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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Spartanburg County

Honorable Grace Gilchrist Knie, Circuit Court Judge

---

KEYLAN DEJUAN MCCLINTOCK,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002255

---

APPENDIX

---

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ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA )  
 2 COUNTY OF SPARTANBURG ) IN THE COURT OF GENERAL SESSIONS  
 3  
 4 The State, )  
 -vs- ) TRANSCRIPT OF RECORD  
 5 Keylan Dejuan McClintock, ) 2014-GS-42-5917  
 6 Defendant. ) November 30, 2015  
 7 Spartanburg, South Carolina  
 8  
 9

10 B E F O R E :  
 11 HONORABLE J. DERHAM COLE, JUDGE  
 12  
 13  
 14

15 A P P E A R A N C E S :  
 16 DERRICK BRUCE BULSA, ESQUIRE  
 Attorney for the State  
 17  
 RICHARD HAROLD WARDER, ESQUIRE  
 18 Attorney for the Defendant  
 19  
 20  
 21

22 Linda D. Moffitt  
 23 Circuit Court Reporter  
 24  
 25

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Guilty plea -- page 3.1

No sworn testimony; no exhibits entered into evidence.

1 MR. BULSA: Your Honor, this is the State vs. Keylan  
2 Dejuan McClintock. It's Indictment 2014-GS-42-5917, a true  
3 billed indictment for murder.

4 He's pleading guilty to that charge with a negotiated  
5 sentence of 30 years. He's represented by Dick Warder.

6 THE COURT: You are Keylan Dejuan McClintock.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Mr. Warder is your lawyer.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: How long has he been representing you on  
11 this charge of murder?

12 THE DEFENDANT: About August of this year.

13 THE COURT: Since then have you had plenty of time to  
14 talk to him about the nature of this charge, as well as  
15 your apparent decision to plead guilty to it?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And did you talk to him about your  
18 personal circumstances and your background?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And did you tell him what your race was?

21 THE DEFENDANT: Yes.

22 THE COURT: What did you tell him?

23 THE DEFENDANT: I mean, I didn't tell him what my race  
24 was, no.

25 THE COURT: You didn't tell him?

1 THE DEFENDANT: No.

2 THE WITNESS: Did you tell him what your address was?

3 THE DEFENDANT: No.

4 THE COURT: You didn't? Why not?

5 THE DEFENDANT: I don't know.

6 MR. WARDER: He was in -- he was incarcerated, Your  
7 Honor. His address then was the jail, and that's where he  
8 was at.

9 THE COURT: Well, now, is that the address on his  
10 driver's license?

11 MR. WARDER: No, sir.

12 THE COURT: So he must have an address. Let's put  
13 some information on this sentencing sheet, Mr. Warder.  
14 Those sentencing sheets are supposed to be complete before  
15 they're handed up here.

16 (Pause.)

17 THE COURT: This indictment, 2014-5917, charges you  
18 with the crime of murder.

19 The state alleges that on September the 5th of 2014  
20 you did wilfully and with malice aforethought kill Donald  
21 Travis Harper by shooting him and that he died as a  
22 proximate result of that gunshot wound.

23 Killing a person accompanied by malice aforethought  
24 constitutes the crime of murder. For the crime of murder  
25 you can receive a sentence of life in prison.

1           It carries a mandatory minimum sentence of not less  
2 than 30 years in jail. That 30 years in jail is not  
3 subject to any sort of credits. You don't get credits for  
4 going to school; you don't get credits for acting properly;  
5 you don't get credits for working. You don't get credits  
6 for anything. Do you understand?

7           THE DEFENDANT: Yes, sir.

8           THE COURT: Thirty years means 30 years. It doesn't  
9 mean 30 years minus something. It means 30 years, just  
10 like life means life. Do you understand?

11          THE DEFENDANT: Yes, sir.

12          THE COURT: Did Mr. Warder explain to you what would  
13 have to be proven in court before you could be convicted or  
14 found guilty of the crime of murder?

15          THE DEFENDANT: Yes, sir.

16          THE COURT: And he told you what kind of sentence  
17 could be imposed if you were found guilty?

18          THE DEFENDANT: Yes, sir.

19          THE COURT: Did you tell him everything you know about  
20 the facts that relate to these allegations against you?

21          THE DEFENDANT: Yes, sir.

22          THE COURT: Did you and he discuss whether or not you  
23 have a defense to the charge of murder?

24          THE DEFENDANT: Yes, sir.

25          THE COURT: Do you have one?

1 THE DEFENDANT: No.

2 THE COURT: Did he explain to you each of the  
3 constitutional rights you must give up if you want to plead  
4 guilty?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Did he explain to you that you have a  
7 right to remain silent?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand what when you plead  
10 guilty you give up your right to remain silent? In other  
11 words, you have to answer my questions because I can't take  
12 your guilty plea unless you do.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand your right to remain  
15 silent?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you wish to give that right up in order  
18 to plead guilty?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Did Mr. Warder explain to you that you  
21 have a right to confront and to examine witnesses in court  
22 who provide evidence against you?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand that when you plead  
25 guilty that does not occur?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you wish to give up that right to  
3 examine the witnesses in court?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And you understand what you're giving up?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Did Mr. Warder explain to you about your  
8 right to have a jury trial and to have 12 jurors determine  
9 if you're guilty or not?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand that when you plead  
12 guilty a jury doesn't decide the case? They don't  
13 determine whether or not you're guilty of murder.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand your right to have a  
16 jury trial?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you wish to give that right up in order  
19 to plead guilty?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Did Mr. Warder explain to you that the  
22 crime of murder is classified in the law as a violent  
23 offense?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Did he explain to you that the crime of

1 murder is classified as a most serious offense?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Did he explain to you that the crime of  
4 murder is classified as a no-parole offense?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And in this case that means service day  
7 for day. If you get 30 years, you do 30 years in jail,  
8 assuming you don't die sooner. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you understand the significance of  
11 those designations?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Has anybody promised you anything other  
14 than the negotiations that Mr. Bulsa has stated so far as  
15 the sentence is concerned?

16 THE DEFENDANT: No, sir.

17 THE COURT: Has anybody threatened you or forced you  
18 into pleading guilty?

19 THE DEFENDANT: No.

20 THE COURT: Has anyone coerced you in any fashion or  
21 pressured you in any way that resulted in your decision to  
22 plead guilty?

23 THE DEFENDANT: No, sir.

24 THE COURT: Are you pleading freely and voluntarily?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Was it your decision?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And are you guilty of murder just as I  
4 described it by reading the allegations in this indictment  
5 and explaining to you what the statute provides for?

6 THE DEFENDANT: Yes, yes, sir.

7 THE COURT: You are 21 years old.

8 THE DEFENDANT: Yes, sir.

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

10 THE DEFENDANT: Graduate.

11 THE COURT: Of where?

12 THE DEFENDANT: Byrnes High School.

13 THE COURT: Are you married?

14 THE DEFENDANT: No.

15 THE COURT: Do you have children?

16 THE DEFENDANT: No, sir.

17 THE COURT: Do you work?

18 THE DEFENDANT: Not any more.

19 THE COURT: Have you worked?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Where?

22 THE DEFENDANT: Tietex.

23 THE COURT: Doing what?

24 THE DEFENDANT: Heating and air.

25 THE COURT: Have you ever been treated for any type of

1 substance abuse or addiction?

2 THE DEFENDANT: No, sir.

3 THE COURT: Do you suffer from any such a condition  
4 now?

5 THE DEFENDANT: No, sir.

6 THE COURT: Have you ever been treated for any type of  
7 mental illness or emotional disturbance?

8 THE DEFENDANT: No, sir.

9 THE COURT: Do you suffer from any such a condition  
10 now?

11 THE DEFENDANT: No, sir.

12 THE COURT: Have you had plenty of time to talk with  
13 your lawyer about your decision to plead guilty?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you need any further time?

16 THE DEFENDANT: No.

17 THE COURT: Do you have any questions you need to ask  
18 me about this process or about your decision?

19 THE DEFENDANT: No, sir.

20 THE COURT: Listen to what the solicitor tells me  
21 about the facts that relate to the case.

22 MR. BULSA: Thank you, Your Honor.

23 This occurred on September 5th of 2014 approximately  
24 7:45 in the evening. It happened on [REDACTED] Street  
25 Extension in the Greer community. That's Highway 290.

1           The victim is Donald Travis Harper. Your Honor, he  
2 was 33 years old when he was killed.

3           Mr. Harper and a friend of his, Josh White, were  
4 driving home from their job at a car lot when they saw a  
5 go-cart being ridden in a field. It's a big field that  
6 fronts about three residences on East Poinsett Street. The  
7 address is [REDACTED] Street Extension.

8           They saw this go-cart driving in this field, and  
9 Mr. Harper's go-cart had been stolen the day before.  
10 Mr. Harper lives about a mile away from this location.

11           They saw the go-cart and realized it was Mr. Harper's  
12 go-cart. They pulled the truck into that field and  
13 confronted the individual that was riding the go-cart.  
14 That was a Remero Shell. That is the brother of Sandino  
15 Jackson.

16           Mr. Shell denied stealing the go-cart. There was a  
17 verbal altercation at the site of the go-cart which was  
18 being ridden in the field closer to the roadway.

19           Mr. Harper and Mr. White got back into their truck and  
20 actually drove up towards the last house on this driveway.  
21 This driveway serves four different residences. The owner  
22 of this field lives in the far house. To help the Court  
23 understand, I've got a picture here.

24           Mr. Harper got out at that residence and was on the  
25 phone with 9-1-1, and the elderly couple that lived at

1 that residence had come out into the yard because they had  
2 seen the go-cart riding. The gentleman of the couple told  
3 us that he'd actually told the go-cart rider not to ride  
4 the go-cart in his field.

5 So you've got the elderly couple; you've got Mr.  
6 Harper there on the phone with 9-1-1 waiting for the police  
7 to arrive to deal with the stolen-go-cart situation.

8 Mr. Harper sends his friend back to -- or sends his  
9 friend to their house and asks for him to go get his wife,  
10 get Mr. Harper's wife. That's Nicole Harper. She's seated  
11 in the gallery.

12 Mrs. Harper came to the residence, drove down the  
13 driveway and drove to where her husband was, parked in the  
14 neighboring house's driveway and got out to see what was  
15 going on, to assist her husband.

