.

7 I think he and I have, as I said,
8 struggled with the idea that he was not the ultimate
9 perpetrator but is facing the exact same scenario as
10 the ultimate perpetrator. He essentially, Judge,
11 like I said, wishes that things weren't exactly as
12 they are but understands that, given his two
13 options, this is the better of the two.

14 His mother is here, as well as three of
15 his sisters, Pam, Alicia -- Amelia -- and Alice,
16 sorry. He has other family members who weren't able
17 to be here today. I have -- I would enjoy it more
18 if the outcome were different, but I have enjoyed
19 representing him.

20 He always has a smile on his face. He
21 always seems to be in a good mood despite always a
22 serious situation that we're dealing with. He's
23 very young, Judge, and I'm sure that if he had one
24 decision in his life to ever take back, it would be
25 anything that had to do with March 22, 2010.

1 I think that is pleading today, looking
2 for some element of mercy, some element of
3 compassion, some element of leniency, especially
4 considering the mandatory minimum carried on the
5 murder charge for which he is also entering a plea
6 today.

7 I don't routinely find myself at a loss
8 for words, but I am today. His mother or his
9 sisters may like to address the Court at the
10 appropriate time.

11 THE COURT: Yes, ma'am. Give me your
12 name.

13 MS. BROWN: My name is Mary Brown, and I'd
14 like to say one thing. I live by God. If you can
15 find it in your heart to forgive Isiah. Isiah knows
16 a mother don't appreciate -- I just lost my mother
17 six years ago. It hurts.

18 It's not a tragedy like y'all's, but it's
19 a hurt. Anytime you take something away -- a
20 anything with my son. If I was an angel, I would
21 put breath back into your son. If I could have went
22 to the graveyard, I would have put a -- from the
23 graveyard.

24 If I was Moses and had a staff, I would
25 part the Red Sea, and none of this would never

1 happen. If y'all can find forgiveness in your heart
2 to do. Isiah -- he is suffering now because he did
3 it, and I can understand. Thank you.

4 MS. BROWN: I would like to say something.

5 THE COURT: Give her your name, please.

6 MS. BROWN: My name is Amelia Brown.

7 Isiah is my brother. I love him. And when it comes
8 down to life and death as far as them losing their
9 son, you know, we still have our brother.

10 What I see is that generations and
11 legacies is still being cut off. You can't change
12 it, can't even apologize for something like that.
13 But just, you know, hopefully -- as far as like for
14 the other boys and, you know -- and everything.

15 But all I say is generations and legacies
16 is still being cut off. They have so much purpose,
17 so much potential, and they're blind to see and
18 realize what they've got in them. They have so much
19 potential.

20 Just like he said that his son had a
21 bright future, I feel my brother had one, too.
22 Throughout the choices and decisions and stuff that
23 they made, we can't change that. We can't. But the
24 only thing I can say to Isiah is encourage him and,
25 you know, that God will have mercy on him and the

1 Court will have mercy on him.

2 And I just continue to pray for that
3 family, their strength, because they hurt too, and
4 we're hurting too and the fact that this happened.
5 We really do from the depths of our soul, we hate
6 this because it should have been the other way
7 around. Something should have been changed.

8 Somebody could have had a better choice
9 and decision when it come down to their young life,
10 college and all this stuff. But I just pray for
11 them that even down to the next generation as far as
12 legacy and everything. All I see is just
13 generations and legacies is just being cut off.

14 THE COURT: Thank you. Anyone else?

15 MR. GROVE: Before we move on, Judge, I do
16 know that Isiah would like to address the Court at
17 the appropriate time. We're asking for the minimum.

18 THE COURT: All right, Mr. Brown, what
19 would you like to tell me?

20 MR. BROWN: I'm sorry for what happened.
21 And if I could go back, I'd rather me die than him.
22 I ain't knew he was going to kill him.

23 THE COURT: Let me ask you something, Mr.
24 Brown. Were you in a gang?

25 MR. BROWN: Yes, sir.

1 THE COURT: Why did you feel like it was
2 necessary for you to be in a gang?

3 MR. BROWN: Just running with the crowd,
4 sir.

5 THE COURT: Anything else, Mr. Grove?

6 MR. GROVE: Certainly nothing short of
7 senseless, Judge. I don't -- as you heard from
8 Isiah, I don't think that there was anything
9 heinous. Certainly a terrible situation and
10 needless without thought.

11 His age, his family background, the
12 seriousness of the charges and those other reasons
13 that I've already mentioned is why, again, we're
14 requesting the minimum of 30 years.

15 THE COURT: All right. Anything else from
16 the State, Mr. Daniel?

17 MR. SHIPP: Nothing, Your Honor.

18 THE COURT: Those that know me have heard
19 me say this before. But I said it when I first got
20 this job almost 16 years ago. My colleagues told me
21 that the most difficult thing that we would have to
22 do would be criminal sentencing.

23 Nothing in the past 16 years has changed
24 that view. I agree that this is the most difficult
25 thing that we have to do. And it's something that I

1 have never over 15, 16 years gotten comfortable
2 with, and I hope that I never get comfortable with
3 it because I think that if you get comfortable with
4 it, it means that you are not taking it seriously or
5 you don't care.

6 And that's not the case at all. But we
7 judges have no crystal ball. We can't see the
8 future. All we can do is listen to the facts as we
9 have heard them, and try to apply the law as we know
10 it, and use our experience and impose a sentence
11 that we think is correct under the circumstances.

12 Sometimes it doesn't satisfy anyone.
13 Rarely does it satisfy everyone. But it is
14 something that we have to do as a part of our job,
15 and it is not something that I take lightly.

16 SENTENCE OF THE COURT

17 I think that the defendant in this case is
18 entitled to some consideration because he is
19 pleading guilty to the crimes, and accepting
20 responsibility, and obviously is remorseful.

21 But the other side of the coin in this
22 case is that the minimum sentence might have been
23 appropriate if the individual who had been killed as
24 a result of this incident had been the drug dealer
25 who was involved in criminal activity and whom they

1 went to rob in the first place.

2 But that's not the case here. Here we
3 have a young man slightly older than this young man
4 but still a very young man who was completely
5 innocent, minding his own business, a completely
6 senseless killing.

7 I've also said this many times, that these
8 street guns are of great concern to me. If it
9 wasn't for the people out there on the street with
10 these guns that they picked up from somebody for
11 \$20, a lot of these instances wouldn't occur, or, if
12 they did, they would be a lot less serious.

13 But when they've got that street gun
14 involved, somebody gets killed, as happened in this
15 situation. And unfortunately it was apparently an
16 innocent, fine young man. I'm also troubled by the
17 fact that as the defendant in this case has admitted
18 to being a member of a gang and that gangs advocate
19 violence.

20 Having said that, I am going to impose a .
21 sentence to give him some consideration for the fact
22 that he did plead guilty and he's accepted
23 responsibility and apologized for it. But at the
24 same time, I've got to take into consideration the
25 surrounding circumstances, as I say, the killing of

1 a young man who was minding his own business, unlike
2 the drug dealer that they had gone to deal with and
3 like the fact that they were there with a gun that
4 wouldn't have resulted in a killing had that street
5 gun not been present.

6 I'm going to take these in reverse order
7 just because it's the easiest way to do it. But the
8 sentence on the conspiracy is five years to run
9 concurrent with the murder conviction. The sentence
10 on the possession of a weapon during the commission
11 of a crime is five years concurrent with the murder
12 conviction.

13 And the sentence on the armed robbery is
14 30 years concurrent with the murder conviction.
15 However, the sentence of the Court with regard to
16 the murder, taking everything into consideration on
17 both sides, including the defendant's admitting his
18 guilt and pleading guilty to the crime but also
19 taking into consideration that the victim was
20 innocent and was not involved in any kind of a crime
21 -- the sentence of the Court is that the defendant
22 is committed to the State Department of Corrections
23 for a term of 45 years to run concurrent all with
24 the other sentences.

25 MR. SHIPP: Thank you, Your Honor.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT, OFFICIAL COURT REPORTER, AND
NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH
CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF
THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE
ABOVE-CAPTIONED CASE ON AUGUST 8, 2011, IN DILLON,
SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL
NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF
ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS
OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND
AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE
NINTH DAY OF NOVEMBER, 2012.



REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 11/21/2013

1 State of South Carolina
2 County of Dillon Court of General Sessions

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4

5 State)
6)
7 v.) Transcript of Record
8) 10-GS-17-494
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March 7, 2012
Dillon, South Carolina

B E F O R E:

The Honorable Howard P. King, Judge.

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

W. Shipp Daniel, III, Assist. Solicitor
Attorney for the State

William E. Grove, Assist. Public Defender
Attorney for the Defendant

Stacy L. Sheppard, RPR
Circuit Court Reporter

1	I N D E X				
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3					
4					
5	(There were no witnesses.)				
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1	E X H I B I T S		
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EVD.</u>
3			
4			
5			
6	(There were no exhibits.)		
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1 (The following proceedings were held on
2 March 7, 2012.)

3 **THE COURT:** All right. Mr. Daniel, what's the
4 matter before the Court?

5 **MR. DANIEL:** Thank you, Your Honor. May it
6 please the Court. Before you is Isaiah Brown on
7 murder indictment 2010-GS-17-494. Your Honor, on
8 August the 8th, 2011, this Court sentenced Mr. Brown
9 to 45 years on murder, 30 years on armed robbery,
10 five years on possession of a weapon during the
11 commission of a violent crime and five years on
12 conspiracy as the result --

13 **THE COURT:** Concurrent?

14 **MR. DANIEL:** Yes, sir, concurrent. As a result
15 of a valid plea.

16 This is before you today on the defense motion
17 to reconsider that sentence, that, I believe, was
18 timely filed.

19 **THE COURT:** All right. The plea was entered on
20 August the 8th of 2011?

21 **MR. DANIEL:** Yes, sir, that's what my records
22 show.

23 **THE COURT:** All right. And, Mr. Grove, you
24 represent the defendant and represented him at the
25 plea as well?

1 **MR. GROVE:** I did, Judge.

2 **THE COURT:** Okay. And it's your motion for a
3 reconsideration of the sentence?

4 **MR. GROVE:** It is.

5 **THE COURT:** All right. Go ahead.

6 **MR. GROVE:** Judge, essentially, it's a motion
7 to reconsider not based on any law that I'm aware
8 of, not based on any case or statute. It's a motion
9 to reconsider based on equity, based on fairness and
10 based on circumstances that were present at the time
11 and circumstances that have arisen subsequent to
12 Isaiah's plea.

13 There were three defendants total charged in
14 this case. I don't think that there was any
15 evidence that suggested that at the time the
16 incident occurred that Isaiah Brown was the shooter.
17 I think that all of the evidence suggested that
18 Mikal Bethea was the actual shooter involved in this
19 case. Isaiah Brown and the other co-defendant,
20 whose name currently escapes me --

21 **THE COURT:** Refresh my memory as to the facts
22 and circumstances surrounding this homicide.

23 **MR. GROVE:** As the Solicitor presented them
24 back in August, Judge, the trial, the Solicitor's
25 case would have presented three co-defendants

1 conspiring to conduct an armed robbery on a local
2 drug dealer. Upon arrival to that particular
3 location, the gentleman was not home. And then
4 following that unsuccessful attempt, they -- the
5 victim in the case arrived at the apartment complex,
6 an attempt to perform an armed robbery on that
7 person would have been shown by the Solicitor's
8 office.

9 I believe that the evidence would have
10 suggested at the very least, if not proven, that
11 Mikal Bethea was holding the gun at the time and
12 Mikal Bethea fired the fatal shot. However, the
13 three gentlemen, would have been shown by the State,
14 to have all three been involved at the time. And
15 the State would have obviously shown that subsequent
16 to the armed robbery and subsequent to a shoot -- I
17 believe one shot, that the victim did die later on
18 that evening or the very next morning.

19 **THE COURT:** All right. I recall some of it
20 now. It's coming back to me. And I'm going to ask
21 Mr. Daniel if he wants to supplement the facts.

22 But as I recall what happened was that three
23 individuals went to an apartment complex to buy
24 drugs or steal from the drug dealer, one or the
25 other, or some way involved in a drug transaction.

1 The individual was not home and so then they
2 attempted to rob the victim who was sitting in a
3 car, if I recall. Is that correct, Mr. Daniel?

4 **MR. DANIEL:** Yes, sir. Benny Anderson, Jr.,
5 the victim, was -- had just gotten off work and had
6 came to see his girlfriend and they were sitting in
7 his car in the parking lot.

8 **THE COURT:** Minding their own business and --

9 **MR. DANIEL:** Minding their own business.

10 **THE COURT:** -- completely innocent.

11 **MR. DANIEL:** Completely innocent. The victim
12 in this case is from Mullins and had finished high
13 school, was going in the Marines, had never -- had
14 no prior record, didn't even know these guys.

15 **THE COURT:** Okay. A fairly young man if I
16 recall.

17 **MR. DANIEL:** Yes, sir. He was 19 at the time
18 of the shooting.

19 **THE COURT:** With his girlfriend, was getting
20 ready to go in the Marine Corps and just -- and they
21 attempted to rob him and --

22 **MR. DANIEL:** Got his wallet and then the victim
23 was shot twice.

24 **THE COURT:** Okay. So after the robbery, I mean
25 there's -- the robbery was successful and he was

1 still shot.

2 MR. DANIEL: Correct.

3 THE COURT: All right. That's kind of the fact
4 scenario that I just wanted to get back in my mind
5 because I couldn't remember exactly what happened.

6 All right. Go ahead, Mr. Grove.

7 MR. GROVE: Sure, Judge. And large in part,
8 the evidence presented by the State would have been
9 by Isaiah's own statement. I think -- in the file,
10 there was one individual near the scene who said
11 they saw someone who they thought looked like Isaiah
12 Brown, that led to his arrest.

13 I think he also had -- at the time, he's
14 obviously a young man. At the time, I think he had
15 a pending juvenile trespass or something like that
16 that he was actually picked up on, then he was
17 questioned about this incident. And it was his
18 information that led to, essentially, almost the
19 entire discovery in the case.

20 THE COURT: What would the defenses's -- I
21 mean, the State's proof of the defendant's
22 involvement have been if you'd gone to trial? I
23 mean, how did you have him linked to it?

24 MR. DANIEL: This defendant?

25 THE COURT: Yes.

1 **MR. DANIEL:** Would have been through his own
2 statements and the statement of one of the other
3 co-defendants.

4 **THE COURT:** Who was cooperating.

5 **MR. DANIEL:** Who had cooperated from day one.

6 **THE COURT:** All right.

7 **MR. GROVE:** But, essentially, Judge, I believe
8 Isaiah was the first arrested, first to make a
9 statement and handed the State their case on a
10 silver platter in a terrible incident, but following
11 the incident, did everything he could to make sure
12 that the truth came out and to make sure that,
13 essentially, that the case -- I don't think that
14 there needed to be an in-depth investigation. There
15 wasn't a manhunt or a tracking anyone down
16 situation. Isaiah's statement and the statement of
17 his co-defendant suggested that Mikal Bethea was the
18 shooter. Mikal Bethea didn't make any statements.

19 And, Judge, as recently as November, I believe,
20 I'm not sure when Mikal Bethea's partial trial
21 began, it was following Isaiah Brown's plea, but it
22 has been a couple of months since Mikal Bethea's
23 case was disposed of, there were issues with
24 witnesses coming forward. The State was kind of
25 caught between a rock and a hard place. And

1 Mr. Bethea pled. I don't remember what the charge
2 was, I wasn't present for that hearing, but he
3 received a sentence of 15 years.

4 The third co-defendant, who, as you heard
5 Mr. Daniel say, had provided substantial cooperation
6 as well, received a sentence of seven or seven and a
7 half years I believe. And, again, I don't know what
8 the charge was. My presumption is voluntary
9 manslaughter or accessory after the fact, something
10 to that effect. I don't know. That's not
11 necessarily relevant for Your Honor's consideration.

12 What is relevant, Judge, is essentially we have
13 what I would consider a nonshooting, less culpable
14 co-defendant charged under the hand of one, the hand
15 of all who's going to, if things remain as they are,
16 serve more than three times the sentence imposed on
17 the person who we would have suggested and very
18 likely the State would have suggested with a
19 successful trial against Mikal Bethea, that Mikal
20 Bethea was the shooter. Mikal Bethea is going to
21 serve somewhere in the range of 85 to 95 percent of
22 a 15-year sentence whereas Isaiah Brown as of today
23 is serving day-for-day on a 45-year sentence, Judge.

24 I pray that the Court consider reducing his
25 sentence to the mandatory minimum of 30 years. That

1 is still an overwhelming amount of time, Judge.
2 That is a day-for-day 100 percent sentence and it
3 will exceed twofold who we would suggest the shooter
4 was in the actual case, the actual culpable party or
5 the more culpable party as it were. And, again,
6 Judge, this isn't based in law, this isn't based in
7 statute, this is based in equity.

8 **THE COURT:** All right. Thank you.

9 Let me -- I'm looking at the documents from the
10 file. They've been handed to me by the Clerk's
11 office. And I see a letter from you, Mr. Grove,
12 dated August the 17th to Ms. Hyatt with a copy to
13 Mr. Daniel for a motion to withdraw the guilty plea,
14 but I don't see a motion for a reconsideration to
15 the sentence.

16 **MR. GROVE:** I apologize, Judge. The same form
17 would apply then for a motion to withdraw the plea.

18 **THE COURT:** All right. So is the motion before
19 me to withdraw or --

20 **MR. GROVE:** Judge --

21 **THE COURT:** -- I guess that's what I'm trying
22 to determine is what's actually before the Court for
23 consideration.

24 **MR. GROVE:** Clearly, my memory is failing me,
25 Judge, or circumstances were different at the time

1 of the filing of the motion. At this time, I would
2 retain everything that I presented to the Court on a
3 motion now to withdraw the plea and I'd also request
4 that the Court consider an untimely motion to
5 reconsider the sentence.

6 **THE COURT:** All right. I understand your
7 position as far as the matter of the motion on the
8 reconsideration as it not being anything from a
9 legal standpoint. It was within the range allowed
10 by the statute. It is primarily based upon an
11 equitable argument with regard to the sentences that
12 were received by the co-defendant for at least the
13 same or more involvement than this defendant.

14 **MR. GROVE:** That's correct, Judge. And I'd be
15 remiss if I didn't give Isaiah's family an
16 opportunity to address Your Honor if you deem it
17 appropriate.

18 **THE COURT:** Yeah, I'll be glad to hear from
19 them.

20 **MR. GROVE:** His mother Mary Brown is here. She
21 may like to address the Court.

22 **THE COURT:** Yes, Mrs. Brown.

23 **MRS. BROWN:** Well, Your Honor, in fairness, I
24 like to do what's right, you know. I live by the
25 Bible. My mama taught me to live by the Bible. She

1 was an Evangelist. And I'm hoping and praying for a
2 miracle today, as well as the people -- I can
3 understand her feelings too and mine's. Nothing
4 more I can say. I can't bear no more pain. I try
5 to carry this burden if it don't kill me.

6 **THE COURT:** Okay. Thank you.

7 Anyone else, Mr. Grove?

8 **MR. GROVE:** No, Judge, that will be it.

9 **THE COURT:** All right. Mr. Daniel, I'll be
10 glad to hear from the State.

11 **MR. DANIEL:** Well, Judge, first of all, I don't
12 know why we're here. I mean, I don't know what
13 motion I'm arguing against if it's to withdraw the
14 plea or reconsider the sentence.

