

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Lexington County

Honorable Brooks P. Goldsmith, Circuit Court Judge

JOSHUA B. PHILLIPS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-001288

APPENDIX

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1	State of South Carolina	)	In the Court
2	County of Richland	)	Of General Sessions
3			
4			Indictment No.: 2008-GS-32-02618
5			2008-GS-32-02923
6	State of South Carolina,	)	
7	Plaintiff.	)	
8	vs.	)	Transcript of Record
9		)	
10	Joshua Brandon Phillips,	)	
11	Defendant.	)	
12			December 5, 2012
13			Lexington, South Carolina
14			
15	<u>B E F O R E:</u>		
16	The Honorable R. Knox McMahon, Judge.		
17			
18	<u>A P P E A R A N C E S:</u>		
19	Samuel R. Hubbard, III, Assistant Solicitor		
20	D. Shawn Graham, Assistant Solicitor		
21	Eleventh Judicial Circuit		
22	Arie D. Bax, Esquire		
23	Attorney for the Defendant		
24	Brenda J. Sigwald, Circuit Court Reporter		
25	For the Honorable R. Knox McMahon		
	P.O. Box 206, Jackson, South Carolina 29831		

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Certificate of Reporter

E X H I B I T SNO.DESCRIPTIONPAGE

(There were no exhibits
entered during this hearing.)

GUILTY PLEA

THE CLERK: Indictment 2012-GS-32-2618, State versus Joshua Brandon Phillips, indicted for murder, pleading to voluntary manslaughter; and Indictment 2012-GS-32-2620, the State versus Joshua Brandon Phillips, indicted for armed robbery, pleading as charged. They're both signed and properly attested to. They're both true billed and he is represented by Mr. Arie Bax.

Sir, I need you to stand up and raise your right hand, please.

JOSHUA BRANDON PHILLIPS,

having been duly sworn, testified as follows:

THE COURT: Have him come around, please.

MR. BAX: Yes, sir.

MR. HUBBARD: Your Honor, I did neglect to inform Your Honor that there is a Blair issue.

THE COURT: Step around here, please, Mr. Phillips.

MR. HUBBARD: I apologize for jumping in. I just neglected to inform you. He's been evaluated by DDSM and by Department of Mental Health. Obviously, they found that he's competent and I just wanted to let Your Honor know that and pass these up.

THE COURT: All right. Thank you.

MR. HUBBARD: Thank you, Your Honor.

MR. BAX: For the record, Your Honor, we're not

1 contesting the findings of the government agencies that
2 have examined my client. And we've certainly had plenty of
3 time since those examinations to look at any other opinions
4 if we had desired to. It is my opinion and in my
5 experience and in my contact with my client that that would
6 not be necessary in this case.

7 **THE COURT:** All right. I have reviewed both of
8 these documents. One from the South Carolina Department of
9 Mental Health and one from the South Carolina Department of
10 Disabilities and Special Needs, both indicating that Joshua
11 B. Phillips is competent under the standards as provided by
12 the law. I'm going to have them marked as Court's Exhibits
13 No. 1 and No. 2.

14 (WHEREUPON Court's Exhibits No. 1 and 2 were marked
15 for evidence.)

16 **THE COURT:** All right. Anything, Solicitor?

17 **MR. HUBBARD:** No, sir, not on that issue.

18 **THE COURT:** All right. Mr. Bax, you represent
19 Joshua Brandon Phillips?

20 **MR. BAX:** I do, Your Honor.

21 **THE COURT:** Have you explained to him the charges,
22 the possible punishments, his constitutional rights,
23 including his right to a jury trial?

24 **MR. BAX:** I have, Your Honor, at length.

25 **THE COURT:** In your opinion, does he understand the

1 charges, the possible punishment, and his rights?

2 MR. BAX: I believe that he does, Your Honor.

3 THE COURT: How does the defendant indicate he
4 intends to plea to armed robbery and to voluntary
5 manslaughter?

6 MR. BAX: Guilty, Your Honor. He indicates to me
7 he wishes to plead guilty.

8 THE COURT: Thank you. And we have already covered
9 his order to be evaluated under State versus Blair.

10 Are you Joshua Brandon Phillips?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Before I can accept pleas of guilty,
13 it's necessary for me to determine if these pleas are being
14 given freely and voluntarily. Therefore, I need to ask you
15 some questions concerning them. If you do not understand
16 my questions, please let me know and I'll try to explain
17 them to you. If at any time you wish to talk with your
18 lawyer, please let me know and I'll allow you to do so.
19 You understand?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: How old are you, Mr. Phillips?

22 THE DEFENDANT: Thirty-one, years old.

23 THE COURT: Thirty-one?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: How much education do you have.

1 THE DEFENDANT: Well, my family helped me out
2 through school. I finished the twelfth grade.

3 THE COURT: All right. Did you graduate?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Where did you graduate from?

6 THE DEFENDANT: Brooklyn Casey.

7 THE COURT: Brooklyn Casey High School?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: What year?

10 THE DEFENDANT: It's been a long time ago.

11 THE COURT: Okay. Before you were incarcerated,
12 were you employed?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: What type of work do you do?

15 THE DEFENDANT: I was working at Red Lobster, being
16 a dishwasher.

17 THE COURT: Today are you under the influence of
18 any medication, drugs, or alcohol?

19 THE DEFENDANT: No, sir.

20 THE COURT: Are you aware of any physical,
21 emotional or nervous problem that keeps you from
22 understanding what you're doing today?

23 THE DEFENDANT: No, sir.

24 THE COURT: You heard your attorney, Mr. Bax, tell
25 me that he's explained to you the charges that have been

1 placed against you, the possible punishments and your
2 constitutional rights, including your right to a jury trial
3 and that you understand those things; is that correct?

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** I've been handed up two indictments.
6 The first indictment -- I'm going to review them with
7 you -- is 2012-GS-32-02618. It basically reads that you,
8 Joshua Brandon Phillips, along with Robert Jarred Prather,
9 did in Lexington County, on or about April 22, 2005,
10 willfully, feloniously, and with malice aforethought beat
11 Gerald Stewart about the head and body and/or smothered
12 Gerald Stewart and that Gerald Stewart did die in Lexington
13 County on or about that same date, April 22nd, 2005 as a
14 proximate result thereof, in violation of 16-3-10 of the
15 Code of Laws of South Carolina, 1971 as amended. That is
16 an indictment for murder.

17 It appears you are being allowed to enter a guilty
18 plea to voluntary manslaughter for which the maximum
19 potential punishment could be up to thirty years. Do you
20 understand?

21 **THE DEFENDANT:** Yes, sir, Your Honor.

22 **THE COURT:** The next indictment, 2012-GS-32-02620,
23 reads that you did, along with Robert Jarred Prather, in
24 Lexington County, on or about April 22nd, 2005, knowingly
25 and willfully, while armed with a deadly weapon,

1 feloniously take from the person or presence of Gerald
2 Stewart, by means of force, threats, or intimidation, goods
3 or monies described as follows, a Coca-Cola 75th
4 Anniversary Box Set, and/or collectible coins, and/or the
5 victim's wallet and/or U.S. currency, with the intent to
6 deprive the owner of the use of such property in violation
7 of 16-11-338 of the Code of Laws of South Carolina. That
8 is an indictment for armed robbery.

9 It appears you're pleading guilty to armed robbery,
10 for which you could receive a sentence of up to twenty-five
11 years. Do you understand?

12 **THE DEFENDANT:** Yes, sir, Your Honor.

13 **THE COURT:** Now, Mr. Phillips, when you plead
14 guilty, you give up certain very important constitutional
15 rights. First, you give up your right to remain silent.
16 That is your right against self-incrimination, your right
17 to say nothing at all.

18 (WHEREUPON the defendant was conferring with his
19 attorney and there was a pause in the proceedings.)

20 **MR. BAX:** Sorry, Your Honor.

21 **THE COURT:** In other words, you give up your right
22 to keep your mouth shut. You understand that?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** Second, you give up your right to have
25 a jury trial. That is your right to have a jury decide

1 whether or not you're guilty beyond a reasonable doubt.

2 You understand that?

3 THE DEFENDANT: Yes, sir, Your Honor.

4 THE COURT: Third, you give up your right to
5 confront and be confronted by the witnesses against you.

6 Do you understand that?

7 THE DEFENDANT: Yes, sir, Your Honor.

8 THE COURT: You understand those rights as I have
9 enumerated them to you?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Do you understand that when you plead
12 guilty, you give up these very important constitutional
13 rights?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Is that what you want to do?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Do you understand that you'll not get a
18 jury trial if you plead guilty?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Understanding then the nature of the
21 charges against you, voluntary manslaughter and armed
22 robbery, how do you wish to plead to voluntary
23 manslaughter? Guilty or not guilty.

24 (WHEREUPON there was a pause in the proceedings.)

25 THE DEFENDANT: Guilty, Your Honor.

1 **THE COURT:** And as to the nature of the charge
2 against you of armed robbery and the consequences of the
3 guilty plea of armed robbery of up to twenty-five years,
4 how do you wish to plea to that charge? Guilty or not
5 guilty?

6 **THE DEFENDANT:** Guilty, Your Honor.

7 **THE COURT:** Do you understand, Mr. Phillips, when
8 you plead guilty, you admit the truth of the charges made
9 against you?

10 **THE DEFENDANT:** Yes, Your Honor.

11 **THE COURT:** Now, Mr. Phillips, you may have
12 defenses to these charges. I don't know whether you do or
13 not. You understand that if you plead guilty, you waive,
14 or give up any defenses you may have?

15 **THE DEFENDANT:** Yes, Your Honor.

16 **THE COURT:** You may have given an incriminating
17 statement in this case. I don't know if you did or not.

18 **THE DEFENDANT:** Yes, Your Honor.

19 **THE COURT:** If you plead guilty, you understand
20 that you waive or give up the right to contest or challenge
21 whether that statement was given freely and voluntarily in
22 accordance with your constitutional rights.

23 **THE DEFENDANT:** Yes, Your Honor.

24 **THE COURT:** Did you commit the offense of voluntary
25 manslaughter?

1 **THE DEFENDANT:** Your Honor, under the hand of one
2 is the hand of all, yes, Your Honor, I am guilty of that
3 charge.

4 **THE COURT:** All right. Well, now you've brought up
5 the issue of accomplice liability as to voluntary
6 manslaughter; is that correct?

7 **THE DEFENDANT:** Yes, Your Honor.

8 **THE COURT:** Mr. Bax, have you fully and completely
9 reviewed the law in the State of South Carolina as to
10 accomplice liability or the theory of the hand of one is
11 the hand of all?

12 **MR. BAX:** Yes, I have, Your Honor. In fact, that
13 has been something we've discussed quite extensively. It
14 is my professional opinion that that law would be charged
15 to the jury and that based on the evidence that I see as
16 being admitted in this case, that that would be a
17 substantial factor in the jury making their decision; and I
18 believe my client understands that because that is the
19 applicable law in South Carolina, that that makes him
20 guilty under our law. Whether he agrees with the law or
21 not, we've had the discussion about the fact that I'm not a
22 legislator and I'm not a Supreme Court justice and neither
23 is he. The law is what it is.

24 **THE COURT:** And neither am I.

25 **MR. BAX:** And neither are you, Your Honor. That it

1 is the law and he understands that. So under the hand of
2 one is the hand of all, he understands that he could be
3 held liable and he believes he's guilty under that law.

4 **THE COURT:** Do you have any questions you would
5 like to ask me in that regard, Mr. Phillips?

6 **THE DEFENDANT:** I believe you've got everything
7 taken care of, Your Honor.

8 **THE COURT:** So you have no questions you would like
9 to ask me as to accomplice liability? When you say you
10 believe you have everything taken care of, you've discussed
11 it fully and completely with your lawyer?

12 **THE DEFENDANT:** Kind of, I believe, on some things.

13 **THE COURT:** No.

14 (WHEREUPON the defendant was conferring with his
15 attorney.)

16 **THE COURT:** Sir?

17 **THE DEFENDANT:** Everything's good, Your Honor.

18 **THE COURT:** Well, everything good is not a correct
19 response to my question. It's either yes, I have or no I
20 haven't, whichever way it falls. It's fine with me,
21 Mr. Phillips. Have you discussed it fully and completely
22 with your lawyer?

23 **THE DEFENDANT:** Yes, Your Honor.

24 **THE COURT:** And I'll cover that a little bit later
25 also.

1 **MR. BAX:** Thank you, Your Honor.

2 **THE COURT:** Did you commit the offense of armed
3 robbery?

4 **THE DEFENDANT:** Yes, Your Honor.

5 **THE COURT:** All right. Solicitor, have there been
6 any plea know negotiations in this case?

7 **MR. HUBBARD:** Yes, sir, Your Honor. Your Honor, in
8 discussing this case with the victim's family, which is
9 Ms. Nelda Medford, who is here, she's the aunt of the
10 victim, Gerald Stewart, and in talking with Mr. Arie Bax,
11 we have agreed to a negotiated sentence if Your Honor is
12 willing to accept it of twenty years on both charges.

13 **THE COURT:** Thank you. Thank you, Mr. Hubbard. On
14 both charges?

15 **MR. HUBBARD:** Yes, sir.

16 **THE COURT:** The reduction?

17 **MR. HUBBARD:** Yes, sir.

18 **THE COURT:** It was reduced from murder to voluntary
19 manslaughter?

20 **MR. HUBBARD:** Yes, sir, that's correct. That's
21 correct, Your Honor.

22 **THE COURT:** And the armed robbery and a twenty year
23 concurrent --

24 **MR. HUBBARD:** Yes, sir, Your Honor.

25 **THE COURT:** Negotiated?

1 MR. HUBBARD: Yes, sir, Your Honor.

2 THE COURT: Mr. Bax, has the solicitor correctly
3 and completely stated the negotiations into the record?

4 MR. BAX: He has, Your Honor. The only thing I
5 would adjust to protect the record is our agreement any
6 other charges out there are being not pressed as a result
7 of this plea.

8 MR. HUBBARD: That's true, Your Honor.

9 MR. BAX: That is our understanding, Your Honor.

10 THE COURT: Has -- Mr. Phillips has the solicitor
11 fully and completely stated what you understand the plea
12 negotiation to be?

13 (WHEREUPON the defendant was conferring with his
14 attorney.)

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: In your mind, is there anything more to
17 the plea negotiations?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: Do you still wish to plead guilty to
20 the charges?

21 THE DEFENDANT: Under the hand of one is the hand
22 of all, yes, Your Honor.

23 THE COURT: Mr. Phillips, has anyone promised you
24 anything or held out any hope of reward to get you to plead
25 guilty?

1 **THE DEFENDANT:** No, Your Honor.

2 **THE COURT:** Has anyone threatened you or used force
3 to get you to plead guilty?

4 **THE DEFENDANT:** No, Your Honor.

5 **THE COURT:** Has anyone used any pressure or
6 intimidation to cause you to plead guilty?

7 **THE DEFENDANT:** No, Your Honor.

8 **THE COURT:** Are you pleading guilty of your own
9 free will and accord?

10 **THE DEFENDANT:** Yes, Your Honor.

11 **THE COURT:** I'm going to ask you about your lawyer,
12 Mr. Bax. Are you satisfied with the manner in which your
13 lawyer has advised you and represented you?

14 **THE DEFENDANT:** Yes, Your Honor.

15 **THE COURT:** Have you talked with your lawyer as
16 often and for as long as you feel necessary for him to
17 properly represent you?

18 **THE DEFENDANT:** Yes, Your Honor.

19 **THE COURT:** Do you need anymore time to talk with
20 your lawyer?

21 **THE DEFENDANT:** No, Your Honor.

22 **THE COURT:** Have you understood your talks with
23 your lawyer?

24 **THE DEFENDANT:** To the best of my ability, yes,
25 Your Honor.

1 THE COURT: What do you mean by that? To my best
2 ability?

3 THE DEFENDANT: As far as what he's telling me,
4 yes.

5 THE COURT: You've understood your talks with him?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Has your lawyer done everything for
8 you, you feel like he could have done or should have done?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Has your lawyer done anything in your
11 case that you feel like he should not have done?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: Are you totally and completely
14 satisfied with your lawyer's services?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: You have any complaint you want to make
17 about your lawyer, the solicitor's or any police officers
18 involved in your cases?

19 (WHEREUPON the defendant was conferring with his
20 attorney.)

21 THE DEFENDANT: Yes, Your Honor -- oh, no, no.

22 THE COURT: I'll ask you again. You've had an
23 opportunity to talk with your lawyer for a moment. Do you
24 have any complaints you want to make about your lawyer, the
25 solicitor, or any of the police officers involved in the

1 case?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Have you understood my questions?

4 THE DEFENDANT: Yes, Your Honor.

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

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: Do you understand that you'll have a
9 right to appeal your guilty pleas and the sentence of the
10 Court and that you or your lawyer must do so within ten
11 days?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: All right. Thank you.

14 Solicitor, if you could give me the facts, please.

15 MR. HUBBARD: Yes, sir, Your Honor. And, Your
16 Honor, just so Your Honor knows how this case came before
17 you today, this charge arose April 22nd of 2005. Back in
18 2009, there was a codefendant, Robert Gerald Prather. He
19 was tried and there was a mistrial. Prior to that time,
20 the State and the defendant's attorney, Mr. Phillips'
21 attorney at that time, Ms. Fullwood, reached agreement and
22 Mr. Phillips actually pled to this armed robbery and to the
23 manslaughter. He ended up not cooperating after giving
24 multiple conflicting statements. He filed a PCR and an
25 appeal and we joined him and brought him back.

1 Last week, we tried Robert Jarred Prather and
2 convicted him of murder and of robbery. He received a
3 thirty-year sentence. Coming into court today, we were
4 planning on going to trial next week and if Mr. Phillips
5 changes his mind at all, we're prepared to try him next
6 week as charged. But the facts are these: April 22, 2005,
7 early morning hours, just after four o'clock in the
8 morning, Mr. Phillips and Mr. Prather showed up at the
9 hospital in Lexington, claiming that Mr. Phillips had been
10 raped and they needed a rape kit.

11 Obviously, that caused some concern at the
12 hospital. They made inquiries as to what happened.
13 Mr. Prather is the one that told them the story of what
14 occurred at a residence in West Columbia. He said Gerald
15 Stewart's house on Decree Avenue. Basically what they said
16 is that Mr. Phillips had passed out.