16 There was some dispute over how fast she was driving  
17 up the driveway, whether she almost hit somebody that was  
18 walking on the driveway towards the location.

19 What's going on as she's driving in, her husband's on  
20 the phone with 9-1-1. Sandino Jackson, who is Remero  
21 Shell's brother, older brother, come to where Mr. Harper  
22 was.

23 You can hear on the 9-1-1 call some verbal exchange  
24 between those two. You hear when the wife gets, shows up,  
25 because Mr. Jackson then goes and starts addressing the

1 wife. Mr. Harper is afraid for his wife, drops the phone  
2 and essentially goes and tackles Sandino Jackson near where  
3 the wife was.

4 There's a slope down the driveway towards the field.  
5 Those, the two men, tumble down the slope and begin a  
6 fistfight.

7 while there on the ground fighting, Mr. McClintock  
8 comes up the road, up the driveway, with Remero Shell.  
9 They stayed in the trailer, which was the third residence  
10 down from the -- from the far residence. They come walking  
11 up. They see the fight.

12 The elderly couple tells us that Mr. Jackson had the  
13 upper hand and was assaulting Mr. Harper. Mr. Harper would  
14 have been on the ground. Sandino Jackson would have been  
15 over him kind of towards the side.

16 And for some reason Mr. McClintock comes up with a gun  
17 and immediately begins shooting at the victim. He shot at  
18 him at least four times, struck him four times. Three of  
19 those were through-and-through wounds. One of the  
20 wounds -- one of the gunshots went from his lower  
21 extremity, through his chest, through his heart. And that  
22 bullet was recovered from his body at the autopsy.

23 After the shots were fired the three men ran back to  
24 their trailer. Of course 9-1-1 was called once again.  
25 E.M.S. arrived; police arrived. They find everybody in the

1 location.

2 Mr. McClintock had stayed back towards the trailer  
3 area. Mr. Jackson, who had been involved in the fight,  
4 came up to talk with the police. Mr. Jackson leads the  
5 police to Mr. McClintock.

6 Mr. McClintock had hidden the gun that he used under a  
7 rock in the front yard of the residence, of the trailer  
8 residence. He came and readily admitted that he was  
9 involved in the shooting. Everybody was separated and  
10 taken to the police station.

11 The gun was recovered. Unfortunately, Your Honor, the  
12 gun was also stolen. We actually had that witness coming  
13 to testify. It was stolen about three weeks prior to this  
14 shooting.

15 It was determined that the go-cart was, in fact,  
16 Mr. Harper's. Another investigator investigated that case.  
17 Mr. Jackson and Mr. Shell, two brothers, later pled guilty  
18 to receiving stolen goods of that stolen go-cart.

19 This is one of those crazy cases, Your Honor. It's  
20 sort of unexplained. I can't understand why it happened.

21 Mr. Harper's father is here, as well as his wife and  
22 friend. We were set to try this case this week.

23 Mr. McClintock's only criminal history was a  
24 misdemeanor receiving stolen goods conviction from December  
25 of 2013.

1 THE COURT: All right. Mr. McClintock, you heard what  
2 the solicitor told me.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you agree with him or disagree with  
5 him?

6 THE DEFENDANT: I agree.

7 THE COURT: Do you still want me to accept your plea  
8 of guilty?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. I'll accept it and hear from  
11 you and Mr. Warder.

12 MR. WARDER: Your Honor, it's a negotiated sentence.  
13 My client's a young man, 21 years old. The events  
14 that day have woefully changed a number of lives certainly.  
15 Our hearts go out to the victims, their families, Your  
16 Honor.

17 He wasn't armed with the gun. The gun was in the  
18 house. He just grabbed it and ran down. The rest of it's  
19 almost unexplainable, Your Honor.

20 THE COURT: How did he explain it to you?

21 MR. WARDER: That he ran down there to try and break  
22 up the fight and shot the gun.

23 THE COURT: All right. Mr. McClintock, anything you  
24 want to add?

25 THE DEFENDANT: That's all.

1 THE COURT: Anything else on behalf of the state?  
2 MR. BULSA: No, sir.  
3 THE COURT: On Indictment 2014-5917, Sentence of the  
4 Court is you, Keylan Dejuan McClintock, be confined to the  
5 South Carolina Department of Corrections for a period of 30  
6 years.

7 END OF REQUESTED TRANSCRIPT OF RECORD

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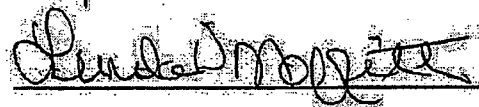
CERTIFICATE

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I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh 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 trial of the captioned cause, relative to appeal, in the court of General Sessions for Spartanburg county, South Carolina, on the 30th day of November 2015.

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

August 26, 2016



Linda D. Moffitt  
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )  
 )  
 Keyland D. McClintock, #366251 )  
 Full name and prison number (if any) of Applicant. )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )

IN THE COURT OF COMMON PLEAS

2016-CP-42-2908

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth 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 Perry Correctional Institution
2. Name and location of Court which imposed sentence Spartanburg Co. General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: 2014A4210202914  
Murder  
 (a) \_\_\_\_\_  
 (b) \_\_\_\_\_  
 (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:  
Nov. 30, 2015 - 30 Years  
 (a) \_\_\_\_\_  
 (b) \_\_\_\_\_

CLERK OF COURT  
 SPARTANBURG COUNTY  
 2016 AUG -8 AM 10:39  
 M. HOPE BLACKLEY

- (c) \_\_\_\_\_
- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty  X
  - (b) after a plea of not guilty \_\_\_\_\_
  - (c) after a plea of nolo contendere \_\_\_\_\_
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?  
 No
- 8. If you answered "yes" to (7), list:
  - (a) the name of each Court to which you appealed:
    - i.  N/A
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (b) the result in each such Court to which you appealed:
    - i.  N/A
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (c) the date of each such result:
    - i.  N/A
    - 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) \_\_\_\_\_ Did not know I could.
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: See attaches pages (Reserve The Right To Amend)

2016 AUG - 8 AM 10: 39  
 M. HOPE BLACKLEY

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

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

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

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

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

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

- (a) the specific nature thereof: N/A
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed: N/A
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (c) the disposition thereof: N/A
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

STATE OF SOUTH CAROLINA  
 DEPARTMENT OF CORRECTIONS  
 2016 AUG -8 AM 10:39  
 H. HOPE BLACKLEY

iv. \_\_\_\_\_

(d) the date of each such disposition: N/A

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

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? N/A

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

(a) which grounds have been presented: N/A

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: N/A

(a) \_\_\_\_\_

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

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

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

2016 AUG -8 AM 10:39  
MAYOR BLACKLEY  
START/RECORD/CLERK

- (a) your arraignment and plea?  X
- (b) your trial, if any?  X
- (c) your sentencing?  X
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
- (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. \_\_\_\_\_ Richard Warder
- ii. \_\_\_\_\_ P.O. Box 26133
- iii. \_\_\_\_\_ G'Ville, S.C. 29616

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

\_\_\_\_\_ New Trial

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

NO

CLERK OF COURT  
 SPARTANBURG COUNTY  
 2016 AUG -8 AM 10:39  
 M. HOPE BLACKLEY

LEGAL CITATION

The applicant allege and can prove that he was denied effective assistance of trial counsel. The applicant submits that the extensive record speaks for itself as to the competency of counsel. Trial counsel for the applicant was not diligent in his representation of the applicant and did not perform well within the range of competence demanded of attorneys in criminal matters and did not perform within the wide range of reasonable professional assistance.

In Strickland v. Washington, 466 U.S. 668, the United States Supreme Court held that a convicted defendant's claim that counsel's assistance was so defective as to require a reversal of a conviction requires that the defendant show, first, that counsel's performance was deficient and, second, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial, 104 S.Ct. 2064. The applicant submits that counsel's performance was deficient and his performance prejudiced him.

Counsel's performance prejudiced the applicant to the point where there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. The applicant is requesting an evidentiary hearing and a new trial.

Applicant contend and can show that his conviction and sentence was in violation of the U.S. Constitution, S.C. Constitution and the laws of this state.

The applicant is asserting a 5th, 6th, and 14th Amendment violation which sets forth a prima facie violation of his constitutional rights. Applicant's grounds for relief are constitutional dimension. The fundamental defects alleged are standards that require establishment of a complete miscarriage of justice and an omission inconsistent with the rudimentary demands of fair procedure.

The following acts and omissions by counsel constituted ineffective assistance of counsel.

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(ANSWERS TO QUESTION #10 AND #11 ON PCR APPLICATION)

- (1) Counsel Was Ineffective For Allowing The State To Admit Into Evidence A Statement Applicant Made While In Police Custody Because The Statement Was Involuntary And Induce By A Promise Of Leniency.

Trial counsel was ineffective for failure to challenge and allow the applicant's statement because the officer was in a position of apparent authority, and his comments are tantamount to a promise of leniency.

The test for determining the admissibility of a statement is whether it was knowingly, intelligently, and voluntarily given under the totality of the circumstances. State v. Rabon, 275 S.C. 459, 272 S.E.2d 634 (1980). A statement induced by a promise of leniency is involuntary if so connected with the inducement as to be a consequences of the promise. See, State v. Brown, 268 S.C. 99, 232 S.E.2d 324 (1977). The state bears the burden of proving beyond a reasonable doubt the statement given was voluntary. State v. Goolsby, 268 S.E.2d 31, 101 S.Ct. 616. The State cannot meet its burden of showing the applicant's statement was voluntary and not the product of the officer's promise of leniency. The statement should have been excluded.

Applicant allege that he made self-incriminating statements which were induced by the investigating officer's promise of leniency. Applicant asserts that trial counsel was ineffective for failing to inform applicant prior to his guilty plea that his statements may have been made involuntary and, if so, would be inadmissible at trial. Statements are inadmissible at trial when they are made involuntary. State v. Franklin, 299 S.C. 133 382 S.E.2d 911 (1989). A statement is made involuntary when it is induced by a promise of leniency. State v. Peake, 291 S.C. 138, 352 S.E.2d 487 (1987).

Because of trial counsel's deficient performance, he would not have pled guilty, and would have insisted on going to trial to challenge the charge grounded on his allegedly involuntary statements.

- 2) Involuntary Plea.