15 **THE COURT:** Actually, it's both I guess. He's
16 got a written -- have a written motion for
17 withdrawal that needs to be addressed and needs to
18 be taken care of and then he's also made a motion
19 for a reconsideration. So, I guess, he's got both.

20 **MR. DANIEL:** Well, as to the withdrawal, I
21 would say, Your Honor, the defendants aren't allowed
22 to plead guilty, not like the sentence, not be happy
23 with what they get, see what the co-defendants get
24 and then say, oh, well, I want to withdraw my
25 completely valid plea. I think that I don't need to

1 spend anymore time arguing that one.

2 As to the untimely now motion to reconsider, I
3 would say that, first of all, Mr. Grove is to be
4 commended for standing up here at all with Mr. Brown
5 given the way -- what unfolded right after the
6 sentencing before. Mr. Grove is a good man.

7 Secondly, I would say that the facts of this
8 case weren't presented to you in their entirety.
9 The State would have pursued and did pursue all
10 three defendants under a theory of hand of one is
11 the hand of all and accomplice liability when it
12 comes to the murder. The gun in question here it
13 was said by the other defendant that did cooperate
14 that that was Isaiah's gun. The gun was found in
15 Isaiah's grandmother's home where he had hidden it
16 in the roof or in the attic area.

17 **THE COURT:** After the murder?

18 **MR. DANIEL:** After the murder. And Mr. Brown
19 was never honest about that even after law
20 enforcement found the gun. Law enforcement went to
21 DJJ at Mr. Brown's request to interview him again
22 and law enforcement already had the gun, had already
23 gotten it from his grandmother's or grandfather's
24 home and asked him where's the gun and he even then
25 said, I have no idea where the gun is, it wasn't

1 mine, I don't know where it is. And all the time he
2 had been the one that had hid it in the home of his
3 grandparent and we knew that because Mr. Brown told
4 a cellmate at DJJ about it who then called us and
5 said, I know where that gun in that murder is.

6 Your Honor, the bottom line is this:
7 Mr. Redmond and I went to Columbia to SCDC to talk
8 to Mr. Brown before the trial of Mikal Bethea and we
9 wanted his cooperation, we wanted his help. We sat
10 him down and said, this was after his plea, we said,
11 Here's what we'll do for you, you've been given 45
12 years. We can motion the Court if you testify for
13 us and we can knock it down as low as we can, which
14 is to 30, which is obviously the minimum of murder,
15 and we will do that. We told him that. With your
16 cooperation, we'll cut 15 years off your sentence,
17 that's the best we can do.

18 He said, Nope, I don't want any part of that.
19 The only thing I will do is I'll get up there and
20 I'll testify if you will let me withdraw my plea and
21 I'll plead to accessory after the fact. That's what
22 he wanted was access -- that's the only thing he
23 would agree to.

24 When he came to Dillon, because we brought him
25 anyway, we transported him to see maybe if he

1 changed his mind. We sent Mr. Grove -- or Mr. Grove
2 went out there to talk to him. We went out there.
3 This was like the week before trial and we went out
4 again and said --

5 **THE COURT:** Before Bethea's trial?

6 **MR. DANIEL:** Before Bethea's trial. Will
7 you --

8 **MR. GROVE:** Real quick, if I can interject,
9 Judge. I did not, someone else from my office did.
10 I believe it may have been Ms. McNeal. I was in
11 another county. I just wanted to --

12 **MR. DANIEL:** Somebody went out there. He was
13 represented.

14 And we went out there and asked him again,
15 Look, Mikal Bethea's trial is next week, will you
16 testify for us? We'll bring it down from 45 to 30.
17 And he said, Yeah, I'll do that if you let me
18 withdraw my plea and plea to accessory after the
19 fact.

20 So the difference is what you see in what
21 happened with Isaiah Brown and what you see with
22 Matthew Cade, who's the defendant who was
23 cooperating with us, both gave statements, Isaiah
24 refused to help after that. Matthew gave a
25 statement and was cooperating, was willing to take

1 the stand, did take the stand in Mikal Bethea's
2 trial and he got seven years. That's the
3 difference.

4 So defendants like Isaiah Brown need to know
5 that if they cooperate, like we went to him and
6 asked, if they cooperate, then we'll help them, but
7 if they don't cooperate, we're not going to help
8 them. And so, certainly, we don't want to set the
9 precedent now that he can come up, just because he
10 got a whole lot of time, he can come up here after
11 not having assisted us like Matthew Cade did, come
12 up here and get his time reduced.

13 He pled to a -- he validly pled to a murder
14 charge. And as the Court said, there is no legal
15 basis for this change in sentencing, there is no --
16 it's an equity situation. And it does seem a little
17 strange that you got 45, 15 and seven, but I've
18 already given the explanation on the seven because
19 he helped. Had Mr. Brown -- he had every
20 opportunity to help himself, but he thumbed his nose
21 at us and didn't want any part of it.

22 Now, as for the other defendant, there were
23 evidentiary issues in that case, in Mikal Bethea's
24 case, with a witness who voluntarily did not answer
25 a subpoena. He has -- that witness has been charged

1 and that charge is pending. We didn't have a choice
2 but to do what we needed to do there.

3 Now, if Mr. Bethea [sic] had agreed to help us,
4 then we wouldn't have needed that witness and the
5 guy who got 15 would have gotten more than that very
6 likely at trial. So Mr. Bethea held a lot of cards
7 in his hand and we offered him a chance to play
8 those cards and to have a 15-year reduction in his
9 sentence that we were going to ask for and he chose
10 not to do it. And so for him to come up now and ask
11 the Court to reduce his sentence is offensive to the
12 State.

13 **THE COURT:** Okay. Thank you, sir.

14 Mr. Grove, would you like to respond?

15 **MR. GROVE:** Briefly, Judge. The Solicitor
16 hasn't said anything that was inaccurate, but that
17 doesn't change the circumstances for why we're here,
18 equity, Judge. I'll readily admit the lack of a
19 legal basis. Your Honor is fully aware of that.

20 The law is designed to be fair, Judge. And in
21 this case, I think it's clear, circumstances being
22 what they were, it is not.

23 His mother has indicated she may like to
24 respond. His sister, Amelia, is also here who may
25 like to say a few words before Your Honor rules.

1 **THE COURT:** Well, I've already given them an
2 opportunity to do that before I heard from the State
3 and I really think that one of them didn't want to
4 say anything. And his mother did tell me what she
5 had to say at the time. So, you know, I'm not sure
6 -- I don't want to cut them off particularly, but I
7 really think that we could go on and on. I'm sure
8 their argument is the basis -- is the fairness
9 argument or the equitable argument that you have
10 made, but I'll give them a chance.

11 Yes, ma'am, what else do you want to tell me,
12 Mrs. Brown?

13 **MRS. BROWN:** Your Honor, I'm Isaiah's mother
14 and I tried to raise him right. The day that trial
15 start, and Mr. Daniel know, in fairness to my heart,
16 the reason my son got 45 years, because I'm his
17 mother. I'm trying to tell him to do what's right
18 in fairness and what I think is right. My son
19 wanted that trial that day.

20 **THE COURT:** Well, the point is that Mr. Daniel
21 has made, and I think it is a very valid point, that
22 your son has had the opportunity to help himself and
23 has declined to do so and, you know, that's a very
24 valid point. He now wants the Court to change its
25 sentence when he was not willing to do that himself.

1 And he had that opportunity when the State's
2 attorneys went over to the department of corrections
3 and talked with him and also when they brought him
4 over here before Mr. Bethea was ever brought to
5 trial and he did not avail himself of those
6 opportunities to get the very thing that he's asking
7 for now, which is a reduction to the minimum
8 sentence.

9 You know, there comes a point when an
10 individual has to himself take advantage of the
11 opportunities that are presented to him and he
12 didn't -- has not and did not do so. I mean, that's
13 what I've got to think about.

14 Yes, anybody else?

15 MS. BROWN: Okay. As well as I know --

16 COURT REPORTER: I need your name.

17 MS. BROWN: Amelia Brown.

18 Okay. They had offered him 30 years. And, you
19 know, I don't know much about the law, I don't
20 understand, but they went to him, offered him 30
21 years. And it's just like something is kind of off
22 because it seemed like all of them would have got,
23 like, the same amount, but he wound up getting the
24 highest sentence.

25 I mean, I don't understand how someone that

1 murdered someone get 15 years, you know, I don't
2 understand that. And, like I say, I don't know the
3 law. You know, I don't know. I'm standing up here,
4 this is new to me, but I just don't understand that,
5 I really don't.

6 It seem like to me all of them would have got
7 the maximum, you know, time because all of them was
8 together, but he got 40 -- first, they offered him
9 30 years and then, you know, he wound up getting 45
10 years and we're coming back and they still want to
11 give him 30 years, I don't understand that. I mean,
12 you know, I don't because how it look to me, it look
13 to me like it's not right. I mean, you know, I
14 don't know what the law is or nothing, but it look
15 to me like it's not right.

16 **THE COURT:** Well, as the State indicated, they
17 had some evidentiary problems with regard to
18 Mr. Bethea's case and they were really giving
19 Mr. Brown a chance to help them with Mr. Bethea's
20 case and he declined to do so. If he had helped
21 them with Mr. Bethea's case, Mr. Bethea may not have
22 gotten 15 years, he may have gotten more. If
23 Mr. Brown had been willing to come in --

24 **MR. DANIEL:** Absolutely.

25 **THE COURT:** -- and tell, then the State

1 wouldn't have had to deal with Mr. Bethea to a point
2 of getting just the 15 years. If Mr. Brown had come
3 in and told, had been willing to help, then it's
4 very possible and probably, I would say, likely that
5 Mr. Brown and Mr. Bethea would have both ended up
6 with 30 years.

7 **MR. DANIEL:** Absolutely, that's what we were
8 going for. And, Your Honor, I don't know what the
9 young lady said about us offering 30 years. There
10 was never a 30-year offer in this case. I don't
11 know where that came from.

12 **MRS. BROWN:** Yes, Your Honor.

13 **THE COURT:** All right. I understand.

14 I recall the facts and I do recall that I was
15 especially offended by the fact in this case that,
16 you know, if they had been gone in there, the drug
17 dealer, and maybe the drug dealer had gotten shot,
18 we would have had a different situation, but when
19 you get a young person with his whole life in front
20 of him, never been in any kind of trouble, sitting
21 there minding his own business and he's attacked by
22 three individuals, and I only had one before me,
23 that's a pretty bad situation. And he was attacked
24 by three individuals, there's no question about it.
25 And not only was he attacked, he lost his life

1 senselessly.

2 (Pause.)

3 **THE COURT:** All right. First of all, there is
4 a written motion in the file to withdraw the timely
5 made -- a motion timely made to withdraw the guilty
6 plea. The Court finds that there is no legal basis
7 for the withdrawal of the guilty plea. It was
8 freely and voluntarily made at the time that it was
9 entered into and no evidence has been presented that
10 it was not anything other than a completely
11 voluntary plea and therefore the motion to withdraw
12 the guilty plea is denied.

13 Also before the Court is a oral motion for
14 reconsideration. And while this is not timely made,
15 is being treated by the Court as timely made by
16 Mr. Grove and an opportunity given for a full
17 presentation and argument made by Mr. Grove. The
18 presentation and positions by defense counsel are
19 sound and well articulated and for purposes of
20 subsequent writs and applications for
21 post-conviction relief, are timely and well
22 presented by competent and experienced counsel.

23 The request for reconsideration is based on
24 equitable as opposed to legal principles,
25 specifically the -- is no legal argument that the

1 sentence imposed was other than what is allowed by
2 law, but the argument is made that the co-defendant
3 Bethea who supposedly or allegedly was the shooter
4 in this horrendous and horrific homicide of a young
5 man who was, from my recollection, a fine young man
6 who was doing nothing but minding his own business
7 and was robbed and killed in the parking lot simply
8 because he was there and they couldn't find the
9 individual they were looking for, but the argument
10 is that that defendant, Mr. Bethea, received a
11 15-year sentence and the other co-defendant a
12 seven-year sentence.

13 The State has offered a valid and legitimate
14 reason for that and has articulated their response,
15 which the Court finds to be very persuasive and well
16 stated. There were evidently problems in
17 Mr. Bethea's case as far as evidentiary problems are
18 concerned. And this defendant was given the
19 opportunity on two occasions to help himself by
20 agreeing to testify against Mr. Bethea to tell
21 exactly what happened, that was when the Solicitor's
22 office went to SCDC where Mr. Brown was incarcerated
23 and he was not willing to accept the offer of the
24 State to request from the Court a downward departure
25 pursuant to the Omnibus Crime Bill to the minimum

1 sentence of 30 years, but wanted to dictate his own
2 terms.

3 He was also given that same opportunity before
4 Mr. Bethea was -- Mr. Bethea's case was called and
5 brought to Dillon. And the same offer was made
6 where the State would request a downward departure
7 for substantial assistance as is allowed by the
8 omnibus bill.

9 And I might say, counsel, that for purposes of
10 this, about three years ago or four years ago, I was
11 appointed by the Chief Justice to head a task force
12 to revise the criminal rules. Our task force has
13 completed our work. And our draft and proposed
14 rules are in the hands of the Supreme Court. They
15 have them under advisement. I don't know what
16 they're going to do with them.

17 But I will say that one of those rules that we
18 proposed was the downward departure at the request
19 of the State within one year based upon Rule 35 of
20 the Federal Rules of Criminal Procedure where a
21 defendant does offer substantial assistance to the
22 State. In fact, Senator Malloy's bill incorporates
23 the very language that we put in the proposed rule
24 that is before the Supreme Court and it was
25 incorporated into the statute of the Omnibus Crime

1 Bill and was adopted by the Legislature and that is
2 the exact language almost that we proposed, that my
3 committee proposed in the amendment to the rules.

4 And the State was willing to do that if
5 Mr. Brown had been willing to testify against
6 Mr. Bethea and he said that he was, but he was going
7 to do it on his terms and not on the terms being
8 offered by the State.

9 I really think that had the State had the
10 evidence of Mr. Brown at the time of Mr. Bethea's
11 case, that Mr. Bethea would have probably ended up
12 with a minimum of 30, if not more, years in prison,
13 but since he did not cooperate, the State had
14 evidentiary problems, they had to get whatever they
15 could get out of it and the best they could get was
16 the 15-year sentence.

17 I say all that to say that Mr. Brown has had
18 ample opportunity to help himself and to have his
19 sentence reduced by one third, but has failed and
20 declined to take advantage of that opportunity and I
21 see no reason that the sentence should be
22 reconsidered. For that reason, the motion to
23 reconsider is denied.

24 MR. DANIEL: Thank you, Judge.

25 END OF PROCEEDINGS

C E R T I F I C A T E

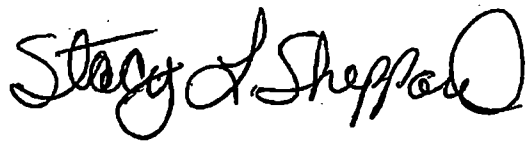
STATE OF SOUTH CAROLINA

COUNTY OF DILLON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Dillon County, South Carolina, on the 7th of March, 2012.

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

April 7, 2012



Stacy L. Sheppard, RPR
Circuit Court Reporter

WITNESSES

Hayes

Dillon Police Department

Law Enforcement Case #:

085

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
J008799

ARRESTED ON: 2010-03-23

ACTION OF GRAND JURY**TRUE**

Grand Jury Foreperson

Date

VERDICT

Petit Jury Foreperson

Date

Amended

DOCKET NUMBER:
2010-GS-17-0616

The State of South Carolina

County of Dillon

COURT OF GENERAL SESSIONS

Term:
August 2010

THE STATE

vs.

Isiah Marcus Brown**INDICTMENT FOR**

**Conspiracy / Criminal Conspiracy, Common
Law conspiracy**

§16-17-0410

CDR Code: 0049

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	
COUNTY OF DILLON	)	Conspiracy / Criminal Conspiracy, Common Law conspiracy
		§16-17-0410

At a Court of General Sessions, convened on August 5, 2010, the Grand Jurors of Dillon County present upon their oath:

CRIMINAL CONSPIRACY

CDR: 0049 16-17-0410

That Isiah Marcus Brown did in Dillon County on or about March 22, 2010 combine with another, and/or with other persons, for the purpose of accomplishing a criminal or unlawful object or an object that is neither criminal nor unlawful through criminal or unlawful means, to wit: Armed Robbery, in violation of Section 16-17-410, S. C. Code of Laws, 1976, as amended.

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


 WILLIAM B. ROGERS, JR.
 SOLICITOR

WITNESSES

Hayes

Dillon Police Department

Law Enforcement Case #:

085

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
J008798

ARRESTED ON: 2010-03-23

ACTION OF GRAND JURY**TRUE BILL**

Kenneth J. Woodell
Grand Jury Foreperson

8-5-10
Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2010-GS-17-0617

The State of South Carolina**County of Dillon****COURT OF GENERAL SESSIONS**

Term:
August 2010

THE STATE

vs.

Isiah Marcus Brown**INDICTMENT FOR****Weapons / Poss. weapon during violent crime**

§16-23-0490

CDR Code: 0549

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	
COUNTY OF DILLON	)	Weapons / Poss. weapon during violent crime
		§16-23-0490

At a Court of General Sessions, convened on August 5, 2010, the Grand Jurors of Dillon County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME

CDR: 0549 16-23-0490

That Isiah Marcus Brown did in Dillon County, on or about March 22, 2010, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

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


 WILLIAM B. ROGERS, JR.
 SOLICITOR

WITNESSES

Hayes

Dillon Police Department

Law Enforcement Case #:

085

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
J008797

ARRESTED ON: 2010-03-23

ACTION OF GRAND JURY**TRUE BILL**

Grand Jury Foreperson

Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2010-GS-17-0618

The State of South Carolina**County of Dillon****COURT OF GENERAL SESSIONS**

Term:
August 2010

THE STATE

vs.

Isiah Marcus Brown**INDICTMENT FOR**

**Robbery / Armed Robbery, robbery while
armed or allegedly armed**

§16-11-0330(A)

CDR Code: 0139

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA

INDICTMENT FOR

COUNTY OF DILLON

) Robbery / Armed Robbery, robbery while armed or allegedly armed

§16-11-0330(A)

At a Court of General Sessions, convened on August 5, 2010, the Grand Jurors of Dillon County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That Isiah Marcus Brown did in Dillon County on or about March 22, 2010, while armed with a deadly weapon, to take and carry away personal property of Bennie Anderson from or in the immediate presence of Bennie Anderson with intent to deprive Bennie Anderson of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

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

William B. Rogers, Jr.
WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

Hayes

Dillon Police Department

Law Enforcement Case #:

085

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and
plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
J008793

ARRESTED ON: 2010-03-23

ACTION OF GRAND JURY**TRUE BILL**

Grand Jury Foreperson

Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2010-GS-17-0494

The State of South Carolina**County of Dillon****COURT OF GENERAL SESSIONS**

Term:
June 2010

THE STATE

vs.