17 **THE COURT:** Where is Decree Avenue in West Columbia
18 in relationship to Triangle City?

19 **MR. HUBBARD:** To Triangle City -- I know it's right
20 of Highway 1 and it is right near -- in fact, if you go
21 right up to Highway 1, it's just a few blocks from Highway
22 1. Callaway's Bar and that shopping center --

23 **THE COURT:** Yes, sir.

24 **MR. HUBBARD:** Just probably -- just four or five
25 blocks down the road from there.

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

2 **MR. HUBBARD:** They indicated that they'd been at
3 that residence with Gerald Stewart, a man in his mid to
4 late 40's. These gentleman were in their early twenties at
5 the time. They said they'd been drinking at the house, got
6 drunk, everything had been fine and that at some point
7 Mr. Phillips passed out and was placed on the sofa by his
8 friend, Mr. Prather. Mr. Prather left, came back.
9 Mr. Stewart was nude. There was a confrontation because
10 they were wondering what in the world had happened. He had
11 made sexual comments about what had transpired with
12 Mr. Phillips and then there was an altercation and he was
13 beaten to death, basically. That came from Mr. Prather.

14 He pretty much stuck to that story with some
15 variations. Mr. Phillips, that whole time, never really
16 spoke. He submitted to a rape protocol test, which came up
17 negative. No physical signs of rape. Both the doctor and
18 the nurse that evaluated him were saying, we don't see any
19 signs of rape. He was interviewed at the --

20 **THE COURT:** This would have been anal intercourse?

21 **MR. HUBBARD:** Yes, sir -- now, because they never
22 really described what might have happened, so they checked
23 for everything.

24 Officers interviewed Mr. Phillips at the hospital,
25 treating him as a victim. But they were also concerned

1 about what Mr. Prather had said, so they alerted law
2 enforcement, said someone needs to go check Decree Avenue,
3 you may have another victim there. They talked to
4 Mr. Phillips. Mr. Phillips said at that time he'd had
5 about twelve beers, doesn't remember a lot and his friend
6 had awakened him and said something might have happened to
7 him. When law enforcement actually found Mr. Stewart,
8 there was -- it was kind of an odd situation. He was
9 covered up in a blanket, with a pillow on his head. When
10 they pulled that off, he was on his knees, face down in a
11 sofa. There was a sex object placed next to his arm and he
12 had a carving on his -- just above his buttocks and on his
13 buttocks, the word rapist.

14 So they knew, all right, something's definitely,
15 definitely wrong here. Law enforcement asked Mr. Phillips
16 at the hospital, do you know anything about that carving.
17 Initially he denied it. Finally he said, Yeah, I know
18 there's the word rapist on the backside. Well, this rape
19 protocol test took a couple of hours. This interview took
20 maybe thirty minutes. They took him to West Columbia and
21 at that time they had more information about the house, so
22 they Mirandized them. They got a written statement from
23 Mr. Phillips.

24 Mr. Phillips says that what happened was the day
25 before, on the 21st, he and Mr. Prather went over to the

1 house to drink beer and play cards and everything was fine
2 except for an altercation at some point in the day between
3 he and Gerald Stewart. He didn't really elaborate what
4 that was about. But everything was fine and they went back
5 to normal. He says that he told the same story about how
6 he went to sleep on the sofa, woke up in Gerald Stewart's
7 bed. Mr. Prather came in; there was a fight. Mr. Prather
8 used what appeared to be a round board. It was a TV table
9 tray, Judge, like a portable TV tray, used that to beat
10 Mr. Stewart. He said that Mr. Stewart passed out on the
11 sofa, face up and then he was put in the position of being
12 put face down on that sofa by Mr. Prather. Mr. Prather is
13 the one that took the knife out and tried to carve rapist.
14 He said Mr. Prather also attempted to smother Mr. Stewart.

15 While this was going on, Mr. Phillips in his first
16 statement, his first written statement, says I tried to
17 take his pulse twice. The first time it was faint, the
18 second time, there was no pulse. And that was about the
19 time of the carving of rapist. He says after they
20 concluded that Mr. Stewart was dead, that's when
21 Mr. Prather directed him to start stealing stuff, including
22 the wallet, the Coca-Cola box and some coins. Those items,
23 Judge -- the Coca Cola box was found in Mr. Prather's car
24 at the hospital, along with a knife underneath that box
25 that was purportedly used to carve rapist. The board was

1 found near an apartment complex in the woods of an
2 apartment complex where Mr. Phillips was living. And so
3 those items were recovered. And just to let Your Honor
4 know, when the hospital did testing, there were no signs of
5 rape, there are also no signs of alcohol at that point in
6 his blood.

7 And, Your Honor, what I've done, just to show Your
8 Honor kind of the layout of what happened -- and I've shown
9 this to Mr. Bax, I've got a three tab notebook of
10 photographs. Tab one is actually the crime scene. It
11 shows Gerald Stewart. There's two photos of him on his
12 knees, face down on the sofa. You'll see in one of them
13 there's a blue comforter. Law enforcement took that
14 comforter off of Gerald Stewart when they got in there.
15 Otherwise that's how they found him. There's a close up
16 showing something propped up against his shoulder. That's
17 the sex object, Your Honor, that I was referring to. And
18 then the final photo I have is actually from the autopsy
19 showing the word rapist. I do think there's one photo,
20 where you can barely see it at the crime scene, but it's
21 the word rapist. That's all in tab one.

22 Tab two shows items that were actually found in
23 Mr. Phillips' pocket. Primarily of interest are the coins
24 that you see in the photograph in tab two. He ends up
25 admitting he took those from Gerald Stewart's house.

1 There's also the Coca-Cola set -- there's a photo that
2 shows it in the car and then there's a photo that shows it
3 displayed out. Gerald Stewart's dad worked his entire life
4 for Coca-Cola and had a display in the house and that item
5 came from the house, Judge. We have -- Ms. Nelda says she
6 has seen it before. She knows that was Gerald Stewart's.
7 We also have other people that have seen that item before
8 and knew it had come from the house. Those were the items
9 that were stolen. The basis of the armed robbery is in
10 that knife, but also that board that is shown -- that's in
11 tab three, the TV tray top.

12 **THE COURT:** What apartment complex is that now?

13 **MR. HUBBARD:** That's Woodbine Apartments off of
14 Platt Springs Road. It's very close -- just a couple of
15 blocks away from Decree Avenue. You could actually walk.

16 In preparation for trial, the prosecutor who had
17 the case at this time spoke to Mr. Phillips. They spoke in
18 April of '09, April 22nd, in fact. It was actually years
19 to the day of this incident. He gave a statement that was
20 very different from his initial one. He talked about
21 basically having a relationship with Mr. Prather, that
22 Mr. Prather's actions were an act of jealousy. He thought
23 when -- when he walked in, he thought Mr. Phillips and the
24 victim had had relations and that he responded by attacking
25 him. In that statement, he implicates himself by saying

1 that Jarred tried to smother him but they both jumped on
2 him and beat him. A month later, he gave another statement
3 and then in September of '09, he gave yet another
4 statement. He would retract some things and add some
5 things. Each time, though, he implicated himself, his
6 being involved in the death and robbery, armed robbery of
7 Gerald Stewart.

8 The final statement was October 15th of '09. Right
9 on the cusp of the trial of Robert Jarred Prather. He
10 admits at that point -- and Your Honor, this was another
11 incident where we brought law enforcement in, they
12 Mirandized him, he was very emotional. Law enforcement
13 said this is probably the closest thing to the truth, but,
14 Your Honor, we don't really know. We just know he
15 implicates himself again.

16 He says he and Jarred had stolen beer from
17 Mr. Stewart on a previous occasion; that Gerald Stewart had
18 had guns that were stolen from him and he says Mr. Prather
19 had done that on a previous occasion. He said when
20 Jarred -- his partner Jarred Prather, left the house
21 briefly, that's when he and Mr. Stewart, the victim were
22 talking, Phillips and Mr. Stewart were talking about what
23 had transpired, that those guns had been stolen by
24 Mr. Prather. Mr. Phillips says this whole thing at this
25 point was really a planned robbery. They were planning to

1 rob Mr. Stewart. They'd been in the house before, knew he
2 had collectibles, coins, things of that nature, so they
3 planned to take these things. He says, while I'm talking
4 to Mr. Stewart, that's when Robert Prather, Robert Jarred
5 Prather returns to the house. He hears what's going on.
6 That's when the fight ensues. He says, he admits he never
7 passed out from alcohol. The whole bit about passing out
8 on the sofa, that never happened. It was all planned.

9 He says, they -- he said Jarred initially attacked
10 Gerald Stewart using the TV tray, but he says they,
11 including himself, helped prop Gerald Stewart up on the
12 sofa in the position in which he's found. He said he was
13 checking his pulse to make sure -- whether he was alive or
14 not. He said he is the one -- Mr. Phillips is the one that
15 put the pillow over Mr. Stewart's head to smother him. He
16 said Jarred Prather told him to do that. He said there was
17 no need to check his pulse after that because he knew he
18 was dead. He said Mr. Prather gave him a knife and said,
19 Carve the word rapist. He says in that instance he did it.
20 He said they agreed to approach the hospital and act as if
21 there had been a rape, that that was all a cover up. And
22 as far as the blue blanket there, he said he's the one that
23 covered Gerald Stewart's body. He says what they took was
24 the Coca-Cola box set; they took the wallet of Gerald
25 Stewart. They actually furnished that to the people at the

1 hospital to identify Gerald Stewart and he says, I took the
2 coins. He says they go to Callaway's Bar, play pool, get
3 their story straight and then to the hospital. He leaves
4 out that part at Woodbine Apartments in that final
5 interview. The next day, he just sent word back, I'm not
6 talking; everything I've told y'all is a lie. But, Judge,
7 every time he opened his mouth, he implicated himself each
8 time.

9 Your Honor, as I said, we were prepared to go
10 forward and try this case and what we would show at trial
11 too is how Gerald Stewart died. The pathologist said it
12 was a cardiac arrhythmia, where his heart started racing.
13 She said that was due to the stress of being beaten. And
14 she said that stress made his heart rate go up. He had an
15 already weakened heart. It was twice the size of a normal
16 heart and she said basically his heart shut down and he
17 died.

18 But she said something interesting. She said she
19 could not rule out smothering as a contributory factor.
20 And she ruled the manner of death as a homicide. If we had
21 gone to trial, we would have, obviously, gotten into all
22 these statements, all these facts, or at least tried to and
23 presented the evidence of items that were stole and,
24 obviously, Dr. Ross would testify as to the cause of death.
25 Last week we tried Robert Jarred Prather. He was convicted

1 of murder. We're prepared to do so today if Mr. Phillips
2 backs out of this plea. We've done this plea with the hope
3 of resolving this case and with Ms. Nelda Medford's consent
4 and input. And, Your Honor, at the appropriate time, I
5 think she'd like to say a couple of words. Thank you, Your
6 Honor.

7 THE COURT: Prior record?

8 MR. HUBBARD: No, sir.

9 THE COURT: All right. Thank you. I'll be glad to
10 hear from whoever you want me to hear from.

11 MR. HUBBARD: This is Ms. Medford that's coming
12 forward, Your Honor.

13 THE COURT: Good morning. Tell me your name,
14 please.

15 MS. MEDFORD: Nelda Medford.

16 THE COURT: All right. I'll be glad to hear from
17 you. Yes, ma'am?

18 MS. MEDFORD: Your Honor, I would like to thank the
19 Court and these two brilliant attorneys for what they have
20 done. And I do think now that Gerald Stewart has seen
21 justice.

22 THE COURT: Thank you. Thank you very much
23 Ms. Medford. Thank you for being here. Sorry you have to
24 be here.

25 MS. MEDFORD: Thank you.

1 MR. HUBBARD: Thank you, Your Honor.

2 THE COURT: All right. Anything further,
3 Solicitor?

4 MR. HUBBARD: No, sir, Your Honor. Thank you.

5 THE COURT: All right. I find there is a
6 substantial factual basis for those guilty pleas. I find
7 that the defendant's decision to enter these pleas of
8 guilty is free and voluntary, knowingly and intelligently
9 made; that he has had the advice and counsel of a very
10 competent experienced attorney with whom he says he is well
11 and totally satisfied. His plea of guilty to voluntary
12 manslaughter and guilty to armed robbery are therefore
13 accepted.

14 Mr. Bax?

15 MR. BAX: Thank you, very much, Your Honor. We
16 appreciate the Court's time today. We know that the Court
17 was not originally scheduled to take these kind of matters
18 into consideration, but we appreciate Your Honor making the
19 time to resolve this, both for the State and for the
20 defense. Obviously, it's a negotiated plea. We'd ask Your
21 Honor to accept that negotiated plea. I would also ask the
22 Court to be aware and ask the Court to give credit for the
23 time served. Mr. Phillips has been incarcerated since his
24 arrest in April of 2005, continuously without any break.
25 At one point after the initial plea in this case, he was

1 transferred to SCDC. He was taken to R & E and he was then
2 assigned to a couple of institutes. Eventually, he was
3 assigned to Manning Correctional Institute in Columbia, the
4 smaller institute that's in Columbia near I-20. So we
5 would ask that it be -- that he be given credit for all
6 time served. Obviously, that would in April of this coming
7 year amount to eight years by my calculation, Your Honor.
8 So that is a very big part of this and important. And I
9 don't think there's anything -- there's no dispute that he
10 has been incarcerated throughout all this time -- and just
11 on these charges.

12 As Your Honor has heard from the State, he doesn't
13 have any prior record or reasons to be locked up. Because
14 it's negotiated, Your Honor, I don't want to spend a lot of
15 mitigation time because I don't feel it would be necessary
16 as long as Your Honor is inclined or the Court is incline
17 to go with the negotiated sentence. Obviously, you've
18 heard the facts. There was obviously a lot of back and
19 forth about exactly what happened that night. My client in
20 my conversations with him, you know, in talking to him
21 about the law of South Carolina, about the law of the hand
22 of one is the hand of all and about how trial would go as
23 well as how they would be charged on the law and what the
24 law means, my client is pleading guilty freely and
25 voluntarily here today to the deal that we have worked out

1 graciously with the State.

2 I would like to state for Your Honor, Joshua is a
3 great kid, really nice kid. He -- he had trouble in
4 school, but he had -- when he was a very young child, he --
5 his biological mother lost her parental rights based on
6 some things that happened. As a result, these two
7 wonderful people, John and Kathy, who are sitting in the
8 first row -- Phillips -- adopted him around the age of four
9 or five years old, after -- and they have, I think invested
10 more time and love in Joshua and his other brother who was
11 adopted as any human that I've ever seen.

12 They've been here for him throughout this entire
13 process. I have spent the last two years talking with John
14 and Kathy. I just want to point out that they're here in
15 support of their son and we ask this Court to accept the
16 plea in this case, Your Honor.

17 THE COURT: Thank you. Thank you very much, Mr.
18 Bax.

19 Anything you'd like to say, Mr. Phillips?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: Sir?

22 (WHEREUPON the defendant was conferring with his
23 attorney.)

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: All right. Thank you. Thank you very

1 much. Anything further, Mr. Bax?

2 MR. BAX: No, Your Honor, thank you very much for
3 the Court's time.

4 MR. HUBBARD: Your Honor, I would have one request.
5 That notebook I handed up, may we make that a Court's
6 Exhibit for purposes of --

7 THE COURT: Yes, sir.

8 MR. HUBBARD: -- so the Court -- if it's ever
9 reviewed, they'll know that you had opportunity to look at
10 it.

11 THE COURT: All right. Certainly. You can have it
12 marked.

13 MR. HUBBARD: Thank you, Your Honor.

14 (WHEREUPON Court's Exhibit No. 3 was marked for
15 evidence.)

16 THE COURT: Did Mr. Prather have a prior criminal
17 history, Solicitor?

18 MR. HUBBARD: No, sir, Your Honor. He had a couple
19 of arrests, but no convictions.

20 THE COURT: What were those arrests for?

21 MR. HUBBARD: One was a simple assault. That was
22 dismissed before it ever made it to court with the victim's
23 consent. The second one was, I believe it was styled as
24 endangering a child. He -- and he was not guilty on that,
25 Your Honor. It was a girlfriend, apparently a girlfriend's

1 child, was found wondering out of the house. He was found
2 inside the house sleeping. He was supposed to be in charge
3 of the child. That was here in the town of Lexington.

4 THE COURT: What age was he?

5 MR. HUBBARD: He was 22 or 23 when this occurred.
6 He's 30 now, so.

7 THE COURT: They were contemporaries.

8 MR. HUBBARD: Yes, sir. They apparently claim to
9 have gone to high school together at, I think, Brooklyn
10 Casey.

11 THE COURT: I believe that's what he said. So he
12 was about 23 -- Mr. Phillips -- when this happened.

13 MR. HUBBARD: Yes, sir.

14 THE COURT: All right.

15 (WHEREUPON there was a pause in the proceedings.)

16 THE COURT: All right. Solicitor, you and
17 Assistant Solicitor Graham have evidently done a fine job
18 in preparing and trying the case last week or the week
19 before, I don't know when, I'm never assigned to criminal
20 court in Lexington anymore. This is the first criminal
21 matter I've handled in about eight months in Lexington
22 County. And obviously, from the State of Ms. Medford,
23 she -- on behalf of the loved one, that she's very
24 appreciative of that.

25 Mr. Bax has done his usually outstanding job and

1 preparing this case. I noticed his paralegal and
2 investigator come in this morning with about two feet of
3 file.

4 MR. BAX: That's a small fraction of the file too.
5 I've got about seven trial notebooks.

6 THE COURT: Mr. Bax has appeared before this Court
7 many times. Obviously, with the conviction of Mr. Prather,
8 Mr. Bax has been very effective in continuing the job he
9 normally does in getting an offer such as this, in my
10 opinion, which I think is an appropriate offer for there to
11 be thing a closure or resolution, although I believe
12 closure is somewhat overrated. That's not relevant to
13 this.

14 If he went to trial, you'd be facing a life
15 sentence.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Thirty year minimum, mandatory,
18 day-for-day sentence, plus potentially a consecutive
19 twenty-five-year sentence. Probably I would have given it
20 to you -- at least a life sentence. Although I can't
21 predict what I would or would not have done nor can I
22 predict what a jury would have done.

23 I commend you, Mr. Bax. Are you appointed?

24 MR. BAX: I am appointed, Your Honor, after
25 Ms. Fullwood was relieved as a result of the PCR, she

1 personally asked me to step in and be appointed by the
2 Court, which was done.

