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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. SUPREME COURT

Certiorari to Sumter County

Brian M. Gibbons, Circuit Court Judge

JAMES EARNEST BUTLER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001197

APPENDIX

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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

COURT OF GENERAL SESSIONS

James Earnest Butler,)
)
PLAINTIFF,)
)
v.)
)
State of South Carolina,)
)
DEFENDANT.)
_____)

TRANSCRIPT OF MOTIONS
C/A No. 2013-GS-43-000112

Charleston County Courthouse
June 5, 2013

BEFORE:

HONORABLE R. FERRELL COTHRAN, JR., PRESIDING

APPEARANCES:

Assistant Solicitor Kirk Griffin
Attorney for State of South Carolina

Timothy Murphy, Esquire
Attorney for James Earnest Butler

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER



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Certificate of Service

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JAMES E. BUTLER VS. STATE OF SOUTH CAROLINA

3

1 Bailiff: Place your left hand on the Bible and raise
2 your right hand. State your name for the record.

3 Mr. Butler: James E. Butler.

4 Bailiff: Do you solemnly swear and affirm that the
5 testimony that you give in this court is the truth, the
6 whole truth, and nothing but the truth so help you God?

7 Mr. Butler: Yes sir.

8 Mr. Griffin: Your Honor, the State of South Carolina
9 vs James Earnest Butler, on indictment number 2013-GS-43-
10 112. Your Honor he was originally charged on count one with
11 murder, he was charged on count two burglary in the first
12 degree. He is represented by Tim Murphy, indicates he wish
13 to plead guilty to the lesser included offense of count one
14 voluntary manslaughter. In exchange for the guilty plea the
15 burglary in the first degree will be dismissed.

16 The Court: Mr. Butler you want to plead guilty?

17 Mr. Butler: Yes sir.

18 The Court: Have you had enough time to talk to your
19 lawyer about this?

20 Mr. Butler: Yes sir.

21 The Court: You satisfied with his representation?

22 Mr. Butler: Yes, sir I am.

23 The Court: Anybody promised you anything or threatened
24 you in any way to get you to plead guilty?

25 Mr. Butler: No, sir they have not.

Mr. Butler - Examination by The Court

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The Court: You understand you are looking at thirty years?

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Mr. Butler: Yes sir I am.

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6

The Court: And it is an eight five percent crime, a no parol able offense. You have to do eighty five percent of whatever I give you?

7

8

Mr. Butler: Yes, sir.

9

10

The Court: Are you under the influence of alcohol or drugs?

11

Mr. Butler: No, sir I do not drink or smoke.

12

13

The Court: Do you have any mental diseases that could keep you from understanding what you are doing today?

14

15

Mr. Butler: No, sir I have a sight problem but I understand.

16

The Court: You understand me?

17

Mr. Butler: Yes sir.

18

The Court: How far did you go in school?

19

Mr. Butler: I graduated Hillcrest in Dalzell.

20

21

The Court: Your lawyer explained the nature of your charges against you, right?

22

Mr. Butler: Yes, sir.

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The Court: What your constitutional rights, are is that right?

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Mr. Butler: Yes, sir.

Mr. Butler - Examination by The Court

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The Court: One of your constitutional rights is under the fifth amendment you have the right to remain silent, but you will give that right up today if you plead guilty, because you are telling me you guilty. Do you understand?

Mr. Butler: Yes, sir.

The Court: You also got a right to a jury trial and in that trial you would be presumed innocent and the State would have to prove you guilty of these charges beyond a reasonable doubt, all twelve jurors. You would be able to sit in the court room and confront the witnesses that testified against you in your trial. Your lawyer could cross examine each one of the State's witnesses. He could subpoena witnesses to testify on your behalf. He could put any defenses you may have. When you plead guilty you give all that up, do you understand?

Mr. Butler: Yes, sir.

The Court: You are giving any appeal that could come out of a trial when you plead guilty, do you understand that?

Mr. Butler: Yes, sir.

The Court: Did you have an opportunity to review the discovery that the State gave with your attorney?

Mr. Butler: Yes, sir I did.

The Court: You have seen everything you think you are

Mr. Butler - Examination by The Court

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entitled to see?

Mr. Butler: Yes, sir.

The Court: Do you have any questions concerning that?

Mr. Butler: Well later on after everything go on I would like to say my peace.

The Court: I am going to let you tell me anything you want to. I just want to be sure you understand your rights and you know what you are doing?

Mr. Butler: Yes sir.

The Court: Now if you want to appeal this guilty plea today you or lawyer must file it with the Clerk's office within ten days or you give up that right, do you understand?

Mr. Butler: Yes, sir.

The Court: Alright the solicitor is going to tell me about the facts in this case.

Mr. Griffin: Your Honor this incident occurred on February 28, 2009 at 40 Robinson Lane here in the City of Sumter. A witness went to that location and found Mr. James Davis lying on the floor just inside the front door of his residence there on Robinson Lane. Detectives were notified and responded to the scene. The scene was processed, Your Honor, they recovered, the detectives recovered a pipe wrench which was the murder weapon. Your Honor, it was

Facts by The State

7

1 determined that the manner of death was blunt force trauma
2 to the head which resulted in acute subdural hematoma. The
3 autopsy found that this type of injury would have caused
4 Mr. Davis to expire within minutes. Judge during the
5 autopsy scraping were done underneath the victims
6 fingernails and the fingernail scrapings were collected and
7 submitted to SLED. A DNA profile was developed and at that
8 point the case, for lack of a better phrase, got cold.
9 There was not further leads, detectives continued to work
10 the case, but at that point they did not have a suspect.
11 Subsequently the defendant before you was arrested on some
12 unrelated burglary charges here in Sumter County. As a
13 result of that arrest Mr. Butler's DNA was submitted to
14 SLED for comparison and collected at the time of his
15 arrest. Turns out that the DNA profile collected from the
16 fingernail scrapings of the victims came back to Mr.
17 Butler. So at that point he was arrested in June, actually
18 he was arrested later on in 2012, I believe in, January 26,
19 2012. Your Honor he was brought over for a bond hearing and
20 at that time he plead to the prior burglary charges with
21 the county. Also had a bond hearing on this murder charge
22 and he asked to speak with Lieutenant Angela Rabon who is
23 present in the court room. At that time he gave her a
24 statement and essentially admitted to hitting Mr. Davis in
25 the head with the pipe wrench. He disputed the burglary in

Facts by The State

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1 the first degree charge. He stated that this was an
2 argument over some money and that things got out of hand
3 and that he hit the victim in the head with the pipe
4 wrench. Judge he was adamant that the burglary had not been
5 committed and that he was invited into the home by Mr.
6 Davis. That led Lieutenant Rabon to go back and check calls
7 for service to the residents at 40 Robinson Lane and she
8 was able to determine that the door had been kicked in some
9 months prior to the homicide being committed. So at least
10 that portion of his story checked out and that is why we
11 are dismissing the burglary and also why one of the primary
12 reasons we are pleading this to voluntary manslaughter
13 instead of murder. Judge we have gone over all of those
14 issues with the victims. I believe they understand that
15 under the law the police department and the solicitors
16 office feel like this is an appropriate resolution to the
17 case. There are two family members of the Davis family
18 here. At the appropriate time I know they want to address
19 Your Honor. Judge again we feel like this is the
20 appropriate charge and the appropriate resolution for this
21 case and that at the appropriate time I would be happy to
22 give you Mr. Butler's prior criminal record.

23 The Court: Mr. Butler are those facts correct, what
24 the solicitor told me?

25 Mr. Butler: About what happened?

Mr. Butler - Questions by The Court:

9

1 The Court: Yeah about you hitting him in the head with
2 the pipe?

3 Mr. Butler: Yes sir I hit him in the head I feared for
4 my life sir, I feared for my life.

5 The Court: Well I do not know whether you got a self
6 defense to this induced crime or not but you are pleading
7 guilty to me to voluntary manslaughter which carries up to
8 thirty years in prison. Now you can talk to your lawyer
9 about whether you think you have a self defense plea. If
10 you acted in self defense it may be a situation you are not
11 guilty of voluntary manslaughter.

12 Mr. Murphy: Your Honor we have discussed self defense
13 at length. In particular the reasonableness of Mr. Butler's
14 actions would be a question for the jury and weigh the pros
15 and cons. He is satisfied, I believe he is satisfied that
16 and he certainly, well let me put it to you this way. He
17 understands that by pleading guilty to voluntary
18 manslaughter he is waving any self defense claim. He is
19 also satisfied that self defense may not be a viable
20 defense, it would be up to the jury. Given the nature of
21 the altercation the actions may not have been reasonable
22 under the circumstances. I think that is a fair statement.

23 The Court: You heard what your lawyer just told me, is
24 that right?

25 Mr. Butler: Yes, sir.

Mr. Butler - Questions by The Court:

10

1 The Court: So you want to give up any self defense
2 arguments that you have and plead guilty before me is that
3 right?

4 Mr. Butler: Yes sir.

5 The Court: And you are admitting causing the death of
6 this gentleman?

7 Mr. Butler: Yes, sir.

8 The Court: I find there is a factual basis to your
9 plea. It's freely and voluntarily entered into. That you
10 have had advice of competent counsel that you tell me you
11 are satisfied with. Now I am going to hear from the
12 solicitor and any victims and then I am going to come back
13 and I am going to let you tell me anything you want to tell
14 me?