Isiah Marcus Brown**INDICTMENT FOR****Murder / Murder**

§16-03-0010; 16-03-0020

CDR Code: 0116**William B. Rogers, Jr., Solicitor**

STATE OF SOUTH CAROLINA)
)
COUNTY OF DILLON)

INDICTMENT FOR

Murder / Murder

§16-03-0010; 16-03-0020

At a Court of General Sessions, convened on June 17, 2010, the Grand Jurors of Dillon County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Isiah Marcus Brown did in Dillon County, on or about March 22, 2010, willfully, feloniously, and intentionally kill the victim, Bennie Anderson, with malice aforethought, either express or implied, by means of shooting, and the victim did die as a proximate result thereof on or about March 22, 2010 in Dillon County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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


WILLIAM B. ROGERS JR.
SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

71

COUNTY OF Dillon
STATE VS.
Isaiah Marcus Brown

AKA:

Race: Black Sex: M Age: 18DOB: 1993 SS# [REDACTED]

Address:

City, State, Zip: Dillon, SC 29536DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

INDICTMENT/CASE#: 2010-GS-17-0616A/W#: J008799Date of Offense: 4/27/2010S.C. Code §: 16-17-0 410CDR Code #: 0049

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

W. Ship
Daniel, Ship76085
SC Bar#Isaiah Brown
DefendantWillie G. [Signature]
Attorney for Defendant77931
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2010-GS-17-494☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$100

\$12

\$25

\$500

\$25

\$150

\$50

\$40/ca

\$5

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. ☐

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning\$ paid to Public Defender Fund

Other:

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2107
Aug 8, 2011

FILED
GIVEN: HYATT
2011 AUG -8 PM 2:52
CLERK OF COURT
DILLON COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF Dillon
 STATE VS.
Isai ah Marcus Brown
 AKA: _____
 Race: _____ Sex: M Age: 18
 DOB: 1993 SS#: _____
 Address: _____
 City, State, Zip: Dillon, SC 29536
 DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Wade 26085 Isai Brown Will E 77931
 Daniel, Shipp SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2010-65-17-0494

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 25-65-16.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-17-0617

A/W#: J008798

Date of Offense: 3/22/2010

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

FILED
 CLERK OF COURT
 DILLON COUNTY
 2010 AUG 8 PM 2:12
 GWENDOLYN HYATT

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☒

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter: Rena K. Gantt

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2107

Sentence Date: Aug 8, 2011

10-304

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Dillon
STATE VS.

INDICTMENT/CASE#: 2010-GS-17-0618

Isaiah Marcus Brown

A/W#: J008797

AKA:

Date of Offense: 3/22/2010

Race: Black Sex: M Age: 18

S.C. Code §: 16-11-0330(A)

DOB: 1993 993 SS#:

CDR Code #: 0139

Address:

City, State, Zip: Dillon, SC 29536

DL#: SID#:

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADS

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Wylie 76085 Isiah Brown Wylie 77931
Daniel, Shipp SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2010-GS-17-0994
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 26-25-25.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-25 (16-25-25 Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$
§ 14-1-206 (Assessments 107.5 %) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ 100.00
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00
3% to County (if paid in installments) \$ 3.90
TOTAL \$ 133.90

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court Deputy Clerk: Rema K. Gault

Court Reporter: Rema K. Gault

SCCA/217 (03/2011)

Presiding Judge: Howard P. King

Judge Code: 2107

Sentence Date: Aug 5, 2011

74

STATE OF SOUTH CAROLINA

COUNTY OF Dillon
 STATE VS.
Isaiah Marcus Brown

AKA:

Race: Black Sex: M Age: 18DOB: 1993 SS#: _____

Address: _____

City, State, Zip: Dillon, SC 29536

DL#: _____ SID#: _____

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

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-17-0494A/W#: J008793Date of Offense: 3/22/2010S.C. Code § : 16-03-0010; 16-03-0020CDR Code #: 0116

30-Lix

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
 ATTEST: Wyle 76055 Isaiah Brown Will E. J. 77931
Daniel, Shipp SC Bar# Defendant Attorney for Defendant SC Bar#

 WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 45 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-1

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 (Carrying a Firearm) (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter: Rena K. Gantt Thomas

SCCA/217 (03/201)

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge

Judge Code: 2107Sentence Date: Aug 8, 2011
 FILED
 CLERK OF COURT
 DILLON COUNTY
 AUG-8-2011 2:52 PM

FORM 5

STATE OF SOUTH CAROLINA)

County of Dillon)Isaiah Marcos Brandy)

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

v. #347041)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2014-CP-17414

APPLICATION FOR

POST-CONVICTION REVIEW

FILED
GWEN T. HYATT
2014 SEP 10 AM 11:04
CLERK OF COURT
DILLON COUNTY

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution, 990
Wisnaby Highway, Bishopville, SC 29010
2. Name and location of Court which imposed sentence Dillon County Court
of General Sessions, Dillon, South Carolina
3. Name(s) of co-defendant(s) (if any) Mible, Bethea; Matthew
Code
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-95-17-00494; Murder
 - (b) 2010-95-17-00410; Criminal Conspiracy

- (c) 2010-95-17-00617; Possession of a Weapon
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) August 8, 2011; Forty-five (45) years 2011
- (b) August 8, 2011; five (5) years 2011
- (c) August 8, 2011; five (5) years 2011
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~~ YES I Did
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed (3-5-14)
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 3-5-14
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

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

(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)

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

(a)

(b)

(c)

(d)

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

(a)

i.

ii.

iii.

iv.

(b)

i.

ii.

iii.

iv.

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

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) (10)(a); First Collateral Attack
 (b) (10)(b); First Collateral Attack
 (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? Yes.
 (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. Will E. Jove, Public Defenders Office, Post Office Box 27, Dillon, S.C. 29536
 ii. Post Office Box 11539, Columbia, S.C. 29211
 iii. William Grove, Public Defender Office, 180 N. Troy St MSC-N Florence, SC 29501
 (b) the proceedings at which each such attorney represented you:
 i. Plea and Sentencing
 ii. South Carolina Court of Appeals
 iii. _____

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

Based on the above, Convictions (Plea) and
Sentences be Reversed and Remanded for
a New Trial.

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

No, I am not

STATE OF SOUTH CAROLINA)

County of Dillon)

VERIFICATION

I, Isaiah Marcus Brown, #347241, 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.

Isaiah Brown

SWORN to and subscribed before me this
 day of Sept, 2014.

(L.S.)

[Signature]
 Notary Public

My Commission Expires: 11-4-2015

FILED
 GWEN T. HYATT
 2014 SEP 10 AM 11:04
 CLERK OF COURT
 DILLON COUNTY

2014-CP-17 414

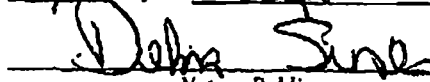
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

Isaiah Marcos Brown #317241, 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.

 Isaiah Brown
Applicant

SWORN or affirmed to and subscribed before me this
9 day of Sept, 2014.


Notary Public

My Commission Expires: 11-4-2015

FILED
GWEN T. HYATT
2014 SEP 10 AM 11:04
CLERK OF COURT
DILLON COUNTY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DILLON	)	FOR THE FOURTH JUDICIAL CIRCUIT
Isaiah Marcus Brown, #347241,	)	Case No. 2014-CP-17-414
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the Application for Post-Conviction Relief filed September 10, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dillon County Clerk of Court. In June 2010, the Dillon County Grand Jury indicted Applicant for murder (2010-GS-17-494). In June 2010, the Dillon County Grand Jury indicted Applicant for criminal conspiracy (2010-GS-17-616), possession of a weapon during the commission of a violent crime (2010-GS-17-617), and armed robbery (2010-GS-17-618). William E. Grove, Esquire, represented Applicant. On August 8, 2011, Applicant pled guilty as indicted after selecting a jury for a trial on the charges. The Honorable Howard P. King sentenced Applicant to concurrent sentences of forty-five (45) years for murder, five (5) years for criminal conspiracy, five (5) years for possession of a weapon during the commission of a violent crime, and thirty (30) years for armed robbery.

Applicant filed a timely notice of appeal. Robert M. Dudek, Esquire, of the Office of Appellate Defense perfected the appeal with the filing of an Anders¹ brief. The South Carolina Court of Appeals dismissed Applicant's appeal on March 5, 2014. State v. Brown, Op. No. 2014-UP-96 (S.C. Ct. App. filed March 5, 2014). The remittitur was returned to the circuit court on March 21, 2014.

II.

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

1. "Denial of Effective Assistance of Counsel"
 - a. "failure to investigate; failure to properly"
2. "Involuntary Guilty Plea"
 - a. "counsel's ineffectiveness resulted in plea"

Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

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

III.

Respondent submits Applicant's allegation of ineffective assistance of plea counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the

¹ Anders v. California, 386 U.S. 738 (1967).

allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show 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, 59 (1985).

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of plea counsel probably raises questions of fact 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.

Respondent further submits Applicant's allegation his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376

S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 279 S.C. 264, 305 S.E.2d 247.

V.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VI.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

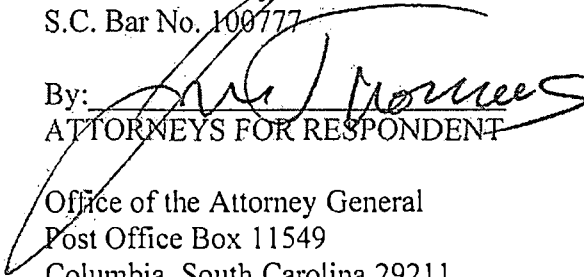
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

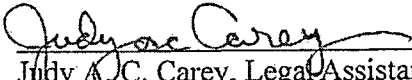
Nov. 21, 2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DILLON	)	
	)	
	)	2014-CP-17-0414
	)	
ISAIAH MARCUS BROWN, 347241	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
807 Gervais Street; Suite 203
Columbia SC 29201

DATED this 21st day of November, 2014.


 Judy A. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DILLON	)	C/A NO: 2014-CP-17-414
	)	
Isaiah Brown, #347241,	)	
	)	
Applicant,	)	
	)	FIRST AMENDMENT TO PRIOR
v.	)	APPLICATION FOR PCR
	)	
State of South Carolina,	)	
	)	
Respondent,	)	

The Applicant, through appointed counsel below, makes the following additional claim and amendment to his prior application for post-conviction relief:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (i) Counsel failed to investigate co-defendant, Mikal Bethea.
 - (ii) Counsel failed to prepare for trial.
 - (iii) Counsel failed to investigate, review and/or discuss trial strategy, defenses and evidence with Applicant.
 - (iv) Counsel was not present during a meeting involving the Solicitor's office and Applicant.
 - (v) Prosecutorial misconduct for attempting to interview Applicant in the absence of counsel.
 - (vi) Counsel failed to properly advise Applicant of possible sentencing range for the charges.
 - (vii) Counsel failed to challenge statements made by Applicant while he was interviewed at the age of 16 without being able to consult with his parent.
 - (viii) Counsel failed to bring to the Court's attention Applicant had a pending Motion to Relieve Counsel. The Motion was never heard or ruled upon.

- (ix) Counsel failed to properly prepare for Reconsideration hearing.
- (x) Ineffective assistance of appellate counsel.
- (xi) Involuntary guilty plea.

THE BOOZER LAW FIRM, LLC



Lance S. Boozer
Attorney for Applicant
807 Gervais Street, Suite 203
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

Columbia, South Carolina
January 4, 2016

CERTIFICATE OF SERVICE

I, the undersigned of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing First Amendment to Prior Application for PCR upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, on January 4, 2016, addressed as follows:

Jessica Kinard
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211



Lance S. Boozer

State of South Carolina	)	In the Circuit Court
	)	
County of Dillon	)	2014-CP- 17-00414

Isaiah M. Brown,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	
_____	)	

Darlington, South Carolina
January 12, 2016

B E F O R E:

The Honorable Roger E. Henderson

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

Mr. Lance S. Boozer, Esquire
Attorney for Plaintiff

Ms. Jessica E. Kinard, Esquire
Attorney for Defendant

Lisa Carter
Circuit Court Reporter

I N D E X

WITNESSESPAGE

Isaiah M. Brown:

Direct Examination by Mr. Boozer

5

Cross Examination by Ms. Kinard

25

Mikal Bethea:

Direct Examination by Mr. Boozer

33

Cross Examination by Ms. Kinard

40

William Grove:

Direct Examination by Mr. Boozer

42

Cross Examination by Ms. Kinard

57

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>EV.</u>
A-1	Dillon County Public Index	8
A-2	Dillon County Public Index	9
A-3	Dillon County Public Index	10
A-4	Dillon County Public Index	11
A-5	Letter from Mikal Bethea	38

1 THE COURT: Yes, ma'am, Ms. Kinard.

2 MS. KINARD: Thank you, Your Honor. May it please
3 the Court? This is the matter of Isaiah Marcus Brown
4 versus the State of South Carolina, case number 2014-CP-17-
5 414. We're before the Court on a application for a post
6 conviction relief that was filed September 10, 2014. By
7 way of procedural history, the applicant is presently
8 confined to the South Carolina Department of Corrections
9 pursuant to orders of commitment of the Dillon County Clerk
10 of Court. In June, 2010, the Dillon County grand jury
11 indicted the applicant for murder. They also indicted him
12 for criminal conspiracy, possession of a weapon during the
13 commission of a violent crime, and armed robbery. William
14 E. Grove represented the applicant. On August 8, 2011, the
15 applicant pled guilty as indicted after selecting a jury
16 for a trial on the charges. The Honorable Howard P. King
17 sentenced him to concurrent sentences of forty-five years
18 for murder, five years for criminal conspiracy, five years
19 possession of a weapon during the commission a violent
20 crime, and thirty years for armed robbery. The applicant
21 filed a timely notice of an appeal and was represented by
22 Robert Dudek of the Office of Appellate Defense. He
23 requested the appeal with a filing of a Ander's brief. The
24 Court of Appeals dismissed the applicant's appeal on March
25 5, 2014, and remitted a return in Circuit Court on March

Isaiah Brown- Direct Examination by Mr. Boozer

5

1 21, 2014. In his initial application the applicant alleged
2 that he was being held in custody unlawfully for denial of
3 ineffective assistance of counsel and involuntary guilty
4 plea. Since that time the applicant has also filed an
5 amendment to his application that was received by the
6 Attorney General's office on January 6, 2016. The state is
7 present and ready to proceed. The applicant is present
8 with his attorney, Lance Boozer.

9 THE COURT: Mr. Boozer?

10 MR. BOOZER: Thank you, Your Honor. If it pleases
11 the Court? We would call Isaiah Brown to the witness
12 stand.

13 THE COURT: Okay. All right, Mr. Brown.

14 CLERK: Place your left hand on the Bible and raise
15 right hand please. You swear or affirm the testimony you
16 give this court to be the truth and nothing but the truth
17 so help you God?

18 MR. BROWN: Yes, ma'am.

19 CLERK: Have a seat.

20 MR. BROWN: Sit right here?

21 CLERK: Right up here.

22 ISAIAH BROWN, first being
23 duly sworn, testified as follows:

24 Direct Examination by Mr. Boozer:

25 Q. Mr. Brown, how are you doing today?

1 A. I'm doing all right; and you?

2 Q. I'm doing fine. And if you would just for everybody
3 in the courtroom just try to keep your voice up so
4 everybody can hear you, okay? Mr. Brown, you're currently
5 incarcerated at SCDC?

6 A. Yes, sir.

7 Q. And you're - - originally, what were you charged
8 with?

9 A. Murder, armed robbery, criminal conspiracy, and
10 possession of a weapon.

11 Q. And did you enter a guilty plea to the charges?

12 A. Yes, sir.

13 Q. And what sentence did you receive?

14 A. Forty-five years.

15 Q. Tell me again when you pled guilty, do you remember
16 the date?

17 A. August 8, 2011.

18 Q. When did you receive - - when did you receive these
19 charges?

20 A. March 23, 2010.

21 Q. Now, did you have some co-defendants?

22 A. Yes, sir.

23 Q. And who were your co-defendants?

24 A. Mikal Bethea and Matthew Cade.

25 Q. Mikal Bethea and Matthew Cade?

Isaiah Brown- Direct Examination by Mr. Boozer

7

1 A. Correct.

2 Q. And if you would maybe just lean back a little bit
3 from that microphone. I'm giving you a lot of directions,
4 I'm sorry. We'll get you straight. Mikal Bethea and
5 Matthew - - -

6 A. Mikal Bethea.

7 Q. Mikal Bethea and Matthew Cade were your co-defendants?

8 A. Correct.

9 MR. BOOZER: Your Honor, may I approach the witness?

10 THE COURT: Yes, sir.

11 Q. Mr. Brown, if you would take a look at a copy of a
12 document I'm handing to you, if you look up at the top it
13 says, "Dillon County Fourth Judicial Circuit Public Index,"
14 do you see that?

15 A. Yes, sir.

16 Q. If I submit to you this is a document from the Dillon
17 County Clerk of Court's website that I pulled from the
18 Internet and this reflects, if you look down it says,
19 "Mikal Bethea, charged code, voluntary manslaughter of
20 original charge of murder," if you look there in the
21 middle, the date received March 26, 2010, disposition date
22 November 16, 2011, what did Mr. Bethea plea to?

23 A. Voluntary manslaughter.

24 Q. And this was your co-defendants and these were the
25 same, that was the same murder charge that you were facing,

1 correct?

2 A. Correct.

3 MR. BOOZER: Your Honor, at this time I would move
4 to mark this exhibit one, applicant's exhibit one.

5 MS. KINARD: Without objection.

6 MR. BOOZER: All right. Without objection that
7 would be applicant's one.

8 (Whereupon, the Dillon County Public Index has been marked
9 and entered into evidence as Applicant's Exhibit No. 1)

10 MR. BOOZER: Your Honor, may I approach the witness?

11 THE COURT: Yes, sir.

12 MR. BOOZER: Thank you.

13 Q. Mr. Brown, I'm going to hand you another document
14 which looks similar to applicant's exhibit one, if you look
15 at the top it says, Dillon County Fourth Judicial Circuit
16 Public Index and if you look also this is dealing with Mr.
17 Bethea as well. This shows the sentence that he received.
18 It says fifteen years and is that your understanding of
19 what Mr. Bethea, the sentence that he received in his case
20 as part of his plea?

21 A. Yes, sir.

22 MR. BOOZER: Your Honor, at this time I'd move to
23 mark this as applicant's exhibit number two.

24 MS. KINARD: Without objection.

25 THE COURT: All right. Without objection.

Isaiah Brown- Direct Examination by Mr. Boozer

9

1 Received in evidence.

2 (Whereupon, the Dillon County Public Index has been marked
3 and entered into evidence as Applicant's Exhibit No. 2)

4 Q. Now, Mr. Brown you also had another co-defendant as
5 you've indicated, Matthew Cade, is that correct?

6 A. Correct.

7 MR. BOOZER: Your Honor, may I approach the witness?

8 THE COURT: Yes, sir.

9 MR. BOOZER: Thank you.

10 Q. Mr. Brown, I'm going to hand you another document that
11 does look similar to the previous two documents marked
12 applicant's exhibit's one and two, if you would take a look
13 at that for a moment and at the top of this it says, Dillon
14 County Fourth Judicial Circuit Public Index and if you look
15 down, it is Matthew Cade, original charge of murder, charge
16 code, charge description, voluntary manslaughter. Date
17 received March 26, 2010. Pled guilty November 17, 2011.
18 If I submit to you - - I'll submit to you that this is a
19 copy that I pulled from the Dillon County Clerk of Court's
20 Website, is this your co-defendant Matthew Cade?