3 **THE COURT:** It never ceases to amaze me how lawyers
4 for both the State and defense, plaintiffs lawyers, civil
5 lawyers get a bad rap. Everyone in the newspapers and on
6 TV and in the press and internet, they always stand up to
7 the plate. They always toe the line whether it's in civil
8 court, criminal court -- I have lawyers that mediate cases
9 for me for free for people that have no money to pay for
10 them. They rebuild houses, step in like Mr. Bax and help
11 the system to move along and hopefully some justice being
12 done.

13 2012-GS-32-2620 and 2012-GS-32-2421, as to Joshua
14 Brandon Phillips on the charge of voluntary manslaughter,
15 the defendant is committed to the State Department of
16 Corrections for a determinate term of twenty years. As to
17 the charge of armed robbery, the defendant is committed to
18 the State Department of Corrections for a determinate term
19 of twenty years. Those sentences are to run concurrent
20 with each other. He is to be given credit under Section
21 24-13-140 for all time served from the time of arrest in
22 April of 2005.

23 Good luck to you, Mr. Phillips. Thank you Mr. Bax.

24 **MR. HUBBARD:** Thank you so much, Your Honor.

25 **THE COURT:** Court will be in recess until 2 p.m.

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Good luck to you, Ms. Medford.

* * * * * END OF TRANSCRIPT * * * * *

1 State of South Carolina }
2 County of Aiken } **Certificate of Reporter**

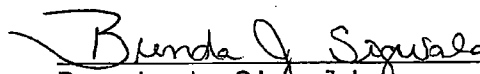
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6 I, THE UNDERSIGNED, Brenda J. Sigwald, Official
7 Court Reporter for the Fifth Judicial Circuit of the State
8 of South Carolina, do hereby certify that I reported the
9 proceedings in the captioned case in the Court of General
10 Sessions in and for the State of South Carolina on the 5th
11 day of December, 2012.

12 I FURTHER CERTIFY that the foregoing pages,
13 numbered 1 through 35 constitute a true, accurate and
14 complete transcript of said hearing.

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

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 4th day of March, 2013.

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Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020.

ORIGINALSTATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)IN THE COURT OF GENERAL SESSIONS
ELEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)

v.)

ORDER CLARIFYING SENTENCE

JOSHUA PHILLIPS,)

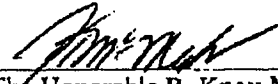
(Indictment No(s)): 2012-GS-32-2618;
2012-GS-32-2620)DEFENDANT.)
_____)

On December 5, 2012, this court imposed sentence on Defendant for the above-referenced indictments. Present at the plea hearing was Defendant, Joshua Phillips, with his court-appointed attorney, Arie D. Bax. Also present for the state was Deputy Solicitor Rick Hubbard and Assistant Solicitor Shawn Graham.

On Indictment No. 2012-GS-32-2618, the court imposed a sentence of twenty (20) years for the lesser-included offense of Voluntary Manslaughter to run concurrent with Indictment No. 2012-GS-32-2620 Armed Robbery. These indictments stemmed from the same incident that occurred on or about April 22, 2005. Defendant has been continuously incarcerated for these offenses. At the hearing, Deputy Solicitor Hubbard clarified for the court that these charges are in fact the same charges for which Defendant had been arrested on April 22, 2005. Deputy Solicitor Hubbard further clarified that the indictments had been reissued in 2012 in order to strengthen the jurisdictional language and that terms of the plea agreement stipulated that Defendant was to receive credit for time served since the initial date of arrest, April 22, 2005, and that credit was to apply to both 2012-GS-32-2618 and 2012-GS-32-2620. Defense Counsel agreed.

While the sentencing sheet indicated that Defendant was to receive credit for time served, it has come to the court's attention that the sentencing sheets did not indicate the exact amount of credit for time served that Defendant was to receive. Defendant was to receive credit for time served pursuant to S.C. Code § 24-13-40 for Indictment No(s). 2012-GS-32-2620 and 2012-GS-32-2628 from the date of his arrest on April 22, 2005. This was simply an oversight. The purpose of this order is to clarify the court's intent regarding the sentence for Indictment No. 2012-GS-32-2620 and 2012-GS-2628.

IT IS HEREBY ORDERED that Defendant be given credit for time served pursuant to S.C. Code Ann. § 24-13-40 from the date of April 22, 2005 and that credit applied to the sentence of Indictment No(s). 2012-GS-32-2620 and 2012-GS-32-2628 for the offenses of Voluntary Manslaughter and Armed Robbery.

Lexington, South Carolina
17 May, 2013

The Honorable R. Knox McMahon
Presiding Judge, Eleventh Judicial Circuit
A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.
Joshua Brandon Phillips

AKA: _____

Race: _____ Sex: _____

SID#: _____

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

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217
☐ 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: _____

Solicitor

SC Bar# 015294

Defendant

Attorney for Defendant

SC Bar# 72488

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 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: 12-65-32-02620
☒ 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 § 25-13-15.

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 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	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$130.00

Clerk of Court/ Deputy Clerk

Court Reporter: B. Sigwald

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS3202618A/W#: 12-STR-00509Date of Offense: 4/22/2005S.C. Code § : 16-03-0010CDR Code #: 0116

SENTENCE SHEET

Negotiated 20 yrs.

☐ CONVICTED OF or ☒ PLEADS

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

_____ 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: 2145Sentence Date: 5 DEC 12

FORM 5

FILE

ORIGINAL

2013 CP 3202341

STATE OF SOUTH CAROLINA

COUNTY OF Lexington, S.C.

2013 JUL 12

IN THE COURT OF COMMON PLEAS

2:41

#335243, Joshua Brandon Phillips
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 South Carolina Dept. Corrections - Lieber Corr. Inst. P.O. Box 205, Ridgeville, S.C. 29472
2. Name and location of Court which imposed sentence Lexington County Court of General Sessions, Lexington, S.C.
3. Name(s) of co-defendant(s) (if any) The Honorable R. Knox McMahon Robert Jarad Prether (alleged)
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012 GS 32 02618 Voluntary Manslaughter
 - (b) 2012 GS 32 02620 Armed Robbery
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) December 5th, 2012 and 20 yrs. ran
 - (b) concurrent with 20 yrs. time served

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

- (c) _____
6. Check whether a finding of guilty was made: FILED
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty 2013 JUL 12 2:41
- (c) after a plea of nolo contendere LETALIA L. LORING
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes, I told my attorney to appeal it.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals; P.O. Box
- ii. 11629; Columbia, S.C. 29211
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 5-31-13
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. (facially valid guilty plea)
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) I requested that my attorney to appeal it.
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Trial/Plea Counsel
 (b) Applicant is a Mental Health Patient
 (c) see Attached sheet

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

- (a) Ineffective Assistance / Involuntary Plea
 (b) Applicant is a Mental Health Patient
 (c) see Attached sheet

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

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

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

(a) the specific nature thereof:

- i.
 ii.
 iii.
 iv.

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

- i.
 ii.
 iii.
 iv.

(c) the disposition thereof:

- i.
 ii.
 iii.

Page 3(a)

Applicant set forth this cause of action Pursuant to the Jurisdiction that are set forth in 17-27-20 (1)(6) "Collateral attack upon any ground of alleged error hereto for available under this uniform Post Conviction Act that are being submitted or amended.

Applicant asserts ineffective assistance of trial Counsel in this application. Due to the lack of records and the assistance of counsel, Pursuant to S.C.R. Civ. P., Rule 71.1(d)(e) states that the burden of proof is on the Applicant to show his entitlement for relief by a preponderance of the evidence and also for the appointment of Counsel for the hearing, to insure that all available grounds for relief are included in the application and shall be amended if necessary. It would be chronologically impossible for the applicant to carry such a burden without the aid of the whole Lower Court records and the appointment of counsel to help establish his Constitutional claims.

The Applicant request that this court order the state to turn over all the Lower Court records pertaining to this conviction and order that Counsel be appointed in the above mention application. Applicant further request that this Court grant leave to amend the present Application in this cause of action due to the lack of records and Applicant is without Counsel.

Applicant seeks this Court's approval of this application, so that Applicant's right to a PCR won't be deem abandon due to the fact that Applicant has only one (1) year to file this Application from the date of a Final Judgment or from the remittitur to the Lower Court, which ever come first.

Page 3(a)

FILED

Page 3(a)

Applicant set forth this cause of action Pursuant to the Jurisdiction that are set forth in 17-27-20(1)(b) "Collateral attack upon any ground of alleged error hereto for available under this uniform Post Conviction Act that are being submitted or amended.

Applicant asserts ineffective assistance of trial counsel in this application. Due to the lack of records and the assistance of counsel, Pursuant to S.C.R. Civ. P., Rule 71.1(d)(e) states that the burden of proof is on the Applicant to show his entitlement for relief by a preponderance of the evidence and also for the appointment of counsel for the hearing, to insure that all available grounds for relief are included in the application and shall be amended if necessary. It would be chronologically impossible for the applicant to carry such a burden without the aid of the whole Lower Court records and the appointment of counsel to help establish his Constitutional Claims.

The Applicant request that this court order the state to turn over all the Lower Court records pertaining to this conviction and order that counsel be appointed in the above mention application. Applicant further request that this Court grant leave to amend the Present Application in this cause of action due to the lack of records and Applicant is without Counsel.

Page 3(a)

The reason why Applicant did not file within one year after the entry of judgment that are set forth in S.C. Code Ann. § 17-27-45(a) is due to his mental incompetency. Applicant is still incompetent and needs a mental evaluation.

iv. _____
 (d) the date of each such disposition:

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

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

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

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

NO

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

(a) which grounds have been presented:

i. _____
 ii. _____
 iii. _____

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

i. _____
 ii. _____
 iii. _____

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

(a) _____
 (b) _____
 (c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
- Arie D. Bax; P.A.
 - The Bax Law Firm; 69 Robert Smalls Parkway,
 - Suite 3-C; Beaufort, S.C. 29902
- (b) the proceedings at which each such attorney represented you:
- arraignment and plead
 - entering of guilty plea and sentence
 -

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

20. Conviction is in violation of Hill v. Lockhart/Strickland v. Washington
VACATE AND REMAND SENTENCE FOR TRIAL
 Are you now under sentence from any other court that you have not challenged?
No

FILED
 2013 JUL 12 P 2:41
 CLERK OF COURT
 DISTRICT OF COLUMBIA

STATE OF SOUTH CAROLINA)

County of Lexington)

VERIFICATION

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

[Signature]

SWORN to and subscribed before me this 9th
day of July, 2013.

Lechean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

FILED
2013 JUL 12 2:41

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

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

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


Applicant

SWORN or affirmed to and subscribed before me this
9th day of July, 2013.


Notary Public

My Commission Expires: May 26, 2020

FILED
2013 JUL 12 2:41
CLERK OF COURT
CLERK OF COURT



ALAN WILSON
ATTORNEY GENERAL

ORIGINAL

FILED

2013 JUL 23 A 11:15

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

July 22, 2013

The Honorable Beth Carrigg
Clerk of Court, Lexington County
205 East Main Street, Suite 146
Lexington, SC 29072

RE: Joshua B. Phillips, # 335243 v. State of South Carolina
2013-CP-32-2341

Dear Ms. Carrigg:

The above-referenced individual has filed an Application for Post-Conviction Relief (PCR) in the Circuit Court and needs to have an attorney appointed to represent him. If you will appoint an attorney and let me know his or her name, I will send her or him a copy of our file in this matter.

The trial counsel was listed on the PCR application as "Mr. Arie D. Bax."
If you have any questions with regard to this matter, please let me know.

Sincerely,

Troyeshi Brailey
Legal Assistant

Lexington County Clerk of Court
 Beth A. Carrigg
 205 East Main Street; Ste. 128LP
 Lexington, S.C. 29072

Joshua B. Phillips #335243
 Evans Corr. Inst.; FIB-219
 610 Highway Nine West
 Bennettsville, S.C. 29512

Tuesday; May 27, 2014

Re: Joshua B. Phillips #335243 v. State of South Carolina

Case #: 2013-CP-32-02341

REQUESTING ALL DOCUMENTS THAT PERTAINS TO CASE
 No: (00507862) UNDER FOIA S.C. CODE ANN. §§ 30-
 4-30(b), 30-4-40 (2003)

Mrs. Carrigg,

I need copies of all documents
 that pertains above.

If you can please assist me in this manner,
 it will be Honorably appreciated.

Respectfully submitted,

Joshua B. Phillips

SWORN BEFORE ME THIS 27th
 DAY OF May, 2014
S. Oulson (L.L.S.)
 COMM. EX. 2/24

BETH A. CARRIGG
 CLERK OF COURT
 LEXINGTON, SC

2014 MAY 29 A 7:58

FILED

ORIGINAL

FILED

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON) IN THE COURT OF COMMON PLEAS
) ELEVENTH JUDICIAL CIRCUIT
) Docket No.: 2013-CP-32-02341Joshua B. Phillips # 335243,
Petitioner,

vs.

State of South Carolina,
Respondent.**ORDER DENYING PETITIONER'S
MOTION TO RELIEVE COUNSEL**

A hearing for the pro se Motion to relieve Counsel filed by the petitioner was heard on June 18, 2014. The Petitioner appeared and was represented by Aimee J. Zmroczek, Esq. Walt Whitmire, Esq., was present for the respondent. Petitioner argued that he had not received his discovery and therefore counsel should be relieved and Petitioner handed up several items of communication between the Petitioner and his counsel. The Court questioned the Petitioner and ruled that dismissal of counsel was not proper and order petitioner to communicate and assist his counsel while his matter was pending. This Court finds that Petitioner's motion was wholly without merit where counsel has exhibited professionalism and diligence in his case.

The Court denied petitioner's motion to relieve counsel and order her to remain on the case.

AND IT IS SO ORDERED.

The Court denied petitioner's motion to relieve counsel and order her to remain on the case.


 The Honorable Donald B. Hocker
 Presiding Judge
 Eleventh Judicial Circuit
Date: 7-21, 2014Lamers, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP3202341

Joshua Brandon Phillips
#335243

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

8/13/2014

Date

For Clerk of Court Office Use Only

This judgment was entered on **12th of August 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **12th of August 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Aimee Jendrzejewski Zmroczek
PO Box 11961 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	
Joshua Brandon Phillips,	)	C.A. No. 2013-CP-32-2341
S.C.D.C. No. 335243	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed July 12, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. The Applicant was indicted at the October 2012 term of the Court of General Sessions for Lexington County for murder (2012-GS-32-2618); and armed robbery (2012-GS-32-2620). The Applicant was represented by Arie D. Bax, Esq. On December 5, 2012, Applicant pled guilty to the lesser included offense of voluntary manslaughter; Applicant also pled guilty as indicted to armed robbery. The Honorable R. Knox McMahon sentenced Applicant to a term of twenty (20) years imprisonment on each charge, to be served concurrently.

A notice of appeal was filed on Applicant's behalf and perfected by Arie D. Bax, Esq. In an Order filed May 31, 2013, the Court of Appeals dismissed Applicant's appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR. The Court of Appeals denied Applicant's

pro se petition for rehearing in an order filed September 3, 2013. The Remittitur was returned on October 21, 2013.

Attached herewith and incorporated herein by reference are the records of the Lexington County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections, and the transcript from Applicant's plea hearing. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

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

1. Ineffective Assistance Counsel:
 - a. Applicant is a Mental Health Patient
2. Involuntary guilty plea;
 - a. Applicant is a Mental Health Patient

III.

The Applicant's first claim is an allegation of ineffective assistance of trial counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

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

IV.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code '17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VI.

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

VII.

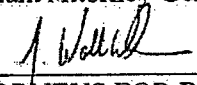
WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

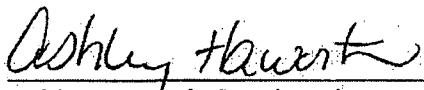
April 15th, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	
	)	2013-CP-32-2341
JOSHUA BRANDON PHILLIPS,	)	
	)	
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** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ms. Aimee Zmroczek, Esquire
A.J.Z. Law Firm, LLC.
PO Box 11961
Columbia, SC 29211

DATED this 15th day of April, 2015.



Ashley Haworth, Legal Assistant
For Respondent

Joshua B. Phillips #335243
 Evans Corr. Inst., F1B-#219
 610 Highway 9 West
 Bennettsville, S.C. 29512

Friday, April 10, 2015

A.J.Z. Law Firm, LLC
 Aimee J. Zmroczek
 P.O. Box 11961
 Columbia, S.C. 29211

RE: Joshua B. Phillips v. State
Docket No. 2013-CP-32-02341

"REQUESTING FOR MOTION OF DISCOVERY"

Rule 5

Dear Mrs. Zmroczek,

I need my Motion of Discovery. I need all of it except the pictures. The volume of the discovery is out of my control and irrelevant.

In re Matter of Haddock, 321 S.E.2d 601 (S.C. 1984) "I only have one full adjudication to raise all my meritorious issues." If you insist on denying me this, tell me what statutes or laws govern your decision.

I have meritorious issues that are going to be raised and I need it for references, dates, times, witnesses, etc. I am writing to the Clerk of Court to have this letter clocked, stamped and filed in the court records to indicate that I have requested this from you.

If you can please assist me in this matter, it will be more than Honorably appreciated.

Respectfully submitted,

Joshua B. Phillips
 Joshua B. Phillips

SWORN to and subscribed before me this 10th
 day of April, 2015

S. Dulla (L.S.)
 Notary Public
 My Commission Expires: 2/2

105-2210
 CLERK OF COURT
 LEXINGTON
 2015

Joshua B. Phillips #335243
 Evans Corr. Inst., F1B-#219
 610 Highway 9 West
 Bennettsville, S.C. 29512

Friday, April 10, 2015

Lexington County Clerk of Court
 Beth A. Carrigg
 205 East Main Street
 Lexington, S.C. 29072

Dear Mrs. Carrigg,

There are two important issues that I would like to bring to your attention.

- 1) I need to know if you have filed my "APPLICATION FOR FORENSIC DNA TESTING" pursuant to S.C. CODE §17-28-50(A); and
- 2) I need the IMPANELMENT OF THE GRAND JURY in the COURT OF GENERAL SESSIONS, OCTOBER TERM 2012 Documents pursuant to S.C. CODE ANN. §14-7-1770 (Supp. 2003) and S.C. CODE ANN. §30-4-15 to 30-4-165 (1991+Supp. 2003).