The applicant's alleged errors have not been previously litigated or waived in the proceedings resulting in the conviction or in any other proceeding that the petitioner has

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taken to secure relief from his conviction.

Allegations in applicnat's PCR application must be deemed true until those allegations of involuntary plea are controverted by the state. Until allegation contained in verified application for PCR are controverted by the state, they are deemed to be true for purpose of determining whether an evidentiary hearing should be held.

A defendant waives several constitutional rights by pleading guilty, the due process clause requires that the guilty pleas are entered into voluntary, knowingly and intelligently. See, Boykin v. Alabama, 395 U.S. 238 and Pittman v. State, 337 S.C. 597 524 S.E.2d 623 (1999).

Boykin, requires that a defendant be made aware of:

- 1) The right to a jury trial;
- 2) The privilege against self-incrimination;
- 3) The right to confront one's accusers.

Additionally, the South Carolina Supreme Court requires that a defendant entering a guilty plea be made aware of:

- 1) The nature and crucial elements of the offense (See, Henderson v. Morgan), 96 S.Ct. 2253 (1976).
- 2) The maximum and any minimum penalty (Pittman v. State), 524 S.E.2d.
- 3) The nature of the constitutional right being waived. Pittman, supra, Dover v. State, 405 S.E.2d 391 and Hazel v. State, 271 S.E.2d 602 (1980).

Applicant was denied a fair proceeding because of the ineffectiveness of counsel. If it were not for counsel's errors and omissions, the outcome of the proceeding would have been different. A valid waiver must be established under the due process clause and cannot be presumed from a silent record.

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(3) Trial Counsel Was Ineffective For Failure To Interview Potential Witnesses On His Behalf.

In this application, applicant asserts ineffective assistance of counsel due to the attorney failing to interview potential witnesses, before advising him to plead guilty. If applicant's case had gone to trial rather than to the guilty plea proceeding, the witnesses could have changed the outcome, or at least changed his decision to plead to the charge. This prejudiced the applicant and the outcome of the case. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052. Cobb v. State, 408 S.E.2d 223.

There is evidence in the record indicating defense attorney failure to conduct adequate investigation. Defense counsel could easily have investigated and discovered the facts and taken proper actions. The record in this case established a reasonable probability that, but for counsel's error's, applicant would not have pled guilty but would have insisted on trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366.

(4) Trial Counsel Failed To Request A Mental Competency Hearing/Evaluation Which Denied Him Due Process Of Law.

The applicant in the reference case gave his attorney information about his childhood. Mental competency became a issue because of the prior treatment and medication that he was taking. Trial counsel refused to request a mental evaluation which denied him due process and procedural due process of law.

When a criminal defendant's mental capacity is questioned and the trial attorney has reason to believe that the applicant is not fit to stand trial because the person lacks the capacity to understand the proceeding against him or to assist in his own defense, upon request, the judge shall:

- 1) Order examination of the person by two examiners designated by the Department of Mental Health.
- 2) Order the person committed for examination and observation to an appropriate facility of mental health or Department of Disabilities and special need.

In applicant's case, defense counsel's representation also should have included S.C. Code § 44-23-410. Counsel was in a unique position to evaluate applicant's ability to assist him,

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since that entailed frequent conversation and interaction. Defense counsel's concern about applicant's mental capacity was additionally supported by the uncharacteristic nature of the charge. Applicant had a relatively clean criminal record when he was arrested. The prosecution would have suffered no harm from a mental examination if trial counsel would have requested an examination well before his hearing/trial.

In Medina v. Singletary, 116 S.Ct. 2505, Due Process [also] requires that a hearing be held whenever evidence raises a sufficient doubt about the mental competency of an accuse to stand trial. The procedural competency principle operates as a safeguard to ensure that the substantive competency principle is not violated. Claims involving these principles raise similar but distinct issues. The issue in a substantive claim is whether the defendant was in fact competent to stand trial, but the issue in a procedural competency claim is whether the trial court should have conducted a competency hearing. See, Sheley v. Singletary, 955 F.2d 1434, 1438; United States v. Day, 949 F.2d 973, 981. A denial of either of these rights as in the case at bar should provide the basis for relief. Weisberg v. Minnesota, 29 F.3d at 1276.

Applicant have made a substantive competency claim by alleging he was tried and convicted while mentally incompetent. Due Process prohibits the conviction of a person who is mentally incompetent. Bishop v. U.S., 350 U.S. 961, 76 S.Ct. 44, 100 L.Ed 835; Godines v. Moran, 509 U.S. 389, 113 S.Ct. 2680; Pate v. Robinson, 383 U.S. 375, 86 S.Ct. 836; Jeter v. State, 417 S.E.2d 594.

Trial counsel knew that sanity was an issue that should have been fully addressed. Mental alertness and understanding displayed by the applicant in colloquies with the trial court did not justify ignoring applicant's history with his attorney pronounced irrational behavior, while the applicant's demeanor at the plea hearing might be relevant to the ultimate decision as to his sanity, it cannot be relied upon to forego a hearing on that very issue. Bishop, 350 U.S. 961, 76 S.Ct. 440.

Applicant's constitutional rights were abridged by his failure to receive an adequate hearing on his competence to

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stand trial. See, Cooper v. Oklahoma, 517 U.S. 348 116 S.Ct. 1373 (1996) and Drope v. Missouri, 420 U.S. 162, 95 S.Ct. 896.

In Pate v. Robinson, 383 U.S. 375, the court held the failure to observe procedures adequate to protect a defendant's right not to be tried and convicted while incompetent to stand trial deprives him of his due process right to a fair trial.

Counsel's performance was deficient and that deficient performance prejudiced his defense.

(5) Trial Counsel Was Ineffective For Failure To Put The State's Case Through Adversarial Testing And Raise A Self-Defense Claim.

Trial counsel failed to raise a self-defense claim based upon the evidence and witness statement that were given to the police. The evidence is plain that under the totality of the circumstances, self-defense should have been used as a claim for the following reason.

The victim's friend gave a statement that he and the victim were smoking a blunt (marijuana) at the time that they observed the go-cart. It is evident that the aggressor was the victim and his wife. Several statements were given that the victims wife stated that you don't know who you are messing with, I will kill you. The victim and his wife was unruly and combative.

The law recognizes the right of every person to defend himself or herself or a friend, relative, or another from death or from sustaining serious bodily harm. To do this a person may use such force as is reasonably necessary.

The right of self-defense is founded upon necessity, either actual or reasonably apparent necessity. The applicant can satisfy the four basic elements that are required for self-defense.

The applicant can show that he was without fault in driving on the immediate difficulty which gave rise to the necessity of using deadly force which resulted in the taking of the victim's life.

The applicant can show by witnesses account that he did not provoke, initiate, or otherwise through his own fault about a difficulty in the use of deadly force against an attack which was caused by that provocation.

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The applicant can show that at the time the fatal act was committed he believed that he was in imminent danger of losing his life or sustaining serious bodily injury, or some other person was in such imminent danger. The term imminent danger means an immediate or present danger and not a past or future danger. The applicant's belief was reasonable and that a reasonably prudent person of ordinary firmness and courage would have entertained the same belief.

The applicant and other person being defended actually was in imminent danger. The circumstances were such as would warrant a person of ordinary prudence and courage to inflict the fatal injury in order to save himself or some other person from death or serious bodily injury. It can be shown that a reasonably prudent person of ordinary firmness and courage if acting under the same or similar circumstances would have reached the same conclusion and entertained the same belief. The applicant had a right to act upon appearances.

One does not have to wait until his or her assailant gets the advantage, for one always has the right under the law of self-preservation to prevent another from getting an advantage. The applicant had no other means of avoiding the danger of losing his life or a friends life or sustaining the infliction of serious bodily injury other than to act as he did under the particular circumstances as existed.

There is a reasonable probability that had counsel put the state's case through adversarial testing and put forth a self-defense claim based upon the totality of the circumstances, the applicant would have elected to go to trial as opposed to pleading guilty. The outcome of the proceeding would have been different.

Under the totality of the circumstances the victim <sup>is</sup> the aggressor from the start by hitting the applicant's <sup>car</sup> with a car and then fighting him. Trial counsel just went along with what was in the solicitor's file instead of putting <sup>the</sup> state's case through adversarial testing.

Counsel's performance is held to the standard of reasonable professional assistance and he has a duty to bring such skill and knowledge as will render the trial a reliable adversarial

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testing process Id. at 688, 104 S.Ct. at 2065. Investigation is an essential component of the adversary process. Because the adversarial testing process generally will not function properly unless defense counsel has done some investigation into the prosecution's case and into various defense strategies. Kimmelman v. Morrison, 106 S.Ct. 2574, quoting, Strickland, 466 U.S. at 691.

OFFICE OF THE  
SPECIAL AGENT IN CHARGE

2016 AUG -8 AM 10:39

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA )  
 )  
County of S SPARTANBURG )

VERIFICATION

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

Kayla McC...

SWORN to and subscribed before me this 3<sup>rd</sup>  
day of August, 2016.

Nancy C. Merchant (L.S.)  
Notary Public

My Commission Expires: 1-23-2023

CLERK OF COURT  
SPARTANBURG, S.C.  
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M. HOPE BLACKLEY

**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.

*Kesh McClintock* ✓  
 Kesh McClintock Applicant

SWORN or affirmed to and subscribed before me this  
3<sup>rd</sup> day of August, 2016.

*Nancy C. Murchant*  
 \_\_\_\_\_  
 Notary Public

My Commission Expires: 1-23-2023

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- c. Counsel failed to interview potential witnesses on Applicant's behalf.
- d. Counsel failed to adequately investigate.
- e. Counsel failed to request a mental competency evaluation and hearing, which denied him due process of law. Applicant was tried and convicted while mentally incompetent.
- f. Counsel failed to put the state's case through adversarial testing and raise a self-defense claim.

## 2. Involuntary Guilty Plea

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

### III.

Applicant claims ineffective assistance of counsel in his application. Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

#### IV.

Respondent further submits Applicant's second allegation that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983);

Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56.

Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

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

V.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an

evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

## VI.

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

## VII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claims of ineffective assistance of counsel and involuntary guilty plea.