21 A. Yes, sir.

22 Q. And that murder charge is the charge that you were
23 also charged with?

24 A. Yes, sir.

25 Q. And he pled to voluntary manslaughter?

1 A. Correct.

2 MR. BOOZER: At this time Your Honor I'd moved to
3 mark this applicant's exhibit three.

4 THE COURT: All right, sir.

5 MS. KINARD: No objection.

6 THE COURT: Received without objection. In
7 evidence.

8 (Whereupon, the Dillon County Public Index has been marked
9 and entered into evidence as Applicant's Exhibit No. 3)

10 MR. BOOZER: Your Honor, may I approach the witness?

11 THE COURT: Yes, sir.

12 MR. BOOZER: Thank you.

13 Q. Now, Mr. Brown, I'm going to hand you another copy
14 from the Dillon County Clerk of Court's Website, if you
15 would take a moment and look at it. And do you see it
16 says, disposition date November 17, 2011. Pled guilty.
17 Seven years and I would submit to you that this is a copy
18 of Matthew Cade's sentencing for the voluntary
19 manslaughter. Is that your understanding of the year and
20 time that he received - - -

21 A. Correct.

22 Q. - - - for his crime? And is that from the same set of
23 crimes that you were charged with and pled to?

24 A. Correct.

25 MR. BOOZER: Your Honor, at this time I would move

Isaiah Brown- Direct Examination by Mr. Boozer

11

1 to mark this as applicant's exhibit number four.

2 THE COURT: All right.

3 MS. KINARD: No objection.

4 THE COURT: Received without objection.

5 (Whereupon, the Dillon County Index Public Index has been
6 marked and entered into evidence as Applicant's Exhibit No.
7 4)

8 Q. So, Mr. Brown, you received a forty-five year sentence
9 for these same charges?

10 A. Yes, sir.

11 Q. And you ended up pleading guilty to murder?

12 A. Pleading guilty.

13 Q. And your co-defendants receive fifteen years and seven
14 sentences?

15 A. Correct.

16 Q. Now, you were represented by a lawyer for your plea,
17 correct?

18 A. Correct.

19 Q. Who represented you?

20 A. Mr. William Grove.

21 Q. All right. Now, obviously, you've filed today an
22 application for post conviction relief, is that correct?

23 A. Correct.

24 Q. And do you know what it is that you're asking this
25 Court to do or want this Court to do for you if it grants

1 your application for post conviction relief?

2 A. Correct.

3 Q. And what is that?

4 A. A new trial.

5 Q. And is that what you want in this case?

6 A. Yes, sir.

7 Q. Do you recall when you were first arrested on these
8 charges, I think you said that earlier?

9 A. Yes.

10 Q. When was that?

11 A. March 23, 2010.

12 Q. When were you appointed Mr. William Grove?

13 A. I was appointed William Grove, like, later on that
14 year, like, in October or November.

15 Q. Later on that year, so you're talking so March is when
16 you were arrested?

17 A. Yes, sir.

18 Q. So you were appointed Mr. Grove in October of that
19 year?

20 A. Yeah. Around October or November.

21 Q. Did you have another lawyer?

22 A. Yes, sir.

23 Q. Who was that?

24 A. Rosalind Sellers.

25 Q. All right. What happened with Rosalind Sellers?

1 A. She moved off my case because she said they were
2 moving her up to a paid lawyer and the last murder case she
3 was doing was the Inman case.

4 Q. So she was no longer your attorney because she was
5 moving positions - - -

6 A. Yes, sir.

7 Q. - - - and the last murder case she was handling was a
8 separate case?

9 A. Yes, sir.

10 Q. All right. Did you have any discussions with Ms.
11 Sellers about what sentence you were going to receive or
12 what you were trying to do with your case?

13 A. Yes, sir. We discussed that she was describing
14 getting me a YOA a sentence.

15 Q. And when you say, YOA, you're talking about under the
16 Youthful Offender Act sentence under that?

17 A. Correct.

18 Q. Was there any talk about you pleading guilty in
19 getting forty-five years or anything like that?

20 A. No, sir.

21 Q. All right. So after you get Mr. Grove, tell me if you
22 recall about how many times you probably met with Mr.
23 Grove?

24 A. Probably about three, no more than four.

25 Q. All right. So did you ever bond out?

1 A. No, sir.

2 Q. All right. So from October of 2010 which is when you
3 were appointed Mr. Grove through to August of 2011, your
4 testimony is that you met with Mr. Grove maybe three or
5 four times?

6 A. Correct.

7 Q. Do you know how many times those meetings would last?

8 A. Them meetings wouldn't last that much probably didn't
9 more than twenty minutes.

10 Q. What would you talk about at your meetings?

11 A. I was talking about, like, our case, like, what's
12 going on, was, like, what's the sentencing range, like,
13 what can you do, or what type of strategy we got.

14 Q. Well, let's kind of walk through because you've got
15 some allegations for your PCR, correct?

16 A. Correct.

17 Q. All right. Now, originally you filed your own PCR
18 application, right?

19 A. Correct.

20 Q. And then - - -

21 MR. BOOZER: Court's indulgence, Your Honor.

22 THE COURT: Yes, sir.

23 Q. In your original PCR application, you alleged that you
24 received ineffective assistance of counsel, failed to
25 investigate, you also alleged involuntary guilty plea and

Isaiah Brown- Direct Examination by Mr. Boozer

15

1 counsel's ineffectiveness resulted in your plea.

2 A. Correct.

3 Q. All right. You've also, you filed an amended
4 complaint or amended application through me, your attorney,
5 right?

6 A. Correct.

7 Q. All right. Let's walk through all of these. First,
8 you alleged that your lawyer failed to investigate Mikal
9 Bethea, who was your co-defendant?

10 A. Correct.

11 Q. To your knowledge, did your lawyer Mr. Grove ever
12 speak with Mr. Bethea about his role in the case?

13 A. No, sir.

14 Q. Did you ever have any discussion with your lawyer
15 about what Mr. Bethea, his role in the case?

16 A. No, sir.

17 Q. Is that something that you would've liked for him to
18 have done?

19 A. Yes, sir.

20 Q. All right. You say counsel failed to prepare for
21 trial. Now, did you actually pick a jury in your case?

22 A. Yes. I picked a jury and they were ready to go
23 forward for the next day.

24 Q. All right. Tell me what your understanding of what
25 your lawyer was going to do to defend you at trial?

1 A. Nothing really because he say I ain't had no defense.

2 Q. Did you know what witnesses he was going to call, if
3 any, on your behalf?

4 A. None.

5 Q. Did you know what defenses he may present on your
6 behalf?

7 A. Nah. He tell me I ain't have no defense.

8 Q. Did he - - let me ask you this, did you have any - -
9 what was the conversation like? How did it go from you
10 having a trial to then you entering a guilty plea? What
11 were you telling your lawyer?

12 A. I was telling him that I wanted to plead guilty, not
13 plead guilty, sorry, but go to trial but he kept telling me
14 to plead guilty to the crimes. So me and him had a little
15 altercation. Well, he come to see me before I went to
16 court asking me was I going to plead guilty and I told him
17 no and I walked out on him.

18 Q. You walked out on him. Why did you walk out on him?

19 A. Because he'd been trying to get me to plead guilty to
20 something I ain't really wanted to do.

21 Q. And you wanted a trial?

22 A. I wanted a trial.

23 Q. Did he review any evidence with you prior to your
24 trial?

25 A. He was showing me the statements that's about it.

1 Q. All right. Walk me through, did you ever have -- was
2 there ever a time that you met with the solicitor's office
3 about your case?

4 A. Yes, like, a day before I went to court they brung me
5 back to Dillon County because I was at Marlboro County,
6 they brung me back and then me, my mama, William Grove,
7 Solicitor, Shipp Daniels and Solicitor, Kinard and we all
8 been talking, like, what I want to do. And I told them
9 right then and there, I wanted to go to trial and they
10 would saying, like, the best thing for me to do is plead
11 guilty cuz if I go to trial, we lose and get life.

12 Q. So they were telling you, if you didn't plead guilty
13 you would go to trial and get life?

14 A. Correct.

15 Q. And you said Mr. Grove was present at that meeting?

16 A. Yes.

17 Q. Was there ever a time that you met with anyone from
18 the solicitors office without Mr. Grove being present?

19 A. Correct. When they brung me back to try to get me to
20 testify on Mr. Bethea and they called me up front and then
21 Mr. Shipp Daniel and Kinard and Ms. McNeil from the public
22 defenders office.

23 Q. Mr. Grove wasn't there?

24 A. No.

25 Q. Who was McNeil?

1 A. She, I guess, a public defender at the public
2 defender's office around that time.

3 Q. Was she your counsel of record or was she just present
4 on behalf of the public defender's office?

5 A. She was just present on behalf of the public defenders
6 office.

7 Q. Do you know why Mr. Grove wasn't at that meeting?

8 A. No. They just said he was out of town. They ain't
9 give me no details.

10 Q. We've gone over just now your allegation that counsel
11 failed to prepare for trial and counsel failed to
12 investigate, review, and discussed trial strategy and
13 defenses with you. You've also alleged and I think that
14 goes along right now with your testimony, prosecutorial
15 misconduct for meeting with you without your lawyer
16 present?

17 A. Correct.

18 Q. All right. Now, prior to your plea when you entered
19 your plea, did Mr. Grove tell you how much time you would
20 get when you pled guilty?

21 A. No. He just say thirty.

22 Q. All right. So walking in there that day to your plea,
23 how much time did you think you would receive?

24 A. Anything from two to thirty on a voluntary
25 manslaughter.

1 Q. So you went through that day thinking that you're
2 pleading to voluntary manslaughter and that you would
3 receive a sentencing range from two to thirty years?

4 A. Correct.

5 Q. Did you have any idea that you could potentially
6 receive a sentence of forty-five years?

7 A. No, sir.

8 Q. Did you have any discussion with Mr. Grove that you
9 could potentially receive a sentence of forty-five years?

10 A. No, sir. Only if I - - only if I go to trial I would
11 get life.

12 Q. Had you known that if you pled guilty that you could
13 receive forty-five years or more than thirty years, would
14 you have pled guilty?

15 A. No, sir. I would insisted forward with my trial by a
16 jury.

17 Q. Now, when you were arrested, how old were you?

18 A. Sixteen.

19 Q. How old are you now?

20 A. Twenty-two.

21 Q. All right. When you were arrested, were you
22 interviewed by investigators or police?

23 A. Yes, sir.

24 Q. All right. Did you talk to your mom about it or was
25 your mom there when you were being interviewed?

1 A. No, sir, nobody wasn't present. Like when they locked
2 me up I asked them could I call my mama and they said, no.

3 Q. Who said, no?

4 A. John Willie Brown.

5 Q. Who's that?

6 A. He's, like, an investigator.

7 Q. All right. So you wanted to talk to your mom before
8 you spoke with the police?

9 A. Yes, sir.

10 Q. And they wouldn't let you do that?

11 A. They wouldn't let me do it until after they got done
12 questioning me and about to send me to DJJ.

13 Q. Did you tell Mr. Grove that, that's how your
14 questioning occurred?

15 A. Yes, sir.

16 Q. Was he aware of that to your knowledge?

17 A. Yes, sir.

18 Q. Did he make any sort of motion to suppress any sort of
19 statements you may have made?

20 A. No, sir.

21 Q. Did he have any discussion that, that may have been a
22 possibility?

23 A. No, sir.

24 Q. Now, at some point, did you attempt to have Mr. Grove
25 removed from your case or relieved as your lawyer?

1 A. Yes, sir.

2 Q. All right. Tell me about that, how did that come
3 about?

4 A. Like, after Dillon shipped me to Marlboro County, it
5 seemed like he wouldn't never come and seeing me and
6 discussing my case with me and it's been, like, a couple of
7 months probably, like, two months so I filed a motion to
8 relieve him and it seemed like I had never been called
9 before to a judge to see what's going on with my matter.

10 Q. You know when you file that motion to be relieved?

11 A. Somewhere in, like, March - - March, 2011.

12 Q. And that motion was never heard?

13 A. Never heard.

14 Q. Did you want to relieve Mr. Grove?

15 A. Yes, sir.

16 Q. What you want to relieve him?

17 A. Because he wasn't coming to see me and doing, like,
18 defense, strategies, choices.

19 Q. Now, you recall that at the guilty plea you were asked
20 a number of questions by the judge?

21 A. Correct.

22 Q. Some of those questions dealt with the record
23 certainly reflects what was said but some of those
24 questions dealt with, did you understand why you were there
25 and that you were happy with your lawyer, did you have

1 enough time to speak with him, do you remember that?

2 A. Yeah, I recall that.

3 Q. Now, you responded affirmatively to a lot of those
4 questions, correct?

5 A. Correct.

6 Q. Why did you give the responses you gave that day?

7 A. Because I really ain't knew how to answer the
8 questions so my lawyer was telling me as the judge would
9 asked me the questions to say yeah to the questions.

10 Q. He was - - your lawyer was telling you how to answer
11 some of those questions?

12 A. Most of or all of them.

13 Q. When was he doing that? Was he doing it before you
14 entered the plea or during the plea, how did that - - -

15 A. During the plea while the judge was like reading out
16 the questions to me.

17 Q. Now, you also, after you were sentenced, received
18 forty-five years there was another hearing, is that right?

19 A. Correct.

20 Q. What was that?

21 A. A motion to withdraw the guilty plea.

22 Q. Was it also a motion for reconsider the sentence?

23 A. Yes, but there was an oral motion, like, once we get
24 into the courtroom.

25 Q. Why was that an oral motion once you got into the

1 courtroom?

2 A. Because he never filed no motion for reconsideration.

3 Q. Who, Mr. Grove?

4 A. Mr. William Grove.

5 Q. Did you know that he was filing a motion to withdraw
6 your plea?

7 A. No. I didn't know until he sent me a copy of it.

8 Q. I mean, did you want him to do that?

9 A. Yes.

10 Q. And what happened at the reconsideration or motion to
11 withdraw your plea hearing?

12 A. When we been there, like, all talk, the judge, like,
13 ask them what was going on, he started arguing an oral
14 motion for reconsideration. He never got on the topic of
15 about a motion, the timely filed motion to withdraw my
16 guilty plea. He just started arguing the oral motion.

17 Q. You also filed - - did you file an appeal?

18 A. Yes, sir.

19 Q. All right. Who was your appellate lawyer?

20 A. Robert M. Dudek.

21 Q. You've also alleged ineffective assistance of
22 appellate counsel?

23 A. Yes, sir.

24 Q. What you believe your appellate counsel did that was
25 ineffective?

1 A. He argued the wrong issues.

2 Q. What did he argue?

3 A. He argued that the judge, the judge failure to
4 reconsidered my sentence by me not testifying.

5 Q. What do you think he should have argued?

6 A. Invalid voluntary guilty plea, ineffective assistance
7 of counsel.

8 Q. Did you have any meetings with your appellate lawyer?

9 A. I talked to him, like, one time over the phone.

10 Q. And you also have the allegation that you originally
11 filed that's also in your amended application that your
12 guilty plea was involuntary?

13 A. Correct.

14 Q. And you don't feel like your plea was voluntarily and
15 knowingly and intelligently entered?

16 A. No, sir.

17 Q. Now, going back to your co-defendants, Mr. Bethea and
18 Mr. Cade, to your knowledge has anyone admitted to actually
19 being the shooter in the case?

20 A. I think Mr. Bethea did when he went to court and pled
21 guilty. He had told the judge that he was guilty of the
22 crimes.

23 Q. And your position the whole time has been that you
24 were not a part of the actual murder?

25 A. No, sir.

1 Q. And that was even discussed at your plea, was it not?

2 A. Yes, sir, it was discussed.

3 Q. Is there anything else right now that you want to
4 bring to the Court's attention as far as your allegations?

5 A. My claim for ineffective assistance of counsel, I just
6 feel like if I had known they was going to give me forty-
7 five years I would not have pled guilty and insisted
8 forward with my trial by jury all because Mr. William Grove
9 ineffective advice, he told me to plead guilty. So he my
10 lawyer, so the only thing he want what's best for me so I
11 pled guilty.

12 MR. BOOZER: Your Honor, I don't have any further
13 questions at this time.

14 THE COURT: Thank you. Ms. Kinard?

15 MS. KINARD: Thank you, Your Honor.

16 **Cross Examination by Ms. Kinard:**

17 Q. Good morning.

18 A. Good morning.

19 Q. What did Mr. Grove tell you, you would have gotten as
20 far as a sentence if you did plead guilty?

21 A. Two to thirty.

22 Q. On what charge?

23 A. Voluntary manslaughter.

24 Q. What were you actually charged with?

25 A. Murder.

1 Q. So you knew going to court that you faced a murder
2 charge?

3 A. Yes. Yes, ma'am.

4 Q. To go back to how your case developed with Mr. Grove,
5 you said you met with him three or four times?

6 A. Correct.

7 Q. And you talked about things such as your sentencing
8 range?

9 A. Correct.

10 Q. Like what murder carried?

11 A. Yes, ma'am.

12 Q. And what voluntary manslaughter carried?

13 A. Yes, ma'am.

14 Q. And the other charges that you had before you?

15 A. Yes, ma'am.

16 Q. You stated that you walked out on Mr. Grove because
17 you are frustrated with his advice?

18 A. I walked out on him because he was telling me to plead
19 guilty when I was telling him I wanted to go to trial.

20 Q. And he was telling you to plead guilty because he
21 thought as your attorney that was his best advice?

22 A. Correct.

23 Q. He reviewed all the evidence with you?

24 A. Like the statements but not the, like, dealing with my
25 co-defendant's and stuff.

1 Q. As far as what? What did you mean - - -

2 A. Like question them and stuff like that. But like the
3 statements and stuff, he viewed that with me.

4 Q. And you knew that if you didn't plead that you stood a
5 chance of getting life?

6 A. Yes, ma'am.

7 Q. The meeting you described where Mr. Grove wasn't
8 present but Ms. McNeil was there?

9 A. Yes, ma'am.

10 Q. And you know she was a member of the public defenders
11 office?

12 A. Yes, ma'am.

13 Q. Just like Mr. Grove was?

14 A. Yes, ma'am.

15 Q. So someone from that office was there with you?

16 A. Yes, ma'am.

17 Q. When you went into the plea, why did you think you are
18 pleading to voluntary manslaughter?

19 A. Because that's what he told me. Before I even went to
20 court he was, like, he gonna get it knocked down to a
21 voluntary manslaughter, anything I get would be two to
22 thirty and the judge would liable to give me fifteen years
23 but that's why pled guilty and listened to Mr. Grove.

24 Q. When you went before the Court for your plea and you
25 had your pending motion to relieve Mr. Grove, why didn't

1 you inform the Court of that?

2 A. Because he told me if I had brung it to the light the
3 judge wouldn't did it at the time because it's time for me
4 to go to court.

5 Q. So he felt that the judge just didn't want to hear it,
6 is that the impression you got?

7 A. I got the impression from Mr. William Grove he's
8 telling me that the judge is not going to hear it because
9 it's time for me to go to court.

10 Q. Thank you. I had misunderstood. So you went to court
11 and you pled guilty and received your sentence and then you
12 were remanded into custody, between that time and your
13 motion for reconsideration, what happened?

14 A. Nothing happened, like, be more clearer.

15 Q. Did anybody come to visit you to talk to you about
16 testifying?

17 A. Yes. At SCDC Shipp Daniel and Kinard.

18 Q. What do they talk to you about precisely?

19 A. Asking, like, was I gonna plead guilty and if I plead
20 guilty they gonna withdraw my guilty plea and have me plea
21 to minimum of murder and that's thirty years.