If you can assist me by giving me a copy of each and send it by way of my self addressed envelope, it will be more than Honorably appreciated.

Respectfully submitted,

Joshua B. Phillips
 Joshua B. Phillips

SWORN to and subscribed before me this 10th
 day of April, 2015

S. Oculao (L.S.)
 Notary Public

My Commission Expires: 2/24

CLERK OF COURT
 LEXINGTON, SC
 APR 15 2015

Joshua B. Phillips #335243
 Evans Corr. Inst., F1B-#219
 610 Highway 9 West
 Bennettsville, S.C. 29512

Friday, April 10, 2015

Lexington County Clerk of Court
 Beth A. Carrigg
 205 East Main Street
 Lexington, S.C. 29072

Dear Mrs. Carrigg,

I am writing you in reference to having the letter that I've sent you along with this letter "REQUESTING FOR MOTION OF DISCOVERY" Rule 5 from my PCR Attorney, Aimee J. Zmroczek to be clocked, stamped and filed in the court records to indicate that I have requested this from her.

If you can please help me in this matter, it will be more than Honorably appreciated.

Respectfully submitted,

Joshua B. Phillips
 Joshua B. Phillips

CLERK OF COURT
 LEXINGTON COUNTY
 S.C.
 APR 10 2015

SWORN to and subscribed before me this 10th
 day of April, 2015

J. C. Law (L.S.)
 Notary Public
 My Commission Expires: 2/20

Joshua B. Phillips #335243
 Evans Corr. Inst., F1B-#219
 610 Highway 9 West
 Bennettsville, S.C. 29512

Tuesday, May 5, 2015

Lexington County Clerk of Court
 Beth A. Carrigg
 205 East Main Street
 Lexington, S.C. 29072

Dear Mrs. Carrigg,

I'm writing you this letter in reference to having the attached letter (RE: Joshua B. Phillips v. State, Docket No. 2013-CP-32-02341) "REQUESTING FOR MOTION OF DISCOVERY" (RULE 5) and (RULE 6) that is addressed to my Attorney, Aimee J. Zmroczek along with a CERTIFICATE OF SERVICE to be clocked, stamped and filed into the court records and to be furnished with the clocked, stamped and filed copy by way of a self addressed envelope for my own records.

If you can please help me in this matter, it will be more than Honorably appreciated.

Respectfully submitted,

Josh B. Phillips
 Joshua B. Phillips

SWORN to and subscribed before me this 5th
 day of May, 2015

S. Dulan (L.S.)
 Notary Public
 My Commission Expires: 2/24

FILED

2015 MAY 12 PM 12:34
 CLERK OF COURT
 LEXINGTON, SC

Joshua B. Phillips #335243
 Evans Corr. Inst., F1B-#219
 610 Highway 9 West
 Bennettsville, S.C. 29512

Tuesday, May 5, 2015

The Supreme Court of South Carolina
 Office of Disciplinary Counsel
 P.O. Box 12159
 Columbia, S.C. 29211

To whom it may concern,

I'm writing you this letter in reference to having the attached letter (RE: Joshua B. Phillips v. State, Docket No. 2013-CP-32-02341) "REQUESTING FOR MOTION OF DISCOVERY" (RULE 5) and (RULE 6) that is addressed to my Attorney, Aimee J. Zmroczek along with a **CERTIFICATE OF SERVICE** to be clocked, stamped and filed into the court records and to be furnished with a clocked, stamped copy by way of a self addressed envelope for my own records.

If you can please help me in this matter, it will be more than Honorably appreciated.

Respectfully submitted,

Joshua B. Phillips
 Joshua B. Phillips

SWORN to and subscribed before me this 5th
 day of May, 2015

S. Oula (L.S.)
 Notary Public
 My Commission Expires: 2/21

Joshua B. Phillips #335243
 Evans Corr. Inst., F1B-#219
 Bennettsville, S.C. 29512

Tuesday, May 5, 2015

A.J.Z. Law Firm, LLC
 Aimee J. Zmroczek
 P.O. Box 11961
 Columbia, S.C. 29211

RE: Joshua B. Phillips v. State
 Docket No. 2013-CP-32-02341

**"REQUESTING FOR MOTION OF DISCOVERY"
 (RULE 5) and (RULE 6)**

Dear Mrs. Zmroczek,

I need my entire **MOTION OF DISCOVERY (RULE 5) and (RULE 6)**. I need all of it, including the **TRIAL NOTEBOOKS** that were supposedly put together by Arie D. Bax, but to exclude the pictures due to it being contraband by SCDC Policy PS-10.08.

See, Matter of Haddock, 283 S.C. 116, 321 S.E.2d 601 (S.C. 1984) (An ineffective office system does not excuse an attorney from neglecting a legal matter. Sup. Ct. Rules, Rule 32, Code of Prof. Resp., DR6-101 (A)(3); Rules on Disciplinary Procedure, §7, subd. A(3)).

I am requesting for my entire case file, (excluding the pictures) in paper documents, no CD due to it being contraband pursuant to SCDC Policy PS-10.08.

I've sent along with this letter a **CERTIFICATE OF SERVICE** to verify that I have notified the Lexington County Clerk of Court; Beth A. Carrigg; 205 East Main Street; Lexington, S.C. 29072 and The Supreme Court of South Carolina; Office of Disciplinary Counsel; P.O. Box 12159; Columbia, S.C. 29211 to have this letter (RE: Joshua B. Phillips v. State, Docket No. 2013-CP-32-02341 **"REQUESTING FOR MOTION OF DISCOVERY" (RULE 5) and (RULE 6)**) clocked, stamped and filed into their court records and be furnished with a clocked, stamped and filed copy back by way of a self addressed envelope for my own records.

If you can please help me in the above referenced matter, it will be more than Honorably appreciated.

FILED

2015 MAY 05 11:16
 CLERK OF COURT
 LEXINGTON COUNTY

FILED

2015 MAY 22 PM 4:16

CLERK OF COURT
LEXINGTON COUNTY
LEXINGTON, SC

Respectfully submitted,

Joshua B. Phillips
Joshua B. Phillips

cc: Lexington County Clerk of Court
Beth A. Carrigg
205 East Main Street
Lexington, S.C. 29072

cc: The Supreme Court of South Carolina
Office of Disciplinary Counsel
P.O. Box 12159
Columbia, S.C. 29211

SWORN to and subscribed before me this 5th
day of May, 2015.

S. Quilla (L.S.)
Notary Public

My Commission Expires: 2/26

CERTIFICATE OF SERVICE

I, Joshua B. Phillips certify that the foregoing letter (RE: Joshua B. Phillips v. State, Docket No. 2013-CP-32-02341) "REQUESTING FOR MOTION OF DISCOVERY" (RULE 5) and (RULE 6) have been served a copy of all enclosed at the following addresses via United States Postal Mail Service:

- | | |
|-------------------------|------------------------------------|
| 1) A.J.Z. Law Firm, LLC | 2) Lexington County Clerk of Court |
| Aimee J. Zmroczek | Beth A. Carrigg |
| P.O. Box 11961 | 205 East Main Street |
| Columbia, S.C. 29211 | Lexington, S.C. 29072 |
-
- 3) The Supreme Court of South Carolina
Office of Disciplinary Counsel
P.O. Box 12159
Columbia, S.C. 29211

On this 5th day of May, 2015.

Thus, I declare under the penalty of perjury that this letter was served via United States Postal Mail Service to all the above as listed parties.

/s/ Joshua B. Phillips
Joshua B. Phillips

SWORN to and subscribed before me this 5th
day of May, 2015

S. Ouellet (L.S.)
Notary Public
My Commission Expires: 2/24

FILED

2015 MAY 22 PM 4:15
CLERK OF COURT
LEXINGTON SC

1 State of South Carolina

Court of Common Pleas

2 County of Lexington

3

4 Joshua B. Phillips,

)

Transcript of Record

)

5 Applicant,

)

vs.

)

2013-CP-32-2341

6

)

The State of South Carolina.

)

7

8

9

June 8, 2015

Lexington, South Carolina

10

11 B E F O R E:

12 The Honorable Brooks P. Goldsmith, Judge

13

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

15 John Walter Whitmire, Assistant Attorney General
Attorney for the State

16

17 Aimee J. Zmroczek, Esquire
Attorney for Defendant

18

19

20

Stacy S. Johnson, RPR
Circuit Court Reporter

21

22

23

24

25

	<u>I N D E X</u>	<u>PAGE</u>
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2	Joshua B. Phillips	
3	Direct Examination by Ms. Zmroczek	9
4	Cross-Examination by Mr. Whitmire	16
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P R O C E E D I N G S

(The following proceedings were held on June 8, 2015.)

BAILIFF: All rise. Court is now in session.

THE COURT: Good afternoon, ladies and gentleman.

Please be seated.

MR. WHITMIRE: I beg the Court's indulgence for just one second.

THE COURT: Sure.

MR. WHITMIRE: May it please the Court? The last case before Your Honor is Joshua Phillips v. State of South Carolina. This is an unusual case for numerous reasons, procedurally and the facts are just in and of themselves unusual to me than any other type of case I've ever encountered. Mr. Phillips was originally indicted for accessories of other facts to murder and armed robbery.

I beg the Court's indulgence. That's my witness. And during the course of representation he decided to turn State's evidence. It was a 2005 offense, he was indicted the following year in 2006, and he was going to testify against his co-defendant, Mr. Prather. And ultimately he was brought -- well, he was represented by Ms. Beth Fullwood. Ms. Fullwood pled him guilty to armed robbery, he was sentenced to ten years, the mandatory minimum, and deferred sentencing on voluntary manslaughter, the lesser

1 included of murder, for which he was subsequently indicted
2 once the State learned more facts.

3 While the State was waiting to try his co-defendant,
4 he filed a PCR application against Ms. Fullwood. At that
5 time -- furthermore, the Solicitor's office found him to
6 be an uncooperative witness where he had reneged on the
7 original plea deal. They agreed with consent and -- with
8 Mr. Phillips' counsel and my office at the time to consent
9 to PCR and let him go back and start over because that's
10 what he wanted to do. When Ms. Fullwood received the PCR
11 application, she stopped her representation and contacted
12 Mr. Bax and Mr. Bax came in on the case then. Ultimately,
13 Mr. Prather, his co-defendant, was tried, a mistrial at
14 first, and then convicted of murder. He had changed his
15 mind and reentered the plea that he had originally had in
16 the beginning to voluntary manslaughter and armed robbery
17 and received a twenty year sentence.

18 The facts of this case are particularly grisly. There
19 were four sets of statements he gave. Eventually at the
20 end he admits to the truth and that's what he pleads guilty
21 to. At first it was him and his co-defendant were seen
22 in the emergency room. They had accused the victim of
23 committing a sexual assault on Mr. Phillips. A rape kit
24 was done, it came back negative, and he claimed he had
25 twelve beers and he was blacked out drunk. The BAC was

1 nothing. He had no alcohol in his system at the time of
2 the test. In his second statement he said it was a
3 lovers quarrel where Mr. Prather was his lover and that
4 Mr. Prather caught him in the act with the victim. In the
5 third, he ultimately tells the truth and says it was all a
6 planned armed robbery to begin with. Well, the victim's
7 belongings, numerous priceless memorabilia, were found in
8 his possession and in his co-defendant's possession. His
9 co-defendant was found guilty at that time and after years
10 of representation from Mr. Bax he had decided to enter that
11 plea. There were two transcripts. The second transcript
12 is particularly telling.

13 At this time, I'll turn matters over to Ms. Zmroczek
14 as I'm not exactly certain on how to decipher some of his
15 allegations, but we are prepared and ready to go.

16 **MS. ZMROCZEK:** Thank you, Your Honor. Mr. Phillips,
17 as you heard, has an unusual case and he has been
18 evaluated numerous times, Your Honor, and -- because
19 any amount of conversation would lead even the least
20 unseasoned lawyer to make sure that he's been evaluated,
21 but, excuse me, Mr. Bax has had him evaluated several
22 times and he has always been found to be competent and
23 criminally responsible for his actions, Your Honor.

24 His -- one of the problems with the communication is
25 that he just feels like he's not guilty of anything and

1 he wants his case overturned, then he told me he wanted
2 concurrent sentences, I keep asking him what he wants, so
3 I feel like at this point it's best if we allow him to
4 testify and tell the Court exactly like what Mr. Bax has
5 done wrong and then that way there's no question.

6 **THE COURT:** The attorney general has no objection?

7 **MR. WHITMIRE:** I'm trying to understand some of his
8 pro se pleadings, which we don't recognize pursuant to
9 Rule 11, but as far as my understanding the only thing in
10 the application that we could reasonably decipher as an
11 ineffective assistance is failure to investigate the
12 status of his mental health. And if you read the first
13 page of the plea transcript, counsel, Mr. Bax, had him
14 evaluated by DMH for competency, DDSN for MR. He put on
15 the record his investigation in this case and on that
16 matter, so we could produce testimony on that, but outside
17 of that I want to make certain that we have an idea kind
18 of what could be going on and what other allegations he's
19 going for at all because he's written extensively and he's
20 indicated he wants to go back on things that the State
21 would intend to move for summary dismissal on immediately.

22 **MS. ZMROCZEK:** And I believe, Your Honor, and I
23 kept trying to tell Mr. Phillips that -- because one of
24 the things that he keeps telling me is that there's
25 after-discovered evidence, there's after-discovered

1 evidence, but I'm still unsure as to what the
2 after-discovered evidence is and that's why at this point
3 I feel like it's best if he gets an opportunity to instead
4 of just writing things and writing -- because he will
5 write the attorneys general's office without me or he'll
6 file things with the clerk without running them through me,
7 and that's obviously been a problem in the nature of our
8 relationship, but since we're here and since they didn't
9 transport the other person, I think we have the time for
10 him to get up on the stand and -- and I know that they --
11 I think that they -- Mr. Whitmire and I have discussed
12 several times kind of the issues with the case, so I don't
13 think that they're being caught off guard with anything,
14 Your Honor, but I don't know how to clearly answer their
15 question without allowing him to do it and then I think
16 the Court would be -- would understand why I can't answer
17 their question.

18 It's my understanding that his counsel is -- he is
19 saying that his counsel is ineffective because he didn't
20 investigate some things and that there's after-discovered
21 evidence. I've asked him what these things are and have
22 not been able to get an answer, Your Honor.

23 **THE COURT:** All right.

24 **MS. ZMROCZEK:** And I understand that I'm in control,
25 but --

1 **THE COURT:** You are in control and explain to your
2 client that you just can't take the stand and just start
3 talking about anything and everything under the sun; that
4 it's a question and answer process.

5 **MS. ZMROCZEK:** Right, and that's what I told him.
6 I -- so I told him the question is gonna be what did
7 Mr. Bax not do that you say is prejudicing your case and
8 that's the question.

9 **THE COURT:** All right. We'll try it and if I have
10 to step in and ask him to tell me exactly what his issues
11 are, then I may just have to do that.

12 **MS. ZMROCZEK:** Thank you, Your Honor.

13 **THE COURT:** Okay.

14 **THE CLERK:** Raise your right and place your left on
15 the Bible.

16 JOSHUA B. PHILLIPS,
17 having been duly sworn, testified as follows:

18 **THE CLERK:** Have a seat and state your name for the
19 record, please.

20 **THE WITNESS:** My name is Joshua Phillips.

21 DIRECT EXAMINATION

22 BY MS. ZMROCZEK:

23 Q. Mr. Phillips, where do you live?

24 A. I live in West Columbia.

25 Q. Where do you live now?

1 A. I live in the penitentiary.

2 Q. Okay. How long have you been there?

3 A. I've been there for ten years.

4 Q. Okay. And you have seven years left on your sentence?

5 A. Yes, ma'am.

6 Q. And you understand that if the Judge grants your PCR
7 that you have to start all over again and that you're
8 facing murder and armed robbery and all of those charges
9 that you were indicted for, right?

10 A. So that's just the -- like enhanced charges?

11 Q. Huh?

12 A. You're talking about the enhanced charges?

13 Q. I understand that you consider them enhanced charges,
14 but those -- that's what you were indicted with, so those
15 are indictments. Those are not enhanced charges, those
16 are what your indictments are.

17 A. Yes, ma'am.

18 Q. Okay. You understand that?

19 A. Yes, ma'am.

20 Q. Okay. And tell the Judge and everyone in the
21 courtroom exactly what it is you're saying that Mr. Bax
22 did not do on your case.

23 A. Well, that's on the --

24 **MS. ZMROCZEK:** Your Honor, he's told me he's written
25 a few things down which may make it a little more clearer.

1 BY MS. ZMROCZEK:

2 Q. All right. What is it that Mr. Bax did not do for
3 you in your case that prejudiced you?

4 MR. WHITMIRE: Objection to the Applicant reading
5 from his notebook or pages. He should know by now what
6 the allegation is.

7 THE COURT: I'll let him use that to refresh his
8 memory, but he can't read his --

9 MS. ZMROCZEK: You can't read from it, so.

10 THE COURT: -- writings.

11 BY MS. ZMROCZEK:

12 Q. Don't cite case law, okay? Tell the Judge and tell
13 everybody in the courtroom what Mr. Bax didn't do. Don't
14 look at your notes. Just what didn't he do?

15 A. It's kind of hard to do, I guess.

16 Q. You keep saying that there was after-discovered
17 evidence. What's the after-discovered evidence?

18 A. Well, one of them -- I can't read off of it? This
19 has --

20 THE COURT: You can't read it. You can look at it,
21 but you can't read it.

22 BY MS. ZMROCZEK:

23 Q. Let me ask it this way. Do you -- you said that --
24 that you felt like they didn't honor the plea agreement?

25 A. Yes, ma'am.

1 Q. Okay. Why do you think that they didn't honor the
2 plea agreement?

3 A. Because I was at his trial, I heard everything that
4 was said in his trial, that he ended up stating exactly
5 what I told the prosecutor, that I -- I was passed out
6 during the commission of the crime, I had no knowledge of
7 the crime due to being passed out.

8 Q. Okay. But -- and you had told that to your attorney,
9 Mr. Bax, but then you went ahead and decided to plead
10 guilty?