Respectfully submitted,

ALAN WILSON  
Attorney General

ROBERT BOLCHOZ  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

VALERIE GARCIA GIOVANOLI  
Assistant Attorney General

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

By:   
ATTORNEYS FOR RESPONDENT

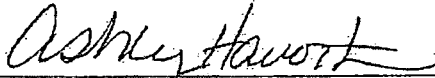
May 16, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
	)	2016-CP-42-2908
KEYLAND D. MCCLINTOCK, #366251,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____		

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

**Mr. Rodney Wade Richey, Esquire**  
**Richey & Richey, PA**  
**PO Box 10916**  
**Greenville, SC 29603-0916**

DATED this 16<sup>th</sup> day of May, 2017.

  
 \_\_\_\_\_  
 Ashley Haworth, Paralegal  
 For Respondent

1 STATE OF SOUTH CAROLINA )  
 2 COUNTY OF SPARTANBURG ) COURT OF COMMON PLEAS NONJURY

3  
 4 KEYLAND D. McCLINTOCK, ) TRANSCRIPT  
 5 ) APPLICANT, ) OF  
 6 ) vs. ) RECORD  
 7 STATE OF SOUTH CAROLINA, )  
 8 RESPONDENT. ) 2016-CP-42-2908

9  
 10 September 18<sup>th</sup>, 2017  
 11 Spartanburg, South Carolina

12  
 13 B E F O R E:

14 THE HONORABLE GRACE GILCHREST KNIE, Judge.

15  
 16 A P P E A R A N C E S:

17 RODNEY W. RICHEY  
 18 ESQ.  
 Attorney for the Applicant

19 VALERIE GIOVANOLI  
 20 ASSISTANT ATTORNEY GENERAL  
 Attorney for the Respondent

21  
 22  
 23 PAMELA E. GREEN  
 24 Circuit Court Reporter  
 Seventh Judicial Circuit

25

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P R O C E E D I N G S

MS. GIOVANOLI: This is the matter of Keyland McClintock versus the State of South Carolina. Docket Number 2016-CP-42-2908 and I'm sorry.

May it please the Court?

THE COURT: Oh, yes, ma'am. Yes, ma'am. Thank you.

MS. GIOVANOLI: Okay. We're before the Court on an application for post-conviction relief filed on August 8<sup>th</sup>, 2016.

Applicant was indicted in 2014 for murder. That was Case Number 2014-GS-42-5917. Applicant was represented by Mr. Richard Warder, and, on November 30<sup>th</sup>, 2015, Applicant pled guilty to murder before the Honorable J. Derham Cole. Judge Cole sentenced Applicant to 30 years in prison then pursuant to a negotiated agreement between the State and the defense, and Applicant did not appeal his guilty plea or his sentence.

The Applicant is present and represented by Mr. Rodney Richey, Richey and the State is also present and ready to proceed. So, at this point, I will hand it over to Mr. Richey.

THE COURT: Thank you.

Mr. Richey.

MR. RICHEY: Your Honor, we call Mr. McClintock.

Keyland McClintock - Direct examination  
by Mr. Richey

1 THE COURT: Good morning, Mr. McClintock.

2 THE WITNESS: Good morning.

3 THE COURT: If you'll raise your right-hand for me.

4 KEYLAND MCCLINTOCK, being first duly  
5 sworn, testified as follows:

6 THE COURT: Okay. Be seated. Make yourself  
7 comfortable.

8 All right?

9 MR. RICHEY: Judge, can I give him his stuff?  
10 Approach the witness?

11 THE COURT: Sure.

12 MR. RICHEY: His paperwork.

13 DIRECT EXAMINATION

14 BY MR. RICHEY:

15 Q Sir, would you state your name please?

16 A Keyland McClintock.

17 Q And, Mr. McClintock, are you currently in the  
18 Department of Corrections?

19 A Yes.

20 Q And what are you in the Department of Corrections for?

21 A Murder.

22 Q Okay. And were you convicted in Spartanburg County?

23 A Yes.

24 Q Okay. Who represented you on those cases?

25 A Richard Warder.

Keyland McClintock - Direct examination  
by Mr. Richey

1 Q Okay.

2 A Yeah.

3 Q All right. You're gonna have to speak up.

4 A Riched Warders (sic).

5 Q Okay. And you filed this application for  
6 post-conviction relief because you believe that Mr. Warder  
7 did not effectively represent you.

8 Is that correct?

9 A Yes.

10 Q And you raised issues in your application and one of  
11 the issues you raised is you believed that he -- you should  
12 of had a mental evaluation.

13 Is that correct?

14 A Yes, sir.

15 Q And, and why do you believe that?

16 A Because I mean I've been on mental health medication  
17 before and I still am. I've had a couple evaluations, and  
18 it's just that basically about it---

19 Q Did---

20 A ---on that.

21 Q Did you discuss that with Mr. Warder?

22 A Yeah. Well, his investigator, when he saw me in the  
23 county, I told him who I was speaking with, which, at the  
24 time, was Westgate Family Therapy, and he asked me why I was  
25 speaking to them. I told him about why I was speaking to

Keyland McClintock - Direct examination  
by Mr. Richey

1 them.

2 Q And were you on any medication at that point?

3 A Yes.

4 Q Okay. And so do you believe that you had of got a  
5 mental evaluation then it would of helped your case?

6 A Yes, sir.

7 Q why is that?

8 A I'm not sure what it would of showed, but I mean it, it  
9 could of, it could of helped. In my opinion, I believe it  
10 would of helped.

11 Q And you claim that Mr. Warder failed to interview  
12 witnesses?

13 A Yes.

14 Q And what witnesses were those?

15 A Mr. Jackson and I believe his sister.

16 Q Uh-huh. (Affirmative).

17 A They were never interviewed or whatever.

18 Q And is, and is a gentleman here today---

19 A Yes.

20 Q ---that you claim he failed to interview?

21 A Yes.

22 Q And who is that?

23 A Sandino Jackson. Sandino Jackson.

24 Q Okay. And how would Mr. Jackson help your case?

25 A He was actually there on the scene when the events took

Keyland McClintock - Direct examination  
by Mr. Richey

1 place, and, from certain things that happened, that was said  
2 about the case, about him never being on the ground, which  
3 he -- I was told so I would be advised to take the plea.  
4 That was never the case. He was on the ground and he was  
5 hit with a car.

6 Q Now, this was a, this was a, a shooting that took  
7 place, correct?

8 A Yes.

9 Q Okay. And, and where did it take place?

10 A In the Greer area of Spartanburg.

11 Q Okay. Was it at a home?

12 A Yeah, a home.

13 Q Okay. And what was the facts surrounding the shooting?

14 A They were a guy came up and it was like a little  
15 altercation had started. After Mr. Jackson was hit with a  
16 car, and the deceased, my victim, Mr. Harper, he jumped on  
17 him from behind and he was on the ground at the time when I  
18 shot the gun.

19 Q Okay. And, and you did the shooting -- is it your  
20 position you did the shooting in an attempt to protect him  
21 or protect yourself?

22 A Yes, sir, to protect him.

23 Q Okay. And, and did you and Mr. Warder discuss the  
24 facts surrounding that shooting?

25 A Very briefly.

Keyland McClintock - Direct examination  
by Mr. Richey

1 Q Okay. And you believed -- did you give a statement?

2 A Yeah, I gave a statement.

3 Q Okay. And did you believe that Mr. Warder should of  
4 developed that statement, looked into suppressing it?

5 A Yes, I feel like he should of been.

6 Q Okay. Did, did you talk to him about that?

7 A No, I didn't get a chance to. I -- when I spoke with  
8 him, every time I spoke with him, it was very briefly. I  
9 only spoke with him two times.

10 Q Okay. And, and do you believe, if he had this mental  
11 evaluation, that -- well, let me go back to this.

12 Do you believe he could of raised a self-defense  
13 defense, self-defense defense?

14 A A self-defense defense or defense of others, Castle  
15 Doctrine.

16 Q Okay. This was not your property, correct?

17 A No. But I had a legal right to be where I was at.

18 Q Okay. Did you discuss that with Mr. Warder?

19 A Yes.

20 Q You did?

21 A Yes.

22 Q And what was his response to that?

23 A That I didn't have any other defense because  
24 Mr. Jackson told his investigator that he was never on the  
25 ground, and he never got hit with a car, which, if he had of

Keyland McClintock - Direct examination  
by Mr. Richey

1 looked, it was in his statement two times that he said he  
2 got hit with a car.

3 Q Okay. And, and you understand that you're charged with  
4 murder and you got the minimum sentence, correct?

5 A Yes.

6 Q It's a lot, but you got the minimum, correct?

7 A (Witness nods affirmatively.)

8 Q And you had -- you got to answer so she can take it  
9 down.

10 A Yes.

11 Q Okay. And you understand, if you win this PCR, you  
12 will go back and you can be facing life without parole?

13 A Yes.

14 Q You understand that?

15 A Yes.

16 Q And, and this, and this is what you want to do?

17 A Yes, sir.

18 Q Okay. All right. Those are the issues you raised in  
19 your application, correct?

20 A Yes.

21 Q Okay. Thank you. Answer any questions the Attorney  
22 General has for you.

23 CROSS-EXAMINATION

24 BY MS. GIOVANOLI:

25 Q Good morning.

Keyland McClintock - Cross-examination  
by Ms. Giovanoli

1           what were you being seen for with regard to your mental  
2 health?

3   A     PTSD and anxiety.

4   Q     Was that after this incident?

5   A     No, before.

6   Q     Okay. So, the PTSD wasn't a result of the shooting?

7   A     No.

8   Q     Okay.

9   A     It, it -- I mean it got worse with, you know, with the  
10 incident after it happened.

11   Q     Okay. And prior to this incident happened, you worked  
12 at Tietex is it called?

13   A     Tietex.

14   Q     Tietex.

15           Okay. And you installed heating and air conditioning?

16   A     I was an assistant helping with heating and air.

17   Q     Okay. And you also graduated high school?

18   A     Yes, ma'am.

19   Q     Is that correct?

20           Okay. And is it your claim today that you were  
21 mentally incompetent to go through with this guilty plea?

22   A     Yes.

23   Q     You were -- do you recall that you were sworn to tell  
24 the truth during your guilty plea?

25   A     Yes.

Keyland McClintock - Cross-examination  
by Ms. Giovanoli

1 Q Okay. And on Page 5, whenever the Court asked you if  
2 you discussed whether or not you had a defense to the charge  
3 of murder with your counsel, you told him that you did  
4 discuss that, and he asked you if you had one and your  
5 response was no on Page 6.