22 Q. Well, this is after you pled though, right?

23 A. Yes, ma'am.

24 Q. So you already pled guilty and got the forty-five?

25 A. Yes, ma'am.

1 Q. And they said they would withdraw it and sentence - -
2 withdraw your plea and sentence you to thirty years?

3 A. Yes, ma'am.

4 Q. Instead of the forty-five you had?

5 A. Yes, ma'am.

6 Q. So you could've not fifteen years off your sentence?

7 A. Yes, ma'am.

8 Q. But you decided not to take their offer?

9 A. No, ma'am.

10 Q. After that happened, you went back to court for the
11 motion to withdraw the guilty plea and motion for
12 reconsideration, is that correct?

13 A. Correct.

14 Q. Do you remember how that - - you mentioned that the
15 motion for reconsideration was an oral motion?

16 A. Correct.

17 Q. And that was argued before the Court, do you remember
18 how the Court treated that motion?

19 A. They treated - - they treated it as the same as the
20 withdrawal of a guilty plea because he wouldn't argue
21 nothing but based on equality so the judge accepted it.

22 Q. Accepted it as if it were timely filed?

23 A. Yes, ma'am.

24 MR. BOOZER: I beg the Court's indulgence.

25 THE COURT: Yes, ma'am.

1 MS. KINARD: I just called to the Court's attention
2 Page 23 of the reconsideration which is stamped Page 58
3 around Line 13.

4 THE COURT: Okay.

5 MR. BOOZER: That paragraph stating that it is,
6 well, "articulated and timely for purposes for post
7 conviction relief."

8 Q. Mr. Brown, Mr. Boozer touched on the fact that at the
9 plea you did answer all the questions of the Court in the
10 affirmative meaning that you understood that you were
11 giving up a lot of rights by entering into the guilty plea?

12 A. I didn't understand -- I didn't understand it I was
13 just saying yeah to those questions from Mr. Grove telling
14 me to say yeah.

15 Q. So he was whispering in your ear telling you what to
16 say?

17 A. Yes, ma'am.

18 Q. Okay. Regardless, you realize you were under oath?

19 A. Under oath, like....

20 Q. You were sworn to tell the truth, the whole truth,
21 before the Court that day?

22 A. Oh, yes, ma'am.

23 Q. Just like you are now?

24 A. Yes, ma'am.

25 Q. So when you said that you committed these crimes, when

1 were you telling the truth?

2 A. Was I telling the truth?

3 Q. Mmm, hmm.

4 A. No, ma'am.

5 Q. You weren't. Are you telling the true today, though?

6 A. Yes, ma'am.

7 Q. Mr. Boozer mentioned that Mr. Bethea may have admitted
8 to being the shooter at one point, is that correct?

9 A. Correct.

10 Q. Did you ever tell anybody that you were the shooter?

11 A. No, ma'am.

12 Q. Not even when you were in DJJ?

13 A. No, ma'am.

14 Q. Do you remember how they ended up finding the gun at
15 your grandmother's house?

16 A. Yes, they say I told so dude named, Shekel Crowley
17 where the murder weapon was and supposedly that's how they
18 got it from him because he wrote a statement.

19 Q. Was he the only person that wrote a statement?

20 A. My other co-defendant.

21 Q. So your co-defendants testified against you but you
22 wouldn't testify against them?

23 A. You talking about Matthew Cade?

24 Q. Mmm, hmm or Mr. Bethea? Did either of them testify
25 against you?

1 A. No, because I ain't went to trial.

2 Q. I'm sorry, let me rephrase that. Did either of them
3 provide any evidence or information that would've harmed
4 you?

5 A. No, not really.

6 Q. Regardless, you refused to testify in a manner that
7 would harm them, is that correct?

8 A. Not harm them it's just - - I just felt like I
9 wouldn't did right, like, in my sentencing so I just ain't
10 mess with it and by me testifying and getting thirty years
11 that still, I still feel like that's still not fair.

12 Q. What else could Mr. Grove have done for you?

13 A. Investigate my case more. Talk to my co-defendants
14 and prepare for trial because that's what I had wanted.

15 Q. Were you co-defendants represented by counsel, do you
16 remember?

17 A. Yes.

18 Q. Did they provide statements to the police?

19 A. Only one of them did.

20 Q. And Mr. Grove had access to that statement?

21 A. Yes, ma'am.

22 MS. KINARD: That's all I have right now, Your
23 Honor. Thank you.

24 THE COURT: Mr. Boozer?

25 MR. BOOZER: No redirect, Your Honor.

Mikal Bethea- Direct Examination by Mr. Boozer

33

1 THE COURT: All right. You can step down, sir.

2 MR. BOOZER: Your Honor, at this time I would call
3 Mikal Bethea who is in SCDC's custody but he is also in the
4 back room.

5 THE COURT: Okay.

6 CLERK: Do you swear or affirm the testimony you
7 give this Court be the truth and nothing but the truth so
8 help you God?

9 MR. BETHEA: Yes, ma'am.

10 CLERK: Have a seat.

11 THE COURT: Speak loudly and clearly, Mr. Bethea,
12 all right?

13 MR. BETHEA: Yes, sir.

14 MIKAL BETHEA, first being
15 duly sworn, testified as follows:

16 Direct Examination by Mr. Boozer:

17 Q. Mr. Bethea, how are you doing?

18 A. I'm all right.

19 Q. Good. My name is Lance Boozer and I represent Isaiah
20 Brown.

21 A. Right.

22 Q. And you understand that?

23 A. Yes, sir.

24 Q. Now, you understand that I do not represent you,
25 right?

1 A. Right.

2 Q. All right. And before coming here today, you
3 understand that you don't have to testify?

4 A. Exactly.

5 Q. And you've spoken with your previous lawyer, Marshall
6 Weaver?

7 A. Correct.

8 Q. And Mr. Weaver has spoken with you about what you're
9 doing here today?

10 A. Right.

11 Q. And you appear on your own free will and volition to
12 testify in court today?

13 A. Correct.

14 Q. Mr. Bethea, tell me - - obviously, you're currently in
15 SCDC custody?

16 A. Right.

17 Q. What were you originally charged with?

18 A. Originally, I was charged with murder, armed robbery,
19 possession of a firearm, and conspiracy of armed robbery.

20 Q. And who are your co-defendants?

21 A. Matthew Cade and Isaiah Brown.

22 Q. And do you see Isaiah Brown in the courtroom here
23 today?

24 A. Correct.

25 Q. Now, what did you ultimately plea to?

1 A. I pled to a manslaughter, second-degree manslaughter.

2 Q. And what sentence did you receive for that?

3 A. A fifteen year sentence.

4 Q. Did you receive a fifteen year sentence for
5 everything?

6 A. For everything altogether.

7 Q. Altogether. Now, who represented you at that time, I
8 know we talked about Marshall Weaver, who were your
9 lawyers?

10 A. Myesha Brown and her assistant, Marshall Weaver.

11 Q. And they were your attorneys the whole time?

12 A. Marshall, he, came around at the time of my trial.
13 Myesha was my initial appointed attorney.

14 Q. And we did you plead guilty?

15 A. Two thousand, 2011.

16 Q. Was it - - do you know what month maybe?

17 A. Sir?

18 Q. Do you know what month it may have been?

19 A. November. November of 2011.

20 Q. At any time following your arrest or at any time prior
21 to your plea or even after your plea, were you ever
22 contacted by Isaiah Brown's lawyer, William Grove?

23 A. No, never.

24 Q. Do you know if Mr. Grove ever contacted your lawyers
25 Marshall Weaver or Myesha Brown?

1 A. Every time someone was to contact me they'd go through
2 my lawyers so if he would've contacted them they would've
3 told me so I have got no - - -

4 Q. Do you have memory of having any discussion with
5 either Mr. Weaver or Ms. Brown, hey Mr. Grove, Isaiah's
6 lawyer, wants to talk to you?

7 A. Never.

8 Q. Okay. Did any investigator on Isaiah Brown's behalf
9 ever try to contact you directly or your lawyers?

10 A. No, sir.

11 Q. Is that something you would have known had they
12 contacted your lawyers?

13 A. Yeah, first handedly.

14 MR. BOOZER: Your Honor, may I approach the witness?

15 THE COURT: Yes, sir.

16 Q. Mr. Bethea, I'm going to hand you a document and I'd
17 like you to take a moment and read over that and, Your
18 Honor, this is actually already part of the record. I
19 certainly can hand up another copy.

20 THE COURT: All right, sir.

21 MR. BOOZER: May I approach, Your Honor?

22 THE COURT: Yes, sir.

23 MS. KINARD: It would be in the judge's packet.

24 Q. Mr. Bethea, have you had a moment to look at what I
25 just handed you?

Mikal Bethea- Direct Examination by Mr. Boozer

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1 A. Correct.

2 Q. Okay. Is that your writing?

3 A. Right.

4 Q. Is that a letter that you wrote?

5 A. Right.

6 Q. Who did you write that to?

7 A. At the time I had wrote it for Isaiah. I don't
8 remember his lawyers name at the time.

9 Q. Okay. But you were writing this addressing it to Mr.
10 Brown's lawyer for his PCR case?

11 A. Right.

12 Q. Okay. And if you would, I'd just go ahead and have,
13 have you read this out loud if you would?

14 A. "Hi my name is Mikal Bethea, the co-defendant of your
15 client Mr. Isaiah Brown. I'm writing to inform you that I
16 would be more than willing to testify in his behalf if and
17 when his case is called in court to notify the judge that I
18 forced him to do everything he did in the case seeing that
19 everything was my idea in the first place. The hand he
20 played in the situation for robbery was all part of my
21 doing and power I had while holding the gun forcing him to
22 rub the victim with me. I'd like to discuss this matter
23 with you if possible. I'm currently incarcerated at Lee
24 Correctional, SCDC number, 348701. Please do not hesitate
25 to contact me in need of assistance."

1 MR. BOOZER: Your Honor, at this time I would move
2 to introduce this as applicant's exhibit five.

3 MS. KINARD: No objection, Your Honor.

4 THE COURT: All right. Received without objection.
5 Received into evidence.

6 (Whereupon, the Letter from Mikal Bethea has been marked
7 and entered into evidence as Appellant's Exhibit No. 5)

8 Q. Mr. Bethea, looking at that letter, is that still true
9 to this day what you said in that letter?

10 A. A matter of words, yeah.

11 Q. You've already - - you've pled guilty to your charges,
12 correct?

13 A. Correct.

14 Q. What did you admit to at your plea as to your
15 involvement in this case?

16 A. Basically, the truth. That everything, that
17 everything was my idea. I was the one, I brought the gun,
18 you know, basically, he was just out there. You know what
19 I'm saying, he was just out there. When I was on the
20 streets I was a true definition of a menace to society. So
21 a lot of things that I wanted people to do, I didn't need
22 to just show too much force, it was done, you know what I'm
23 saying. And he - - when I approached - - when I approached
24 the situation to him he was in a predicament what he knew
25 had to be put between a rock and a hard place, you know

1 what I'm saying and so it was more done out of fear than
2 anything he didn't do anything in this case.

3 Q. You felt like Mr. Brown did not play the role of - -
4 he didn't want to be there and the murder to happen?

5 A. Right. He didn't - - I initially went out there to
6 his sister's house to go see him, you know what I'm saying,
7 and that's how he got into the picture period. If I would
8 have never went out there to go see him, he wouldn't never
9 be in the picture anyway. He was only really just standing
10 next to the car, that's all he did.

11 Q. And who brought the weapon?

12 A. I did.

13 Q. Did you - - did he ever have a gun?

14 A. Not before the case.

15 Q. And no one on Mr. Brown's behalf attempted to talk to
16 you about this?

17 A. Uh, uh.

18 Q. And if called to trial, would you have said, made that
19 same statement?

20 A. Made that same statement.

21 MR. BOOZER: The Court's indulgence just a moment.

22 THE COURT: Yes, sir.

23 Q. Mr. Bethea, you're serving a fifteen year sentence.
24 When's your max out date?

25 A. Well, I have another five year sentence for an assault

1 and battery with a high and aggravated nature. My max out
2 date is 2028 right now.

3 Q. How old will you be when you get out?

4 A. Thirty-four, thirty-five.

5 MR. BOOZER: Approach the witness, Your Honor?

6 THE COURT: Yes, sir.

7 MR. BOOZER: Your Honor, that's all the questions I
8 have of Mr. Bethea at this time.

9 THE COURT: Okay. Ms. Kinard?

10 MS. KINARD: Thank you, Your Honor.

11 **Cross Examination by Ms. Kinard:**

12 Q. Good morning, Mr. Bethea.

13 A. How are you doing?

14 Q. Did you provide any information to the solicitor's
15 office that might harm the case of Mr. Brown?

16 A. Any information to the solicitor's office?

17 Q. Yes.

18 A. I can't remember. I might have. I did a lot of
19 writing in the county jail so....

20 Q. Did you provide a statement to the police at any time?

21 A. No, ma'am.

22 Q. You did not? And you've never spoken to Mr. Grove?

23 A. No, ma'am.

24 Q. Did you ever speak with your attorneys about Mr.
25 Brown's involvement?

Mikal Bethea- Cross Examination by Ms. Kinard

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1 A. Yeah, it did come - - it came up in our discussion
2 about the case.

3 Q. What did you tell them that Mr. Brown did?

4 A. He was just there. Same thing I said this time. I
5 didn't go into specifics like I did just now but I just
6 told them he was there, you know what I'm saying, he really
7 wasn't involved, you know, he just happened to be right
8 there.

9 Q. Okay. And you said that you brought the gun?

10 A. Correct.

11 Q. And who took the gun afterwards?

12 A. I told him to put it up.

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

14 THE COURT: Mr. Boozer?

15 MR. BOOZER: No redirect, Your Honor.

16 THE COURT: You can step down, sir. Thank you.

17 MR. BOOZER: Thank you, Your Honor. At this time we
18 would call Mr. William Grove to the stand.

19 THE COURT: Okay. Mr. Grove.

20 CLERK: Do you swear or affirm the testimony you
21 give this Court be the truth and nothing but the truth so
22 help you God?

23 MR. GROVE: I do.

24 WILLIAM GROVE, first being
25 duly sworn, testified as follows:

1 **Direct Examination by Mr. Boozer:**

2 Q. Mr. Grove, how are you doing today?

3 A. I'm well.

4 Q. Good. Now, you represented Mr. Brown in his prior
5 case with a plea?

6 A. I did.

7 Q. All right. Do you recall when you were first
8 appointed to represent him?

9 A. I started in the Fourth Circuit Public Defender's
10 Office in August of 2010 so it would have been shortly
11 thereafter.

12 Q. Would it have been maybe as soon October of 2010?

13 A. Sure. It may have been even earlier than that. I
14 don't recall.

15 Q. Was this one of the first - - was this one of your
16 earlier cases working as a public defender?

17 A. Yes. I adopted an active caseload when I came in and
18 this was a preassigned case.

19 Q. Now, you, obviously - - did you hear the testimony of
20 Mr. Brown today?

21 A. I did.

22 Q. And you've heard testimony that he was previously
23 represented by Ms. Sellers?

24 A. That's right.

25 Q. And what was your understanding of any discussions

1 that had been going on between Ms. Sellers and Mr. Brown?

2 A. She was one of the first people I contacted when I got
3 appointed, obviously, having been the prior lawyer on the
4 case, and his testimony is pretty consistent with the
5 temperature of the case at the time. She had been talking
6 with Shipp Daniel, at least that's what she told me, was
7 she was optimistic for a youthful offender act sentence or
8 something of that nature. Isaiah had been very cooperative
9 with law enforcement when he had been originally arrested,
10 he was identified as the non-shooting co-defendant. She
11 and I were both optimistic that the outcome of his case
12 would certainly not be what it is.

13 Q. Out of all three of the defendants, did you feel like
14 he was maybe in one of the better positions?

15 A. Mitigation wise, yeah. Absolutely. Evidence wise,
16 no. Mikal Bethea was in the best position evidence wise,
17 he had never made a statement. The only things that put
18 him on the scene were the fact that a standby witness had
19 said there were three people there and that Isaiah and
20 Matthew had both put him in it with their statements. But
21 Mikal had never actually given a confession to law
22 enforcement or anybody else to my knowledge. So legally
23 speaking Mikal Bethea was in the best position but as far
24 as how the state, how I feel the state should have handled
25 the case, Isaiah and Matthew would have been in better

1 positions.

2 Q. Do you know or recall about how many times you may
3 have met with Mr. Brown prior to what ultimately ended up
4 being a plea?

5 A. I know he said three or four, I think it was, I
6 certainly think it was more than that. More - - it
7 wouldn't have been a weekly thing but I did my best to meet
8 with him as often as possible. I was at the time during
9 the course of my representation of him I ended up being
10 assigned to most of the cases in Marlboro County and some
11 of the cases in Dillon. I did my best to meet with him as
12 often as I was able to and talk about the evidence and try
13 and get ready for either a plea or a trial.

14 Q. But you don't have, I guess, a specific recollection
15 of how many times that may have been?

16 A. No.

17 Q. Whether it was three or four or....

18 A. I would have to guess that it would be more than that
19 but, I mean, it wouldn't have been twenty. You know, if I
20 were to guess I would say six or seven times. I don't
21 think he's too far off of his estimate.

22 Q. Do you know how long each of the meetings would've
23 lasted?

24 A. Some short, some long. They seem to get progressively
25 longer as meetings tend to do with clients the closer we

1 got to a trial date when we would start talking about the
2 evidence more in-depth they would go longer and longer but
3 he's probably right over the course of a year they probably
4 average thirty minutes, twenty, thirty minutes.

5 Q. What exactly - - did you discuss any defenses with him
6 during these meetings?

7 A. Yeah, sort of. And he's right, I probably at one
8 point or another said that I'm not sure what kind of
9 defense we can use. Our best case scenario would have been
10 suppression of his statement because he didn't have a
11 lawyer present, because of his age, because his mother
12 wasn't there, I searched through case law and I could not
13 find anything that supported that creating an issue of a
14 voluntary statement and without that, the evidence against
15 him was they found the gun at his grandmother's house that
16 he had confessed to, at least, his agreement to participate
17 in an armed robbery that led to a death. Our options were,
18 again, mitigation. That was our best case scenario.

19 Q. Did you have any discussion with him about challenging
20 that statement based on his age?

21 A. Yeah, I'm sure that I would have. The conversation
22 probably would have been me coming to him saying I have
23 looked into this and I haven't found anything that's
24 helpful. It may have not been a particularly long
25 conversation. I mean, I certainly wouldn't have sat there

1 and reviewed the case law that was against him. I would
2 have done that on my own and then reported to him that I
3 have been unable to find anything that was helpful.

4 Q. Now, I know y'all actually selected a jury.

5 A. That's right.

6 Q. Were there any sort of motions that were made,
7 pretrial motions or anything at that time?

8 A. Not at that time, no.

9 Q. Okay. Would you have made any sort of motion about
10 trying to suppress his statement?

11 A. Yeah. There would have routinely been a Jackson v.
12 Denno hearing. At least as far as I can remember that
13 would have been the order of events, was pick a jury, argue
14 those motions in the afternoon, and then proceed the
15 following day if good, bad, or otherwise the case would
16 begin the following morning.