11 A. Under the hand of one, hand of all.

12 Q. Okay. And you understand that we've had numerous
13 conversations about what accomplice liability is?

14 A. Yeah, I found out. I was advised by my counsel that
15 under the hand of one, hand of all that it was -- consisted
16 of by me being present at the house where the crime was
17 committed along with my -- my co-defendant being found
18 guilty makes me an accomplice.

19 Q. Okay. And you're -- but you're saying that that was
20 incorrect advice?

21 A. Yes, ma'am. I found that out through other -- other
22 cases.

23 Q. Okay. But you would agree that I have sent you what
24 the case law is and that you've been provided with what
25 the case law is under accomplice liability, but you still

1 believe that he advised you incorrectly?

2 A. Well, accomplice liability is when you participate in
3 a crime, you aided and abetted and you assisted along with
4 another individual.

5 Q. And so it's your testimony that you -- since you told
6 your counsel that you were passed out that he should not
7 have advised you to plead and that you should have gone to
8 trial?

9 A. That should have been an alibi defense.

10 Q. Okay. Is there anything else that you feel like --

11 A. He also advised me that numerous conflicting
12 statements that was made that I'd be found guilty under
13 the hand of one, hand of all.

14 Q. Okay.

15 A. And that I found out through case law that -- that
16 it's well-established law that --

17 **MR. WHITMIRE:** Objection. Relevance.

18 **THE COURT:** Overruled. Go ahead.

19 A. It's well-established law that due to the numerous
20 conflicting statements made would not substantiate guilt
21 as an aider or abetter. It takes more -- it takes more
22 evidence.

23 Q. Okay. So it's your position that if he would have
24 correctly explained accomplice liability to you that you
25 would not have pled and that you would have gone to trial?

1 A. Yes, ma'am.

2 Q. Okay. Anything else? Did you ask him to investigate
3 anything that he did not investigate?

4 A. Well, the Item 45, the bed linen, would substantiate
5 evidence that would show that that's where I was at along
6 with other statements that was made by -- by me.

7 Q. Okay. So the bed linen which was on the bed --

8 A. Yes, ma'am.

9 Q. -- would substantiate that you were on the bed and not
10 in the living room where the murder occurred?

11 A. Well, no, if there is saliva or -- or anything of that
12 nature because hair can travel from place to place.

13 Q. Okay. And you had these discussions with your
14 attorney, right?

15 A. Yes, ma'am.

16 Q. But you're saying he still should have brought that
17 up in the plea or that he should have used that to go to
18 trial?

19 A. I mean, to my best ability, I mean, as far as the
20 advice is concerned, that to me it would make a big
21 difference because it would change the outcome of the --
22 of the case.

23 Q. Okay. So you just disagreed with his opinion that it
24 wouldn't make a big difference?

25 A. Yes, ma'am.

1 Q. Okay. Anything else?

2 A. Oh, yeah. He also told me about the mere presence
3 charge, but mere presence does not substantiate guilt as
4 an aider or abetter either. I found that out.

5 Q. Okay. So y'all discussed all the possible charges
6 and defenses?

7 A. Well, we discussed things, but I wasn't aware of
8 really they -- they are. I'm not no attorney. All I can
9 do is go by his advice as counsel and --

10 Q. Okay.

11 A. -- but I found out through later discovery, you know,
12 that --

13 Q. Well, I don't know because you keep saying I found
14 out through later discovery. Do you mean legal research
15 that you're doing at the prison?

16 A. Yes, ma'am.

17 Q. Okay. So you're not talking about actual discovery
18 items?

19 A. No, ma'am.

20 Q. You're talking about things that people are telling
21 you or that you're researching at the prison?

22 A. Yes, ma'am.

23 Q. Okay. So you're saying that if you had known all
24 that that you would have chosen to -- a trial instead of a
25 plea?

1 A. Yes, ma'am, because it would have changed the outcome
2 of the case.

3 Q. Okay.

4 **MS. ZMROCZEK:** Your Honor, those are all the questions
5 I have at this time.

6 **THE COURT:** All right.

7 **MS. ZMROCZEK:** Please answer any questions that Mr.
8 -- that the Assistant AG has.

9 **THE WITNESS:** Yes, ma'am.

10 **MR. WHITMIRE:** May it please the Court?

11 **THE COURT:** Certainly.

12 CROSS-EXAMINATION

13 BY MR. WHITMIRE:

14 Q. Good afternoon.

15 A. Good afternoon.

16 Q. Your original attorney was Ms. Beth Fullwood?

17 A. Yes, sir.

18 Q. You pled guilty before Judge Childs back in -- was it
19 back in 2006, 2009?

20 A. 2009.

21 Q. Sentenced to ten years for an armed robbery?

22 A. Yes, sir.

23 Q. With deferred sentencing on the voluntary
24 manslaughter?

25 A. Yes, sir.

1 Q. Do you remember why Mr. Bax got appointed to your
2 case?

3 A. Once -- once that I heard he tried -- threatened to
4 go to trial, Mr. Prather, that's when I filed the PCR for
5 ineffective assistance of counsel due to the fact that I
6 told my attorney, Ms. Fullwood, that -- why should I plead
7 guilty first when new evidence could stem from his trial.

8 Q. But you filed the PCR application against Ms. Fullwood
9 prior to Mr. Prather's trial.

10 A. Exactly.

11 Q. Not after.

12 A. But I was never able to raise that issue. The State
13 -- excuse me. The State went ahead and put in an order to
14 -- to vacate and remand it back to general sessions.

15 Q. They agreed to let you have PCR?

16 A. Yeah, I understand that, but it's not the -- it's not
17 the factual -- what I really wanted as a result -- because
18 when I was trying to get things resolved I couldn't do it
19 because it was already done.

20 Q. And what you really wanted was a trial?

21 A. No, what it was is that -- is the actual plea
22 agreement due to the fact that they was saying I breached
23 the terms and conditions due to the fact I didn't -- I
24 didn't take the stand.

25 Q. But you were the one who moved and invalidated all of

1 that and got it to start over by filing PCR?

2 A. Yeah, I did that because of my -- to my ability I knew
3 that once he actually took the stand and testified under
4 oath, you know, that I was passed out during the commission
5 of the crime, he didn't tell anything about the crime and
6 all that, that's -- that's when I knew that the State would
7 not call him to testify.

8 Q. And that was your first story that you told the
9 police; that were passed out and you were, in fact, the
10 victim?

11 A. That's what I told them twice and they ended up
12 telling me about the crime scene.

13 Q. Didn't you give several other statements to the
14 police?

15 A. No.

16 Q. Never?

17 A. Just that one.

18 Q. So when Mr. Hubbard spoke at your guilty plea in 2012
19 with Mr. Bax and he explained your involvement in all of
20 this, you didn't stand up and say this is completely --
21 this is a lie?

22 A. Well, no, because -- the simple reason is because
23 that he was working on a trial testimonial statement so,
24 therefore, he was coaching me into what to say.

25 Q. Mr. Bax was coaching you?

1 A. No, that was Dayton Riddle.

2 Q. Dayton Riddle?

3 A. The Third.

4 Q. But Mr. Hubbard inherited your case. Once PCR was
5 granted, he starting prosecuting you?

6 A. Yeah.

7 Q. And, just for the record, PCR --- did you ever have a
8 hearing, a PCR hearing?

9 A. No.

10 Q. In fact, the solicitor agreed to give you what you
11 wanted and let you start back over?

12 A. Yeah, but that's not really what I wanted. I was
13 trying to go for the plea agreement because I had ten
14 years on one charge and trying to do something with the
15 voluntary. I was not aware of having to go with that
16 situation.

17 Q. You pled guilty because Mr. Prather was convicted?

18 A. That's part of it.

19 **MR. WHITMIRE:** At this time no further questions,
20 Your Honor.

21 **MS. ZMROCZEK:** I have no redirect, Your Honor.

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

23 (Witness excused.)

24 **MS. ZMROCZEK:** Those are all the Applicant's
25 witnesses, Your Honor.

1 **THE COURT:** The Applicant rests.

2 **MR. WHITMIRE:** The State calls Mr. Arie Bax.

3 ARIE DAVID BAX,

4 having been duly sworn, testified as follows:

5 **THE CLERK:** Have a seat and state your name for the
6 record, please.

7 **THE WITNESS:** My name is Arie Bax. Last name is
8 spelled B-A-X.

9 DIRECT EXAMINATION

10 BY MR. WHITMIRE:

11 Q. Good afternoon, Mr. Bax.

12 A. Good afternoon.

13 Q. How long have you practiced law?

14 A. It has been over eleven years now.

15 Q. The extent of your practice?

16 A. Is primarily criminal defense. Well, as of right now
17 it's a hundred percent criminal defense. I currently work
18 at the Beaufort County Public Defender's Office.

19 Q. A former assistant attorney general on PCR?

20 A. That's correct.

21 Q. So you're familiar with this process?

22 A. That's correct. I worked as an assistant attorney
23 general representing the State on PCR's for about two
24 years.

25 Q. Mr. Bax, would you briefly describe the unusual

1 procedure of this case?

2 A. I will do my best. It is procedurally complicated.
3 I was contacted, I believe, in late 2009 or early 2010,
4 I'm not -- I can't quite remember, by Beth Fullwood. I
5 had -- was in private practice at the time. I had worked
6 for Ms. Fullwood for two and a half years, going on three
7 years, as the lead trial attorney at the Lexington Public
8 Defender's Office, but I had been in private practice for
9 a while at that point. She contacted me and asked if I
10 would be willing to be appointed to represent a Mr. Joshua
11 Phillips. I asked Ms. Fullwood why and she explained, you
12 know, basically what -- what's already been talked about
13 in this hearing; that she had arranged a plea arrangement
14 where Mr. Phillips had already pled to an armed robbery
15 charge. I believe he received a ten year sentence. He
16 also pled to voluntary manslaughter and the sentence was
17 held in abeyance until after he had testified at the trial
18 of his co-defendant. During that period of time after
19 that plea, he had been -- they went ahead and sent him to
20 SCDC from the Lexington County Detention Center because he
21 had that active sentence. At that time he had filed a
22 post-conviction relief application alleging ineffective
23 assistance against Ms. Fullwood and thus she could not
24 continue to represent him and was relieved. And because
25 of the nature of the case, the fact that it was a murder

1 case, a fairly complicated murder case with a complicated
2 procedural history, she didn't want to just give it to
3 the next person on the list because we were operating
4 under the 608 system at the time, so she actually called
5 me ahead of time to see if I would agree and after some
6 cajoling I did agree to represent him at that time.

7 If I may continue, Your Honor, to go to some of
8 the other issues, basically I received the file from
9 Ms. Fullwood and one of the first things that I did was
10 I looked at Mr. Phillips' correspondence to Ms. Fullwood.
11 And Mr. Phillips is a prolific writer. He spends a huge
12 amount of his time writing correspondence all day, every
13 day. At that time there was roughly a hundred plus pages
14 of letters to Ms. Fullwood and I read all of them and in
15 reading them the overriding theme was I wanted a trial,
16 not a plea. So before I ever went to see him -- and I
17 think he was at -- maybe it's Manning Correctional
18 Facility, it was right in -- right near Columbia on the
19 north end there, a in fairly small facility. I read those
20 so that I would know what I was dealing with and I went
21 and met with Mr. Phillips at Manning Correctional Facility
22 and I talked with him and I said, you know, based on
23 everything here it looks like you really wanted to go to
24 trial. And I had spoken with Wayne Floyd, who was private
25 counsel for the co-defendant, I talked to him about the

1 trial that had occurred by that point of Mr. Prather, I
2 believe his name was, and I knew that there were some
3 issues there that we would explore. I was also aware
4 through Ms. Fullwood and --

5 Q. I hate to interrupt.

6 A. Yes, sir.

7 Q. The trial had occurred?

8 A. By the time I talked to Mr. Phillips it had.

9 Q. Was it a mistrial?

10 A. It was a mistrial. The first trial of Mr. Prather was
11 a mistrial and they did not re-try him until 2012 and I
12 believe the mistrial occurred in '09 after Josh had had his
13 first plea with Ms. Fullwood.

14 But also in reading the letters I wanted to make sure
15 that the other issue was his competence, so I went and I
16 spoke with him and I told him I can -- I believe, no
17 guarantees, but I believe I can reverse all this and get
18 you back to a level where you're facing all the charges
19 again. I'm gonna need to make sure that you're competent
20 first -- both in my discussions, as well as have the
21 Department of Mental Health look at you, and if that comes
22 back, then I will do this if you want. And I explained
23 to him at the time, you know, everything's coming back,
24 you're gonna be looking at murder, you're gonna be looking
25 at armed robbery, the whole nine yards, and he said he

1 would.

2 And so when he was ruled competent, I actually
3 approached Rick Hubbard, who had inherited the case, and
4 said, you know, you don't have to do this, but I would
5 think after the fact that you couldn't use him as a witness
6 in the trial against Mr. Prather and it resulted in a
7 mistrial, you're kind of probably pissed, do you want
8 another bite of this guy, because if you do you can call
9 the AG's office and tell them -- consent to the PCR and
10 reverse everything and that's -- and he said yeah --

11 Q. I hate to stop you there --

12 A. Yeah.

13 Q. -- Mr. Bax, but when you say the AG's office consent,
14 do you mean without a hearing or a finding of ineffective
15 assistance of counsel by Ms. Fullwood?

16 A. That's correct. It was just a consent based on
17 Mr. Hubbard, who was a deputy solicitor here, and currently
18 is until he takes a job at y'all's office. He contacted
19 the AG's office and said, you know, I want y'all to just
20 consent to it being reversed with no specific findings of
21 ineffective assistance because I want to start from scratch
22 with this case. And my client and I both expressed to the
23 AG's office that we were in agreement with that. And I
24 forget the name of the attorney in here -- in town that
25 was appointed as PCR counsel. A nice gentleman. I can't

1 remember his name. I can see his face. I actually
2 contacted him and let him know, you know, congratulations,
3 you just won at PCR.

4 Q. So for the record he had a separate attorney for this
5 collateral issue?

6 A. He was already appointed an attorney here in town,
7 and I ask that attorney to forgive me for forgetting his
8 name, but, you know, I literally contacted him and said
9 how would you like to win the PCR and he said it sounds
10 fine to me.

11 Q. Ultimately Mr. Phillips got his wish and got to start
12 over?

13 A. That's correct.

14 Q. Can you describe your involvement going forward and
15 what you did for him in his initial steps?

16 A. Okay. And --

17 Q. Stages. Not steps. I apologize.

18 A. Feel free to stop me --

19 Q. Oh, no.

20 A. -- because I can ramble on this case for quite a
21 while. I did spend almost three years working on this
22 case. The first thing I did obviously after we dealt with
23 the competency issues, and that was a little complicated
24 as Ms. Zmroczek talked about. You know, he was actually
25 looked at by both the Department of Mental Health, as well

1 as DDSN, because -- and I did some background prior to the
2 competency with his adoptive parents, his adoptive father
3 John, and I do forget his mother's name, a sweet lady,
4 adoptive parents. John has since died sadly enough. John
5 was a very nice man. They actually gave me originals of
6 his schooling records from back in his grade school days
7 all the way up through high school where there were
8 multiple testing of his IQ. And generally he didn't
9 really have much more than about a 60 to 70 functional IQ,
10 and I provided all of that material to the testers to make
11 sure that he got a full and fair evaluation. I still to
12 this day really feel like there's a question as to his
13 competency, but I have doctors saying he's competent and
14 there's nothing I can do about that.

15 After that was done, knowing what he wanted, I hired
16 a private investigator and I obtained funding through the
17 Office of Indigent Offense to fund that investigator.
18 Her name is Lee Connelly. Lee Connelly is an excellent
19 investigator.

20 Q. And Ms. Connelly is the investigator often used by
21 the public defender's office?

22 A. She -- yeah. I knew about her because at Lexington
23 County then, and I guess now, they use private
24 investigators. I mean, my office in Beaufort we have
25 on-staff investigators, but they use ones they -- we had

1 to get funding for each and every time. So I had obtained
2 the services of Ms. Connelly. I told her what we were
3 looking for and she started digging right away, produced a
4 huge amount of materials. As you can see here, this box,
5 which I'm guesstimating is about eighty to a hundred
6 pounds, is the -- all of Mr. Phillips' file. And a good
7 45 to 55 percent of that is materials produced by Lee
8 Connelly in her investigation. Just really detailed stuff.
9 She chased down a lot of leads.

10 Not only did she talk to Ronald Rabon, who was the
11 roommate of the alleged victim, she talked to former
12 roommates. There was even one out of state that we had
13 talked to and we were gonna try to bring him into state,
14 if possible. A whole number of things. Additionally,
15 one of the main areas that I was looking at in
16 investigation --

17 Q. Mr. Bax?

18 A. Yes, ma'am -- yes, sir. Sorry.

19 Q. I do apologize. Let me back up.

20 A. Go ahead.

21 Q. The substance of the State's evidence, what was it
22 and how did it evolve throughout the years with your
23 client's statements?

24 A. My client's statements were the number one detriment
25 to his case period. You know, once again, it was one of

1 these cases where, as I've seen many, many times in my
2 career, if my client had exerted -- you know, had exercised
3 his right to remain silent and stayed silent we would
4 have had a much stronger case. The problem was is that
5 Mr. Phillips was a little inaccurate with his testimony
6 early based on my remembrance and based on my file, and
7 that is he gave more than one statement. My remembrance,
8 and obviously I don't have time to in my career to go
9 through that whole file before I get here today, but my
10 remembrance is he gave at least four statements and the
11 last two, I think, were given to the solicitor in
12 anticipation of his cooperation at trial against
13 Mr. Prather.

14 And in those statements he did implicate himself and
15 the problem was is he did so with his attorney standing
16 next to him in a conference room in this building with
17 the solicitor's office. The reason I mention those
18 details is as I explained to Mr. Phillips many, many times
19 there's no way that I could suppress those statements
20 under those circumstances; there was no ability under a
21 Jackson v. Denno hearing pre-trial to say these were not
22 voluntary.

23 Q. To get the chronology right, the last two statements,
24 did he give these after he pled guilty and got the benefit
25 from the State originally, Ms. Fullwood?

1 A. Honestly, Mr. Whitmire, I cannot recall the exact
2 timeline. It was around in that period of time because it
3 was in the midst of this negotiation by Ms. Fullwood to
4 -- to have him be a cooperating witness for the State and
5 the problem was is that there would be some details that
6 would be a little bit problematic when he would give the
7 statement to Mr. Riddle or whoever because I think Dayton
8 had the original, that's what he was referencing, was that
9 these statements were given to Mr. Riddle and his staff
10 with Ms. Fullwood there and so he wanted to clarify a
11 detail and when he would try to clarify the detail the
12 second time he would change his story again.