6 Is that, that correct?

7 A Yes, because I was advised by my attorney at the time  
8 that I didn't have one, and, as he was asking me questions,  
9 he was telling me, you know, how to answer these questions  
10 cause I wasn't really familiar with the legal system. So,  
11 he was advising me yes, no, how to answer the questions.

12 Q Okay. So, your testimony is that your lawyer told you  
13 how to answer these questions?

14 A He did, yes.

15 Q Okay. So, that wasn't a true answer that you gave to  
16 the Court?

17 It was just something you were told to tell him?

18 Is that what your testimony is?

19 A Yes.

20 Q Okay. So, you lied during your guilty plea?

21 A Based upon what he advised me to do.

22 Q Okay. I apologize for fumbling with papers.

23 THE COURT: Take your time.

24 Q Okay. And also, on Page 10 of the guilty plea, under  
25 oath, you told the Court that you had never been treated for

Keyland McClintock - Cross-examination  
by Ms. Giovanoli

1 any type of mental illness or emotional disturbance.

2 Do you remember that?

3 A Yes.

4 Q Why didn't you tell him what you're telling the Court  
5 today?

6 A Again, everything I was advised to I was advised by Mr.  
7 Warders (sic) at the time. When I was standing there, he  
8 was leaning over telling me yes, no, how to answer the  
9 question. He said if you don't answer the questions the way  
10 they need to be answered, then he won't accept your guilty  
11 plea. I know that I was suppose to go ahead and give him --  
12 go ahead and stay with that. Then I would yes, I was on  
13 mental illness medicine -- I was on medicine at the time of  
14 my hearing.

15 Q Okay. So, if someone tells you to lie, you would, you  
16 would lie?

17 A I mean I'm following my counsel's advice.

18 Q Okay. Then also, whenever the solicitor put forth all  
19 the facts of this case into the record, that was -- started  
20 on Page, I believe, 11. No, bottom of Page 10 and it goes  
21 on until Page 14. And then, on Page 15, the Court asked you  
22 if you agreed or disagreed with the facts as presented by  
23 the solicitor, and you responded I agree.

24 So, your testimony today now is that that was also a  
25 lie?

Keyland McClintock - Cross-examination  
by Ms. Giovanoli

1 A Yes.

2 Q Okay. And you gave a statement when the police arrived  
3 to the scene of the crime.

4 Is that correct?

5 A I gave a statement at the Sheriff's Office.

6 Q Okay. At the Sheriff's Office. I'm sorry.

7 What was that statement or do you recall or do you need  
8 to look back?

9 A I got it right here. My statement stated that, on the  
10 evening of September 5<sup>th</sup>, 2014, me and Sandino were riding  
11 his go-cart in his yard and we finished and let his brother  
12 ride and went into the house shortly after. I looked out  
13 the door and noticed his brother riding in an open grassy  
14 field and then a white Jeep cut across the grass and I  
15 noticed him going around the go-cart at which time I  
16 couldn't see Romell because of a tree.

17 So, I stepped back and told Dino I think something is  
18 happening with his little brother. So, he left and went  
19 down there to the field where he was. I looked out the door  
20 again and a man in a white Jeep was leaving -- no, a man in  
21 a white Jeep was trying to fight Romell.

22 I went next door and I grabbed his grandparents so they  
23 come could help and see what's going on. Shortly after,  
24 when I came out, he was yelling the man hit him with a car,  
25 and he -- I seen him speed off.

Keyland McClintock - Cross-examination  
by Ms. Giovanoli

1 Q And that's all in your statement?

2 A No.

3 Q No, you can continue.

4 A And then I went back in the house. I saw a gun. I put  
5 it in my pocket because I was afraid for myself and the  
6 safety also. And after that, then Sandino and another man  
7 start arguing about the guy who had just hit him with the  
8 car, and me and his brother approached trying to calm him  
9 down and get him to come into the house, and a lady told us  
10 to leave.

11 As we were leaving and started walking, I noticed a red  
12 or burgundy sedan fly into the driveway, and we yelled for  
13 her to slow down, you also hit us. I heard more arguing  
14 between Sandino and the man get louder. And when I turned  
15 around, the man was running toward the way we were walking,  
16 but he struck Sandino with his fist. At the time, they fell  
17 on the ground naturally, and when I shot the gun, I shot the  
18 gun out of fear. I put the gun up and I waited for the  
19 police.

20 Q So, that's slightly different then the testimony you're  
21 giving here today.

22 Is that correct?

23 A What do you mean?

24 Q You said that you -- a car hit one of your friends and  
25 so -- and then the victim got on top of him and they were

Keyland McClintock - Cross-examination  
by Ms. Giovanoli

1 fighting and you came out and shot him because you were  
2 scared for your friend's life.

3 None of that's in your statement to law enforcement, is  
4 it?

5 A No.

6 Q Okay. And, in this case, you actually shot the victim  
7 four times.

8 Is that correct?

9 A Yes.

10 Q Okay. Don't you think you could of just shot him one  
11 time maybe in the leg if you were scared for your life?

12 A I didn't even know he was hit until I heard someone  
13 saying he was hit. I wasn't trying to hit him. I was  
14 starting to break up the fight down like kind of toward that  
15 direction. And when I realized he was hit, then --.

16 Q Okay. And this was -- it was your decision to plead  
17 guilty.

18 Is that right?

19 A Yeah, based upon his advice. He told me not -- it'd be  
20 in his behalf to plead guilty because, if I went to trial,  
21 I, more likely, you know, get a life sentence.

22 Q Okay. You allege that he failed to pursue any type of  
23 defense.

24 What type of defense did you think you had?

25 A Defense of others.

Keyland McClintock - Cross-examination  
by Ms. Giovanoli

1 Q Defense of others.

2 So, that's based on your testimony today, but not the  
3 story that you told back in 2014?

4 A Well, I brought it up to him and he just -- he went  
5 on---

6 Q What did you bring up to him?

7 A ---kind of fast talking.

8 Q Did you bring up the same---

9 A I brought up---

10 Q ---the same story in your statement---

11 A I brought up---

12 Q ---or this story today?

13 A I brought up self-defense, defense of others, and what  
14 other kind of defenses could I use. He told me I didn't  
15 have a defense because Mr. Jackson told his investigator he  
16 was never on the ground and never got hit with a car.

17 Q Okay. I have no further questions. Thank you.

18 MR. RICHEY: No other questions.

19 Call Mr. Warder.

20 THE COURT: Okay. Mr. McClintock, sir, you may step  
21 down and you can take your things with you. Watch your  
22 step.

23 Mr. Warder.

24 MR. RICHEY: No, excuse me. I'm sorry, Your Honor.

25 I'm gonna call Nakesha Pearson. Sorry, Your Honor.

Nakesha Pearson - Direct examination  
by Mr. Richey

1 THE COURT: Thank you.

2 Good morning, ma'am.

3 THE WITNESS: Good morning.

4 THE COURT: If you will, raise your right-hand.

5 NAKESHA PEARSON, being first duly  
6 sworn, testified as follows:

7 THE COURT: Okay. Thank you. Be seated --

8 THE WITNESS: All right.

9 THE COURT: -- and just make yourself comfortable  
10 there. Let me move that up.

11 DIRECT EXAMINATION

12 BY MR. RICHEY:

13 Q Ma'am, can you state your name please?

14 A Nakesha Pearson.

15 Q Okay. Ms. Pearson, do you know Mr. McClintock?

16 A He's my son.

17 Q Okay. And are you aware of any mental issues that he  
18 had growing up or --?

19 A Yes.

20 Q And, and I'm gonna show you something. I'm gonna show  
21 you this document.

22 Can I approach, Your Honor?

23 THE COURT: Yes, sir.

24 Q Okay. Do you, do you know what that document is?

25 A Yes.

Nakesha Pearson - Direct examination  
by Mr. Richey

1 Q what is it?

2 A It's a listing of all the medication that he's been on  
3 or currently on as well.

4 Q Do you know whether he was on those at the time this  
5 happened?

6 A Yes.

7 Q Okay. And what do you -- do you know what those  
8 medications are for?

9 A There are several on here, but he was taking some  
10 mental health medicines, some for a previous illness he has  
11 now, but there are several on here that he was taking  
12 previously and as well as now --

13 Q Okay.

14 A -- as I stated before.

15 Q And did -- let me -- do you know whether that affected  
16 his decision making just by your interaction with him?

17 A Yes, it could.

18 Q It could and did you talk to Mr. warder about this?

19 A No.

20 Q Okay. You did not?

21 A No.

22 Q Did you not believe it was important?

23 Did you not think it was important?

24 A Mr. Warders (sic) and I never discussed anything of  
25 Keyland's mental -- I think I only spoke with Mr. Warders

Nakesha Pearson - Cross-examination  
by Ms. Giovanoli

1 (sic) maybe twice.

2 Q Okay.

3 A Thank you. Answer any questions the Attorney General  
4 will have for you.

5 CROSS-EXAMINATION

6 BY MS. GIOVANOLI:

7 Q You testified that that medicine that he was taking  
8 could have affected his, I guess, interaction with you.

9 Is that correct?

10 A Yes.

11 Q And you, you felt that -- you feel that that's  
12 important?

13 A I feel it's important because it's a mental health  
14 medicine -- there's more than mental health medicines on  
15 there.

16 Q Okay. Well, if you felt it was important, why didn't  
17 you talk to Mr. Warder about it?

18 Why didn't you bring it to his attention?

19 A As I just stated, I spoke with Mr. Warders (sic) maybe  
20 two times.

21 Q Uh-huh. (Affirmative).

22 A I spoke with his secretary more than I spoke with him.  
23 I think I actually saw his presence twice before the  
24 hearing.

25 Q Okay. So, in those two meetings, why didn't you

Nakesha Pearson - Cross-examination  
by Ms. Giovanoli

1 discuss these issues with him?

2 A The discussion each time I was there was mainly about  
3 the incident that happened, and it was -- we weren't there  
4 often or very long when I was there.

5 Q Okay. And I understand that, but I just -- I guess my  
6 question is just why didn't you bring something that you  
7 felt was important to Mr. Warder's attention?

8 A Again, the most concentration was on the fact of the  
9 shooting.

10 Q Okay. And you also said a few times he's on mental  
11 health medicines.

12 Do you know for what?

13 A His mental capacity, he had some issues while he was in  
14 the hospital -- in high school that I took him for that he  
15 was on medicine, and the medicine he's on now is for an  
16 illness that he has previously.