17 Q. Now, his plea was in August of 2011?

18 A. I think that's right, yeah.

19 Q. And y'all picked a jury, do you know how soon before
20 picking the jury that you knew y'all were going to go to
21 trial?

22 A. I'm sorry.

23 Q. Sure that me rephrase that. When did you first learn
24 that you guys would be on that trial roster?

25 A. Shipp and I have been talking about that for several

1 weeks. If I remember I think we were actually second up,
2 maybe a month out he had said I got another case ahead of
3 this one that I'd like to try first but this case is, I
4 believe the term the solicitor often uses, is ripe, and if
5 it wasn't going to go to trial in August it would've gone
6 to trial the following month or we were getting into the
7 part so I would've had, I don't know, three or four weeks
8 to know that it was actually up for trial.

9 Q. What was your relationship like with Mr. Brown at that
10 time?

11 A. It seemed to be fine. It got strained again the
12 closer we got to trial because things weren't going our
13 way. I was unhappy with the decision of the solicitor not
14 to reduce his charge based on his level of involvement and
15 based on his level of cooperation, at least, in the
16 beginning. Unfortunately, there's nothing I can do to make
17 the solicitor to give me an offer that I think is
18 reasonable or one that my client wants to accept. So our
19 relationship certainly got worse the closer we got to a
20 trial because I wasn't able to get him the things that he
21 and I both felt like were reasonable.

22 Q. Did he ever file a motion to have you relieved as his
23 lawyer?

24 A. I don't remember. I don't doubt it. As a public
25 defender, clients often want to be excused, me to be

1 excused from the case, that's not an uncommon complaint
2 especially when things aren't going well. I don't have
3 anything that says that he did but I don't doubt that, that
4 happened.

5 Q. Was Mr. Brown pretty adamant that he wanted a trial
6 throughout the entire time you were representing him?

7 A. No. We flip-flopped several times. In the beginning,
8 it was to try and work out a plea that was reasonable,
9 given all of his circumstances. When we got closer to a
10 trial and his options were to plead guilty without a
11 recommendation to everything or go to trial that's when we
12 started actually entertaining the ideal of going to trial
13 and ultimately, obviously, we decided to plea.

14 Q. Do you recall ever having, I guess, right at the time
15 of the plea or right before picking the jury that Isaiah
16 was really wanting to go to trial?

17 A. Yeah, and I remember him wanting to go to trial
18 because he didn't want to plea to murder and I tried, you
19 know, I did my best to explain to him I thought our best
20 option was a plea even if it is to murder. I did not, I
21 was not optimistic about how a trial would go for him. The
22 law does, unfortunately, the law doesn't say you have to be
23 the trigger man and given his - - given facts of his
24 particular case, the evidence allows for charge of murder
25 and I think, I don't think we would've been successful at a

1 trial and I think he, leading up to that day, my opinion
2 was he would've been worse off going forward with the trial
3 and I told him as much.

4 Q. Since y'all had selected a jury, what exactly is it
5 that you would've done at trial or what would your trial
6 strategy kinda of been had y'all continue or proceeded
7 through to a trial?

8 A. The first thing would have been to challenging the
9 statement, obviously. And outside of challenging the
10 statement it's an attack of the evidence. We didn't have
11 an alibi. We certainly could've called character
12 witnesses. He testified earlier that I wasn't planning on
13 calling any witnesses and realistically that's probably
14 true because we didn't have any witnesses that I thought
15 would be helpful other than maybe his mother or somebody
16 else saying they think he's a good fella. And given the
17 circumstances I didn't think that would have been helpful
18 testimony.

19 Q. Did you ever have any conversation with Mr. Brown
20 where you indicated if he proceeded to trial he would get a
21 life sentence?

22 A. I probably told him that, that was likely, yeah. That
23 - - and that is not something that I would have guaranteed
24 him and that's certainly not something that I would have
25 done in an effort to intimidate him or anything. It

1 would've been done to encourage him that given two bad
2 options at that point, I thought the plea was the better of
3 two bad.

4 Q. Did you ever speak with or attempt to speak to Mikal
5 Bethea?

6 A. No.

7 Q. Did you ever have any contact with, excuse me, with
8 Marshall Weaver or Myesha Brown, the lawyers for Mr.
9 Bethea?

10 A. I don't think Marshall got on that case until after
11 Isaiah's case was over. I only knew Myesha Brown as his,
12 as Mikal Bethea's lawyer. I may have had a conversation or
13 two with her. I genially don't remember. Given the fact
14 that he had never made a statement to law enforcement and
15 evidentiary speaking, he was in the best position. He had
16 zero incentive to make any sort of a statement implicating
17 himself and trying to take the blame for either Matthew or
18 Isaiah.

19 Q. Did you think though, if he were to have taken the
20 blame at that time, do you think it would've been helpful
21 to have spoken with Mr. Weaver or Ms. Brown to communicate
22 with Mr. Bethea to see if that's he may say?

23 A. Maybe. But again I don't think any of that
24 necessarily arose the evidence. It all goes back to
25 mitigation and Shipp Daniel was the lead prosecutor on the

1 case and I talked with him at nausea about how a plea to
2 murder was inappropriate for Isaiah. And I was unable to
3 convince him of that. I don't think that would have
4 helped. At the time Shipp thought that Mikal Bethea was
5 the shooter. Everybody thought that Mikal Bethea was the
6 shooter. That was never a question in anybody's mind. I
7 don't know how Mikal Bethea actually saying it out loud
8 would've helped Isaiah.

9 Q. And you're aware that Mr. Bethea pled guilty to
10 voluntary manslaughter and received fifteen years?

11 A. That's right. I believe he pled in the middle of a
12 trial. I don't know what happened in his trial. I did sit
13 for that. I'm not sure what issues came up in his
14 particular case but my understanding of his was that he
15 pled to voluntary mid trial for one reason or another.

16 Q. And are you also aware the third co-defendant, Matthew
17 Cade, pled guilty to voluntary manslaughter and received a
18 seven year sentence?

19 A. That's right. And I think he would've done that maybe
20 even the same day. He was either already had or was at
21 least prepare to testify against Mikal Bethea and certainly
22 based on that, I guess, the prosecutors gave him some sort
23 of a benefit.

24 Q. Did you ever have any conversation with Mr. Brown
25 about pleading guilty and pleading guilty to voluntary

1 manslaughter?

2 A. We probably would have, but, ultimately that was what
3 from the very beginning I thought was our best outcome, was
4 a reduction in the charge and a plea either with or without
5 a recommendation. I certainly would have liked to have had
6 a low figured recommendation of voluntary plea. I felt
7 like that would've been appropriate. We - - we - - I feel
8 certain we would've had that conversation at some point
9 during the year or so that I represented him.

10 Q. Do you have any discussion with Mr. Brown prior to the
11 plea that he could expect somewhere between two and thirty
12 years?

13 A. Not - - not within a few weeks of the plea. It was
14 clear to me from my conversation with Mr. Daniel more than
15 a month away that we were either going to have to go to
16 trial on murder or we were going to plea to murder. I had
17 gone back and forth with Shipp many times and he had been
18 very clear with me that he was not going to reduce the
19 charge.

20 Q. Were you also communicating this with Mr. Brown?

21 A. Yeah.

22 Q. Did you ever have a discussion or prior to the plea,
23 did you ever tell Mr. Brown that he could expect a thirty
24 year sentence for that exchange for his plea?

25 A. I would have phrased it differently. I would've said

1 probably some thing along the lines of our only opportunity
2 for you to get the minimum or our best opportunity for you
3 to get the minimum is to enter a plea, yeah.

4 Q. Did you ever tell him walking into that plea to expect
5 to get a forty-five year sentence?

6 A. Absolutely not.

7 Q. Did you ever expect to walk into that plea and hear
8 that he would receive a forty-five year sentence?

9 A. Absolutely not.

10 Q. Had you known that he was going to receive a forty-
11 five year sentence would you have encouraged him to take a
12 plea or go on to trial?

13 A. At that point, I probably would have encouraged him to
14 go to trial. I tell my clients all the time that
15 ultimately my job is to tell them what I think, what to do,
16 what they say. And the reason that I was encouraging him
17 and I thought that a plea was in his best interest was I
18 think he was eighteen at the time. If he had received the
19 minimum he would've been locked up for two years already
20 because he got arrested when he was sixteen, if he had
21 gotten the minimum sentence he would've been out forty-six
22 years old, give or take and, you know, there's plenty of
23 life beyond that. If I knew he was walking into a forty-
24 five year sentence were now he's going to be sixty some odd
25 before he gets out, I wouldn't have blamed him for feeling

1 like he did have anything to lose by going to trial.

2 Q. Did you have any realistic expectation at all the
3 potential sentence could be forty-five years?

4 A. No. Again giving the mitigation in his case that he
5 was culpable as an accomplice. I didn't think that he had
6 any reason to expect anything more than the minimum.

7 Q. And as his attorney, I mean, y'all had some pretty
8 close contact, do you think that he had any idea that he
9 potentially could get a forty-five year sentence that day?

10 A. I would have told him that it carries thirty to life
11 and he would've known that but I don't think he would've
12 any realistic expectation of getting anything other than
13 thirty or very close to it.

14 Q. And would you have advised him had you known it was a
15 forty-five year sentence, let's take this to trial?

16 A. Maybe. Certainly. I would not have encouraged him to
17 plea as strongly if I had known that was going to be the
18 outcome.

19 Q. Now, as he sitting there and going through the plea
20 and answering the questions of the Court, were you telling
21 him, sort of, how to respond to those questions?

22 A. I don't remember. If I did it would've been he looked
23 at me and said what did the judge say and I would say, he
24 said X,Y, or Z. I wouldn't have forced him to do anything.
25 I wouldn't have instructed him to answer in a way that he

1 didn't want to. At that point, he had instructed me, I
2 want to plead guilty.

3 Q. Do you have any sort of personal thoughts on the
4 sentence that Mr. Brown received?

5 A. Yeah. I think he got way too much time. I thought he
6 got - - I thought the sentence was, didn't fit his level of
7 involvement at the time and that was prior to the
8 resolution of Mr. Bethea or Mr. Cade's case. I think it's
9 only magnified now that a person who at the time everybody
10 thought was the shooter and now admits out loud that he's
11 the shooter, got a third of the sentence that Isaiah got.
12 I certainly don't think Isaiah's sentence fit's in with the
13 rest of them.

14 Q. And you - - ultimately, you filed, basically, a motion
15 to withdraw the plea?

16 A. That's right. His mother, Mary, was understandably
17 upset after the plea as was everybody and she told me that
18 he wanted to withdraw his plea. He and I did not have a
19 direct conversation but she relayed that message to me so I
20 file the motion to withdraw his plea.

21 Q. And at the hearing - - well, did you tell Mr. Brown
22 that you were filing that?

23 A. I would have sent him a copy of it. Sure.

24 Q. Okay. At the hearing on the motion to withdraw the
25 plea, I guess, there was an oral motion to reconsider?

1 A. That's right.

2 Q. Why was that done?

3 A. At the time I filed the motion I would've filed it
4 within a week or so of the actual plea and none of this
5 other stuff had happened at this point. The trial of Mikal
6 Bethea had not gone on, then that wasn't for two or three
7 more months but by the time we actually had, got in front
8 of Judge King before the actual motion itself, all of those
9 other things had fallen into place and it was very clear
10 that the sentence was despairing to the rest of the
11 situation. So I sort of attached to that motion to
12 withdraw if he wasn't willing to withdraw the plea, I asked
13 that he consider to reconsider the sentence, at the least.

14 Q. And is that what the argument was, was that this was a
15 despairing sentence to the co-defendants?

16 A. Yeah. And I think I said as much at the hearing that
17 I didn't have anything in the way of case law to support
18 it. It was a motion in equity that a more culpable person
19 for reasons I wasn't aware of, got a much lower sentence
20 and it's just not fair. That was the basis of the motion.

21 Q. Where do you currently work now?

22 A. Greenville County. I'm a public defender there now.

23 Q. How long have you been a public defender?

24 A. All total or in Greenville?

25 Q. Yes, sir, all total?

William Grove- Cross Examination by Ms. Kinard

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1 A. This past August was five years.

2 Q. And you - - how many cases do you think you've handled
3 over those five years?

4 A. Hundreds. I don't know.

5 Q. Would you characterize this as the most despairing
6 sentence that you've seen in a similar case or in any case?

7 A. I think so.

8 Q. Everyone, I guess, has cases that they look back on
9 and wish things were different, is this one of those cases
10 for you that you look back on that you still think about
11 because of the time that he received?

12 A. Yeah, it is.

13 MR. BOOZER: The Court's indulgence, Your Honor?

14 THE COURT: Yes, sir.

15 MR. BOOZER: Your Honor, that's all the questions I
16 have of this witness at this time.

17 THE COURT: Okay. Ms. Kinard?

18 MS. KINARD: Thank you, Your Honor.

19 **Cross Examination by Ms. Kinard:**

20 Q. Thank you for being here, Mr. Grove?

21 A. Sure.

22 Q. Just a couple of background questions before we get
23 into some specifics. Did you file a Rule 5, a Brady motion
24 in this case?

25 A. My office would have. We started representing Isaiah

1 before I joined that office and those documents are
2 generated automatically.

3 Q. As far as discovery, did you have any trouble
4 receiving things that you thought you needed?

5 A. No, ma'am.

6 Q. You didn't think anything was absent from the
7 discovery?

8 A. No, ma'am.

9 Q. Did you go over all these materials with Mr. Brown?

10 A. I think I did, yes, ma'am.

11 Q. Did you ever have any trouble with Mr. Brown
12 understanding you?

13 A. No, ma'am.

14 Q. He always seem to be involved in conversations and
15 aware of what was going on?

16 A. Sure. He certainly didn't understand why the case was
17 being handled the way it was but he understood our
18 conversations, absolutely.

19 Q. And he explained his versions of events to you?

20 A. More or less, yes, ma'am.

21 Q. Did you explain the elements of the offenses and the
22 nature of the charges to him?

23 A. Yes, ma'am.

24 Q. And you explain to him the sentencing range that each
25 charge carried?

1 A. Yes, ma'am.

2 Q. He knew that going into trial, basically, your best
3 strategy was to mitigate?

4 A. Yes, ma'am.

5 Q. And so you did everything possible to mitigate any
6 potential sentences that he would've received?

7 A. I think I did, yes, ma'am.

8 Q. And you think you did the best you could to negotiate
9 with the solicitor's office?

10 A. I wish things had turned out differently but I don't
11 know what I could have done differently.

12 Q. Would you describe the discussions that y'all had
13 between picking the jury and deciding to enter into a
14 guilty plea?

15 A. If I remember I think he actually and again we had
16 gone back and forth about a trial or plea several times in
17 the weeks leading up. I think he actually told me before
18 we picked a jury that he wanted to plea but it was, I don't
19 know, maybe half of the panel had come into the courtroom
20 already and so when I discussed that with Judge King and
21 his prosecutor, Shipp Daniel, then the decision was made to
22 go ahead and pick a jury and then entered the plea after
23 the jury had been picked. So that conversation about now I
24 want to plea would have been that morning but right before
25 we picked the jury.

1 Q. As part as those conversations, did you describe to
2 him the constitutional rights he was giving up?

3 A. Yes, ma'am.

4 Q. Do you remember those being explained on the record as
5 well?

6 A. Yes, ma'am. I'm sure they were.

7 Q. What charges did Mr. Brown think he was about to plea
8 to?

9 A. So far as I know and I would've explained it to him
10 and the judge would have too, murder, armed robbery,
11 criminal conspiracy, possession of a weapon.

12 Q. And just to reiterate, you said that if you provided
13 any answers during the plea they were only because he
14 sought them out, is that correct?

15 A. Yes, ma'am. I mean, I wouldn't have twisted his arm
16 so to speak to answer one way or the other.

17 Q. And they were all in line with the effectuating the
18 guilty plea he stated to you he wanted to enter?

19 A. That's correct.

20 Q. Now, the decision to file the motions after the plea,
21 those came from his mother?

22 A. Those were relayed, reported to me by his mother
23 through him, is what his mother told me.

24 Q. And the motion to dismiss was timely filed, the
25 written motion, I'm sorry, the motion to withdraw the

1 guilty plea?

2 A. That's right.

3 Q. And you explain very well the reason you added on the
4 motion for reconsideration. Were you aware of the
5 conversations Mr. Brown had, had with the solicitors
6 between the time of the guilty plea and the time of motion
7 for reconsideration?

8 A. Yeah. I vaguely - - I remember something about, I
9 guess, it would've been the week before or maybe even the
10 week of Mikal Bethea's trial that they would've brought him
11 back and given him an opportunity, do you want to testify
12 and I knew that conversation was going to be going forward.
13 I, genially, don't remember what I was doing but I would've
14 had a good reason to be somewhere else. I may have been in
15 a trial in another county. I don't know why wasn't there
16 but I made sure that another representative of my office
17 was there.

18 Q. Is that a regularly done thing that at least someone
19 from your office is there?

20 A. Sure. I wanted to make sure that he was represented
21 by somebody at our office at that time and given the
22 limited number of employees that we have and the several
23 counties that we had to cover at the time that was not an
24 uncommon thing.

25 Q. So before you walked into those motion you knew that

1 they were going to offer from the state?

2 A. I knew that they had brought him back and given him an
3 opportunity to cooperate at trial and my understanding of
4 that was that they would then reduce his sentence or they
5 would encourage the judge to reduce his sentence to thirty
6 years and that his request was that they allow him to
7 withdraw his plea for his cooperation and enter a plea to
8 something else and they would not do that. So he did not
9 agree to cooperate against Mr. Bethea.

10 Q. And as you stated - - in addition to that - - strike
11 that - - your only argument for reconsideration was an
12 equitable argument, is that correct?

13 A. Yes, ma'am.

14 Q. And what had happened with those recent conversations,
15 you didn't have any case law or any legal basis for your
16 argument, is that correct?

17 A. That's correct.

18 Q. So you went in, basically, just throwing yourself and
19 Mr. Brown before the Court asking to bring sentence in line
20 with his co-defendants?