13 Ultimately Mr. Hubbard and Mr. Riddle both kind of
14 consulted on the case at trial and they decided not to
15 call Mr. Phillips because of the fact that his statements
16 had such kind of glaring disparities between them and they
17 felt -- and this is what they directly expressed to me,
18 both of them, that he would be more of a liability to the
19 State on the stand than an asset because there was plenty
20 of areas by which the defense counsel for Mr. Prather
21 would have had, prior inconsistent statements on
22 cross-examination, to hammer him on.

23 I also believe that based on their contact with
24 Mr. Phillips they realized that in my opinion, and I'd
25 talked about this with Mr. Phillips, based on his -- his

1 disabilities I don't think he would have been able to
2 handle testifying very well if I can put it that way.

3 Q. And just to get the record clear, and I appreciate
4 the Court's patience, the original story was that he was
5 the victim of an assault by the victim. That changed to
6 it a lovers' quarrel?

7 A. What my understanding was, was the dispute that Josh
8 has is that they had been at the victim's house, I forget
9 his name, he was in his fifties, he had some health
10 concerns, and that was another area of investigation that
11 I really thought was strong, but it didn't pan out. But --

12 Q. Causation?

13 A. Well, causation because the problem was is that the
14 cause of death was actually cardiomegaly, which is death
15 by an enlarged heart. In my discussions with Wayne Floyd,
16 you know, he said even the State's pathologist admitted to
17 me during the first trial that it was possible he died of
18 natural causes.

19 Q. The State's pathologist, Dr. Ross?

20 A. Dr. Ross, that's correct.

21 Q. Did Dr. Ross testify at Mr. Prather's trial?

22 A. She did and that's where she testified to that the
23 first time. And I'm not aware of exactly what her
24 testimony was the second time, but I know that Mr. Floyd
25 had the transcript, so I doubt she could deviate very much

1 from her first trial testimony without running into issues
2 with defense counsel on that.

3 And not to get sidetracked, what I was talking about
4 before, and I apologize, was he was at this house along
5 with Mr. Prather, who's street name, porn name was Golden
6 Jew, I remember that, it was weird, and they had been
7 partying all day and I think there was alcohol, as well as
8 some cocaine, involved. And at one point or another it
9 was known that the victim was a homosexual and Mr. Prather
10 and my client -- there was some suspicion that they were,
11 there was some dispute about yes or no during the whole
12 course of events, but either way later on in the evening --
13 and there had been some scuffles because I think that the
14 -- the older victim was kind of trying to get with one of
15 them. Mr. Prather left to go get some more cocaine. When
16 he came back, you know, the story from him was that the
17 victim met him at the door wearing no clothes and having an
18 erection and made some comments about Mr. Phillips and this
19 started the whole altercation and there was an allegation
20 that Mr. Phillips was in the bed.

21 The problem was is that Mr. Phillips changed his story
22 to say that he got up at that time, that he woke up, he got
23 out of the bed and was also mad because he didn't remember
24 how he got to the bed and how all his clothes came off. So
25 based on that portion of his statement, and this goes to

1 what he was saying before, he does say now I was passed out
2 in the bed and there may have been some testimony from
3 Mr. Prather that he was passed out in bed, but there's also
4 his own statement which was admissible saying I got up and
5 I was also mad at the victim and I participated in the kind
6 of scuffle attack that they say stressed his heart and
7 caused him to die..

8 Q. Correct me if I'm wrong, but in one of these meetings
9 with law enforcement and the solicitors he ultimately
10 disclosed that this was all a planned ruse to begin with,
11 a robbery?

12 A. There were -- there was some alluding to that. It
13 was not fleshed out very well. The problems I had from
14 his statements were the portions where he talked about
15 knowingly being part of hitting the victim. There was a
16 kind of weird little particleboard tabletop that had been
17 allegedly used to smack the victim, you know, it was fairly
18 soft, there was no concussion, there was no injuries from
19 it that were life-threatening, but there was some smacking
20 with this kind of fake wood particleboard table piece and
21 he actually led them to where that was. That was taken
22 from the home and thrown in some woods behind the apartment
23 where Mr. Phillips lived and he took them to where that
24 was and showed them to show that he was -- he knew where it
25 was, and that that was a problem, too.

1 Q. And correct me if I'm wrong, Mr. Phillips also through
2 his communications with law enforcement disclosed that he
3 and Mr. Prather went to play pool and got their stories
4 straight before they went to the hospital and --

5 A. Claimed rape.

6 Q. Yes.

7 A. Yeah. It was -- and I forget the name of the bar,
8 I don't even think it's open anymore, but there was a
9 particular bar that they went to after the -- the assault,
10 you know, if you want to call it that, and they had a few
11 drinks and talked about it and, you know, the -- the way
12 the facts would have come out to a jury, the way the
13 solicitor was gonna be able to talk about those facts is
14 that they went there and figured out what they were gonna
15 do and decided to go to the hospital, I think the Lexington
16 County hospital, which is what they did, and at that time
17 at the emergency room claimed that Mr. Phillips had been
18 raped.

19 Q. And kind of going back to some more just general
20 testimony for the record, Mr. Phillips was housed at
21 Manning in Columbia?

22 A. That's correct. At that time, yes.

23 Q. You had no problems going over there and being able
24 to visit with him during the course of representation?

25 A. I did not have any problems visiting with him.

1 Additionally, Mr. Phillips was already writing letters
2 and doing legal research from there. That's how the PCR
3 started. He continued this practice with me. In my
4 file in addition to the hundred and some odd pages of
5 correspondence to Ms. Fullwood, there's another two to
6 three hundred pages of correspondence to me, and in those
7 he would send me cases saying this is what this means and
8 this is what this means and this is what you need to do.

9 Q. Did you keep a -- a log of the hours you spent working
10 on this case?

11 A. Yes, I did. In order to get paid under the old 608
12 system I had to keep a log.

13 Q. Do you have that log with you today?

14 A. I'm sure it's in there somewhere.

15 Q. Just for matters of expedience, could you give a rough
16 estimate?

17 A. Well, I can tell you this. At the time the OID rate
18 was \$40 an hour for out of court and \$60 an hour for in
19 court and I was never in court on this case more than about
20 thirty minutes and my bill was roughly \$20,000 if that
21 gives you an idea.

22 Q. Again, a rough estimate of the consultations you had
23 over at Manning?

24 A. Well, I had, I think, two or three consultations at
25 Manning because I specifically remember my first meeting

1 with Mr. Phillips to discuss what I could do for him, as
2 long as he was competent and -- and still wanted to do
3 that, was to reverse everything. The second meeting was
4 specifically to introduce him to Lee Connelly so he would
5 know who she was because my plan was to have Ms. Connelly
6 also meet with him outside my presence to gain more details
7 to investigate. So that's two I remember specifically and
8 I think there might have been a third. Additionally, after
9 everything was reversed SCDC said well, we're not keeping
10 him, so they sent him back to Beaufort County Detention
11 Center and he was there for at least another year or so
12 prior to his plea, I think around that realm of time, and I
13 visited with him at the Lexington County Detention Center
14 at least once or twice as well.

15 Q. He was sent to Beaufort?

16 A. I mean, not Beaufort. I do apologize. Lexington
17 County Detention Center. He was sent back to Lexington
18 County. And I apologize.

19 Q. How many trial notebooks did you have? What was --
20 what was the, you know -- strike that, Your Honor. Going
21 into trial, what was the extent of your preparations?

22 A. My preparation was very extensive. At the time that
23 we, you know, talked about and ultimately Mr. Phillips
24 agreed to plead guilty I was on, I think, my fifth or sixth
25 trial notebook. There was -- I know we were up to four or

1 five in the month or so before the trial was scheduled to
2 go in December. We had wanted to do it in September and
3 there was -- of 2012 and there was a conflict for both me
4 and Mr. Hubbard. They wanted to reschedule it in November,
5 but Mr. Duffie Stone, the elected solicitor in Beaufort
6 County, had already staked his claim on me for another
7 murder case I was doing, State versus Rajerick Knight, and
8 so we actually tried that case I think it was the week
9 after Thanksgiving 2012, and this one was slated to go in
10 December of 2012 and --

11 Q. Mr. Bax, I'm really interested to know after getting
12 this extraordinary concession by the State in PCR what was
13 it that made Mr. Phillips go back and enter the same plea
14 all over again?

15 A. I will -- the advice that I gave him, which I believe
16 is why he decided to enter the plea, okay, and, of course,
17 Mr. Phillips and I -- you know, I still -- you know, I feel
18 bad for Mr. Phillips and I -- I don't have a problem with
19 Mr. Phillips. I think that he's -- he's just trying to do
20 what he can for himself, but, you know, at that time what
21 I explained to him was they're now -- because they did
22 convict Mr. Prather, and I think he either got thirty or
23 life, I forget, you know, and the case was weaker against
24 Mr. Prather because Mr. Prather had not made more than one
25 statement and his statement was -- was, you know, not that

1 bad for him. There was one part of it that they focussed
2 on and I think that probably hurt him where he admitted to
3 punching the victim in the face, but basically the fact
4 that Mr. Prather was convicted and his case was much weaker
5 was an eye opener.

6 And, additionally -- this is the other big factor that
7 I discussed with Mr. Phillips. The best trial strategy
8 that I could come up with originally was that regardless of
9 the statements made by my client, the victim in this case
10 did not -- was not murdered because he died of natural
11 causes and I was going to argue to the jury that regardless
12 of what they said about what happened, if it's not murder,
13 it's not murder from a scientific factual basis, if you
14 die of natural causes that can cannot be specifically
15 proximately linked to the actions of my client, he's not
16 guilty under the law.

17 To that end I also obtained funding to retain the
18 services of a medical expert, a forensic pathologist, to
19 re-review the records of Dr. Ross. There was problems with
20 Dr. Ross', you know, causes of death because originally
21 her first report she put out said -- did not have a cause
22 of death. It said no cause of death pending police
23 investigation. After she received consultation and
24 information from law enforcement, she issued a second
25 report listing cause of death cardiomegaly as the result

1 of stress from the attack. You know, I felt that that was
2 an avenue for attack and inappropriate for her to garner
3 and basically fashion her cause of death after consulting
4 with police first. I hired a doctor, I forget her name,
5 out of Charleston and it came after, you know, doing
6 research through SCTLA and then SCAJ on the list serves,
7 and this doctor came highly recommended by several
8 well-known defense attorneys that are friends of mine and
9 I respect their opinion, and I actually -- one of the many
10 things I did with this case is I physically went to her
11 house after having provided her with all the discovery and
12 reviewed this with her. Unfortunately, her opinion was not
13 good. She not only thought that it was murder, she thought
14 that the pathologist for the State had missed the fact that
15 there was probably some asphyxiation cause by pushing of
16 pillows down on the victim's face, which didn't make me
17 ever want to recommend her to any other defense attorneys.

18 Q. So I take it you didn't ask for a written report?

19 A. I did not. I did not ask for a written report and
20 basically the reason I tell that long story is I talked to
21 Mr. Phillips when that twenty year offer with credit for
22 all time served was put on the table and I said we don't
23 have the primary defense that I wanted in this case, our
24 doctor did not help us and I can't go get another doctor.
25 The problem is that once you, as the defense, hire one

1 expert and she doesn't give you what you want and you go
2 hire another one, chances are the prosecution is going to
3 find out about that and they're going to bring that out at
4 trial to make your defense look like, you know, a hired gun
5 bogus defense.

6 Q. And going back to your defense, did you attend
7 Mr. Prather's trial?

8 A. I did not, but I obtained funds to buy his transcript,
9 a fairly pricey little thing that I had no idea you had
10 to pay for, and I had his entire transcript of his first
11 mistrial at my disposal.

12 Q. Were you able to review Mr. Floyd's cross-examination
13 of Dr. Ross?

14 A. That's correct. And I did read all of her -- her
15 direct and cross many times.

16 Q. A final question and this might -- may be
17 disingenuous, but did you try this case to the best of
18 your ability?

19 A. I did. And, you know, honestly I did -- there was --
20 you know, it would have been a good trial, I think, if the
21 -- the doctor issue had panned out. And what I told Josh
22 was it's a triable case, but the problem is without being
23 able to kind of divert attention away from your statements
24 and the fact that your co-defendant has already been
25 convicted under less evidence and fact that this plea deal

1 means that you plead now and you'll get out in nine years
2 and be able to walk away from this without the risk of a
3 life sentence, then it's a very good thing that -- that
4 eliminates that risk.

5 Q. Negotiate a plea deal?

6 A. That's correct.

7 Q. After all of the PCR and everything?

8 A. That's right. And, frankly, honestly, I never thought
9 Rick Hubbard would make that offer. You know, I -- I made
10 the inquiry after the -- the trial of Mr. Prather went the
11 way that it did in 2012, but I never expected them to put
12 it back on the table because they were still pretty pissed
13 at Mr. Phillips for, you know, basically changing his story
14 so much that they couldn't use him the first time around.

15 **MR. WHITMIRE:** Thank you, Mr. Bax. Please answer any
16 questions that opposing counsel may have for you.

17 **THE WITNESS:** Thank you.

18 **THE COURT:** Cross-examination?

19 **MS. ZMROCZEK:** Thank you.

20 CROSS-EXAMINATION

21 BY MS. ZMROCZEK:

22 Q. Even though Mr. Phillips has been found competent, you
23 still question his ability to understand things, right?

24 A. I do. I do. Honestly, I do. And the problem is that
25 we can't do more than what we can do as defense attorneys.

1 If the psychiatrists say that he's competent, you know, and
2 we did bring that up in detail to Judge McMahon prior to
3 the plea, and as I'd always told him if there had been a
4 trial, there would have been the same thing. We would
5 have had a Blair hearing and we would have gone through
6 all of the findings from the multiple doctors that talked
7 to him. In my personal opinion, the things -- I'm not a
8 psychiatrist, maybe I should have been because they make
9 more money than we do, you know, I think that while he can
10 research things and he can talk about cases and he can
11 correctly use words like lawyer and judge and prosecutor,
12 I honestly believe Josh can't competently assist his
13 attorney because he cannot let go of things no matter how
14 much the facts contradict it. He gets an idea in his head,
15 and I think there's some obsessive compulsive there, I
16 don't know, and he -- no matter what you say he won't let
17 go.

18 Now I've had a lot of conversations with Josh and we
19 got along well and after, you know, sometimes hour long
20 conversations, both physically in -- face to face as well
21 as on the phone because he could call me any time, even in
22 Manning they all have cell phones in prisons now, they call
23 me all the time, once the conversation was over he could --
24 he would start to get to the point where I am because I
25 would quietly, you know, calmly and logically kind of tell

1 him why each of the things that he had researched was
2 incorrect and I would explain it, and by the time it was
3 over he'd kind of be on the same page. An hour after I've
4 hung up the phone, he'd be back to the first viewpoint and
5 I'd be getting letters back to the same thing that I just
6 spent an hour kind of talking to him out of. And so from
7 that standpoint -- you know, Josh is a good kid. He got
8 himself into some bad stuff and some bad things happened
9 that I don't think either of the people intended, certainly
10 not him, but it was what it was. There's nothing else I
11 could do.

12 Q. And you and I have had several conversations about
13 requesting your file and it took -- between your trial
14 schedule and my trial schedule and the distance, it took
15 some time for me to get that file, correct?

16 A. It absolutely did and I had sympathized with your
17 position. The problem was is that as you can see and as
18 your assistant saw, the file is humongous and I just --
19 you know, I'm working for the public defender's office,
20 but my wife still runs our private firm and we just can't
21 afford to come out of pocket to ship something like this,
22 which would cost a couple hundred dollars, and we couldn't
23 afford to -- to copy it or ship it. We certainly couldn't
24 afford -- and if we tried to scan it and e-mail it to you,
25 it would probably break the servers, so it was really a

1 point where, you know, making it available to you was the
2 only thing we could do and I know that was inconvenient
3 for your office.

4 Q. And we eventually did get it?

5 A. That's correct.

6 Q. But it contains all of your research and all of your
7 notes and you -- and you discussed corpus delecti with him?

8 A. Yes.

9 Q. And you explained to him how that's not applicable in
10 this case, right?

11 A. That's correct.

12 Q. Okay. And you understand that he still doesn't agree
13 with that?

14 A. I understand that he doesn't agree with that. I
15 understand he doesn't agree with a lot of things. And I
16 know the issue of the enhanced charges still comes up and
17 he still kind of hangs up on the idea that originally
18 they had talked about him as an accomplice and then they
19 indicted for murder and I explained to him many times that
20 if they felt like they had enough evidence for him to be
21 charged as a principal, they can go to the grand jury and
22 present it as a murder and if the grand jury votes that
23 it's true billed as a murder, it's true billed as a murder,
24 and that's something he still has a hard time with.

25 Q. And to your knowledge was there ever a plea agreement

1 that he got -- because he pled he got ten years on the
2 armed robbery, which was overturned on the PCR, but to
3 your knowledge was there ever a plea agreement that he
4 was gonna get a concurrent ten for the voluntary that he
5 had pled guilty to but had yet to be sentenced on?

6 A. No, and I -- you know, that was one of the primary
7 discussions I'd had with Beth Fullwood when I first
8 took the case. She told me that, you know, they would
9 not promise him anything on the voluntary manslaughter
10 specifically because that was the practice of the
11 Eleventh Circuit Solicitor's Officer at that time, it
12 may still be, I don't know, that they don't want someone
13 to testify to a jury as a cooperating co-defendant and
14 have them be able to look at the jury and say yes, I was
15 promised X number of years. They don't like to have --
16 they want to have at least something out there that is
17 undetermined so that they can argue that this person is
18 doing it, you know, just to be doing the right thing,
19 whatever.

20 Q. Right. And you explained to him about how the
21 doctor's testimony was that y'all had consulted wasn't
22 going to help his case?

23 A. That's correct. I mean, that was a big disappointment
24 for me and I'm sure it was for him. I just really think
25 that it really should have been better than it was, but,

1 you know, once the expert decides to give her opinion, she
2 decides to give her opinion and I really can't expert shop.
3 That's very risky as a defense attorney.