17 Q Okay. But could you---

18 A Currently now.

19 Q Could you explain those mental issues?

20 A Well, the issue in high school, he just felt like he  
21 was a little suicidal or whatever. So, I had to take him to  
22 get checked out for that.

23 Q Was he ever diagnosed with anything?

24 A They put him on some medication. I don't think there  
25 was an actual diagnosis.

Richard Warder - Direct examination  
by Mr. Richey

1 Q Okay. All right. Thank you.

2 Nothing further.

3 A You welcome.

4 MR. RICHEY: No other questions.

5 THE COURT: Thank you, ma'am.

6 THE WITNESS: You welcome.

7 THE COURT: Watch your step.

8 MR. RICHEY: We call Mr. Warder.

9 THE COURT: Mr. Warder, if you'd raise your right-hand.

10 RICHARD WARDER, being first duly  
11 sworn, testified as follows:

12 THE COURT: Thank you, sir. Please be seated.

13 THE WITNESS: Thank you.

14 THE COURT: Make yourself comfortable.

15 DIRECT EXAMINATION

16 BY MR. RICHEY:

17 Q Sir, can you state your name please?

18 A Richard Warder.

19 Q And, Mr. Warder, are you a practicing attorney?

20 A Yes, sir.

21 Q Okay. Do you recall representing Mr. McClintock?

22 A Yes, sir, I do.

23 Q And he was -- he pled guilty to murder.

24 Is that correct?

25 A Yes, sir.

Richard Warder - Direct examination  
by Mr. Richey

1 Q Okay. You were in the courtroom and heard the  
2 allegations and the testimony by Mr. McClintock.

3 Is that correct?

4 A Yes, sir.

5 Q And I'm just gonna go down the list of those.

6 Number one. Did you discuss his mental health status  
7 with him?

8 Do you recall that?

9 A I do not recall it, no, sir.

10 Q Did, did you know whether that, that issue was  
11 presented to you by either him or his mama or anybody?

12 A I do not believe it was.

13 Q Okay. And, and you didn't -- the answers that he gave  
14 on the transcript, were those his answers or --?

15 A Yes, sir.

16 Q Okay. Well, let me ask it this way.

17 Did you tell him what to say to the judge?

18 A Only in the most general terms of, of being polite, of  
19 telling the truth, and saying yes, sir, no, sir, you know,  
20 how -- just things that, that we would tell every witness --

21 Q Right.

22 A -- that comes before the Court.

23 Q All right. You, you did not tell him to answer no to  
24 the question about mental health?

25 A No.

Richard Warder - Direct examination  
by Mr. Richey

1 Q Okay. If, if that was something that had been brought  
2 to your attention, would you have pursued it?

3 A Yes, sir, if I thought there was a valid defense. I  
4 certainly don't like to plead people guilty to 30 years.

5 Q In terms of interviewing witnesses, did you recall  
6 whether you interviewed the witnesses that Mr. McClintock  
7 asked you to interview?

8 A Certainly we interviewed everybody he talked -- I sent  
9 my investigator that -- with the statements of, of most of  
10 the, the people that were -- had given statements, the ones  
11 there, and we tried to confirm whether they would testify to  
12 the events in the statements. Most everybody gave an  
13 incriminating statement and would -- indicated that there  
14 was -- they had no intention of testifying to anything  
15 different.

16 Q Okay. The statement that he gave, do you believe that  
17 it could have been suppressed in a suppression hearing?

18 A No, sir.

19 Q Okay. Can you -- do -- can you tell me why you believe  
20 that?

21 Do you believe it was given voluntarily?

22 A Yes, sir, I do believe it was a voluntary statement.

23 Q Okay. Did, did your client concur with that opinion?

24 A I don't think he ever mentioned that he was -- anything  
25 that gave -- made me think it might not be voluntary.

Richard Warder - Direct examination  
by Mr. Richey

1 Q Okay. And, and about the, the self-defense or defense  
2 of others defense, did y'all discuss that?

3 A Yes, sir.

4 Q And do you believe that that was a valid defense?

5 A No, sir.

6 Q Can you, can you tell me why --

7 A Well---

8 Q -- that this---

9 A ---he wasn't ever in danger, and there's really no  
10 evidence that the other fellow was about to be killed. He  
11 was losing a fight and Mr. McClintock came out with a gun  
12 and shot him four times.

13 Q So, there were two guys fighting, and whoever was the  
14 winning/losing, and it's your testimony is he came out, he  
15 was not under any threat, and shot the guy?

16 A Yes.

17 Q Okay.

18 A Well, that's the way I recall it, yes, sir.

19 Q Okay.

20 One moment, Your Honor, please.

21 THE COURT: Yes, sir.

22 (Pause.)

23 MR. RICHEY: No other questions, Your Honor.

24 THE COURT: Okay. Yes, ma'am.

25 MS. GIOVANOLI: Thank you, Your Honor.

Richard Warder - Cross-examination  
by Ms. Giovanoli

1 CROSS-EXAMINATION

2 BY MS. GIOVANOLI:

3 Q Just for a little background.

4 How long have you been practicing law?

5 A Since 1974. I think it's 43 years, 44.

6 Q And has that always been criminal law?

7 A Yes.

8 Q Okay. And you were retained in this case, right?

9 A Yes.

10 Q Okay. Was he in, in jail or out on bond during the  
11 pendency?

12 A He was in jail.

13 Q Okay. And do you, do you recall how many times you  
14 visited him or had any communication with him?

15 A No, I, I can't honestly remember.

16 Q Did you request discovery in this case?

17 A Yes, I requested discovery. I have on staff  
18 investigators that we -- they would of visited with him. I  
19 would of visited with him. We would of given him a copy of  
20 the discovery.

21 Q Okay. So, either you or someone from your office  
22 reviewed the discovery with him?

23 A Yes.

24 Q So, he was aware of all of the evidence the State had  
25 against him?

Richard Warder - Cross-examination  
by Ms. Giovanoli

1 A Yes, and I, I don't rely on just -- I mean we talk  
2 about the evidence. I talked about the case with him and  
3 --.

4 Q Okay. And did you discuss his version of events?

5 A I'm sorry?

6 Q Did you discuss with him his version of the events --

7 A Yes.

8 Q -- how they happened?

9 A Yes.

10 Q Okay. And what were those?

11 were they consistent with his statement he gave to law  
12 enforcement?

13 A Yes.

14 Q Okay. You heard him testify today about his friend  
15 being hit by a car and on the ground and the victim jumped  
16 on him.

17 Is that the first time you've heard that story?

18 A Yeah. Well, the way it was, the way it was portrayed  
19 today was, was, was somewhat different.

20 Q Okay. Did you discuss with him the strengths and the  
21 weaknesses of going to trial in this case?

22 A Yes, that's why we, we finally took what -- a 30 years  
23 because the chance that -- conviction seemed highly  
24 probable.

25 Q Okay.

Richard Warder - Cross-examination  
by Ms. Giovanoli

1 A And it seemed like that, that going to trial with, with  
2 not a valid defense and, and, and might get us more time.

3 Q Okay. And so this was actually a negotiated sentence  
4 to the minimum for murder, which is 30 years?

5 A That's right.

6 Q Okay. And that decision to accept that plea offer was  
7 made by your client, correct?

8 A Yes.

9 Q Okay. Did you ever force him or coerce, or coerce him  
10 into making that decision?

11 A No, I tried to give him honest advice.

12 Q Okay. Did you inform him that it was his right to go  
13 to a jury trial and that was his decision?

14 A Certainly. We were ready to do it. I mean we would,  
15 would of gladly tried his case.

16 Q Okay. And you informed him of his right to remain  
17 silent had you guys gone to a jury trial?

18 A Yes.

19 Q And you informed him of his right to confront all the  
20 witnesses against him?

21 A Yes.

22 Q And the right to call his own witnesses, right?

23 A Certainly.

24 Q Okay. So, going back to the discovery in this case, I  
25 think you mentioned that you have an investigator.

Richard Warder - Cross-examination  
by Ms. Giovanoli

1           what further investigation did you do of this case  
2 other than reviewing the discovery?

3 A    I reviewed the discovery. I just talked to it -- to  
4 him about it on several occasions.

5 Q    Did you say that your investigator spoke with some of  
6 the witnesses in the case?

7 A    Yes.

8 Q    Okay. And they could not -- none of them could offer  
9 evidence or testimony that would help your client?

10 A    That's right.

11 Q    Okay. Okay. Going to the -- oh, let me just go ahead  
12 and say this.

13           So, going into the hearing, you didn't tell him  
14 specifically how to answer certain questions during the plea  
15 colloquy?

16 A    No.

17 Q    Okay. And so when he responded to -- I'm gonna scratch  
18 that.

19           Going to the mental health issues, it was your  
20 testimony, right, that the Applicant or his family, they  
21 never informed you of any mental health history or issues  
22 with him?

23 A    They didn't inform me, and, quite frankly, my  
24 discussions with him, I wouldn't had any clue that there  
25 was -- it was anything mentally wrong.

Richard Warder - Cross-examination  
by Ms. Giovanoli

1 Q Okay. So, you---

2 A He was completely rational, clear. Everything made --  
3 the conversations all fit together and made sense. So --.

4 Q So, he never gave you any indication that maybe you --  
5 he's got some mental issues that you should investigate?

6 A No.

7 Q Okay. And, in this case, I guess the facts were sort  
8 of that there was a fist fight going on between the victim  
9 and one of the Applicant's friends.

10 Is that correct?

11 A I think they were down -- had got down on the ground  
12 and were actually rolling around. And so I suppose it's  
13 kind of a combination between a fist fight and a wrestling  
14 match. I'm not sure.

15 Q Okay. And are you aware of whether the Applicant was  
16 Mirandized prior to his statement to the police officers?

17 A My understanding was he was, he was.

18 Q Okay. And if he had not been, you would of seen that  
19 in the discovery?

20 A Yes.

21 Q And if you had not been, would you have pursued a  
22 motion to suppress his statement?

23 A Yes, though I don't think the State's case would of  
24 failed if the statement had suppressed.

25 Q Did he ever mention that his statement was induced by a

Richard Warder - Cross-examination  
by Ms. Giovanoli

1 promise, promise of leniency from law enforcement?