21 A. Hand-in-hand, yes, ma'am.

22 MS. KINARD: That's all I have, Your Honor. Thank
23 you.

24 THE COURT: Thank you. Mr. Boozer?

25 MR. BOOZER: No redirect, Your Honor. Thank you.

1 THE COURT: Thank you, Mr. Grove. You may step
2 down.

3 MR. GROVE: Thank you.

4 THE COURT: Mr. Boozer, any other witnesses?

5 MR. BOOZER: No further witnesses on behalf of the
6 applicant's, Your Honor.

7 THE COURT: Any - - -

8 MS. KINARD: The state has no witnesses but we
9 request a brief closing.

10 THE COURT: Okay.

11 MR. BOOZER: Thank you, Your Honor. If it pleases
12 the Court?

13 THE COURT: Yes, sir.

14 MR. BOOZER: Just briefly, judge - - -

15 MS. KINARD: Your Honor, I'm sorry could we excuse
16 Mr. Grove from his subpoena?

17 THE COURT: Any objection?

18 MS. KINARD: No, sir.

19 MR. BOOZER: No, sir.

20 MS. KINARD: I just wanted to get that on the
21 record. Thank you.

22 THE COURT: You maybe excused, Mr. Grove.

23 MR. BOOZER: Thank you, Your Honor.

24 THE COURT: Yes, sir.

25 MR. BOOZER: May it please the Court? Judge, I

1 think this case Mr. Bethea had really not a lot of options
2 and he comes out with a forty-five year sentence. The co-
3 defendant gets a fifteen year sentence and the other co-
4 defendant gets a seven year sentence. One of those co-
5 defendants who testified today actually admits to being the
6 most culpable of the parties and being the actual shooter.
7 He was never investigated by Mr. Brown's lawyer.
8 Apparently, no one attempted to talk to Mr. Bethea's
9 lawyers to see if he would've made that statement at the
10 time maybe to assist Mr. Brown had he known what position
11 he was in. I certainly think had counsel had done that he
12 would've been in a better position to evaluate Mr. Brown
13 whether he would go to trial or take a plea. Your Honor, I
14 think it's very important that although going through the
15 plea colloquy there is, there is testimony in there and the
16 judge does advise him of the sentencing range for murder,
17 thirty to life. But listening to Mr. Brown sit here and
18 say that he had no idea that he would walk in there and get
19 a forty-five year sentence and also listening to,
20 importantly, his counsel saying that he had no realistic
21 expectation of Mr. Brown walking out with a forty-five year
22 sentence and Mr. Brown saying had he known he would've
23 gotten that, he would have insisted on going to trial
24 because at that point he really would have had nothing to
25 lose and the same with Mr. Grove. Mr. Grove also testified

1 that had he known he would've gotten forty-five years, he
2 would have strongly encouraged Mr. Brown to go to trial. I
3 just think that they walked in there and I think the
4 testimony points to Mr. Brown been advised that, that is
5 not going to happen. I don't think that, that's really a
6 knowingly and intelligent plea when that does occur. Your
7 Honor, I'll let the rest of the allegation that he's made
8 stand on there own through the testimony but I think the
9 most important ones are, obviously, failure to investigate
10 Mr. Bethea and also advising Mr. Brown what the possible
11 sentence would have been. Thank you, Your Honor.

12 THE COURT: Thank you, Mr. Boozer. Ms. Kinard?

13 MS. KINARD: Thank you, Your Honor. May it please
14 the Court? I do not blame Mr. Brown one bit for filing his
15 PCR claim because if I were in his shoes I would have to.
16 With that being said, I believe he's trying to play on the
17 sympathies of the Court and none of his allegations are
18 founded under the PCR statue or any case law. To go
19 through some of them briefly, first of all, the state did
20 not have adequate notice of any prosecutorial misconduct
21 claims as these were only filed a couple of days ago and we
22 have not been able to subpoena any of the available
23 prosecutors or none of the prosecutors are available.
24 Stating that his plea was involuntary, the record clearly
25 shows a full understanding of the plea and that's all that

1 is required under Boykin v. Alabama. You can only attack
2 an attorney's representation of the applicant fallen below
3 a reasonable standard and there's been absolutely nothing
4 here today to show that Mr. Grove's representation of Mr.
5 Brown has fallen below a reasonable professional standard
6 under prevailing arms. As far as the allegedly failed to
7 investigate, we must be shown evidence of what would've
8 been discovered and we haven't seen that. There's no
9 indication to show that Mr. Bethea would ever have
10 testified this way as he did today if he had pressed before
11 his plea. As Mr. Grove stated he had not provided a
12 statement. He had not provided any evidence to incriminate
13 himself and there is no reason for anyone to think who
14 would've done that until he pled. And in fact, he did
15 plead guilty which is another indication that his story
16 would not have changed. He would not have revealed this
17 information. For that reason, there is no basis for
18 thinking that Mr. Grove would have called a witness that
19 had no purpose and foregoing action is not a value to a
20 case cannot be considered ineffective assistance of
21 counsel. If you do not do something that cannot benefit
22 the case, there's no harm, there's no ineffective
23 assistance. Mr. Grove has clearly articulated a valid
24 trial strategy and any time that is done you cannot be
25 found having an ineffective assistance of counsel. All of

1 the elements have been met, excuse me, please strike that.
2 None of the elements have been met to show that Mr. Grove's
3 representation of Mr. Brown was anything but zealous. He
4 represented him throughout the plea. He represented him
5 beforehand through meetings and discussions, he went
6 through his rights, he went through his abilities and Mr.
7 Brown got a bad deal. There is no way to have known how
8 the dice would be rolled. Just as they have walked into a
9 full trial without knowing how a judge and jury would rule,
10 they walked into a plea without a negotiated sentence. Mr.
11 Grove testified that he told Mr. Brown the sentencing
12 guidelines and restrictions and mandatory minimum. So Mr.
13 Brown was fully aware of what he could have receive as soon
14 as he walked in that courtroom and pled before the judge.
15 Regarding, briefly the ineffective assistance of appellate
16 counsel, there is no requirement for appellate counsel to
17 raise every non-frivolous issue presented by the record or
18 presented by the record that is case law and that's why
19 Ander's brief was filed in this case meaning that appellate
20 defense did not find any ground for appealing. So for all
21 of these issues and all of these reasons combined the state
22 maintains that the threshold has not been met under
23 Strickland v. Washington and there's been no prejudice and
24 no deficient performance and the applicant simply failed to
25 carry his burden. Therefore, the state request that the

1 application should be denied and none of the relief being
2 sought by Mr. Brown should be granted. Thank you.

3 THE COURT: Any reply?

4 MR. BOOZER: No reply, Your Honor.

5 THE COURT: All right. Counsel, I am going to have
6 to take this matter under advisement. I will review
7 everything including the testimony given here today and try
8 to get back with you with regards to a decision in the next
9 several days.

10 MR. BOOZER: Thank you, Your Honor.

11 MS. KINARD: Thank you, Your Honor.

12 THE COURT: Thank you, Mr. Boozer. Thank you, Ms.
13 Kinard.

14 (CONCLUSION OF THE HEARING ON JANUARY 12, 2016)
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CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fourth Circuit Court for Darlington County, South Carolina, on the 12th day of January, 2016.

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

Lisa S. Carter

Lisa S. Carter

Circuit Court Reporter

September 18, 2016

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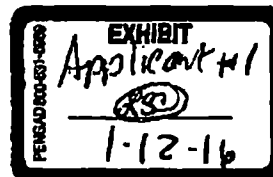
The State of South Carolina VS Mikal R Bethea

Case Number:	J008795	Court Agency:	General Sessions	Filed Date:	03/30/2010
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	Baxley, J. Michael
Disposition:	Pled Guilty				
Disposition Date:	11/16/2011	Date Received:	03/26/2010	Arrest Date:	03/23/2010
Law Enf. Case:		True Bill Date:	06/17/2010	No Bill Date:	
Prosecutor Case:		Indictment Number:	2010GS1700516	Walver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Bethea, Mikal R	0217-Manslaughter / Voluntary manslaughter	0116-Murder / Murder	11/16/2011

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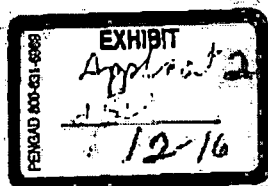
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Prosecutor Case:		Indictment Number:	2010GS1700516	Waiver Date:	
Probation Case:					

Case Parties	Charges	Sentencing	Associated Cases	Actions	Financials	Bonds	
And/Or	Description	Amount	Units	Begin Date	End Date	Completion Date	Consecutive or Concurrent
	15yrs/Def cts since 3/23/10/604days						

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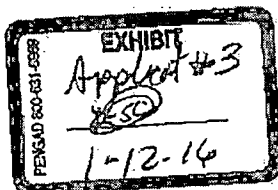
The State of South Carolina VS Matthew Cade

Case Number:	J008794	Court Agency:	General Sessions	Filed Date:	03/30/2010
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	Baxley, J. Michael
Disposition:	Pled Guilty				
Disposition Date:	11/17/2011	Date Received:	03/26/2010	Arrest Date:	03/24/2010
Law Enf. Case:		True Bill Date:	06/17/2010	No Bill Date:	
Prosecutor Case:		Indictment Number:	2010GS1700490	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Cade, Matthew	0217-Manslaughter / Voluntary manslaughter	0116-Murder / Murder	11/17/2011

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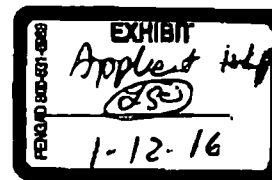
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Law Enf. Case:		True Bill Date:	06/17/2010	No Bill Date:	
Prosecutor Case:		Indictment Number:	2010GS1700490	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

And/Or	Description	Amount	Units	Begin Date	End Date	Completion Date	Consecutive or Concurrent
	7Yrs/Def cts 604Days						

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Hi my name is Mihal Bethea, the co-defendant of your client MIZIAH
 3104. I'm willing to inform you I would be more than willing to testify
 in his behalf if and when his case is called in court. To notify the judge
 that I forced him to do everything he did in the case. Seeing that every
 thing was my idea in the first place. The hand he played in the situation of
 robbery was all part of my doing and power I had while holding the gun.
 Telling him to rob the victim with me. I'd like to discuss this matter
 with you if possible. I'm currently incarcerated in Lee Correctional
 C.D.C # 348701 Please don't hesitate to contact me if need of assistance

Still I remain yours Truly

Mihal Bethea

Mihal Bethea

July-24-2012

CLERK OF COURT
 DALLAS COUNTY

2015 MAR 13 PM 12:03

FILED
 CLERK OF COURT



STATE OF SOUTH CARO)
COUNTY OF DILLON 16 JAN 27 PM 2:09)
Isaiah Brown, #347241.)
Applicant.)
v.)
State of South Carolina.)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
C/A NO: 2014-CP-17-414

ORDER GRANTING PCR
ACERTIFIED
TRUE COPY

[Signature]

CLERK OF COURT

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on September 10, 2014, and subsequently amended on January 6, 2016. Respondent made its return on November 21, 2014. An evidentiary hearing into the matter was convened on January 12, 2016, at the Darlington County Courthouse. Applicant was present at the hearing and was represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Jessica Kinard of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is currently confined in the South Carolina Department of Corrections pursuant to the Dillon County Clerk of Court's orders of commitment. Applicant was indicted by the Dillon County Grand Jury for criminal conspiracy (2010-GS-17-616), murder (2010-GS-17-494), possession of a weapon during the commission of a violent crime (2010-GS-17-617) and armed robbery (2010-GS-17-618). Applicant was represented by William E. Grove, Esquire. On August 8, 2011, Applicant pled guilty as indicted. The Honorable Howard P. King sentenced the Applicant to concurrent sentences of forty-five (45) years for murder, five (5) years for criminal conspiracy, five (5) years for possession of a weapon during the commission of a violent crime, and thirty (30) years

[Signature]

for armed robbery. Applicant subsequently filed a timely Motion to Withdraw the Plea/Motion to Reconsider. Following a hearing on March 7, 2012, Judge King denied Applicant's Motions.

Applicant filed a timely notice of appeal. Robert M. Dudek, Esq., of the Office of Appellate Defense perfected the appeal with the filing of an Anders brief. The South Carolina Court of Appeals dismissed Applicant's appeal on March 5, 2014. State v. Brown, Op. No. 2014-UP-96 (S.C. Ct. App. filed March 5, 2014). The remittur was returned to the circuit court on March 21, 2014.

ALLEGATIONS

In his original Application filed September 10, 2014, Applicant alleges that he is being held in custody unlawfully for the following reasons:

- (i) "Denial of effective assistance of counsel"
 - a. "Failure to investigate; failure to properly (sic)"
- (ii) "Involuntary Guilty Plea"
 - a. "counsel's ineffectiveness resulted in plea"

Applicant filed his amended Application on January 6, 2016, alleging that he was being held in custody unlawfully based on the following allegations:

- (i) Counsel failed to investigate co-defendant, Mikal Bethea.
- (ii) Counsel failed to prepare for trial.
- (iii) Counsel failed to investigate, review and/or discuss trial strategy, defenses and evidence with Applicant.
- (iv) Counsel was not present during a meeting involving the Solicitor's office and Applicant.
- (v) Prosecutorial misconduct for attempting to interview Applicant in the absence of counsel.

- (vi) Counsel failed to properly advise Applicant of possible sentencing range for the charges.
- (vii) Counsel failed to challenge statements made by Applicant while he was interviewed at the age of 16 without being able to consult with his parent.
- (viii) Counsel failed to bring to the Court's attention Applicant had a pending Motion to Relieve Counsel. The Motion was never heard or ruled upon.
- (ix) Counsel failed to properly prepare for Reconsideration hearing.
- (x) Ineffective assistance of appellate counsel.
- (xi) Involuntary guilty plea.

At the evidentiary hearing, Applicant testified on his own behalf. Applicant's former co-defendant, Mikal Bethca ("Bethca") also testified. The State presented testimony from William E. Grove, Esq ("counsel"). This Court also had before it a copy of the guilty plea transcript, reconsideration transcript, appellate records, the Dillon County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR Application and amendment and the State's Return.

STANDARD OF REVIEW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 268 S.C. 441, 334 S.E.2d 813 (1985).

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

professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

Based on the record and testimony presented at the PCR hearing, this Court finds Applicant has met his burden of proof.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Ineffective Assistance of Counsel/Involuntary Guilty Plea

At the evidentiary hearing, Applicant alleged and testified counsel failed to meet with him during a meeting involving the Applicant and Solicitor resulting in ineffective assistance of counsel and prosecutorial misconduct. He further alleged and testified counsel failed to properly advise Applicant of the possible sentencing range for the charges; failed to challenge Applicant's

statements given to law enforcement at the age of 16 without being allowed to consult with his mother; failed to alert the plea court Applicant had a pending Motion to Relieve Counsel; and counsel failed to properly prepare for the hearing on Applicant's Motion for Reconsideration.

Counsel testified he met with the Applicant on several occasions prior to the plea. Counsel further testified he did not think Applicant had any viable defenses at trial. Counsel indicated he recalled there being a meeting between the Applicant and Solicitor in which he was not present, however, counsel testified another attorney from the Public Defender's office was present to advise Applicant during the meeting. Counsel further testified he advised the Applicant of the potential penalties for the charges. Counsel also testified that he was aware law enforcement interviewed the Applicant while he was 16 years old. He further indicated had the case proceeded to trial, he would have filed the appropriate motions to challenge the statements Applicant made to law enforcement. Counsel testified that he was very surprised the Applicant received a 45 year sentence. Counsel further indicated had he thought the Applicant could have realistically received a 45 year sentence, he would have advised the Applicant to move forward with a trial. Following the plea and the sentence, Counsel indicated he initially filed a Motion to Reconsider the sentence, however, he could not find any law to support his position. He further testified, and the record reflects, he also orally amended the Motion to include a Motion to Withdraw the plea. Counsel testified he could not recall whether the Applicant had filed a Motion to Relieve him as counsel, however, he recalled the relationship was strained. He acknowledged no hearing was ever held regarding a Motion to Relieve.

This Court finds Applicant has failed to meet his burden of proof in alleging counsel was ineffective as it relates to these specific allegations. This Court finds although appointed counsel was not present at the meeting with the Applicant and Solicitor, Applicant was sufficiently

represented and accompanied by another attorney from the Public Defender's office. This Court further finds that because Applicant was represented by a member of the Public Defender's office, there was no prosecutorial misconduct. This Court also finds that counsel testified and the record reflects, the Applicant was advised of the potential penalties for the charges he faced. This Court also finds counsel was not ineffective for failing to challenge the statements Applicant made to law enforcement. Counsel testified he would have challenged the statements had the case proceeded to trial and this Court finds counsel's testimony to be credible. This Court further finds counsel was not deficient in his representation of Applicant at the hearing on the Motion to Reconsider the sentence. This Court finds after reviewing the hearing transcript, counsel made the appropriate arguments on Applicant's behalf. This Court further finds that counsel was not ineffective for failing to bring to the plea court's attention that there was a pending Motion to Relieve counsel filed by the Applicant. The plea transcript reflects Applicant testified he was satisfied with plea counsel. Accordingly, this Court finds that counsel was not ineffective regarding these specific allegations.

However, Applicant also alleged and testified counsel was ineffective for failing to prepare for trial and also for failing to investigate and interview his co-defendant, Bethca. At the PCR hearing, Bethca testified that in July 2012, he contacted the Applicant by letter and indicated he was willing to testify on his behalf in a court setting. Bethca testified that he and the Applicant were co-defendants along with a third individual named Matthew Cade.¹ Bethca testified that he was the most culpable of the three (3) defendants and admitted both at his own

¹ This Court notes the Dillon County Clerk of Court records reflect that Bethca and Cade were originally charged with the same crimes as the Applicant. The records further reflect Bethca pled guilty to voluntary manslaughter on November 16, 2011, and was sentenced by the Honorable J. Michael Baxley to fifteen (15) years. The records also reflect Cade pled guilty to voluntary manslaughter on November 17, 2011, and was sentenced by Judge Baxley to seven (7) years.

guilty plea and during the PCR hearing he had the weapon and shot the victim. Bethea also testified he forced the Applicant to participate in the robbery. Bethca testified he was previously represented by Myesha Brown, Esq., and Marshall Weaver, Esq.² Bethca indicated, to his knowledge, Applicant's counsel never attempted to interview him either directly or through his attorneys. Bethea further testified he would have made the same statements on the Applicant's behalf prior to and at the time of Applicant's plea. Counsel testified he never contacted either of Bethea's attorneys to investigate Bethea or any statements he may have made.

"Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland v. Washington, 466 U.S. 668, 687 (1984). Prejudice from counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992). This Court finds the testimony of the Applicant, Bethca and counsel to be credible as it relates to this allegation. This Court finds counsel was ineffective for failing to interview Bethea, resulting in Applicant's involuntary guilty plea. This Court finds had counsel investigated Bethca, he would have discovered Bethca would have presented favorable testimony to aid in Applicant's defense at trial. This Court further finds had counsel investigated Bethea, Applicant would not have pled guilty but would have insisted on proceeding to trial. Without this information, Applicant could not have made a knowing and intelligent decision on whether to proceed to trial or plead guilty. Accordingly, this Court finds Applicant has met his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174. Accordingly, this Court finds Applicant is entitled to a new trial.

2. Ineffective Assistance of Appellate Counsel

² Bethea testified that he had the opportunity to consult with his former attorney, Mr. Weaver, prior to testifying at the PCR hearing and he also understood he was not under any obligation to testify.

Applicant alleged and testified appellate counsel was ineffective for for filing an Anders brief.

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985). The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005). When a claim of ineffective assistance of counsel is based upon a failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id. Where the result of appeal would have been different had counsel not been deficient, the appropriate remedy is to grant a new trial. Ezell v. State, 345 S.C. 312, 548 S.E.2d 852 (2001).

Based on the Applicant's testimony and a review of the record, this Court finds Applicant did not receive ineffective appellate counsel. Applicant failed to show appellate counsel was ineffective or that there were any valid direct appeal issues which appellate counsel should have raised. Accordingly, this Court denies Applicant any relief as it relates to his claim against appellate counsel.

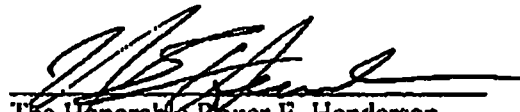
CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has met his burden of proof in showing he received ineffective assistance of counsel and counsel's performance prejudiced him as it relates to counsel's failure to investigate Bethea. This Court further finds and concludes Applicant has met his burden of proof in establishing that his guilty plea was unknowingly and involuntarily entered. Applicant's remaining allegations are dismissed with prejudice. Accordingly, this application for post-conviction relief must be granted.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief is granted;
2. Applicant's convictions are vacated; and
3. Applicant receive a new trial.