15 Mr. Butler: Yes, sir. Thank you, sir.

16 Mr. Griffin: Your Honor, I will start with Mr.
17 Butler's prior criminal record. He goes back all the way to
18 the 80's. There were multiple worthless check charges in
19 1981. Driving under the influence in 1981, simple assault
20 and battery in '83. Use of vehicle without owners consent
21 also in '83. Judge, burglary in 2011, he got eight years
22 suspended to thirty months with two years probation. Judge
23 I apologize some of this got out of order. He also had
24 receiving stolen goods in 1990, another burglary in 1992,
25 burglary in 2001, and possession of cocaine in 2007. Your

Record stated of Mr. Davis

11

1 Honor we, as an officer of the court I believe that people
2 need to be given some credit for pleading guilty but at the
3 same time it's incumbent upon Your Honor to review
4 someone's record, what they have done in the past. Judge we
5 would ask for a sentence in this case which is without
6 recommendation and I know Mr. Murphy is going to ask you to
7 do less but we would ask for certainly some sentence in the
8 twenty to twenty five year range just based on Mr. Butler's
9 prior record. Judge I truly believe it is a manslaughter,
10 but at the same time there is a long history here of
11 criminal record and I think that a sentence between twenty
12 and twenty five years in this case is the appropriate
13 outcome. At this time I would ask that the victim's family
14 come up and share any thoughts they may have with Your
15 Honor.

16 Mr. Davis: Your Honor my name is James Davis Junior
17 the deceased is my father and Your Honor I am here, me and
18 my mother is here. This has been a long going case, Your
19 Honor, and this case had put us through a lot, this murder.
20 It is one thing to understand when someone died that you
21 have a funeral and the family can move on. This has kept
22 our life in whole, Your Honor. This has caused me to be
23 paranoid and do not trust people, do not trust neighbors,
24 do not trust kin folks, do not trust my half brothers and
25 sisters. This case what he have cause has been a lot of

Record stated by State/Reply by Mr. Murphy

12

1 tearing apart in the family because of what he had done,
2 Your Honor. I mean these are two days that you will never
3 forget that in your life had changed the history course of
4 my life and my mother life. My mother is sixty-seven going
5 on sixty-eight. This is just the peace that I had before
6 this is gone. The paranoid of not trusting people, not
7 getting close to other family members pulling apart have
8 gotten worse. I mean he don't understand that it was not
9 just, he saying that it is not self defense to me. He don't
10 understand that there is other ways to get away from my
11 father if there was some kind of argument or whatever. Just
12 what he have done he had left a stain that can never, never
13 be erased and I thank you for the time, Your Honor.

14 The Court: Thank you, sir. Anything else Mr.
15 Solicitor.

16 Mr. Griffin: Your Honor I believe that is it.

17 The Court: Mr. Murphy.

18 Mr. Murphy: Thank you Your Honor. Your Honor you know my
19 client's educational level, he has worked in construction,
20 factories throughout his working career. He has six children,
21 he wants the court to know that he actually has had long
22 periods of time where he has been a productive of society. He
23 owns land, he owns a home, he raised a family. He has some
24 health problems, he is HIV positive, he has suffered a heart
25 attack in the past, he is a diabetic, and he suffers from

Record stated by State/Reply by Mr. Murphy

13

1 multiple sclerosis. I think those are relevant factors to
2 take into consideration also when you consider the
3 altercation that occurred and the physical fight that
4 occurred. Certainly that would have been, had this gone to
5 trial those are factors that we would have highlighted. Your
6 Honor, I concur with the Solicitor in that this truly is a
7 voluntary manslaughter. This is a situation where Mr. Davis
8 owed Mr. Butler some money they went in to talk about it, Mr.
9 Butler apparently had been asking for the money for a while.
10 Mr. Davis and him kind of got into an argument about this
11 money. My client advises that the physical altercation was
12 initiated by Mr. Davis. We were prepared to present some
13 evidence that Mr. Davis had a reputation for being kind of a
14 hot head. Certainly that does not justify the level of
15 response that occurred, but there was a fight, Mr. Butler
16 felt in order to get away he picked up the wrench and he hit
17 Mr. Davis over the head, that's what happened, and then left.
18 He also saw a gun in the home and that is what happened. He
19 did not want to kill Mr. Davis, when he left the home Mr.
20 Davis, as far as Mr. Butler knew was still alive. Obviously
21 --- He wants the Court to know and he will tell the Court
22 himself that he is sorry that this happened, he did not mean
23 it to happen this way. We would ask the Court to consider he
24 was in prison for a little while, while this has been going
25 on. He has not been released really, he was in prison when he

Record stated by State/Reply by Mr. Murphy

14

1 was served the arrest warrants and he was serving his time on
2 the burglary and everything so he has time on that. We would
3 ask the Court to consider that time. We would ask the court
4 to consider that he was straight forward with the police. He
5 went out of his way at the bond hearing to approach the
6 police and give a statement, something that I do not think
7 any defense attorney ever recommends, but in this situation
8 he was truthful and tried to be as straight forward as
9 possible. I certainly respect and appreciate the solicitor's
10 view concerning my clients record I would point out however,
11 that the bulk of those crimes occurred over twenty years ago
12 and really in the last ten years or so we have a possession
13 of cocaine and this burglary for which he served time. So the
14 bulk of that criminal activity extends back into the early
15 80's and a few things in the 90's. As I indicated I think to
16 some degree that is at least balanced by the fact that Mr.
17 Butler was employed, and worked, and raised a family, and was
18 a contributing member to society. Your Honor initially I was
19 prepared to ask for something specific, in talking to my
20 client he just wants you to be as fair and as generous as
21 possible taking into consideration everything. He also he may
22 say this himself he wants the victim's family to know just
23 how sorry he is and how this, if he could take it back he
24 would. As I stated before I think everybody agrees this is a
25 tragedy and he feels horrible that this man died. He wants

Reply by Mr. Murphy/Response by Mr. Butler

15

1 the victims family to know that, that he doesn't feel
2 justified. And that's one of the reasons that he wants to
3 plea. Your Honor from the very first meeting that I had with
4 Mr. Butler, the very first meeting at the preliminary hearing
5 he has told me I want to plea and I want to plea to voluntary
6 manslaughter. I know what I did I want to plea and I will
7 state for the record I tried to talk him out of a plea. I
8 felt that we had a fairly believable self defense claim and
9 I wanted him to know look you are giving this up and he has
10 been very consistent about wanting to pleas wanting to take
11 responsibility. Of course it would not be me serving thirty
12 years if the self defense did not work but I wanted him to
13 know look there is something here. So I would ask the Court
14 to be as just and as fair as possible and certainly
15 understanding that you have to take into account that a man's
16 life has been taken and Mr. Butler certainly understands
17 that. Your Honor if Mr. Butler wants to say anything.

18 The Court: You want to tell me anything Mr. Butler?

19 Mr. Butler: Yes sir. May I turn around and apologize.

20 The Court: You tell me and they can hear you.

21 Mr. Butler: I am very sorry for what happened to Mr.
22 Davis you all, but I am a victim also I tried to leave. I
23 tried all I can to leave, he would not let me leave. I am
24 sorry I am sorry for his death I did not mean for him to die.
25 I wanted to hit him enough to get away, just get away and go

Reply by Mr. Murphy/Response by Mr. Butler

16

1 on about my life that is all I wanted. I did not want him to
2 die, I am being truthful, I am being honest in God's name I
3 am Your Honor. I did not mean for the man to die I do not
4 want them to think I came just to kill him out of
5 premeditated or malice. I didn't do that. I went there in
6 peace, I was the one who got attacked, I the one who got
7 assaulted, I tried to run I tried. He would not let me sir he
8 just would not let me. I had plenty years I done loss years
9 looking up in the ceilings in jail and prison thinking about
10 this. I done went over it with a fine teeth comb and I am
11 praying I have been praying on my knees everyday four five
12 days asking the Lord please ease this up off me because I
13 didn't meant for this man to die I didn't. I don't care what
14 nobody else say in here I didn't meant it, I meant to get
15 away he just would not let me get away, he would not let me
16 leave, he would not let me leave, I tried I tried all I
17 could. I apologize one more time to the family I am very very
18 sorry.

19 The Court: Anything else?

20 Mr. Murphy: No, sir, Your Honor.

21 The Court: I am giving you --- I truly think you are
22 sincere in your apologies and I am giving you the benefit I
23 can give you and I'm taking into consideration your age and
24 the nature of the facts in this case. The sentence of the
25 Court is you are committed to the State Department of

Remarks by Mr. Bulter/Sentencing by The Court

17

1 Corrections for the term of eighteen years. Good luck to you.

2 Mr. Butler: Thank you.

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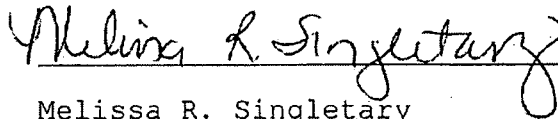
25

CERTIFICATE

This is to certify that the motion transcript in the matter of James Earnest Butler vs. State of South Carolina, consisting of Seventeen (17) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 25thth day of August, 2014.



Melissa R. Singletary
Certified Court Reporter

Notary Public for South Carolina

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF)
 MR. JAMES E. Butler)
 SCDC no. 232706)
 Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)
)
)

RECORDED
 2014 MAY 21 PM 12
 IN THE COURT OF COMMON PLEAS
 JAMES C. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.
 2014-CP-43 1052

APPLICATION FOR
 CERTIFIED TRUE COPY
 OF ORIGINAL FILE
 POST-CONVICTION RELIEF
 Barbara Shapiro
 DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention BROAD RIVER CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence SUMTER COUNTY GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) NONE SUMTER S.C.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-GS-43-0112
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 6-5-2013
 - (b) 18 YEARS

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MAY 29 2014

Revised 3/2003

1

Referred to PCR ds

Answered _____

- (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. S.C. Court of Appeals
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Appeal dismissed
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. Sept 18, 2013
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) No Direct Appeal issue
 - (b) _____
 - (c) _____
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) my lawyer WAS INFECTIVE ASSISTANCE OF COUNSEL
- (b) _____
- (c) _____

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

- (a) my lawyer did not investigate my mental condition.
- (b) Did not do an thorough investigation of my case.
- (c) He did not go and question the two witnesses.