4 Q. And then you explained to him that you could not have
5 filed a Jackson v. Denno regarding all the statements he
6 gave because his attorney, Ms. Fullwood, even though she
7 was found to be ineffective was still there and present
8 for those statements, right?

9 A. Well, what I explained to him is that we could have
10 the hearing. I never told him we couldn't have the
11 hearing, but what told him was is that in my legal opinion
12 there's no chance that those statements were going to be
13 suppressed because you have to argue that the statements
14 were involuntarily made without knowing one's rights or
15 not fully understanding one's rights and that's in my
16 opinion, you know, almost an impossible task when you
17 have your lawyer standing next to you when you make the
18 statements.

19 Q. Even though -- and I think that you stated this
20 earlier, that he doesn't handle pressure very well and he
21 -- and he was probably being pressured by the solicitor's
22 office, which is the reason for the inconsistencies?

23 A. Well, I don't -- I don't know that -- I know Beth
24 Fullwood and you do as well. I don't think she would have
25 let them pressure him. I don't think that she would have

1 let Mr. Riddle, you know, jump up and yell like he can
2 sometimes and intimidate him. I think she would have
3 stopped the interview. Any pressure that he felt I think
4 would have been just generally pressure to please the
5 person that he was talking to in order to get something
6 that helps him, but I don't think there would have been
7 any pressure that would be objectionable by Ms. Fullwood
8 that she wouldn't have objected to.

9 **MS. ZMROCZEK:** I beg the Court's indulgence.

10 **BY MS. ZMROCZEK:**

11 Q. And then, lastly, did y'all have conversations about
12 how he felt like Ms. Fullwood turned her back on him?

13 A. Yes, I did.

14 Q. Okay.

15 A. And basically the conversation I had with him, which
16 I had with him about myself as well many times, is that
17 we, as attorneys, have more than one case and even if we
18 only had your case there's no possible way that we could
19 respond to every letter that Josh sends us and Ms. Fullwood
20 had a -- you know, this public defender who had a large
21 caseload, there's no way that she could have responded to
22 all his correspondence. I mean, he basically overwhelms
23 anyone who represents him with such massive amounts of
24 correspondence that there's no possible way to respond to
25 it and a lot of times you're just to the point where you

1 stop reading them for a while, you know, because you've
2 just -- you've got too many other things to do. And the
3 thing is that not only did I have that conversation with
4 him many times about Beth, as well as myself, when I didn't
5 respond to every letter, the two or three I would get a
6 week, sometimes two and three a day, I also had his
7 stepfather John discuss that with him because John would
8 call me -- and John was a wonderful, nice man, spoke very
9 slowly, and, you know, he would say Josh is complaining
10 about such and such or he's complaining you haven't
11 talked with or visited him and I would tell John what the
12 situation was and he would say I apologize, I'll have a
13 conversation with him, and then John would talk to him.

14 Q. And then when, I believe, you had the guilty plea
15 that y'all had a negotiated sentence?

16 A. Yes, we had a negotiated sentence of twenty years
17 with, and this was the important part, credit for all
18 time served since the original warrants were served on
19 Mr. Phillips.

20 Q. So he received the credit for the time that he did in
21 SCDC even though his PCR was granted?

22 A. In fact, actually initially he did not receive that
23 because the way that SCDC looked at it is they refused to
24 give him credit initially. I ended up having to go back in
25 after I'd already submitted my voucher, getting paid zero

1 for this, and got both Judge McMahon and Rick Hubbard to
2 help me do a -- I drafted a letter clarifying sentence --
3 or, excuse me, an order clarifying sentence because a lot
4 -- or SCDC said, you know -- and John and his wife had
5 called me and everything and Judge McMahon graciously
6 signed an order and, of course, he had me and Rick sign it
7 consenting as well, specifically clarifying that aspect of
8 it for the South Carolina Department of Corrections saying
9 he is to get credit for all of the time because he's never
10 been out, he's just been transferred from one incarceration
11 facility to another, county, state, et cetera, from the
12 time of his warrant, which was indicated on the file,
13 because that was the selling point for this is that, you
14 know, if he got all of that credit he was only going to do
15 nine more years from 2012 and then he'd be out. And so we
16 got that fixed and I did all of that free of charge.

17 **MS. ZMROCZEK:** Okay. Thank you. I have no further
18 questions. Oh, wait. Hold on. Sorry. I have one more
19 further question.

20 **BY MR. ZMROCZEK:**

21 **Q.** So with all of that being done, when is -- when do
22 you expect him to get out?

23 **A.** I mean, I haven't looked at the calculations in a
24 while. I mean, we -- we did our best and, of course, we
25 always advised him, you know, it is -- South Carolina

1 Department of Corrections has to calculate these things
2 and you can't take my promises as a guarantee, but these
3 were 85 percenters, so it's kind of calculateable that he
4 would do roughly 17.5 years on the twenty and he already
5 had eight in, so we had told him it's gonna be roughly
6 nine years and some months from today's date when you
7 would most likely be released from incarceration and that
8 was, I think, December of 2012.

9 Q. So if his projected max out date is 8-23-23 --

10 A. I think that sounds right.

11 Q. -- that's about --

12 A. Like you said, that's about seven years from now and
13 it's been about two years since this plea, maybe more. I
14 don't know. Like I said, it sounds right.

15 **MS. ZMROCZEK:** Okay. Thank you.

16 **MR. WHITMIRE:** No redirect, Your Honor. The State
17 rests and asks that Mr. Bax be released from subpoena and
18 allowed to return back to Beaufort.

19 **THE COURT:** Thank you, Mr. Bax. You may step down
20 and you are excused from your subpoena.

21 **THE WITNESS:** Thank you, sir.

22 (Witness excused.)

23 **MS. ZMROCZEK:** Your Honor, we -- the application is
24 what it is and Mr. -- even though he stands to get out
25 within his natural life, he still wishes the Court to

1 grant the PCR based on his assertions that his counsel
2 did not advise him correctly to take the plea.

3 **MR. WHITMIRE:** May it please the Court? The State
4 would rest on Judge McMahon's comments at the end of the
5 plea transcript. He received exceptional representation
6 of counsel from both of his attorneys. The one relevant
7 -- that's relevant in the application today as he was able
8 to convince the State to do something it never does and
9 allow him to start over. He got what he wanted and he
10 was still able to go back and plea. Because of Mr. Bax's
11 incredible representation, he will be getting out of
12 prison in a handful of years.

13 The only point the State would like to address is
14 maybe some concern about competency in Mr. Bax's opinion
15 and Mr. Bax's excessive amount of hours compensated
16 for any issues he had with communication and used
17 Mr. Phillips' family in this. Also the testimony was
18 clear that he wouldn't be able to meet the standard to
19 show that Mr. Phillips was not competent to assist in the
20 representation. Mr. Phillips was a high school graduate
21 from the local Brookland-Cayce, held a job, and as a
22 result Mr. Bax worked exceptionally hard to ensure that
23 his client was as fully involved as he could be in the
24 case and across the board is just exceptional
25 representation.

1 **THE COURT:** I agree with Mr. Whitmire and for all
2 of those reasons I'm going to -- I'm compelled to deny
3 the application and I'd ask Mr. Whitmire if he'd please
4 prepare an order.

5 **MR. WHITMIRE:** Thank you, Judge.

6 **MS. ZMROCZEK:** Thank you, Judge.

7 (Whereupon, the proceedings were concluded at
8 2:21 PM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh 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 case in Circuit Court on the 8th day of June, 2015.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

September 2, 2016

s/Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

FORM 4
FILED

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP3202341

Joshua Brandon Phillips
#335243

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

PCR hearing was scheduled for June 8, 2015 @ 930am. Aimee Zmroczek made a motion to be relieved as counsel for Joshua Phillips. Motion denied.

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

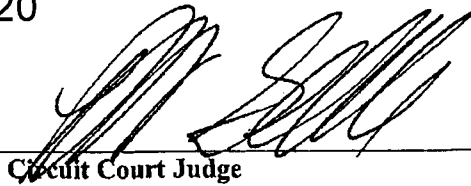
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**



Circuit Court Judge

2139

Judge Code

6/8/2015

Date

For Clerk of Court Office Use Only

This judgment was entered on 6-15-15, and a copy mailed first class or placed in the appropriate attorney's box on 6-15-15, to attorneys of record or to parties (when appearing pro se) as follows:

Aimee Jendrzewski Zmroczek A.J.Z. Law Firm, LLC PO
Box 11961 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg

/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Joshua B. Phillips #335243
MacDougall Corr. Inst., M-1-B15
1516 Old Gilliard Rd.
Ridgeville, S.C. 29472

6-12-15

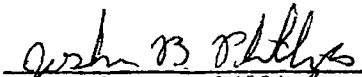
Lexington County Clerk of Court
Beth A. Carrigg
205 East Main Street
Lexington, S.C. 29072

Dear Mrs. Carrigg,

I am sending you this letter in reference to having the letter to my attorney to be clocked stamped and filed with your office (RE: Needing you to file my appeal.)

If you can please assist me in this matter, it will be more than Honorably appreciated.

Respectfully submitted,


Joshua B. Phillips

COPIES
MAILED
JUN 15 2015
10 10 AM
CLERK OF COURT
LEXINGTON COUNTY
SOUTH CAROLINA

Joshua B. Phillips #335243
MacDougall Corr. Inst., M-1-B15
1516 Old Gilliard Rd.
Ridgeville, S.C. 29472

7-8-15

A.J.Z. Law Firm, LLC
Aimee J. Zmroczek
P.O. Box 11961
Columbia, S.C. 29211

FILED

Dear Mrs. Zmroczek,

I filed my very first PCR for Ineffective Assistance of Trial Counsel on Attorney, Elizabeth C. Fullwood. The State went ahead and intervened by filing motions for an ORDER and ORDER TO VACATE PLEA stating that I breached the terms and conditions of the plea agreement by not testifying at my codefendant's trial. The whole objective is that I was at his trial and the State didn't call me to the stand. I have documentation to show that I was in Court on the day my alleged codefendant went to trial.

Due to this being said and done the State had violated S.C. Code § 17-27-20 and North Carolina ET AL. v. Pearce, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656, 1969 U.S. LEXIS 1165.

I am sending the Clerk of Court a copy of this letter to be filed into their court records.

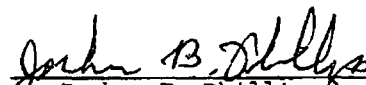
Once the Court denies my Motion of Reconsideration, I need for you to file my appeal along with a Rule 59(e) motion.

You have written me a letter back in April 28, 2014 stating "When we have a date for your PCR I will assure you we will be as prepared as you want me to be!" You didn't amend any meritorious issues to my PCR or nothing else in this matter. This is why I couldn't read anything while I was on the stand. Due to the fact, the State wouldn't be able to put up a defense.

This is in violation of the ABA Standard Ropilla v. Beard, 545 U.S. 374, 125 S.Ct. 2456, 162 L.Ed.2d 360, 2005 U.S. LEXIS 4846; and Strickland v. Washington, 466 U.S. 668, 80 L.Ed.2d 674, 104 S.Ct. 2052. "Ineffective Assistance of PCR Counsel"

If you can please help me in this matter, it will be more than Honorably appreciated.

Respectfully submitted,


Joshua B. Phillips

CERTIFICATE OF SERVICE

I, Joshua B. Phillips certify that the foregoing letter have been served with a copy of all enclosed at the following addresses via United States Postal Mail Service:

1) A.J.Z. Law Firm, LLC
Aimee J. Zmroczek
P.O. Box 11961
Columbia, S.C. 29211

2) Lexington County Clerk of Court
Beth A. Carrigg
205 East Main Street
Lexington, S.C. 29072

On this 7 day of July, 2015.

Thus, I declare under the penalty of perjury that this letter was served via United States Postal Mail Service to all the above as listed parties.

/s/ Joshua B. Phillips
Joshua B. Phillips

SWORN to and subscribed before me this 7th
day of July, 2015
Lisa M. Cross (L.S.)
Notary Public
My Commission Expires: Jan 16, 2024

LISA M. CROSS
Notary Public, State of South Carolina
My Commission Expires 1/16/2024

Joshua B. Phillips #335243
MacDougall Corr. Inst., M-1-B15
1516 Old Gilliard Rd.
Ridgeville, S.C. 29472

7-8-15

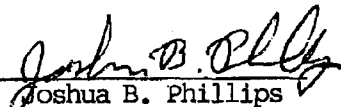
Lexington County Clerk of Court
Beth A. Carrigg
205 East Main Street
Lexington, S.C. 29072

Dear Mrs. Carrigg,

I need the letter that is attached with this letter addressed to my attorney to be clocked, stamped and filed into your court records.

If you can please assist me in this manner, it will be more than Honorably appreciated.

Respectfully submitted,


Joshua B. Phillips

Joshua B. Phillips #335243
 McDougall Corr. Inst., M-1-B15
 1516 Old Gilliard Rd.
 Ridgville, S.C. 29472

1 of 1

8-16-15

2015 AUG 19 PM 4:47

Lexington County Clerk of Court
 Beth A. Carrigg
 205 East Main Street
 Lexington, S.C. 29072

CLERK OF COURT
 LEXINGTON, SC

Dear Mrs. Carrigg,

I need to know if my PCR Attorney, Aimee J. Zmroczek filed the motion to reconsider, then the appeal along with the 59(e) motion. If so, could you please send me a clocked, stamped copy of them along with the Final Order of Dismissal all up under Docket No. 2013-CP-32-02341?

I also need a clocked, stamped copy of the letter I've sent to my PCR Attorney, Aimee J. Zmroczek dated 7-7-15 through your office along with the Certificate of Service.

If you can please assist me in this manner, it will be Honorably appreciated.

Respectfully submitted,
 Joshua B. Phillips

P.S.

COPY 2 J.B.P.

I need a clocked, stamped copy of this letter.

Joshua B. Phillips #335243
 McDougall Corn Inst., M-1-B15
 1516 Old Gilliard Rd.
 Ridgeville, S.C. 29472

9-1-15

Lexington County Clerk of Court
 Beth A. Carrigg
 205 East Main Street
 Lexington, S.C. 29072



Dear Mrs. Carrigg, I need to know if my PCR Attorney, Aimee J. Zmroczek filed the motion to reconsider, then the appeal along with the 59(e) motion. If so, could you please send me a clocked, stamped copy of them along with the Final Order of Dismissal all up under Docket No. 2013-CF-32-02341?

I also need a clocked, stamped copy of the letter I've sent to my PCR Attorney, Aimee J. Zmroczek dated 7-7-15 through your office along with the Certificate of Service.

If you can please assist me in this manner, it will be honorably appreciated.

Respectfully submitted,

Joshua B. Phillips
 Joshua B. Phillips

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

FILED

ELEVENTH JUDICIAL CIRCUIT

2015 MAR 14 P 2:00

Joshua Brandon Phillips,
S.C.D.C. No. 335243

CA. No. 2013-CP-32-2341
BETH A. CAMPBELL
CLERK OF COURT
LEXINGTON, SC

Applicant,

v.

ORDER OF DISMISSAL
(with prejudice)

State of South Carolina,

Respondent.

ORIGINAL

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed July 12, 2013. Respondent made its Return on or about April 15, 2015. An evidentiary hearing into the matter was convened on June 8, 2015, at the Lexington County Courthouse. Applicant was present and was represented by Aimee Zmroczek, Esquire. Respondent was represented by Walt Whitmire, Esquire, of the South Carolina Attorney General's Office.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Arie Bax, Esquire, also testified. This Court had before it a copy of Applicant's guilty plea transcript, the records of the Lexington County Clerk of Court regarding the subject guilty pleas, Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. The Applicant

was indicted at the October 2012 term of the Court of General Sessions for Lexington County for murder (2012-GS-32-2618); and armed robbery (2012-GS-32-2620). The Applicant was represented by Arie D. Bax, Esq.¹ On December 5, 2012, Applicant pled guilty to the lesser included offense of voluntary manslaughter; Applicant also pled guilty as indicted to armed robbery. The Honorable R. Knox McMahon sentenced Applicant to a term of twenty (20) years imprisonment on each charge, to be served concurrently.

A notice of appeal was filed on Applicant's behalf and perfected by Arie D. Bax, Esq. In an Order filed May 31, 2013, the Court of Appeals dismissed Applicant's appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR. The Court of Appeals denied Applicant's pro se petition for rehearing in an order filed September 3, 2013. The Remittitur was returned on October 21, 2013.

Allegations

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

1. Involuntary guilty plea:
 - a. Pled by way of coercion and being misled;
2. Ineffective assistance of counsel:
 - a. "Counsel refused to obtain the relevant documentation that shows defendant Owen has a substantial amount of documentation, showing his invariable state of mind through the Lexington Mental Health Facility";
3. Intoxication and temporary insanity.

¹ Applicant was originally represented on these charges by Elizabeth Fullwood, Esquire, of the Eleventh Circuit Public Defender's Office. Applicant pled guilty on April 16, 2009 to armed robbery and voluntary manslaughter before the Honorable Michelle Childs. In accordance with the plea agreement, the State recommended a ten (10) year sentence for armed robbery, and held the sentence in abeyance for voluntary manslaughter pending Applicant's cooperation with the State in the trial of Applicant's co-defendant, Robert Prather. Applicant subsequently refused to cooperate and filed a motion to withdraw his plea as to voluntary manslaughter; and filed an application for post-conviction relief as to the armed robbery (2009-CP-32-5760). The Motion to vacate the plea on his voluntary manslaughter was granted by the Honorable Thomas W. Cooper; Applicant's PCR was consented to by the State, and granted by the Honorable William P. Keesley.

Summary of Testimony Presented

Applicant testified that he has lived in the penitentiary for ten (10) years and has approximately seven (7) years remaining on his sentence. Applicant said that he learned counsel was ineffective, in part, due to after-discovered evidence. Applicant stated that he was present at his co-defendant's trial. He said he was passed out during the commission of the crime, had no knowledge of the crime, and pled guilty under the "hand of one, hand of all" theory. He stated that he was advised by counsel that because he was present where the crime was committed he was guilty. Applicant testified that he told counsel he was passed out, and that counsel should not have advised him to plead guilty.