AND IT IS SO ORDERED this 25th day of January, 2016.


The Honorable Roger E. Henderson
Presiding Judge
Fourth Judicial Circuit



STATE OF SOUTH CAROLINA)
COUNTY OF DILLON)

IN THE COURT OF COMMON PLEAS
OF THE FOURTH JUDICIAL CIRCUIT

Case No.: 2014-CP-17-0414

Isaiah M. Brown,
S.C.D.C. No. 347241,

Applicant,

v.

State of South Carolina,

Respondent.

**MOTION TO ALTER OR AMEND
THE ORDER GRANTING PCR**

FILED
GREGORY T. BYATT
2016 FEB - 4 PM 3:43
CLERK OF COURT
DILLON COUNTY

Respondent, by and through undersigned counsel and pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, moves the court to alter or amend the judgment of the grounds the Court erred in finding that counsel was ineffective for failing to investigate a co-defendant and, as a result, Applicant entered an involuntary guilty plea. The Order Granting PCR was dated January 25, 2016 and filed January 27, 2016 granting Applicant's PCR application on these two (2) issues. Respondent received this order on January 28, 2016. In support of the motion, Respondent addresses only the grounds upon which relief was granted and would show as follows:

Ineffective Assistance of Counsel for Failure to Investigate

The Court's order granting relief finds that plea counsel was ineffective because he failed to interview Applicant's co-defendant, Mikal Bethea. At the PCR hearing, Bethea testified that he was the most culpable of the three (3) defendants, forced Applicant to participate in the robbery, admitted he had the weapon, and shot the victim. Bethea also presented a letter that he wrote to Applicant's attorneys that outlined the limited involvement of Applicant. This letter was entered into evidence, and bears a handwritten date of July 24, 2012. Bethea testified that he did

not know to whom he should send the letter, so he filed it with the Clerk of Court, which timestamped it on March 31, 2015¹.

Respondent submits that Bethea's testimony should be viewed with the same lens that the Court views recantation testimony. Under the law, Bethea was presumed innocent until he was proven or admitted otherwise. Therefore, plea counsel had no reason to believe that Bethea would testify against his own self-interest. As cited in the order of dismissal, "[c]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland v. Washington, 466 U.S. 668, 687 (1984). Under the circumstances, it was entirely reasonable for plea counsel to forego interviewing Bethea while they were awaiting disposition of the charges, as Bethea would have no reason to act against his self-interest. He was cloaked by several layers of constitutional protection against self-incrimination and in favor of a presumption of innocence. Furthermore, Bethea had not provided a statement to law enforcement and was represented by counsel, both of which presented significant hurdles to plea counsel when it came to gaining any information.

Ultimately, although Bethea testified at the PCR hearing that he would have vouched for Applicant's relative innocence if he had been asked to, the Court must view this statement from the PCR hearing with caution. "Recantation of testimony ordinarily is unreliable and should be subjected to the closest scrutiny when offered as ground for a new trial." State v. Mayfield, 235 S.C. 11, 34-35, 109 S.E.2d 716, 729 (1959). Respondent submits that, although this is not technically recantation of testimony, Bethea's PCR testimony is contradictory to his silence and the innocence that he maintained until his plea. If Bethea had actually desired to help Applicant

¹ This date is during the pendency of the PCR action, and nearly three (3) years after the handwritten date on the letter. Because Applicant did not specifically allege newly-discovered evidence, this fact is not precisely relevant, though still curious.

during sentencing, he could have volunteered this information; rather, he has come forward after entering his plea, receiving his sentence, and at a point when can face no repercussions.

The standard in this PCR action, as always, is that as pronounced in Strickland v. Washington, *supra*. This has been recently analyzed again in our state in the context of a guilty plea by the South Carolina Court of Appeals in Ramirez v. State, 413 S.C. 351, 776 S.E.2d 101 (2015).

“In the context of a guilty plea, the deficiency prong inquiry turns on whether the plea was voluntarily, knowingly, and intelligently entered.” Taylor v. State, 404 S.C. 350, 360, 745 S.E.2d 97, 102 (2013). To show prejudice, a guilty plea defendant must establish there is a reasonable probability that, but for plea counsel's errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58–60, 106 S.Ct. 366; Hyman v. State, 397 S.C. 35, 43, 723 S.E.2d 375, 379. The prejudice prong “focuses on whether [plea] counsel's constitutionally ineffective performance affected the outcome of the plea process.” Taylor v. State, 404 S.C. 350, 360, 745 S.E.2d 97, 102 (internal quotation marks omitted). “In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing.” Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

Ramirez v. State, 413 S.C. 351, 366, 776 S.E.2d 101, 109 (Ct. App. 2015), reh'g denied (Sept. 3, 2015)(supplemented with full citations) At his guilty plea, Applicant testified that he was entering into the plea freely and voluntarily, he understood his waiver of rights, and so forth – every part of the colloquy was present and satisfactorily presented. Though he testified at the PCR that he would have gone to trial if he had known of Bethea's testimony, Applicant knew at the time of entering his plea that Bethea could testify in the manner that he did. The evidence and testimony presented at both the guilty plea and the PCR hearing simply do not amount to errors by counsel that would have deprived Applicant of the constitutional protections of counsel.

Involuntary Guilty Plea

Separately, Respondent contends that plea counsel performed in a manner that was so deficient as to lead Applicant to enter an involuntary guilty plea. The standard is as follows:

A defendant who pleads guilty on the advice of counsel may collaterally attack the voluntariness of his plea only by showing that (1) counsel was ineffective and that (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty. *Wolfe v. State*. 326 S.C. 158, 485 S.E.2d 367 (1997).

Burnett v. State, 352 S.C. 589, 592, 576 S.E.2d 144, 145 (2003). For the reasons stated above, Respondent maintains that plea counsel was not ineffective and that the first prong of this test is satisfied. However, assuming *arguendo* that the alleged failure to investigate by plea counsel constituted ineffective assistance. Respondent avers that Applicant cannot satisfy the second prong of this test by a preponderance of the evidence.

Applicant assumes that the information Bethea provided at the PCR hearing would have easily been obtained if plea counsel had sought it. This is a bold assumption. Several factors exist that would have, more likely than not, prevented plea counsel from obtaining the desired testimony from Bethea. First and foremost, Bethea was represented by counsel, who would have advised him against any activity that would increase his exposure to potentially negative consequences, such as providing a statement or giving an interview. Second, even if plea counsel had been allowed to speak with Bethea, his attorneys would have prevented Bethea from answering any questions, despite his testimony to the contrary at the PCR hearing. Lastly, even if these obstacles had been surmounted by plea counsel, there is no way of knowing if the desired information could have actually been obtained and presented at trial. These factors combined do not amount to "a reasonable probability" that removing plea counsel's alleged errors from the process would have caused Applicant not to plead guilty. Because this part of the test cannot be satisfied, the finding that Applicant entered an involuntary guilty plea must be reconsidered.

Plea counsel testified that the state had a very solid case against Applicant but, among the three (3) codefendants, Bethea had the best evidence, particularly because he had not provided a statement. He further testified that Bethea had "zero incentive" to make a statement or implicate

himself, and the PCR court found these statements to be credible. The 2011 Supreme Court of South Carolina opinion in Edwards v. State neatly summarizes why we, in considering PCR matters, must respect the judgment and efforts of the trial level attorneys:

However, “[t]here is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case.” Ard v. Catoc, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (citing Strickland v. Washington, 466 U.S. 668, 689, 104 S.Ct. 2052, 2065). “[W]hen counsel articulates a *valid* reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel. The validity of counsel's strategy is viewed under an ‘objective standard of reasonableness.’” Lounds v. State, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008). The United States Supreme Court has cautioned that “every effort be made to eliminate the distorting effects of hindsight” and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689, 104 S.Ct. 2052. Accordingly, we must be wary of second-guessing trial counsel's tactics. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011) (emphasis in original) (supplemented with full citations). There is simply not a preponderance of evidence to satisfy either of the prongs of the Strickland test on either ground upon which relief was granted.

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Wherefore, Respondent respectfully requests the Court amend the final judgment to reflect a finding that counsel was not ineffective in his investigation of the case and that Applicant did not enter an involuntary guilty plea.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JESSICA E. KINARD
Assistant Attorney General
Bar No. 77889

By:


Attorneys for Respondent
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

February 1, 2016

STATE OF SOUTH CAROLINA
COUNTY OF DILLON
IN THE COURT OF COMMON PLEAS

ISAIAH M. BROWN,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

FILED
GIVEN T. HYATT
2016 FEB -4 PM 3:43
CLERK OF COURT
DILLON COUNTY

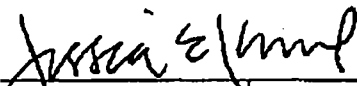
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the **Motion to Alter or Amend the Order Granting PCR** has been served upon the following persons, by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
807 Gervais Street; Suite 203
Columbia SC 29201

The Honorable Roger E. Henderson
Presiding Judge, 4th Judicial Circuit
Post Office Box 311
Chesterfield SC 29709-0311

This 1st day of February, 2016.



Jessica E. Kinard
Assistant Attorney General
Attorney for Respondent

SWORN to before me this 1st day of February, 2016.



Notary Public for South Carolina.
My Commission Expires: May 14, 2024



ALAN WILSON
ATTORNEY GENERAL

February 1, 2016

VIA EMAIL AND USPS

The Honorable Roger E. Henderson
Post Office Box 311
155 West Main Street
Chesterfield, South Carolina 29709-0311

RE: Isaiah M. Brown, #347241 v. State of South Carolina
Case No.: 2014-CP-17-0414

FILED
GWEN T. HYATT
2016 FEB -4 PM 3:43
CLERK OF COURT
DILLON COUNTY

Dear Judge Henderson,

Please find enclosed and served upon you a copy of the State's Motion to Alter or Amend the Order Granting PCR in the above-captioned case.

By copy of this letter, I am also serving Lance S. Boozer, Esquire, attorney for the Applicant, and filing the same with the Dillon County Clerk of Court. If I can provide more information on any aspect of this, please do not hesitate to contact me. In the meantime, I greatly appreciate your consideration of this matter.

With warmest regards, I am

Very truly yours,

Jessica E. Kinard
Assistant Attorney General

Enclosure

cc: Lance S. Boozer, Esquire (via email and USPS)
~~Dillon County Clerk of Court's Office~~ (via USPS only)

STATE OF SOUTH CAROLINA)
COUNTY OF DILLON)

IN THE COURT OF COMMON PLEAS
OF THE FOURTH JUDICIAL CIRCUIT

Case No.: 2014-CP-17-0414

Isaiah M. Brown,
S.C.D.C. No. 347241,

Applicant,

v.

State of South Carolina,

Respondent.

*CERTIFIED
TRUE COPY*

*CLERK OF COURT
DILLON COUNTY*

**ORDER GRANTING RESPONDENT'S
MOTION TO ALTER OR AMEND
AND DENYING PCR RELIEF**
(Ending action)

*2016 JUN 13 AM 8:56
CLERK OF COURT
DILLON COUNTY*

This matter comes before the Court by way of a post-conviction relief (PCR) application filed September 10, 2014, and amended on January 6, 2016. Respondent made its return on November 21, 2014. An evidentiary hearing into the matter was convened on January 12, 2016 at the Darlington County Courthouse. Applicant was present at the hearing and represented by Lance S. Boozar, Esquire. Respondent was represented by Jessica E. Kinard, Esquire of the South Carolina Attorney General's Office.

At the close of testimony, the matter was taken under advisement. Within several days, this Court ruled in favor of the Applicant, granting him relief on the basis of plea counsel's failure to investigate. An order to this effect was signed on January 25, 2016 and filed January 27, 2016. On February 1, 2016, Respondent filed a Motion to Alter or Amend the Order Granting PCR. Upon careful review and consideration, this Court **GRANTS** the motion for reconsideration on the basis that the Applicant failed to prove that plea counsel was ineffective in his representation. The majority of the prior order remains appropriate and in effect; however, the portion of the Findings of Fact and Conclusions of Law regarding Ineffective Assistance of Counsel/Involuntary Guilty Plea shall be amended to read as follows:

1. Ineffective Assistance of Counsel/Involuntary Guilty Plea

At the evidentiary hearing, Applicant alleged and testified that plea counsel failed to appear for a meeting involving the Applicant and Solicitor resulting in ineffective assistance of counsel and prosecutorial misconduct. He further alleged and testified counsel failed to properly advise Applicant of the possible sentencing range for the charges; failed to challenge Applicant's statements given to law enforcement at the age of 16 without being allowed to consult with his mother; failed to alert the plea court Applicant had a pending Motion to Relieve Counsel; failed to properly prepare for the hearing on Applicant's Motion for Reconsideration; and failed to investigate the matter properly because he did not meet with a co-defendant, Mikael Bethea, who testified at the PCR hearing that he would have assumed all responsibility for the crime if he had been asked.

Plea counsel testified he met with the Applicant on several occasions prior to the plea. Plea counsel further testified he did not think Applicant had any viable defenses at trial. Plea counsel indicated he recalled there being a meeting between the Applicant and Solicitor for which he was not present; however, plea counsel testified another attorney from the Public Defender's office was present to advise Applicant during the meeting. Plea counsel further testified that he advised the Applicant of the potential penalties for the charges. Plea counsel also testified that he was aware law enforcement interviewed the Applicant while he was sixteen (16) years old. He further indicated that, had the case proceeded to trial, he would have filed the appropriate motions to challenge or quash the statements Applicant made to law enforcement. Counsel testified that he was very surprised the Applicant received a forty-five (45) year sentence. Counsel further indicated had he thought there was a realistic chance that the Applicant could have received a forty-five (45) year sentence, he would have advised the Applicant to

move forward with a trial. Following the plea and the sentence, Counsel indicated he initially filed a Motion to Reconsider the sentence; however, he could not find any law to support his position. He further testified, and the record reflects, he also orally amended the Motion to include a Motion to Withdraw the plea. Counsel testified he could not recall whether the Applicant had filed a Motion to Relieve him as counsel; however, he recalled that the relationship was strained. He acknowledged no hearing was ever held regarding a motion to relieve him as counsel.

This Court finds Applicant has failed to meet his burden of proof in alleging counsel was ineffective as it relates to these specific allegations. This Court finds although appointed counsel was not present at the meeting with the Applicant and Solicitor, Applicant was sufficiently represented and accompanied by another attorney from the Public Defender's office. This Court further finds that, because Applicant was represented by a member of the Public Defender's office, there was no prosecutorial misconduct. This Court also finds that counsel testified, and the record reflects, the Applicant was advised of the potential penalties for the charges he faced. This Court also finds counsel was not ineffective for failing to challenge the statements Applicant made to law enforcement. Counsel testified he would have challenged the statements had the case proceeded to trial and this Court finds counsel's testimony to be credible. This Court further finds counsel was not deficient in his representation of Applicant at the hearing on the Motion to Reconsider the sentence. This Court finds after reviewing the hearing transcript, counsel made the appropriate arguments on Applicant's behalf. This Court further finds that counsel was not ineffective for failing to bring to the plea court's attention that there was a pending Motion to Relieve counsel filed by the Applicant. The plea transcript reflects Applicant

testified he was satisfied with plea counsel. Accordingly, this Court finds that counsel was not ineffective regarding these specific allegations.

Applicant also alleged and testified counsel was ineffective for failing to prepare for trial and also for failing to investigate and interview his co-defendant, Mikael Bethea. At the PCR hearing, Bethea testified that, in July 2012, he contacted the Applicant by letter and indicated he was willing to testify on his behalf in a court setting. Bethea testified that he and the Applicant were co-defendants along with a third individual named Matthew Cade.¹ Bethea testified that he was the most culpable of the three (3) defendants and admitted both at his own guilty plea and during the PCR hearing he had the weapon and shot the victim. Bethea also testified he forced the Applicant to participate in the robbery. Bethea testified he was previously represented by Myesha Brown, Esq., and Marshall Weaver, Esq.² Bethea indicated that, to his knowledge, Applicant's counsel never attempted to interview him either directly or through his attorneys. Bethea further testified he would have made the same statements on the Applicant's behalf prior to and at the time of Applicant's plea. Counsel testified he never contacted either of Bethea's attorneys to investigate Bethea or any statements he may have made. His justification for this course of action was that he had not received through discovery any statements that Bethea had made, and he was aware of Bethea's attorneys' intention to protect their client and not let him speak against his own interest. He further testified that Bethea was in the best situation, factually, of the three (3) defendants precisely because he had not made a statement.

¹This Court notes the Dillon County Clerk of Court records reflect that Bethea and Cade were originally charged with the same crimes as the Applicant. The records further reflect Bethea pled guilty to voluntary manslaughter on November 16, 2011, and was sentenced by the Honorable J. Michael Baxley to fifteen (15) years. The records also reflect Cade pled guilty to voluntary manslaughter on November 17, 2011, and was sentenced by Judge Baxley to seven (7) years.

² Bethea testified at the PCR hearing that he had the opportunity to consult with his former attorney, Mr. Weaver, prior to testifying on Applicant's behalf, and he also understood that he was not under any obligation to testify.

"Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland v. Washington*, 466 U.S. 668, 687 (1984). This is well-settled case law, and holds true today. Counsel's investigations or lack thereof were completely reasonable in this scenario, as he had no reason to believe that Bethea would break his silence to speak against his own interest, or that his attorneys would allow him to do so. This Court finds the testimony of counsel to be most credible as it relates to this allegation. This Court finds Bethea's testimony regarding his intent to speak on behalf of Applicant not to be credible. At this point in time, he has nothing to lose by attempting to help Applicant receive a new trial though, at the time of the plea, he had a great deal to lose. This Court cannot give any credit to Bethea's statements that he would have sacrificed his own case and future to benefit Applicant. The 2011 Supreme Court of South Carolina opinion in Edwards v. State neatly summarizes why we, in considering PCR matters, must respect the judgment and efforts of the trial level attorneys:

However, "[t]here is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Ard v. Caloe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (citing Strickland v. Washington, 466 U.S. 668, 689, 104 S.Ct. 2052, 2065). "[W]hen counsel articulates a *valid* reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel. The validity of counsel's strategy is viewed under an 'objective standard of reasonableness.'" Lounds v. State, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689, 104 S.Ct. 2052. Accordingly, we must be wary of second-guessing trial counsel's tactics. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011) (emphasis in original)

(supplemented with full citations).

Because Counsel was not ineffective in his investigation and presentation of this case, this Court needs not consider the idea that Applicant's guilty plea may have been involuntary. The proof that must be shown is that, but for counsel's ineffective performance, Applicant would have proceeded to trial.³ There is no ineffective assistance of counsel, so this analysis cannot be conducted.

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. The record shows no prejudice to the Applicant, nor does it show any action by plea counsel that would be deficient under the terms provided by Strickland. Plea counsel was not deficient and did not perform at level that fell below prevailing professional norms. Even if he had, there is no evidence to show prejudice to this Applicant. Additionally, Applicant has failed to show that his guilty plea was anything other than knowingly, intelligently, and voluntarily entered, and has not shown that, but for the defects he alleges in his plea, he would have proceeded to trial. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

³ Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice;
2. The above-noted text shall replace the described portion of the Order Granting PCR that this Court previously issued in this matter; and
3. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 1st day of June, 2016.


 The Honorable Roger E. Henderson
 Presiding Judge

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