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? _____

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

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? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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

- (a) the name and address of each attorney who represented you:
 - i. Timothy W. Murphy
 - ii. Sumter County Courthouse
 - iii. 215 North Harvin Street, Rm # 151 - Sumter S.C 29150
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____

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

REVERSE AND REMAND

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

NO

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Sumter)

Mr. James E. Butler)

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.

Mr. James E. Butler

SWORN to and subscribed before me this 19th
day of May, 2014.

Susan H. Frye (L.S.)
Notary Public

My Commission Expires
March 5, 2018

My Commission Expires: _____

**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.

Mr. James E. Butler
Applicant

SWORN or affirmed to and subscribed before me this
19th day of May, 2014.

Susan A. Frye
Notary Public

My Commission Expires:
March 5, 2018

My Commission Expires: _____

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER)	FOR THE THIRD JUDICIAL CIRCUIT
)	
James E. Butler, # 232706,)	2014-CP-43-1052
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed May 21, 2014, 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 Sumter County Clerk of Court. The Applicant was true bill indicted at the January 2013 term of the Sumter County Grand Jury for Murder and Burglary --First Degree (2013-GS-43-01112). Timothy Murphy, Esquire represented Applicant. On June 5, 2013, Applicant pled guilty to the lesser included offense of voluntary manslaughter. The Honorable R. Ferrell Cothran, Jr., sentenced Applicant to an eighteen year term of imprisonment for voluntary manslaughter.

A timely Notice of Appeal was filed. However, Applicant requested that his appeal be withdrawn. By order filed September 18, 2013 the South Carolina Court of Appeals dismissed his appeal pursuant to his request. The remittitur was issued on October 17, 2103.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina

Department of Corrections, the plea transcript, and appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective Assistance of Counsel
 - a. "My lawyer did not investigate my mental condition."
 - b. "Did not do a thorough investigation on my case."
 - c. "He did not go and question the two witnesses."

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

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

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

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

professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

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

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

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

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

September 26th, 2014.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)
)
)
)
 JAMES E. BUTLER, #232706,)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

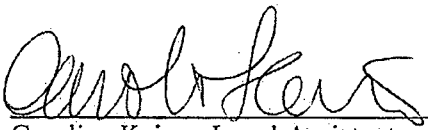
2014-CP-43-1052

AFFIDAVIT OF SERVICE BY MAIL

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

Mr. Fulton Casey Dale Cornwell
448 Deerwood Street Unit 9A
Columbia, SC 29205

DATED this 26th day of September, 2014.


 Caroline Kaiser, Legal Assistant
 For Respondent

State of South Carolina)
)
 County of Sumter)

In the Court of Common Pleas
 Third Judicial Circuit
 2014-CP-43-01052

James Earnest Butler,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)
)
)
)

Transcript of Record

November 9, 2016
 Sumter, South Carolina

B E F O R E:

The Honorable Brian M. Gibbons, Judge

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

Lance S. Boozer, Esquire
 Attorney for the Applicant

Julie A. Coleman, Esquire, Assistant Attorney General
 Attorney for the Respondent

Elizabeth B. Harris, CVR-M-CM
 Circuit Court Reporter

I N D E X

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1 MS. COLEMAN: May it please the court?

2 THE COURT: I'm ready when you are.

3 MS. COLEMAN: This is *James Butler vs. The State of*
4 *South Carolina*, docket number 2014-CP-43-1052. The
5 applicant is presently confined in the South Carolina
6 Department of Corrections pursuant to orders of commitment
7 of the Sumter County Clerk of Court. Applicant was
8 true-bill indicted at the January 2013 term of the Sumter
9 Country grand jury for murder and burglary first degree.
10 Timothy Murphy, Esquire, represented the applicant.

11 On June 5, 2013, applicant pled guilty to the
12 lesser-included offense of voluntary manslaughter. The
13 Honorable R. Ferrell Cothran, Jr., sentenced applicant to
14 an eighteen-year term of imprisonment for voluntary
15 manslaughter.

16 A timely notice of appeal was filed; however,
17 applicant requested that his appeal be withdrawn. By order
18 filed September 18, 2013, the South Carolina Court of
19 Appeals dismissed his appeal pursuant to his request. The
20 remittitur was issued on October 17, 2013.

21 Applicant filed timely application for post-conviction
22 relief on May 21, 2014, alleging that he was being held in
23 custody unlawfully based on the following allegations:

24 Ineffective assistance of counsel. My lawyer did
25 not investigate my mental condition. He did not

1 do a thorough investigation on my case, and he
2 did not go and question the two witnesses.

3 The state filed its return September 26, 2014, and he
4 is present today and represented in this matter by Mr.
5 Lance Boozer.

6 THE COURT: Mr. Boozer.

7 MR. BOOZER: Thank you, Your Honor. If it pleases the
8 court?

9 THE COURT: Yes, sir.

10 MR. BOOZER: Judge, just a preliminary matter. Mr.
11 Butler previously was represented by another lawyer for his
12 PCR matter, and his understanding was that a number of his
13 mental health records from the Department of Corrections
14 that he obtained on his own through an inmate release form
15 -- he was under the understanding that his prior lawyer had
16 handed those up to Judge James, I believe, in another
17 setting. I was unable to confirm whether that ever did
18 occur or not.

19 He would like to hand these up to Your Honor, just
20 make these just a part of the packet for Your Honor to have
21 in, in his review. I've shown these to the state. I'm not
22 sure. I believe they may object to that request, but that
23 would be our request, Judge. We're not going to really go
24 through line by line. He just wants them a part of his
25 record.

1 THE COURT: This is just information in support of his
2 application?

3 MR. BOOZER: That's correct, Your Honor.

4 THE COURT: All right, Ms. Coleman.

5 MS. COLEMAN: Yes, Your Honor, I object to these as
6 hearsay. They are unauthenticated documents, and I'm not
7 sure they're entirely relevant, so the state objects.

8 THE COURT: Objection overruled.

9 MS. COLEMAN: Thank you.

10 THE COURT: I'll make them part of the packet. Go
11 ahead and -- you want to hand them up to me now?

12 MR. BOOZER: Yes, Your Honor.

13 THE COURT: All right. Thank you.

14 MR. BOOZER: Thank you.

15 THE COURT: Thank you. All right, you may call your
16 witness.

17 MR. BOOZER: Thank you, Your Honor. We call Mr. James
18 Butler to the stand.

19 JAMES E. BUTLER, BEING DULY SWORN,
20 TESTIFIES AS FOLLOWS:

21 BAILIFF: Please state your full name and spell your
22 last name for the record.

23 WITNESS: My name is James Earnest B-u-t-l-e-r Butler.

24 DIRECT EXAMINATION BY MR. BOOZER:

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

- 1 A. I'm doing fine now.
- 2 Q. Good. Okay.
- 3 A. Yes, sir.
- 4 Q. Let me ask you this. Do you know what it is that
5 you're doing here today?
- 6 A. Yes, sir. I'm, I'm aware of it now. I'm aware of it.
7 I'm, I'm fighting for my freedom because, you know, I know
8 it ain't -- know I didn't do what I'm in here for.
- 9 Q. Well, let me ask you this. Do you understand -- you,
10 you filed an application for post-conviction relief?
- 11 A. Yes, sir.
- 12 Q. Okay. Do you understand what you're asking this court
13 for today?
- 14 A. I'm asking them to, to look into my situation as, as
15 justified as it -- as, as, as it will be.
- 16 Q. Okay. Well, you filed a PCR application, and you've
17 alleged ---
- 18 A. Oh.
- 19 Q. --- certain things.
- 20 A. Okay. Ineffective assistance of counsel for one.
- 21 Q. Well, let -- we'll get to that in just a second. Do
22 you understand that -- let me ask you this. What were you
23 originally charged with?
- 24 A. I was charged with murder.
- 25 Q. And anything else?

J. BUTLER - DIRECT EXAMINATION BY MR. BOOZER

7

- 1 A. Burglary.
- 2 Q. Burglary first?
- 3 A. Yes, sir.
- 4 Q. Okay, and then ultimately did you have a guilty plea?
- 5 A. From -- well, I, I, I will say it like this, sir. I
- 6 did -- I don't remember all of it but like I said. Doing
- 7 time, my memory came back to me, but at that time, I didn't
- 8 remember anything because of what type of medication was
- 9 given to me.
- 10 Q. Well, we'll get to that also.
- 11 A. Yes, sir.
- 12 Q. But, but do you understand -- right now you're
- 13 currently incarcerated, right?
- 14 A. Yes, sir, I am.
- 15 Q. All right, and what are you incarcerated for?
- 16 A. For murder.
- 17 Q. Well, what did you plead guilty to?
- 18 A. From what I understand, voluntary manslaughter.
- 19 Q. All right, and what type of sentence did you receive?
- 20 A. Came to my mind, eighteen years.
- 21 Q. Do you know when your max out date is?
- 22 A. From what I look at it, it's 2028.
- 23 Q. Okay. Do you understand -- and, and you and I have
- 24 discussed this. Do you understand that the only thing this
- 25 court can do for you is to grant you a new trial on your

1 original charges? Do you understand that?

2 A. Yes, sir. That's, that's fine.

3 Q. So that there is some risk in doing that in that you'd
4 go back and you could get, potentially get more time than
5 what you have left. You understand that?

6 A. Yes, sir.

7 Q. And, and knowing that, do you still want to go forward
8 with your PCR?

9 A. Yes, sir, because I'm innocent.

10 Q. Okay. Now, Mr. Butler, who represented you on these
11 charges?

12 A. Mr. Timothy W. Murphy.

13 Q. All right. Now, you were getting into this a moment
14 ago, but you filed your application and you have some
15 allegations and so let's, let's talk about those. You
16 filed ineffective assistance of counsel for failing to
17 investigate your mental condition. Is that one of your
18 allegations?