2 A No.

3 Q Okay. And there was no evidence of that in your, your  
4 file?

5 A No, sir. No, ma'am. I' sorry.

6 Q That's okay.

7 Did your -- did you or someone from your office  
8 interview Sandino -- I think it's Sandino Jackson?

9 Is that correct or is that---

10 A I don't, I don't -- honestly I don't have, have any  
11 recollection now exactly who was talked to.

12 Q Okay. But it's your recollection that the interviews  
13 that you had with the witnesses, the state had, that all of  
14 their interviews were consistent with the statements they  
15 gave to law enforcement?

16 A Yes.

17 Q Okay. And none of that was -- would help your client  
18 in his murder trial?

19 A No, there was no defense in it.

20 Q Okay. And so this was a negotiated sentence and you  
21 told the client -- you told your client, at that time, that  
22 he was pleading to 30 years, correct?

23 A Yeah, he knew he was taking a sure 30 years rather  
24 than, than going to, to --.

25 Q And that was his decision based on your advice?

Sandino Jackson - Direct examination  
by Mr. Richey

1 A Yes.

2 Q Okay. No further questions. Thank you.

3 MR. RICHEY: No other questions.

4 THE COURT: Okay. Thank you.

5 Mr. Warder, you may step down, sir.

6 MR. RICHEY: Thank you, Your Honor.

7 THE COURT: Watch your step.

8 May Mr. Warder be excused?

9 MS. GIOVANOLI: Yes, Your Honor. I apologize.

10 THE COURT: Counsel, do you object to Mr. Warder being  
11 excused?

12 MR. RICHEY: No. No, ma'am.

13 THE COURT: Then, Mr. Warder, you are excused.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: Yes, sir.

16 MR. RICHEY: Your Honor, we call Sandino Jackson.

17 THE COURT: Mr. Jackson, good morning, sir. Come on --  
18 well, good afternoon. Come on up.

19 sir?

20 MS. GIOVANOLI: I'm so sorry, Your Honor.

21 THE COURT: Okay. All right.

22 SANDINO JACKSON, being first duly  
23 sworn, testified as follows:

24 THE COURT: Thank you, sir. Have a seat right there  
25 and adjust that microphone as you need to.

Sandino Jackson - Direct examination  
by Mr. Richey

1 All right?

2 (Witness complies.)

3 DIRECT EXAMINATION

4 BY MR. RICHEY:

5 Q Sir, can you state your name please?

6 A Sandino Jackson.

7 Q And, Mr. Jackson, you were involved in this incident,  
8 correct?

9 You were one of the people that were fighting.

10 Is that correct?

11 A Yes, sir.

12 Q Okay. Did you ever talk to Mr. Warder in the case?

13 A No, sir, I, I've never seen this man before in my life.

14 Q Okay. So, you didn't, you didn't tell -- did you  
15 have -- did you see anybody from his office?

16 A No. No, sir, I spoke with someone briefly on the phone  
17 for about two minutes. Said they would be coming to my  
18 house to speak with me, my grandparents, and my sister, and  
19 my little brother. No one ever showed, sir. And if you  
20 look in directly, like I want to say a week after that that  
21 someone told me they was coming to speak with me. I was  
22 incarcerated for about four or five months.

23 Q So, nobody ever discussed anything with you about this  
24 case?

25 A I was even incarcerated on the day he went to trial.

Sandino Jackson - Direct examination  
by Mr. Richey

1 Q Okay. were you available to testify?

2 A Yeah, I was available. I told, told the people at the  
3 jail that what was going on. They was like well, if they  
4 need you, they'll call for you.

5 Q Okay. And you were there.

6 Do you think it was reasonable for him to fear for his  
7 safety?

8 A Yes, I really do cause I feared for mine.

9 Q Okay. And, and do you believe that he was protecting  
10 somebody based off of your observation?

11 Now, you can't get in his head.

12 A Yes, sir, I really do. I really do believe he was, he  
13 was looking out and protecting, trying to protect because  
14 this, this man here, he's a good man.

15 You know what I'm saying?

16 And he a good friend. So --.

17 Q Thank you. Answer any questions the Attorney General  
18 might have for you.

19 CROSS-EXAMINATION

20 BY MS. GIOVANOLI:

21 Q Did you give a statement to law enforcement after this  
22 incident?

23 A Yes, ma'am, we did. We all did.

24 Q Okay. And it's your testimony now today that you feel  
25 that you could of helped Mr. -- I'm sorry.

Sandino Jackson - Cross-examination  
by Ms. Giovanoli

1 A McClintock?

2 Q Yeah, McClintock---

3 A Yes.

4 Q ---in his self-defense claim?

5 A Sure could, yes, ma'am.

6 Q But you didn't feel that that was important enough to  
7 bring to defense counsel or Mr. McClintock's attention prior  
8 to his trial?

9 A I did. But see, I did bring it to their attention  
10 but---

11 Q How, how did you bring it to their attention?

12 A I brought it to his mother's attention, but it's, it's,  
13 in reality, it's part of your counsel. Your counsel was  
14 suppose to come speak with me. Like he never did. Counsel  
15 never came to speak with me. Never came out to my house.

16 So, how was I suppose to put forth that motion when  
17 this man is incarcerated?

18 Q So, it's your testimony today that counsel nor anyone  
19 from his office came to talk to you?

20 A No, I've never seen this man in my life nor spoke with  
21 him or nothing.

22 Q Okay. And you would of testified---

23 A Yes, I would of testified.

24 Q ---had he gone to trial?

25 A Yes.

Sandino Jackson - Cross-examination  
by Ms. Giovanoli

1 Q That's your testimony today?

2 A Yes.

3 Q After he's been -- pled guilty to a negotiated sentence  
4 of 30 years?

5 A Yes, I kind of think that's unreasonable.

6 Q Okay. Thank you.

7 Nothing further.

8 MR. RICHEY: No other questions.

9 THE COURT: Thank you, Mr. Jackson.

10 THE WITNESS: You're welcome.

11 MR. RICHEY: That's all, Your Honor, from the  
12 Applicant.

13 THE COURT: Okay.

14 MS. GIOVANOLI: Nothing further.

15 THE COURT: Okay. Arguments, counsel.

16 MR. RICHEY: Well, Your Honor, I would just say that,  
17 and I'm gonna argue this mental health. I think there was  
18 testimony by him and his mom that said he suffered from some  
19 mental health issue.

20 He made an allegation that Mr. Warder's failure to  
21 interview witnesses. I think the mother and Mr. Jackson  
22 testified that they had information. They were never talked  
23 to and my client testified that he felt like it was a  
24 self-defense case, that he was protecting others. That was  
25 corroborated by Mr. Jackson.

1           For those reasons, we'd ask the Court to consider  
2 granting his application.

3           THE COURT: Thank you, Mr. Richey.

4           Yes, ma'am.

5           MS. GIOVANOLI: Thank you, Your Honor.

6           The State would argue that he hasn't met his burden of  
7 proof on any of the allegations.

8           As to the mental health, I believe the testimony from  
9 both the Applicant and his mother was that his mental health  
10 could have affected his case. That's merely speculative and  
11 it doesn't rise to his burden of proof by preponderance of  
12 the evidence. He hasn't provided any records or anything  
13 showing maybe he was mentally incompetent or that he was  
14 under some form of mental disorder that would of affected or  
15 provided some defense for this incident.

16          And, also, Mr. Warder's testimony was that he never had  
17 any indication that, that the Applicant suffered from some  
18 type of mental health that would of affected his case, and  
19 nor did the Applicant or his mother ever inform Mr. Warder  
20 that he, that he was suffering any type of mental health  
21 issues.

22          It's also kind of speculative as far as what exactly he  
23 was dealing with. His mother said that he had never even  
24 been diagnosed with any mental disorder, but that he had  
25 simply been given medication. A lot of us nowadays are on

1 medication.

2       So, I would argue that he did not meet his burden of  
3 proof on that argument.

4       As far as the witness, I would, I would submit that the  
5 credibility of both the Applicant and his friend is  
6 questionable. Mr. Warder testified that either he or  
7 someone from his office did interview the witnesses, and  
8 that their statements were consistent with that with which  
9 they gave to law enforcement. And, in this case,  
10 Mr. Jackson did give a statement to law enforcement, and  
11 that was part of discovery and Mr. Warder reviewed that with  
12 the Applicant.

13       The -- they -- there was also a discussion about Mr.  
14 Warder did discuss self-defense with the Applicant, and he  
15 felt that the facts of this case did not support a defense  
16 of self-defense. That was based on his history and  
17 practicing criminal law and his professional judgment.

18       The Applicant also gave a statement to law enforcement  
19 at the, at the time of the incident, which was completely  
20 different than his testimony today, which would also  
21 highlight the fact that Applicant's testimony today is not  
22 credible. And Mr. Warder also testified that the story he  
23 gave today was the first one -- first time he had heard that  
24 one as well even under the confidence of the lawyer/client  
25 privilege.

1 I believe there is one other issue, and that was -- no,  
2 I think that's it.

3 Oh, there was also some allegations that he was told  
4 what to say. Mr. Warder testified that he did not tell the  
5 Applicant how to respond to each and every question.  
6 Obviously there's a little bit of preparation going into a  
7 guilty plea on what to expect, what kind of questions, what  
8 kind of answers you should give. But the Applicant was  
9 under oath at the guilty plea. He gave questions -- he gave  
10 answers to the judge in that hearing that were diametrically  
11 opposed to the testimony he gave today, and that would  
12 further strengthen the showing that he is -- he is just  
13 simply not credible.

14 So, I would submit that the Applicant has failed to  
15 meet his burden of proving that Mr. Warder was deficient or  
16 that he was prejudiced by any act or omission, alleged act  
17 or omission on the part of Mr. Warder.

18 Thank you.

19 Nothing further.

20 THE COURT: Thank you.

21 Okay. Anything else, Mr. Richey?

22 MR. RICHEY: No, ma'am.

23 THE COURT: Okay. Mr. McClintock, sir, and, counsel,  
24 I -- I'm going to take this under advisement, and I will  
25 issue a decision as quickly as possible.

1 I want to review the transcript, Mr. McClintock, as  
2 well as the other documents that are in the -- in your file.

3 THE APPLICANT: Okay.

4 THE COURT: And I was provided the file this morning.  
5 That's the way this normally works.

6 okay?