Applicant stated that the numerous statements made would not establish guilt as an "aider and abettor." He said that if counsel had correctly explained accomplice liability, he would not have pled but would have instead proceeded to trial. Applicant said that he was not in the living room, where the murder occurred, but instead "on the bed." He said that he had these discussions with his attorney. He further stated that his attorney was wrong in advising him to plead guilty, because this information would have changed of his proceeding, and that counsel's bad advice induced his plea. Applicant alluded to a "mere presence" charge, and that it "doesn't establish guilt as an aider or abettor." He further testified that counsel gave him bad advice on "mere presence," rendering his guilty plea involuntary.

On cross-examination, Applicant said that he asked his original attorney – Ms. Fullwood – why he "should plead guilty first when new evidence can come from [his co-defendant's] trial." He said that at that point, the State consented to post-conviction relief. Applicant said that he heard his co-defendant say that Applicant passed out during the crime, and "new he couldn't testify." Applicant said there were no other statements to police. Applicant said he had been



coached on what to say by the solicitor's office. Applicant testified that he did not want to "start back over," but instead wanted his original plea agreement. He said part of the reason he ultimately pled guilty was that his co-defendant was convicted.

Counsel testified that he has practiced for over eleven (11) years, primarily in criminal defense. Counsel said that he was contacted in late 2009 or early 2010 about this case. He said Beth Fullwood asked if he would be willing to be appointed to represent Applicant. At the time, he had pled guilty to armed robbery and sentenced to ten (10) years imprisonment, and voluntary manslaughter. The manslaughter sentence had been held in abeyance. Applicant had then filed a PCR application alleging ineffective assistance of counsel. Counsel said that he received the defense file from Applicant's previous attorney, Elizabeth Fullwood. Counsel said Applicant was a "prolific writer," and had written over one hundred letters to Ms. Fullwood when she was representing him.

Counsel said that in his initial meeting with Applicant he wanted to see if there were any competency issues and make sure he still wanted a new trial. He testified that Applicant said he wanted a new trial. He further testified that the Solicitor's office wanted "another crack" at the case. Counsel testified that the Attorney General's Office consented to post-conviction relief² without a finding of ineffective assistance of counsel. PCR was ultimately granted in that case.

Counsel said he then addressed competency issues. He said Applicant was looked at by the South Carolina Department of Disabilities and Special Needs and the Department of Mental Health. Counsel said he got Applicant's school records from his adoptive parents, which showed a general functional IQ of between sixty (60) to seventy (70). Counsel noted that he still questions Applicant's competency.

² Applicant had a separate PCR attorney.

Concerning the substance of the State's evidence, counsel said that the statements made by Applicant were the "number one detriment to his case. Period." Counsel said that if Applicant had exercised his right to remain silent and stayed silent, he would have had a much stronger case. Counsel said Applicant made at least four (4) statements. He said that the last two were given in anticipation of his cooperation in his co-defendant's case. Counsel said that Applicant implicated himself with an attorney present in the courthouse. Counsel said that there were problems with his statements, in that Applicant would "try and clarify and detail" a second time, but would change his story. He explained that because the statements had so many glaring disparities, the State felt he'd have been more of a liability than an asset in the prosecution of his co-defendant. He also said that based on contact with Applicant, the State did not think he would have been able to handle testifying very well.

Counsel said that according to Applicant's original story, he and his co-defendant were at the victim's house partying with alcohol and cocaine. He said that Applicant and his co-defendant knew the victim as a homosexual. The co-defendant apparently left at one point to get more cocaine – when he got back, the victim was standing at the door naked and with an erection. Applicant was in the bed.

Later, Applicant said that at that point he woke up, and was mad because he did not understand how he got there. The problem with this story, according to counsel, was that it involved Applicant getting out of bed and participating in the attacks – Applicant talked about knowingly hitting the victim, and smacking him with a fake wood particle board table that the victim was hit with. He said Applicant took police to where that board was. Applicant also said something about him and co-defendant going to a bar, having a few drinks, and talking about the assault. They then went to the hospital and claimed Applicant had been raped.



Counsel testified that he never had a problem visiting with Applicant. He said that Applicant was already writing letters and doing legal research from prison when he started representing him. Applicant would also send him cases. Counsel said he put a substantial amount of time into Applicant's case, and remembers meeting with him a number of times. Counsel said his preparation for Applicant's trial was extensive, and that he was on his "fifth or sixth trial notebook" at the point Applicant decided to plead guilty. Counsel testified that he hired a private investigator, who produced roughly forty-five to fifty percent of his file. Counsel said he did not attend the co-defendant's trial, but got funds for the entire transcript. He said that he read the direct and cross of the State's expert several times.

Counsel explained that it was an "eye-opener" for Applicant when his co-defendant was convicted, particularly since the State's case was weaker against the co-defendant. Counsel stated that another big fact was that the best trial strategy he could come up with to argue that the victim had died of natural causes. He noted there was initially evidence to support that strategy. The victim's cause of death was cardiomegaly, or an enlarged heart. Counsel got funding for a medical expert and forensic pathologist. Counsel said he believed that there were problems with the State's experts and the cause of death, in that there was no cause of death in the first report. However, after consulting with police, the expert said the cause of death was heart related as a result of the stress of the attack. Counsel hired an expert, and physically went to the expert's house to review the report.

Counsel said the expert told him that he not only thought it was murder, but thought the State's expert missed some evidence of asphyxiation. Counsel said that this undercut the primary defense he would have wanted to proceed with in Applicant's case. He further emphasized that it would have been a "good trial" if the doctor's testimony had panned out.



Because of the statements, and because of the fact that the co-defendant had a weaker case and was still convicted, counsel negotiated a plea deal. He said he never thought the prosecuting solicitor would "make that offer," because he was "still pretty pissed" at Applicant.

On cross-examination, Counsel stated that he still questions Applicant's competency, although he was ultimately found competent by "the psychiatrists." Counsel said that he honestly believes Applicant cannot assist his attorney because he cannot "let go of things," even if obviously wrong. Counsel said he explained to Applicant many times that the State could indict him for murder if they thought they had enough evidence for murder. He said he told Applicant the State would not promise him anything on the voluntary manslaughter so it would not come up before a jury. He said that that was the standard practice in the 11th Circuit. Counsel said he explained to Applicant that he could not "expert shop."

Counsel said that in his legal opinion, he would not have been able to get Applicant's statements to police suppressed. He said that it would have been almost impossible to argue voluntariness when they were given in the presence of counsel. Moreover, he did not think Applicant's prior attorney would have let the solicitors pressure him. Accordingly, he did not believe there would have been any objectionable pressure.

Counsel said the guilty plea was a negotiated twenty (20) years with credit for time served since the original warrants were served. Counsel noted that he did not originally get credit for all of his time served, and that he had to go back in and draft an order clarifying his sentence. He said that Judge McMahon signed the order specifically clarifying it, saying Applicant would get all the time he had served.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the

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

Ineffective assistance of counsel:

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; 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, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. 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. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that,

but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to a guilty plea, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

a. Failure to investigate

Applicant has failed to meet his burden with respect to this allegation. Without a doubt, "[a] criminal defense attorney has a duty to investigate, but this duty is limited to a reasonable investigation." Ard v. Catoe, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007). Accordingly, the controlling standard for counsel's duty to investigate is *reasonableness*. Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 64 (2011). So long as a defendant's attorney conducts a reasonable investigation, including interviewing potential witnesses when it is reasonable to do so, his performance will not be deficient. Id. at 457, 710 S.E.2d at 65. Moreover, failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result. Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998).

Applicant has not brought to this court's attention any error or omission on counsel's part, or any fact or theory counsel could have, through a more thorough investigation, uncovered. Further, in light of counsel's extensive and credible testimony to the contrary, this Court is unable to find any deficiency. Counsel testified to the extensive number of hours he spent on Applicant's defense, and said that he remembered meeting with him a number of times. He said that he was on his fourth or fifth trial notebook by the time Applicant ultimately decided to enter a guilty plea. Counsel obtained funds to hire an expert and went to her house to review her

findings. Counsel also obtained funds to order a copy of Applicant's co-defendant's trial transcript, and reviewed it thoroughly – particularly the sections pertinent to Applicant's case. Because Applicant has failed to show either deficiency or prejudice with respect to this allegation, is denied and dismissed.

b. Competency

To the extent Applicant is alleging counsel was ineffective for failing to raise the issue of competency, this Court finds he has failed to meet his burden to show deficiency or prejudice. Due process prohibits the conviction of an incompetent defendant, and this right may not be waived by a guilty plea. Matthews v. State, 358 S.C. 456, 458, 596 S.E.2d 49, 50 (2004). Counsel testified credibly that he had concerns about Applicant's competency, and that he still had those concerns at the time of the evidentiary hearing. Counsel said that he received Applicant's school records from his adoptive parents, which showed a general functional IQ of between sixty and seventy. However, counsel said that Applicant was evaluated by the South Carolina Department of Disabilities and Special Needs and the Department of Mental Health, and that the psychiatrists ultimately found that he was competent.

While counsel's concerns are understandable, he also acknowledged that the "psychiatrists say he's competent." Because Applicant has not presented any credible evidence to refute that finding or counsel's performance on the issue, this Court finds Applicant has not met his burden to show ineffective assistance of counsel. See . Ramirez v. State, 413 S.C. 351, 110, 776 S.E.2d 101, 110 (Ct. App. 2015) (in order to show prejudice within the context of plea counsel's failure to fully investigate a PCR applicant's mental capacity, the applicant need only show a reasonable probability that he was either insane at the time the crime was committed or incompetent at the time of the plea). This allegation is therefore denied and dismissed.

Involuntary Guilty Plea

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011) (citing Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009)).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000). A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both. Holden at 573, 713 S.E.2d at 615 (citing Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 625 (1999)). The longstanding test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. Id.

In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 84, 886 (2007). Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the guilty plea, and also from the record of the PCR hearing. Roddy, 339 S.C. at 33, 528 S.E.2d at 420.

Applicant has failed to present any credible or probative testimony that his plea was coerced. Counsel's credible testimony – that Applicant pled guilty because his codefendant was convicted – is dispositive. Interestingly enough, Applicant also admitted that he basically pled guilty because his codefendant was convicted. Accordingly, Applicant has failed to show his guilty plea was made unknowingly, unintelligently, or involuntarily. This allegation is therefore denied and dismissed.

a. Improper Advice on Accomplice Liability

Applicant's allegation that his guilty plea was rendered involuntary by counsel's improper advice on accomplice liability is entirely without merit. Applicant testified that he was passed out during the commission of the crime, and only pled guilty because his attorney told him that "because he was present where the crime was committed he was guilty." This testimony was not credible, particularly in light of counsel's credible testimony and Applicant's many conflicting statements to law enforcement. In fact, counsel testified that the statements made by Applicant were the "number one detriment to his case. Period." Counsel said that if Applicant had exercised his right to remain silent and stayed silent, he would have had a much stronger case.

According to counsel, Applicant gave at least four statements, the last two of which were given in anticipation of his cooperation in his co-defendant's trial. Counsel said Applicant implicated himself with an attorney present in the courthouse.^{3,4}

Counsel said that according to Applicant's original story, he and his co-defendant were at the victim's house partying with alcohol and cocaine. He said that Applicant and his co-

³ In fact, during Applicant's plea hearing, the assistant solicitor said that "every time [Applicant] opened his mouth, he implicated himself each time." Tr. p. 26.

⁴ This Court also finds credible counsel's testimony that he would not have been able to get Applicant's statements to police suppressed. Counsel said that it would have been almost impossible to argue voluntariness when they were given in the presence of counsel.

defendant knew the victim as a homosexual. The co-defendant apparently left at one point to get more cocaine – when he got back, the victim was standing at the door naked and with an erection. Applicant was in the bed.

Later, Applicant said that at that point he woke up, also mad, because he did not understand how he got there. The problem with this story, according to counsel, was that it involved Applicant getting out of bed and participating in the attacks – Applicant talked about knowingly hitting the victim, and smacking him with a fake wood particular board table that the victim was hit with. He said Applicant took police to where that board was. Counsel said that Applicant also told law enforcement something about him and co-defendant going to a bar, having a few drinks, and talking about the assault. They then went to the hospital and claimed Applicant had been raped.

Because there is no credible testimony in support of Applicant's allegation, this Court finds he has failed to meet his burden to show deficiency or prejudice. As a result, it is denied and dismissed.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

CONCLUSION

Based on the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for

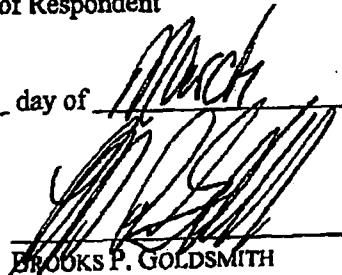
post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED

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

AND IT IS SO ORDERED this 3 day of March, 2016.


BROOKS P. GOLDSMITH
Presiding Judge
Eleventh Judicial Circuit

_____, South Carolina

FILED
MAR 14 P 12:00
BETH A. CANNING
CLERK OF COURT
LEXINGTON, SC

ORIGINAL

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL DISTRICT

COUNTY OF LEXINGTON)

Joshua Brandon Phillips, #335243)
Applicant,)

C.A. No.: 2013-CP-32-2341

v.)

MOTION TO RECONSIDER

State of South Carolina,)
Respondent.)

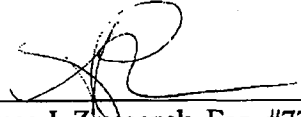
SP
FILED

NOW COMES, Applicant, Joshua Phillips, by and through his undersigned counsel, and moves pursuant to Rule 59(e) SCRPC for an order altering or amending the court's prior order filed on March 14, 2016, denying Applicant's claim and dismissing with prejudice. While the court has ruled in the State's favor, the Applicant submits this motion to ensure that he has "enable[d] the lower court to rule properly after it has considered all relevant facts, law, and arguments." *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 546, 546 (2000). Specifically all allegations submitted in the memoranda by Applicant regarding:

1. Involuntary guilty plea;
2. Ineffective assistance of counsel; and
3. Intoxication and temporary insanity.

THEREFORE, counsel requests that Order be reconsidered for the above listed specific reasons and issues not specifically listed above but raised during the trial of this matter.

Respectfully Submitted,



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(803) 400-1918 telephone
(803) 403-8005 fax
ajzlawfirm@gmail.com
Counsel for Applicant

Columbia, South Carolina
Dated: March 22, 2016

ORIGINALSTATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

Joshua Brandon Phillips, #335243,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No. 2013-CP-32-2341

ORDERBETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2016 MAY 25 PM 2:43

FILED

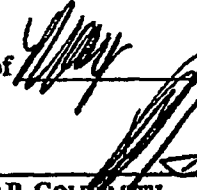
This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 12, 2013. An evidentiary hearing was convened on June 8, 2015, at the Lexington County Courthouse. The Applicant was present at the hearing and Walt Whitmire, Esquire, of the South Carolina Attorney General's Office. The Court denied relief by an order dated March 3, 2016, and filed March 14, 2016. Applicant subsequently filed a motion asking the Court to reconsider the findings of fact and conclusions of law contained in the order of dismissal. Respondent made its return to the motion, requesting this motion be denied.

[Signature follows]

Based upon careful reconsideration of the evidence in this case, including Applicant's motion and supporting memorandum, this Court is not persuaded to alter or amend its judgment. This Court further finds oral argument would not aid in the reconsideration of the original judgment. The Order of Dismissal issued by this Court contains the required findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2014) and Rule 52(a) of the South Carolina Rules of Civil Procedure.

IT IS THEREFORE ORDERED that Applicant's motion be denied and dismissed.

AND IT IS SO ORDERED this 10 day of May, 2016


BROOKS P. GOLDSMITH
Presiding Judge
Eleventh Judicial Circuit

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2016 MAY 25 PM 2:43

FILED

_____, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

INDICTMENT FOR
 ARMED ROBBERY

§ 16-11-0330(A)

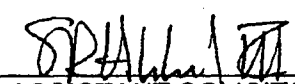
At a Court of General Sessions, convened on OCTOBER 2012, the Grand Jurors of Lexington County present upon their oath:

That **Joshua Brandon Phillips**, along with Robert Jarad Prather, did in Lexington County, South Carolina on or about April 22, 2005, knowingly and willfully while armed with a deadly weapon, feloniously take from the person or presence of Gerald Stewart, by means of force, threats or intimidation goods or monies described as follows: a Coca Cola 75th Anniversary box set and/or collectable coins and/or the victim's wallet and/or U. S. currency, with intent to deprive the owner of the use of such property, in violation of Section 16-11-330 (A) of the South Carolina Code of Laws, 1976, as amended.

A TRUE COPY


 Lex. Co. C.C.C.P., G.S. & F.C.

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


 ASSISTANT SOLICITOR

WITNESSES

West Columbia Police Department

Willie Madison Edwards

Law Enforcement Case #:

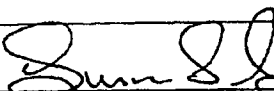
SRH

ARREST WARRANT NUMBER

12-STR-00511

ACTION OF GRAND JURY

FILED
10/1/2012



Foreperson of Grand Jury

Date: 10/1/2012

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012GS3202620

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

OCTOBER TERM 2012

THE STATE

vs.

Joshua Brandon Phillips

CDR #: 0139

Indictment for

ARMED ROBBERY

§ 16-11-0330(A)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
MURDER

• § 16-03-0010

At a Court of General Sessions, convened on OCTOBER 2012, the Grand Jurors of Lexington County present upon their oath:

That **Joshua Brandon Phillips**, along with Robert Jarad Prather, did in Lexington County on or about April 22, 2005, willfully, feloniously, and with malice aforethought beat Gerald Stewart about the head and body and/or smother Gerald Stewart and that Gerald Stewart did die in Lexington County on or about April 22, 2005, as a proximate result thereof, in violation of § 16-3-10 of the Code of Laws of South Carolina, 1976, as amended.

A TRUE COPY


Lex. Co. C.C.C.P., G.S. & F.O.

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


ASSISTANT SOLICITOR

WITNESSES

West Columbia Police Department

Willie Madison Edwards

Law Enforcement Case #:

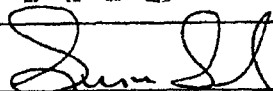
SRH

ARREST WARRANT NUMBER

12-STR-00509

ACTION OF GRAND JURY

TRUE BILL
TRUE BILL



Foreperson of Grand Jury

Date: 10/1/2012

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012GS3202618

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

OCTOBER TERM 2012

THE STATE

vs.

Joshua Brandon Phillips

CDR #: 0116

Indictment for

MURDER

§ 16-03-0010

DONALD V. MYERS, SOLICITOR