19 A. Yes, sir.

20 Q. You've got ineffective assistance of counsel for no
21 investigation. Is that also one of your ---

22 A. Yes, sir, none.

23 Q. All right, and let me ask -- let me tell you this.

24 This -- let me ask my question and then you respond because
25 Madame Court Reporter needs to take everything down.

J. BUTLER - DIRECT EXAMINATION BY MR. BOOZER

9

1 A. Yes, sir.

2 Q. You also have that your lawyer failed to question two
3 witnesses. Is that one of your allegations?

4 A. Yes, sir, that it.

5 Q. All right. Now, you pled guilty on June 5, 2013?

6 A. Yes, sir.

7 Q. When were you first arrested for these charges?

8 A. Well, I think it was 2011.

9 Q. Okay. Was Mr. Murphy your only attorney that you had
10 during that time?

11 A. Yes, sir, and that was a long -- that -- he came
12 really at the end of this.

13 Q. What, what do you mean by that?

14 A. I stayed in jail for a period of time.

15 Q. Okay.

16 A. And I just don't remember all of it because, like I
17 said, what happened to me.

18 Q. Do you know about how many times you may have met with
19 Mr. Murphy?

20 A. Maybe about one or two times.

21 Q. Okay.

22 A. I do remember that.

23 Q. Your, your testimony today is it sounds like you're
24 having some trouble remembering some things about your
25 plea.

1 A. Yes, sir, because like I said, I, I, I have proof to
2 prove that what was done to me was not right.

3 Q. Okay. One of your allegations is that your lawyer
4 failed to investigate your mental health condition. What
5 is your understanding of the mental health conditions that
6 you suffer from?

7 A. I suffer from memory lapse because I had brain cancer.
8 I had Hodgkin's lymphoma and I had a brain, brain lapse --
9 memory lapse, I meant to say, and I was getting some
10 medicine that, that don't suit me. I'm a psych person.
11 I'm not a mental person. Those medication is for mental
12 people and it, it -- they, they will have bad effects on a,
13 on a psych person.

14 Q. At the time of the plea, were you under -- were you
15 taking any medications?

16 A. Yes, from my doctors. You saw it. I had paperwork.
17 I was taking Seroquel 300 mg.

18 Q. Okay. Did that have any effect on you?

19 A. None. That's what I take.

20 Q. All right. How about, were you taking anything else
21 at the time of your plea or ---

22 A. None, nothing else until this doctor at the jail did
23 not got my doctor consent, Mr. David -- Mr. -- Dr. David A.
24 Justice.

25 Q. Well, I'm talking about at your plea. Were you

J. BUTLER - DIRECT EXAMINATION BY MR. BOOZER

11

1 prescribed any medications when you were at your plea?

2 A. Yes, sir, Hal -- Risperdal and Haldol.

3 Q. Okay, and looking -- are you taking either of those?

4 A. Oh, no. No. The doctor at R&E said uh-uh, that's --
5 that would, that would erase your mind.

6 Q. All right. So at the time of your plea, those were
7 the medications you were taking?

8 A. Yes, sir.

9 Q. Do you recall telling the judge at your plea that you
10 were taking any of those medications?

11 A. I couldn't remember. I cannot remember that.

12 Q. All right.

13 A. Certain, certain things I can and certain I can't,
14 sir.

15 Q. Did you have any discussion with your attorney about
16 any sort of mental health conditions or any of the
17 medications that you were taking at that time?

18 A. Well, my cousin wrote it. He has a letter that my
19 cousin wrote and ---

20 Q. Well, well, did you -- let me ask you. Do you have
21 any discussions with him at that time that you ---

22 A. No, sir, I didn't at that time because I, I, I just, I
23 wasn't in the right state of mind.

24 Q. Well, how are you doing today?

25 A. I'm fine. I can, I can reason. I can think. I can

1 walk for myself. I can think for myself, and I can walk,
2 walk very well.

3 Q. Do you understand today what is it that you're doing?

4 A. Yes, sir. I'm fighting for my freedom.

5 Q. Are you in a different state of mind than you were at
6 your ---

7 A. Yes, sir, totally different state of mind. I know
8 right from wrong real good. Excellent. I wouldn't say
9 real -- excellent.

10 Q. Now, do you recall ever meeting with your lawyer and
11 reviewing discovery or Rule 5 materials?

12 A. Sir, I'm glad you brought that up. When I was on my
13 way out, he gave it to my -- gave it to me and I could not
14 understand anything. My cousin went over it for me on my
15 way out of the jail, and my cousin wrote him. That's when
16 he wrote the letter and told him, said look at the two
17 witness, witness that this is not the man that did -- the
18 man or mens that did this.

19 Q. What, what was it alleged that you had done?

20 A. They said I had run into a -- broke into the back of
21 a man house and killed him, which I don't even know
22 anything about this man period.

23 Q. Okay. Now, you indicated that you saw witness
24 statements?

25 A. And I have them right here.

J. BUTLER - DIRECT EXAMINATION BY MR. BOOZER

13

1 Q. Well, let me ask you. When did you first see what
2 you're referring to as witness statements?

3 A. I didn't see them. I went to R&E. After my cousin
4 read them to me, said this is not you, and I went to R&E.

5 Q. Well, when you say R&E, after you pled?

6 A. Yes, sir. I was in a cell and the law clerk came,
7 and, and, and, and told me. That's why he told me to
8 write, write this right here because I have a tape in my
9 mind. I couldn't -- I have to roll my tape back instead.
10 I have to, I have to wait until all that medication is way
11 out my mind, if it does, which it did. I thank God for
12 that.

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

14 THE COURT: Yes.

15 MR. BOOZER: Thank you.

16 BY MR. BOOZER:

17 Q. Mr. Butler, I'm going to hand you a copy of a
18 statement. If you would just identify that for me?

19 A. It says -- I'm'll, I'm'll be short about it.

20 Q. Well, just -- all I want you to do is look at it and
21 just tell me what it is. Don't read it. Just tell me what
22 it is.

23 A. It's a statement by the, the, the witness.

24 Q. Okay, and is this -- it says Witness Victim Statement.
25 Is this a statement that you saw after your plea?

1 A. Yes, sir.

2 Q. And is something that is a part of your case?

3 A. Yes, sir.

4 Q. All right, and when did you receive it?

5 A. At -- on my way out. My -- came and everything and my
6 cousin, like I said, he read it to me and I, I could, I
7 could not understand. He was -- that's why he wrote the
8 letter to him. He said I need to be given a psychological
9 evaluation test.

10 MR. BOOZER: And, Your Honor, at this time we would
11 move to introduce this as Applicant's Exhibit 1.

12 MS. COLEMAN: No objection.

13 THE COURT: Without objection, introduced as
14 Applicant's 1.

15 (STATEMENT MARKED INTO EVIDENCE AS APPLICANT'S EXHIBIT
16 NUMBER 1.)

17 BY MR. BOOZER:

18 Q. Now, Mr. Butler, this appears to be a witness or
19 victim statement from a Tadanza Bailey and basically is
20 dated February 28, 2009, and long and short of it is she
21 was walking to her friend's house sometime maybe after 5 or
22 right around 5 p.m.:

23 Once I walked out the door of my house, I saw the
24 old man that lives at 40 Robinson Lane pull up in
25 a white and red pickup truck. As far as I know,

J. BUTLER - DIRECT EXAMINATION BY MR. BOOZER

15

1 this is his truck, and I've seen him driving it
2 before. I saw him walk inside by himself. He
3 had been inside for just a few minutes when I
4 heard screaming like someone was hurt coming from
5 inside the house. The screaming seemed like it
6 lasted for like five or six minutes. Right after
7 the screaming stopped, I saw a black male
8 approximately twenty to thirty years old come out
9 the back door of the house. When he first came
10 out, he wasn't running. He was walking. I
11 didn't ---

12 Skipping on down:

13 I didn't recognize this guy from being around the
14 neighborhood.

15 Now, this was back in 2009. How old were you back
16 then?

17 A. About fifty-one, fifty-two.

18 Q. Okay. How old are you now?

19 A. I've fifty-seven.

20 Q. And is there anything in this statement that would be
21 consistent with identifying you as ---

22 A. No way.

23 Q. --- a fifty-something year-old -- hang on a second, as
24 a fifty-something year-old man?

25 A. No, sir.

1 Q. Okay, and had you seen this statement, would you have
2 pled guilty?

3 A. No, sir. I would, I would have took the stand.

4 Q. When you say you would take the stand, would you have
5 gone to trial?

6 A. Yes, sir, I would have.

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

8 THE COURT: Yes, sir.

9 BY MR. BOOZER:

10 Q. Mr. Butler, I'm going to hand you another document,
11 and if you would ---

12 A. Yes, sir.

13 Q. --- do just like you did a moment ago and identify
14 that for me.

15 A. Okay. This is Mr. Shirley -- Sherin, Sherin M.
16 Bronson [sic].

17 Q. Well, what, what is it? What's it look like?

18 A. The same.

19 Q. Okay. Does this look like a witness victim statement?

20 A. Yes, sir. This is a man this time.

21 Q. Is this ---

22 A. A young man.

23 Q. Is this a document -- when did you receive this
24 document?

25 A. The same time, all at the same, same time.

J. BUTLER - DIRECT EXAMINATION BY MR. BOOZER

17

1 Q. When you say the same time, you mean ---

2 A. When I was ---

3 Q. --- the same as Exhibit Number 1?

4 A. Yes, sir.

5 Q. So, this would have been -- the first time you saw
6 this was after you pled guilty?

7 A. Yes, sir.

8 Q. Okay.

9 MR. BOOZER: Your Honor, at this time we would move to
10 make this Applicant's Exhibit Number 2.

11 MS. COLEMAN: No objection.

12 THE COURT: Introduced.

13 (STATEMENT MARKED INTO EVIDENCE AS APPLICANT'S EXHIBIT
14 NUMBER 2.)

15 BY MR. BOOZER:

16 Q. All right, Mr. Butler, this is a statement that
17 appears to be from a Sheldon Bronson dated March 28, 2008,
18 which indicates -- who is James Davis?

19 A. That's supposed to be the guy that I took the money
20 from.

21 Q. Okay. So, that's the victim in the case?

22 A. Yes, sir.

23 Q. All right. In part, this statement says:

24 As I got to James's house, I noticed a white
25 Cobalt in the yard across the street with a black

1 male standing outside staring at me. The male
2 was in his early twenties wearing a white hoodie
3 over his head. As I pulled into James's
4 driveway, the guy got out of the Cobalt and left
5 out in a hurry.

6 Have you reviewed this statement?

7 A. Yes, sir.

8 Q. Is there anything in the statement that identifies you
9 as being seen?

10 A. No, sir.

11 Q. Were you aware of this statement at the time of your
12 plea?

13 A. No, sir.

14 Q. And all it does is identify a black male in his late
15 twenties being at the scene of the crime?

16 A. Waiting on the other fellow probably.

17 Q. All right. Had you ---

18 A. That's what I came up with.

19 Q. Had you seen this statement before your plea, would
20 you have entered your plea?

21 A. No, sir, I would not.

22 Q. Had you seen the statement, would you have gone to
23 trial in your ---

24 A. Yes, sir, I would have.

25 Q. Mr. Butler, do you recall at any time ever reviewing

J. BUTLER - DIRECT EXAMINATION BY MR. BOOZER

19

1 this statement with your attorney?

2 A. None. Not at all. He gave it to me and tell me --
3 and told me to go over it myself. That's when I gave it my
4 cousin.

5 Q. Do you know what your lawyer did to investigate your
6 case?

7 A. Nothing.

8 Q. Did y'all ever discuss any sort of trial strategy?

9 A. None.

10 Q. Did you ever talk about what sort of witnesses you
11 might introduce at your trial?

12 A. In God's name, he didn't brought any of that up.

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

14 THE COURT: Okay.

15 BY MR. BOOZER:

16 Q. Mr. Butler, we've been over your allegations for
17 failing to investigate your mental health. Let me ask you
18 this. Did you tell Mr. Murphy at any time that you
19 suffered from any sort of mental disabilities or
20 conditions?

21 A. Not to that time, but my cousin, like I said, he kept
22 -- he wrote it and, and, and made him aware of it because
23 I, I had a problem trying -- walking or thinking for
24 myself. I could not do those things or remember anything.

25 Q. Are you currently receiving mental health treatment?

- 1 A. Yes, sir, I am. I take Remeron.
- 2 Q. What are you being treated for?
- 3 A. Schizophrenic, paranoia, and personality, personality
4 mood swing.
- 5 Q. Prior to being incarcerated, were you receiving any
6 sort of disability or anything like that?
- 7 A. None.
- 8 Q. Okay. Were you, were you getting mental health
9 treatment then?
- 10 A. I was getting -- I mean, oh, I'm sorry. Let me go
11 back. I do get, get mental health. I do get a mental
12 health check.
- 13 Q. You do currently?
- 14 A. Yes, sir, I do.
- 15 Q. Okay, and what, what is that for? For what ---
- 16 A. That's for my schizophrenia, paranoia, and all, all
17 the rest of the stuff.
- 18 Q. Okay. Mr. Butler, we've been over a number of items
19 today. Have we covered all of your allegations as it
20 relates to your PCR application?
- 21 A. Well, let me make sure.
- 22 Q. Take your time.
- 23 A. All right, let me make sure, make sure. Okay, did
24 have opportunity and had the opportunity to do -- to find
25 out what was my state of mind. He did have that, but he

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1 did not care to see whether I was in my right state of
2 mind. Did not care.

3 Q. Okay, we've covered your -- his failure to investigate
4 your mental condition. We've covered -- have we covered
5 the -- him not investigating your case?

6 A. No, sir, we haven't covered that.

7 Q. No. Have we covered that today?

8 A. Oh. Yes, sir, we have.

9 A. Okay, and that has to do with the -- with interviewing
10 or talking to witnesses and telling you about the
11 statements that were out there?

12 A. Yes, sir.

13 Q. All right. Have we also, have we covered, have we
14 covered talking about him questioning the two witnesses?

15 A. Didn't never do it.

16 Q. All right, but have we been over those two ---

17 A. Yes, sir, we have.

18 Q. All right. Is there anything else with regard to your
19 PCR application that you want to bring to this court's
20 attention?

21 A. Well, let me see. Let me make sure; let me make sure
22 because I'm fighting for my life.

23 (A PAUSE.)

24 A. Okay. Okay. Yeah, he didn't, he didn't do what he --
25 investigate all my mental, the people. That was very

1 unprofessional of him from not doing these things, very
2 unprofessional for him not doing it, and, and I didn't
3 freely and unknowingly and, and not intelligently gave
4 that, gave that plea. I didn't know what was going on.

5 Q. Okay.

6 MR. BOOZER: Mr. Butler, that's all the questions I
7 have for you right now.

8 WITNESS: Yes, sir.

9 MR. BOOZER: Please answer any that the state may
10 have.

11 WITNESS: Yes, sir.

12 THE COURT: Ms. Coleman.

13 MS. COLEMAN: Yes, sir.

14 CROSS-EXAMINATION BY MS. COLEMAN:

15 Q. Good morning, Mr. Butler. How are you?

16 A. Good morning.

17 Q. Do you remember discussing any possible defenses with
18 your attorney?

19 A. None. I don't remember.

20 Q. Did you give him any leads or witnesses to
21 investigate?

22 A. He didn't -- none of that game, none.

23 Q. At the guilty plea, do you recall waiving your
24 constitutional rights?

25 A. I don't remember; I just don't remember any of that.

J. BUTLER - CROSS-EXAMINATION BY MS. COLEMAN

23

1 MS. COLEMAN: And, Your Honor, that's on page 4 for
2 your reference.

3 BY MS. COLEMAN:

4 Q. And you waived your right to a jury trial and your
5 right to remain silent. You don't remember any of that?

6 A. I don't remember. I was on that medication. I
7 couldn't. I couldn't.

8 Q. The plea court advised you that by pleading guilty,
9 you were waiving any potential self-defense claim, right?

10 A. Yes. I don't know. I'm not ---

11 Q. You don't remember?

12 A. --- going to sit here -- or, no, because I just don't
13 remember.

14 Q. Do you remember telling the plea judge that you were
15 satisfied with your attorney's services?

16 A. I don't remember that.

17 Q. Do you recall telling the judge that no one was
18 promising or threatening you in order to plead guilty?

19 A. I don't remember any of that; I don't remember
20 nothing.

21 Q. And that you didn't have any mental issues or -- and
22 you understood that you were pleading that day, right?

23 A. I don't remember.

24 Q. You graduated high school, correct?

25 A. Yes, ma'am, I did.

1 Q. Okay. Do you recall telling the plea judge that you
2 wished to plead guilty?

3 A. I don't remember.

4 Q. You don't remember telling him that you were indeed
5 guilty of this crime?

6 A. I don't remember none of that.

7 Q. And you stated that you did hit the victim over the
8 head with a pipe wrench, but you were only doing so to get
9 away from him?

10 A. I don't remember any of that.

11 Q. Okay.

12 MS. COLEMAN: Your Honor, that that's on page 9, line
13 3 and 4 just for your reference.

14 BY MS. COLEMAN:

15 Q. Do you still want a trial on these charges?

16 A. Yes, I do.

17 Q. Okay.

18 A. Because I remember everything now.

19 Q. Okay.

20 MS. COLEMAN: Thank you. No further questions.

21 THE COURT: Mr. Boozer.

22 MR. BOOZER: No redirect, Your Honor.

23 THE COURT: Thank, sir. You can step down.

24 WITNESS: Yes, sir. Thank you, Judge.

25 (THE WITNESS EXITS THE STAND.)

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1 THE COURT: All right, let's take a brief recess.

2 Anything further, Mr. Boozer, on the applicant's ---

3 MR. BOOZER: Nothing further.

4 THE COURT: Let's take a brief recess. I'll be out
5 here shortly. Thank you.

6 (OFF THE RECORD.)

7 THE COURT: The applicant has rested. Is that
8 correct, Mr. Boozer?

9 MR. BOOZER: That's correct, Your Honor.

10 THE COURT: All right, Ms. Coleman.

11 MS. COLEMAN: Yes, sir. The state calls Timothy
12 Griffith.

13 THE COURT: You sure?

14 MS. COLEMAN: I'm sorry, Murphy, Tim Murphy. I had
15 Tim Griffin yesterday in court. I apologize.

16 TIMOTHY W. MURPHY, BEING DULY
17 SWORN, TESTIFIES AS FOLLOWS:

18 BAILIFF: Please state your full name. Spell your
19 last name for the record.

20 WITNESS: Timothy Ward Murphy, M-u-r-p-h-y.

21 DIRECT EXAMINATION BY MS. COLEMAN:

22 Q. Good morning, Mr. Murphy. I apologize. I promise I
23 know your name.

24 A. You are not insulting me by comparing me to Mr.
25 Griffith. He's a good guy.

1 Q. How long have you been practicing law?

2 A. Almost thirty years, twenty years as an Air Force JAG
3 and the last ten here in Sumter.

4 Q. Do you recall whether you were appointed or retained
5 in this case?

6 A. I was appointed. I'm the chief county public defender
7 for Sumter County in addition to having a private practice,
8 and it was through the public defender office that I
9 assigned myself this case.

10 Q. How many times did you meet with the applicant prior
11 to his guilty plea?

12 A. I met with him at the preliminary hearing on June 21,
13 2012. I met with him at the jail October 8, 2012. I met
14 with him on January 17, 2013. I met with him on April 5,
15 2013, and I met with him May 7, 2013, at the jail. And
16 then I met with him here at the courthouse in lockup on the
17 day of the plea.

18 Q. Did you file any Rule 5 or *Brady* motions?

19 A. Yes. I filed a Rule 5 motion upon my appointment on
20 May 3, 2012, and I received the discovery and took it out
21 to him, and we went over it.

22 Q. Okay. So, you did review discovery with the
23 applicant?

24 A. Yes.

25 Q. And were these statements that have been introduced

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1 into evidence, were these part of the discovery at that
2 time?

3 A. Yes.

4 Q. And you went over those with the applicant?

5 A. Yes.

6 Q. Did you discuss the applicant's version of the facts?

7 A. Yes. The applicant from the very beginning of this
8 case advised me that he had, he had a -- well, literally
9 the first words out of his mouth to me were if I can get a
10 plea to voluntary manslaughter, I'll, I'll take it. It was
11 a voluntary manslaughter plea. It was, it was voluntary
12 manslaughter; I didn't mean to kill him. He said that at
13 the preliminary hearing in front of the magistrate, in
14 front of the officer, first words out of his mouth.

15 Notwithstanding that, I, when I went out to talk to
16 him, he told me that initially that -- we, we had a number
17 of conversations about his, his situation. The reason that
18 was because there was, there was -- I had a concern about
19 whether or not he could get through a plea because
20 initially he, he raised some issues about self-defense.
21 And what he advised me was that Mr. Davis was an individual
22 in the community who apparently was involved in different
23 kinds of -- you know, he'd loaned people and different
24 types of activities, and Mr. -- my client advised me that
25 he had loaned Mr. Davis some money and that Mr. Davis owed

1 him some money. That he had gone over to Mr. Davis's home
2 to collect the money. That there was a confrontation and
3 that during this, during this confrontation at Mr. Davis's
4 home, the -- which was a fight basically, that Mr. Butler
5 picked up a -- some sort of wrench and hit Mr. Davis over
6 the head with it, and then he had left the home.

7 He had told me that -- he, he gave me different
8 versions of the self-defense. Concern I had -- when I
9 first spoke to him, he said Mr. Davis was armed with a gun.
10 Later on when we went through -- when I actually got the
11 discovery and we went through the discovery, he said that,
12 well, Mr. Davis wasn't armed but there was a gun nearby.
13 Later on he said, well, the gun was actually -- we had this
14 argument kind of in a living room and that I could see a
15 gun in his bedroom. And so we had, we had a number of
16 conversations about whether or not he should go to trial or
17 whether or not he should plead.

18 He was very insistent and probably one of the most
19 insistent clients I've ever had about wanting to plead to
20 voluntary manslaughter. That was a, that was a constant,
21 constant thing. When can you get me in to plead? And I
22 was the one who was saying, well, wait a minute. I need to
23 look into this. You know, you need to understand what
24 self-defense is and if you believe that you were defending
25 yourself, you know, we need to, we need to think through

1 this.

2 Ultimately we had a discussion in which, you know, I
3 told him look. You keep on telling me different places
4 that this gun is. You went over to Mr. Davis's home and,
5 and he admitted to me that he was mad when he went over to
6 Mr. Davis's home. That he wanted his money. He said he,
7 he told me he had started the argument but that Mr. Davis
8 had hit him first, okay, but that Mr. Davis was in his own
9 home.

10 So, I went through that and I told him. I said look.
11 I said I, I -- you know, we started talking about the, the
12 self-defense theory in a, in a murder case. I said, you
13 know, based on -- and I told him frankly. I said you're
14 not a very credible witness, quite frankly. I mean, based
15 on my conversations with him, I, I, I just told him you're
16 not very credible. I said I don't believe in my judgment
17 that the self-defense proposal which you would have to
18 testify to is going to be successful, and we had that
19 discussion when I brought him the plea offer, which was an
20 open plea to voluntary manslaughter. So, then we talked to
21 that. We talked then about, about that.

22 The focus always was on this, this self-defense theory
23 and, and that -- that and his insistence on wanting to
24 plead was, was the constant theme of our conversations when
25 we were together.

1 Q. Did the applicant ever want a trial on these charges?

2 A. No. No. No. No.

3 Q. Can you briefly characterize the state's evidence
4 against the applicant?

5 A. There was a -- Mr. Davis was found dead in 2008, and
6 there was DNA scrapings taken from his fingernails. There
7 were the statements of the witnesses that counsel was going
8 over 'seeing an individual or, or an individual leaving the
9 home. But what happened was Mr. Butler was convicted for
10 some other crime. I can't really remember what the crime
11 was. I didn't represent him, and during that process DNA
12 was taken. There was a CODIS hit and, and it matched the
13 DNA. He was approached by law enforcement and made an
14 admission to law enforcement that he had hit him over the
15 head with a wrench and didn't mean to kill him. That was
16 before I was even -- represented, represented him, and then
17 -- so, there was that. That was pretty much the state's
18 case.

19 Q. Would you consider this evidence strong or
20 overwhelming?

21 A. What was strong was he made multiple statements to
22 various law enforcement people saying it was an accident
23 or, you know, I didn't mean to kill him. I mean, he --
24 there was never in my conversations with him ever an issue
25 that he had caused Mr. Butler's death. He, he had, he had

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1 -- which, quite frankly, to his -- I took that as to his
2 credit that he was willing to take responsibility for what
3 happened.

4 The other thing I, I pointed out to him, and I forgot
5 to mention earlier, was the fact he, he fled the scene and
6 I, I, I mentioned that in the context of the self-defense.
7 That if he honestly thought he was acting in self-defense,
8 you know, typically people don't flee in that context, but
9 he had, he had fled the scene.

10 Q. What kind of investigation did you do into this case?

11 A. I, I did a lot of background information on Mr.
12 Davis's criminal record and ties to the community. And
13 notwithstanding what my client indicated to me about Mr.
14 Davis's history, Mr. Davis did not have a -- I believe he
15 had, like, one minor drug charge when he was a younger man.
16 There were no acts of violence, anything. I spoke to the
17 officers who interviewed Mr. Butler, that were two of them.
18 There may have been two of them. I can't recall right now.

19 Q. Okay.

20 A. I did not speak to the two individuals who are in
21 those statements.

22 Q. On the day of the guilty plea or prior to the guilty
23 plea, did you review the applicant's constitutional rights
24 with him?

25 A. We reviewed everything. We -- I did go over -- it's

1 my practice and I, and I know I went over everything with
2 him because I know I don't like surprises, and we went
3 through what the plea would be like. We went through that
4 multiple times, and again that was in the context of the,
5 of the self-defense.

6 Mr. Butler's focus at the plea was the timeframe. Not
7 the fact that he had actually committed the crime. It was
8 the timeframe. When he had initially spoken to me in one
9 of his conversations -- I can't remember exactly which one
10 -- he had indicated he would take fifteen years. Then he
11 came back later and we talked about timeframes. And I told
12 him quite frankly -- you know, he wanted, like, five and I
13 said, well, five years is involuntary manslaughter and we
14 went through the definition. I read him the definition of
15 murder, voluntary manslaughter, and involuntary
16 manslaughter, and I said they are not going to offer you --
17 the offer is not involuntary manslaughter. The offer is
18 voluntary manslaughter. Now, I can ask for five but, quite
19 frankly, I don't think you're going to get five. You're,
20 you're likely to get over ten.

21 So, then we talked whether to ask for any timeframe.
22 You have to read the transcript. I think we -- I think
23 initially I was going to ask for eight, but then he wanted
24 to keep it open. Then he asked if his -- then the focus
25 was on okay, well, when can you bring me in? When can you

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1 bring me in for a plea? He was very insistent. He was --
2 it got to the point for my staff at the -- in the public
3 defender office was complaining to me about his calls about
4 when his plea was going to be and -- because he would call
5 once or twice a week or twice or more a week. He's allowed
6 one phone call a week from the jail, and then typically I
7 go out.

8 And so I went back to him and I said, all right, this
9 is the date and he said, well, who's the judge, and I told
10 him who the judge was. And he said, well, I don't want
11 that judge. You know, which do you think would be the best
12 judge? I told him, well, this is who -- Judge B would
13 probably be the best judge, and he said, well, I'll wait
14 until Judge B, who ended up -- well, it was Judge Cothran.
15 He's the one who took the plea. I'll wait for Judge
16 Cothran, and I said okay. So, then we -- I went to the
17 Kirk Griffin, who is the solicitor, and said do you have a
18 problem with us waiting until Judge Cothran's in town, and
19 he said no. So, we waited for Judge Cothran.

20 And I've pled individuals in front of Judge Cothran
21 before on involuntary man -- or on voluntary manslaughter
22 pleas. I told Mr. Butler he would likely receive in the
23 neighborhood of fifteen to twenty years, and he received
24 eighteen. So, he was well prepared for the sentence he
25 received.

1 Q. Was there ever any question of the applicant's mental
2 capacity in this case?

3 A. Mr. Butler never told me he had any mental conditions
4 at all. I never detected any in any of my conversations
5 with him that he did not understand what we were talking
6 about. In particular in regard to self-defense, we, we had
7 what I would consider pretty, pretty good conversations
8 about what was required and what it meant to waive his
9 defenses because he was waiving that defense if, if he --
10 and, and that if he wanted to proceed then with that
11 defense, then what the merit of that -- what I thought the
12 merits of such of defense would be. He was always
13 responsive and, you know, I mean, I, I had no -- he never
14 told me and I had no indication. He came directly from
15 prison, from SCDC. He wasn't out on the street at any
16 time; he came from SCDC to Sumter-Lee and then after he was
17 sentenced, he ended up going back to SCDC.

18 Q. Overall in your opinion, do you believe that the
19 applicant entered his plea knowingly and intelligently?

20 A. Yes.

21 Q. Okay, and whose decision was it to plead guilty?

22 A. His, his adamant decision from the very first time I
23 ever met him, he indicated to me he wanted to plead. If he
24 could get voluntary manslaughter, over and over again --
25 and he knew, he knew what voluntary manslaughter was. If

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1 he could get voluntary manslaughter, he would plead. He
2 told me that. If I'm recalling correctly, at one point he
3 wrote to the solicitor and asked to be scheduled to plead
4 to voluntary manslaughter. He was, he was quite insistent.

5 MS. COLEMAN: Thank you. No further questions.

6 THE COURT: Mr. Boozer.

7 MR. BOOZER: Thank you, Your Honor.

8 CROSS-EXAMINATION BY MR. BOOZER:

9 Q. Mr. Murphy, how are you doing today?

10 A. Good.

11 Q. You've seen -- were you in here for Mr. Butler's
12 testimony?

13 A. Yes.

14 Q. Was he different today than when you were representing
15 or meeting with him?

16 A. No.

17 Q. Okay. You didn't detect that he -- was he thinking
18 any sort of -- or did he appear to be thinking any sort of
19 clearer today than when you were representing him?

20 A. He -- my recollection of Mr. Butler is pretty much the
21 same as he appears today.

22 Q. Did you ever have -- I think you indicated that he
23 never told you that he had any mental conditions at the
24 time?

25 A. No.

1 Q. Did he ever discuss with you any sort of medications
2 that he was taking?

3 A. I don't recall. I don't recall.

4 Q. Do you think that's something that would have been ---

5 A. Well, well if ---

6 Q. --- something important to know?

7 A. Let me put it to you this way. If he would have said
8 he was on, you know, something other than aspirin, I would
9 have researched that further. I, I don't believe he ever
10 told me he was on any medication.

11 Q. Did you ever have any contact with any of his family
12 members?

13 A. No.

14 Q. Do you recall in particular a family member who may
15 have been a cousin by the name of Frederick Tavistock?

16 A. I know a Frederick Cabbagestock that I represented a
17 number of years ago, but not in the context of this case.
18 I mean, I heard Mr. Butler's testimony. If a letter was
19 sent to me after the plea, I would not -- that may have
20 gone into the file. I mean, I, I -- right after -- or I
21 would have forwarded it Appellate Defense because right
22 after the plea, and I mean right after the plea, as soon as
23 he was sentenced to eighteen years, Mr. Butler called me up
24 and said I want to appeal, and then after -- this was in
25 the -- it was in the old courtroom, I think. Yeah -- no,

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1 it was over here. We met again and I told him, I said,
2 well, look. You know, you know, I'll file the appeal, but
3 I don't think there's any real basis for it, and he said,
4 well, no. I want to appeal because he gave me more than I
5 wanted, and I said okay. So, I filed an appeal. So, if
6 there was a letter sent, I would have just forwarded it.

7 Later on I -- the Court, Court of Appeals contacted me
8 and indicated Mr. Butler had written them asking to
9 withdraw his appeal. He had written me at some point and I
10 wrote back reminding him that, you know, I didn't, I didn't
11 believe he had a basis for an appeal, and that his new
12 attorney would be contacting him. That I had filed the
13 appeal and would be contacting him, and then the court
14 contacted me by telephone at my office and said, you know,
15 he's -- he wants to withdraw. Do you have any objection to
16 that, and I said no.

17 I don't, I don't know that Appellate Defense -- an
18 appellate defense attorney had ever been assigned. I don't
19 specifically recall ever having any contact with Mr.
20 Cabbagestock in regard to Mr. Butler. I don't recall that.

21 Q. What was his contact with your office like? Would he
22 call a lot or write a lot or anything like that? Do you
23 recall?

24 A. Yeah. I mean, he was above normal when it came to
25 contact. That's true, yeah.

1 Q. Okay. Was it borderline harassing at times?

2 A. At times.

3 Q. Did that give you any cause or concern about maybe
4 what sort of -- his understanding, mental awareness, or
5 maybe social adaptation?

6 A. What, what it -- well, what it led me to think was he
7 didn't like being in Sumter-Lee County Regional Detention
8 Center and he wanted to get this over with that, and that,
9 that was kind of the theme. He wanted to get this over
10 with.

11 Q. You had indicated, and I think the plea transcript
12 reflects, that this wasn't something that he arrested
13 immediately for. It was not until sometime later that it
14 was connected with DNA.

15 A. Right, the CODIS hit.

16 Q. Do you recall that this incident was -- occurred
17 sometime in 2008?

18 A. I believe that's what the state says.

19 Q. And then he wasn't charged with, with these charges
20 until 2012, nearly four years later?

21 A. That -- I believe that's correct.

22 Q. And that would have been -- when he gave statements to
23 authorities would've been somewhat later in 2012?

24 A. That, that's correct.

25 Q. Did you discuss with him -- and, and I know you

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1 indicated that he was adamant about entering a plea, and
2 you actually testified that it was sort of, like, hey, hang
3 on a second. We need to evaluate this before we make that
4 decision.

5 A. Yes.

6 Q. Do you think he understood what it meant to go to
7 trial and what you'd be able to do at a trial?

8 A. I have no doubt that he understood.

9 Q. Do you think ---

10 A. I also, I also have no doubt he understood to stop
11 contacting people because I, I told him to stop contacting
12 the state. That his statements were not -- his statements
13 were undercutting my ability to negotiate a voluntary
14 manslaughter plea.

15 Q. Did y'all have any discussion about trying -- or that
16 he could try and suppress or you could try and suppress any
17 of the statements or admissions ---

18 A. We talked about his admissions. They were, they were,
19 they were multiple, so.

20 Q. Did y'all discuss attempting to get those thrown out
21 or, or suppressed?

22 A. I don't believe in, in specificity. I mean, you know,
23 I don't believe I, I looked at that in any detail.

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

25 THE COURT: Yes, sir.

1 MR. BOOZER: Thank you.

2 BY MR. BOOZER:

3 Q. Mr. Murphy, I'm going to hand you what's been marked
4 as Applicant's Exhibit Number 1, as well as Applicant's
5 Exhibit Number 2. If you would, just take a moment and
6 look at them unless you've ---

7 A. I've looked at them.

8 Q. --- already -- okay. Are you familiar with those two
9 statements?

10 A. I recall these statements being in the discovery at
11 the time I received discovery and at the time I went over
12 them with Mr. Butler.

13 Q. Do you recall reviewing these statements with Mr.
14 Butler?

15 A. It is -- it's my practice to go over all the discovery
16 with the, with the, with the client. So, I, I, I know I
17 went over everything with him, and I also know I gave him
18 the discovery.

19 Q. But -- how about these? And I understand that's been
20 some time and that is your practice. How about these two
21 independently, though, these two statements?

22 A. Do I, do I have a specific recollection that I went
23 over those specific -- I believe I did. I don't have a
24 specific recollection.

25 Q. Would you agree ---

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1 A. I, I recall them being in the discovery, though. I'm
2 not surprised by what's in there because I remember
3 thinking to myself at the time that if he, he wouldn't have
4 confessed to everybody, you know, there were some avenues.

5 Q. Would this have been one of those avenues?

6 A. Sure.

7 Q. What's contained in these statements?

8 A. Depending on what those witnesses would have said,
9 yeah.

10 Q. Do you recall if you did any sort of investigation
11 into ---

12 A. I did not contact those witnesses.

13 Q. --- these folks?

14 A. No.

15 Q. Had y'all gone to trial, is that an avenue you would
16 have pursued?

17 A. Maybe. I mean, I think the avenue I probably would
18 have pursued would have been the -- I mean, he was telling
19 me he acted in self-defense. The problem, another problem
20 with the self-defense theory was, was that there was no gun
21 found in Mr. James's -- or Mr. Davis's home, but, I mean,
22 if we'd have gone to trial, I'm, I'm, I'm open to all sorts
23 of theories, so.

24 Q. You would agree that in those statements that they
25 allege that there is a young black male at the, at the

1 house at the time basically of the incident?

2 A. That's what they appear to say.

3 Q. Okay, and there's, and there's no mention of Mr.

4 Butler, who at that time would have been a much older

5 individual?

6 A. There's no specific mention of Mr. Butler, no.

7 Q. Did you ask Mr. Butler about, well, how do you explain

8 ---

9 A. No, I don't have -- I don't, I don't recall talking to

10 him specifically about that, no. I do recall talking to

11 him specifically about his engagement with Mr. Davis that

12 day and going in and getting into the fight and how he left

13 the scene and everything. I -- it was a very detailed, you

14 know, discussion because we were -- on more than one

15 occasion in the context of where the guns were, the gun was

16 and things like that. He was always pretty consistent

17 about everything except the gun.

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

19 THE COURT: Yes, sir.

20 BY MR. BOOZER:

21 Q. Mr. Murphy, do you -- did you ever give the materials

22 that you received pursuant to your Rule 5 request, did you

23 give those directly to Mr. Butler?

24 A. That's my practice. I believe I did.

25 Q. Do you know in this case, was that something you did

T. MURPHY - CROSS-EXAMINATION BY MR. BOOZER

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1 before the plea, or did you do it after?

2 A. Oh, well before the plea, sure. What, what, what my
3 practice -- I receive -- what we do is get the discovery
4 from the state. It's scanned into our defendant database,
5 and I give the physical copy to the client and I -- because
6 I have a copy on the database. So, I don't need the
7 physical copy. So, yeah, it would have been well, well
8 before the plea, sure.

9 MR. BOOZER: Thank you, Mr. Murphy. No further
10 questions.

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

12 (THE WITNESS EXITS THE STAND.)

13 MS. COLEMAN: Nothing further witnesses for the state.

14 THE COURT: State rests.

15 All right, any brief argument you want to make? I'm
16 going to take everything under advisement and read
17 everything.

18 MR. BOOZER: And, Your Honor, that's all we would ask,
19 certainly with all exhibits that we've handed up, and we'll
20 rest on the testimony that was presented.

21 THE COURT: Okay.

22 Mr. Butler, what's going to happen, okay.

23 APPELLANT: Yes, sir.

24 THE COURT: See all that stuff?

25 APPELLANT: Yes, sir.

1 THE COURT: I've got to go read through everything,
2 okay?

3 APPELLANT: Yes, sir.

4 THE COURT: I want to make sure I make a good
5 decision.

6 APPELLANT: Yes, sir.

7 THE COURT: So, I'm going to take my time on it but
8 not too much time because you've waited a long time for
9 your day in court, okay?

10 APPELLANT: Yes, sir.

11 THE COURT: I anticipate having a decision within the
12 next ten days. I will communicate my decision through
13 email to your lawyer, and he in turn will let you know,
14 okay?

15 APPELLANT: All right. Thank you. Thank you very
16 much.

17 THE COURT: Thank you very much. Have a good day.

18 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
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 EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR SUMTER COUNTY, SOUTH CAROLINA, ON
THE 9TH DAY OF NOVEMBER, 2016.

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

/S/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

SEPTEMBER 2ND, 2017

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2017 MAR 13 PM 3:41

James E. Butler, #232706,

2014-CP-43-1052

Applicant,

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on May 21, 2014. Respondent submitted its return on September 26, 2014. An evidentiary hearing was convened on November 9, 2016, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was true bill indicted at the January 2013 term of the Sumter County Grand Jury for Murder and Burglary--First Degree (2013-GS-43-01112). Timothy Murphy, Esquire represented Applicant. On June 5, 2013, Applicant pled guilty to the lesser included offense of voluntary manslaughter. The Honorable R. Ferrell Cothran, Jr., sentenced Applicant to an eighteen year term of imprisonment for voluntary manslaughter.

A timely Notice of Appeal was filed. However, Applicant requested that his appeal be withdrawn. By order filed September 18, 2013 the South Carolina Court of Appeals dismissed his appeal pursuant to his request. The remittitur was issued on October 17, 2103.

II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Counsel
 - a. "My lawyer did not investigate my mental condition."
 - b. "Did not do a thorough investigation on my case."
 - c. "He did not go and question the two witnesses."

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, 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, 466 U.S. 668. Applicant must overcome this presumption in order 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. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness

under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, 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).

IV. SUMMARY OF RELEVANT TESTIMONY

At the evidentiary hearing, Applicant testified that he was currently serving time for a crime that he did not do. He stated that he was charged with murder and burglary first degree, and he does not remember all of it, but his memory came back to him over time. He testified that he pled guilty to voluntary manslaughter for a term of eighteen years' imprisonment.

Applicant testified that he met with Plea Counsel one or two times prior to his guilty plea. He testified that he suffered from a memory lapse from a brain cancer medication that he took that did not suit him. He stated that this medication was for "mental people." Applicant stated that he was on this medication at the time of the guilty plea and it had no effect on him. He testified that he no longer takes this medication because the doctor told him that it would "erase" his mind. He stated that he was fine the day of the evidentiary hearing, and that he understands right from wrong now.

Applicant introduced two exhibits; Applicant's Exhibit #1, a witness statement of Tadonzeba Bailey, and Applicant's Exhibit #2, a witness statement of Sheldon Brunson. Applicant testified that he did not see these statements until after his guilty plea, and that these statements did not identify him as the person who committed this crime. He stated that both



statements said that the suspect was 20-30 years old or in his early 20's, but Applicant was 52 years old when the crime was committed. Applicant stated that he never went over these statements with Plea Counsel, but if he had, he would have chosen to go to trial instead of plead guilty.

Applicant testified that Plea Counsel did not investigate his case or discuss his trial strategy. He stated that Plea Counsel was very unprofessional. Applicant testified that he is currently being treated for schizophrenia, paranoia, and personality mood swings.

Plea Counsel testified at the evidentiary hearing that he met with Applicant at the preliminary hearing on June 21, 2012, and again at the jail on October 8, 2012, on January 17, 2013, on April 5, 2013, and in May, 2013 at the plea. He testified that Applicant never wanted a trial; he was always insistent about pleading guilty to voluntary manslaughter. Plea Counsel stated that he actually lost leverage in his negotiations for a plea offer because Applicant adamantly expressed his wish to plead guilty to several people, including the Solicitor, to whom Applicant wrote a personal letter.

Plea Counsel testified that the evidence against Applicant was strong, including DNA scraping from under the victim's fingernails, statements from witnesses, and multiple statements that he had made confessing his involvement. Plea Counsel stated that there was no question of Applicant's guilt. Plea Counsel testified that Applicant gave him several different versions of a self-defense story that he did not believe was very credible. Plea Counsel testified that he tried to explain self-defense and other options to Applicant, but he was very insistent about wanting to plead guilty.

Plea Counsel testified that he investigated the criminal background of the victim and spoke to officers about the case. He testified that Applicant never told him that he had any



mental condition. Plea Counsel stated that he never thought that Applicant did not understand something. He stated that Applicant acted the same at the guilty plea as he did during the evidentiary hearing. He testified that he did not recall Applicant taking any medications around the time of the guilty plea, and if he had known of any, Plea Counsel stated that he would have researched the medications.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant raises an allegation arguing that Plea Counsel was ineffective in his representation surrounding his guilty plea. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). This Court finds that the testimony presented at the PCR hearing satisfies neither prong of the Strickland test; Applicant can show neither ineffectiveness nor prejudice, thus these allegations should be denied and dismissed with prejudice.



Plea Counsel testified at the hearing that he did investigate Applicant's case, but that Applicant always wanted to plead guilty to voluntary manslaughter instead of going to trial, so his efforts were focused on obtaining a plea deal. Plea Counsel credibly testified that Applicant never told him about any mental conditions or medications that he was taking before the guilty plea, and if he had, Plea Counsel would have investigated them further. Plea Counsel further stated that the State's evidence against Applicant was very strong, and included multiple confessions made by Applicant that would have been used against him at trial.

Based on the testimony presented, this Court finds that Plea Counsel's representation did not fall below the standard of reasonableness under professional norms set out in Strickland. Plea Counsel acted competently in Applicant's best interest throughout the course of his representation and went above and beyond what was required of him. Applicant has failed to prove that Plea Counsel was ineffective in any way. This Court finds that Plea Counsel properly investigated Applicant's case and was not ineffective for failing to interview any potential witnesses or investigate any mental condition that Applicant did not tell him about.

Furthermore, this Court finds that Applicant has not shown that he was prejudiced by Plea Counsel's alleged ineffectiveness because he has not proven that he would have chosen to go to trial rather than plead guilty. Applicant insisted from the moment he was charged with this crime that he wanted to plead guilty rather than go to trial. He faced charges of murder and burglary first degree if he had gone to trial, but instead he pled to the lesser included offense of voluntary manslaughter. Plea Counsel reviewed discovery with Applicant and explained to him that he did not have any defenses that would have been successful at trial, including self-defense. The State's evidence against Applicant included fingernail scrapings that matched Applicant's DNA, multiple witness statements placing Applicant at the scene of the crime, and, most



importantly, several statements made by Applicant confessing his guilt and his desire to plead guilty. Even if Plea Counsel had interviewed the two witnesses who gave the statements Applicant presented at the hearing as Applicant alleged he should have, their interview would not have changed Applicant's decision to plead guilty. Based on these factors, this Court finds that Applicant has failed to meet his burden of proving prejudice to satisfy the second prong of the Strickland test.

Because Applicant has failed to meet his burden in proving that Plea Counsel was ineffective and that his ineffectiveness prejudiced him, these allegations are denied and dismissed with prejudice.

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, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

VI. CONCLUSION

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

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-

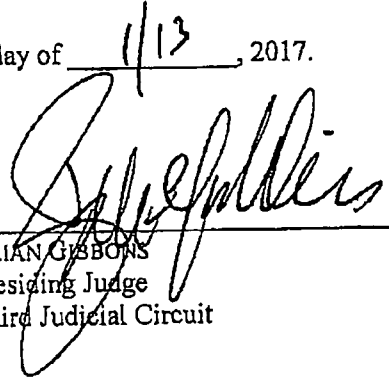


conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.


IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this _____ day of 11/13, 2017.



BRIAN GIBBONS
Presiding Judge
Third Judicial Circuit

, South Carolina

WITNESSES

rene Culick Sumter Police Dept.

Angela Rabon

ARREST WARRANT NUMBER

M935840 M935842

ACTION OF GRAND JURY

TRUE BILL

Angela McDavid
Foreperson of Grand Jury

Date: 1-3-13

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-43-0112

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

January TERM 2013

THE STATE

vs.

JAMES EARNEST BUTLER

Indictment for

Murder
Burglary 1st Degree

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

INDICTMENT FOR

Murder
 Burglary 1st Degree

CERTIFIED TRUE COPY
 OF ORIGINAL FILE

Barbara Shaper
 DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

At a Court of General Sessions, convened on January 3, 2013 the Grand Jurors of

SUMTER County present upon their oath:

COUNT ONE - MURDER

That James Earnest Butler did in Sumter County, on or about February 28, 2009, willfully, feloniously, and intentionally kill the victim, James Davis, with malice aforethought, either express or implied, by means of hitting James Davis in the head with a pipe wrench, and the victim did die as a proximate result thereof on or about February 28, 2009 in Sumter County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

COUNT TWO - BURGLARY, 1ST DEGREE

That James Earnest Butler did in Sumter County on or about February 28, 2009 enter the dwelling of James Davis located at [REDACTED] without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, the defendant caused physical injury to non-participant in crime and having a prior record of two or more convictions for burglary or housebreaking, in violation of Section 16-11-0311(A), Code of Laws of South Carolina, 1976, as amended.

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

Solicitor

Ernest A. Finley III