7 THE APPLICANT: Thank you.

8 THE COURT: All right. Good luck to you, sir.

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 18<sup>th</sup> day of September, 2017.

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

December 1<sup>st</sup>, 2017



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA  
 COUNTY OF SPARTANBURG  
 Keylan Dejuan McClintock, #366251,  
 Applicant,  
 v.  
 State of South Carolina,  
 Respondent.

IN THE COURT OF COMMON PLEAS  
 SEVENTH JUDICIAL CIRCUIT  
 2016-CP-42-2908

**ORDER OF DISMISSAL  
 WITH PREJUDICE**

SPARTANBURG COUNTY  
 2017 OCT 18 AM 10:06  
 M. HOPE BLACKLEY

This matter comes before the Court by way of an application for Post-Conviction Relief (PCR) filed on August 8, 2016. Respondent made its Return requesting an evidentiary hearing be convened. An evidentiary hearing into the matter was convened on September 18, 2017, at the Spartanburg County Courthouse. Rodney Richey, Esquire, represented Applicant. Valerie Garcia Giovanoli, Esquire, of the South Carolina Office of the Attorney General, represented Respondent.

At the hearing, Applicant testified on his own behalf. Applicant's mother, Nekeshia Pearson and friend, Sandino Jackson, also testified for Applicant. Applicant's plea counsel, Richard Warder, Esquire, ("Counsel") also testified. This Court had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject conviction, the transcript from Applicant's guilty plea, the PCR application, Respondent's Return and Applicant's records from the Department of Corrections.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted by the December 2014 term of the Grand Jury for Spartanburg County for murder (2014-GS-42-

5917). Applicant was represented by Richard H. Warder, Esquire. Assistant Solicitor Derrick B. Balsa represented the State. On November 30, 2015, Applicant pleaded guilty to murder before the Honorable J. Derham Cole. Pursuant to a negotiated sentence, Judge Cole sentenced Applicant to thirty years' imprisonment. Applicant did not appeal his conviction or sentence.

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

1. Ineffective Assistance of Counsel, in that:
  - a. "5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendment violations"
  - b. Counsel allowed the State to admit into evidence an involuntary statement made by Applicant while in police custody. The statement was involuntary and induced by a promise of leniency.
  - c. Counsel failed to interview potential witnesses on Applicant's behalf.
  - d. Counsel failed to adequately investigate.
  - e. Counsel failed to request a mental competency evaluation and hearing, which denied him due process of law. Applicant was tried and convicted while mentally incompetent.
  - f. Counsel failed to put the state's case through adversarial testing and raise a self-defense claim.
2. Involuntary Guilty Plea

#### FACTS ADDUCED AT PLEA HEARING

The victim's go-cart was stolen on September 4, 2014. The next day, the victim and his friend were driving home from work when they saw the victim's go-cart being ridden in a large field. They pulled into the field and confronted the driver of the go-cart, Romero Shell. Shell denied stealing the go-cart. After the verbal altercation, the victim and his friend drove down the driveway of the field to the last house, while the victim called 9-1-1. The owners of the residence, an elderly couple, were outside. The male owner had told the go-cart riders not to ride the go-cart in his field.

M. HOPE BLACKLEY

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STATE OF MISSISSIPPI  
SHERIFF'S OFFICE

While the victim waited on the 9-1-1 call for the police to address the stolen go-cart issue, his friend leaves to go get the victim's wife from the victim's house. The victim's wife arrived to assist her husband. As can be heard on the 9-1-1 call, Shell's brother, Sandino Jackson, confronts the victim. Jackson then confronts the victim's wife. At that point, the victim drops the phone and tackles Jackson in an effort to protect his wife. The victim and Jackson begin fist fighting on the ground. Applicant comes from his residence, which was off the same driveway, and immediately begins shooting the victim. Applicant shot the victim four times.

Applicant, Jackson, and Shell run back to Applicant's residence. The elderly couple told law enforcement Jackson had the upper hand in the fight with the victim when Applicant shot the victim. Applicant admitted he shot the victim and gave law enforcement the gun. It was also confirmed the go-cart did, in fact, belong to the victim.

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M. HOPE BLACKLEY

**SUMMARY OF TESTIMONY**

I. Applicant testified to the following:

Applicant testified Counsel should have had him mentally evaluated. Applicant had a history of mental health. Applicant told Counsel's investigator that he was seeing a therapist. Applicant claimed he was seeing a therapist for post-traumatic stress disorder and anxiety. Applicant was not sure what a mental evaluation would have shown but claimed it "could've helped" his case.

Applicant also testified Counsel never interviewed Sandino Jackson, Applicant's friend who was present and part of an altercation with the victim before Applicant shot him. Applicant stated Jackson would have corroborated his story that he shot the victim trying to save Jackson - defense of others. Applicant testified a car ran over Jackson after an altercation, at which point

Jackson was lying on the ground from being hit with the vehicle. Applicant claims the victim jumped on Jackson so Applicant shot him to protect Jackson.

Applicant also testified he believed Counsel should have moved to suppress his admission to law enforcement following the incident, but failed to give any reason why the statement should have been suppressed. Applicant claimed he only spoke with Counsel twice prior to pleading guilty. Applicant testified in those meetings, he and Counsel discussed self-defense, defense of others, and the castle doctrine, but that Counsel told him he would not prevail on any of those defenses based on the evidence. Applicant testified Counsel had an investigator talk to Jackson, who told the investigator he had never been hit by a car and was not on the ground at the time of the shooting.

On cross-examination, Applicant admitted he was under oath at his guilty plea. Applicant also admitted that he told the plea judge he had no defenses, but claimed he said that only because of what Counsel told him to say. Applicant also admitted that he told the plea judge, under oath, that he had never been treated for any type of mental illness or emotional disturbance, but again said he lied because Counsel told him what to say. Applicant also admitted that he agreed with the Solicitor's recitation of the facts at his guilty plea hearing because he was told what to say. Applicant admitted he would lie if told to.

Applicant also read his statement he made to law enforcement immediately after the incident. Applicant admitted his prior statement and his testimony here in his PCR hearing was different. Applicant admitted he told law enforcement he shot the victim because he was scared and fearful and to protect himself. However, at the PCR hearing, he testified he was actually acting in defense of others – specifically, his friend Sandino Jackson.

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II. Nekeshia Pearson testified to the following:

Mrs. Pearson is Applicant's mother. Mrs. Pearson testified she had a list of medications Applicant was currently on and some he had been on for mental issues. She testified his mental issues "could have" affected her interactions with him. Mrs. Pearson testified she never discussed his mental health with Counsel. When inquired as to what the medications were for, Mrs. Pearson only referred to an incident in high school when Applicant was suicidal and she took him to see a professional who prescribed him medications. However, she did not believe he had ever been diagnosed with anything, just given medicine.

III. Counsel testified to the following:

Counsel has been practicing law since 1974. He was retained to represent Applicant on his murder charge. He requested discovery and reviewed all of it with Applicant. Counsel never had any discussions with Applicant or his family regarding a history of mental health. Counsel never received any indication from Applicant that he had mental health issues that needed to be investigated. Applicant was always able to communicate and never exhibited any problems that would raise a flag. Had an issue with Applicant's mental health been brought to Counsel's attention, Counsel would have pursued the matter and any defense.

SPENCER COUNTY  
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Counsel and his investigator both met with Applicant. The investigator also interviewed the witnesses to the shooting. Counsel testified most everyone at the scene gave a statement that was incriminating to his client. Jackson's story was no different than what he had told law enforcement in written statements. Counsel testified the story Applicant told on the stand today was a variation of the version of events that Applicant had told Counsel. Counsel insisted the facts did not support any defenses. Counsel testified that had there been a potentially successful defense, he would have pursued it rather than advising his client to plead guilty to a negotiated

sentence of thirty years. Counsel testified the evidence showed there was a simple fist fight between the victim and Jackson and neither Applicant nor Jackson was in danger. However, Applicant shot the victim four times.

Counsel also testified there was never any indication Applicant's statement to law enforcement was not voluntary. Counsel did not believe he could get it suppressed. Counsel advised Applicant of his constitutional rights including his right to a jury trial. Counsel's advice to Applicant was to accept a plea offer to the minimum for murder – thirty years – however, Counsel did not threaten or coerce Applicant to plead guilty. It was Applicant's own decision to plead guilty and not risk a life sentence if he was found guilty at trial.

IV. Sandino Jackson testified to the following:

Jackson is Applicant's friend. Jackson was present when Applicant shot the victim. Jackson was actually engaged in a physical altercation with the victim at the time Applicant shot the victim. Jackson testified Counsel never interviewed him for Applicant's murder case. Jackson testified he would have helped Applicant at a trial and testify in support of a defense of others claim. Applicant testified he was in jail for 4-5 months prior to Applicant's trial. Jackson believes Applicant was looking out for him and believes Applicant is a good man. However, Jackson never reached out to Applicant or Counsel to try to offer his help and testimony. Jackson testified he did talk to Applicant's mother about helping Applicant at trial.

**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 had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann.

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§17-27-80 (2017). Applicant has failed to prove by a preponderance of the evidence that Counsel was deficient or that he was prejudiced by any deficiency. A Post-Conviction Relief application is not a venue for questioning each and every decision of trial counsel. Rather, the Applicant must demonstrate by a preponderance of the evidence that trial counsel was deficient. Applicant has failed to do so.

### I. Ineffective Assistance of Counsel

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding

would have been different." Cherry, 300 S.C. at 117-18. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

*Failure to adequately investigate and interview witness*

Applicant alleged counsel failed to investigate and interview a potential witness. To show ineffective assistance in this regard, Applicant must present evidence to show what counsel could have discovered had he more fully investigated. Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 772 (1998) ("Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial."). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

Applicant has failed to meet his burden of proving Counsel was ineffective for failing to investigate and interview a witness. Applicant testified Counsel's investigator interviewed Jackson. Counsel also testified Jackson's story to the investigator was consistent with what he told to law enforcement. Counsel also testified he reviewed all of the discovery in the case with Applicant. Counsel also had his investigator interview all the witnesses to the crime. Counsel's testimony on this issue was credible. Jackson's testimony that no one talked to him regarding this case is simply not credible. It strains credulity to believe Counsel, with over forty years of experience, would not interview a murder witness where said witness was directly involved in the altercation that led to the shooting and even gave law enforcement a statement.

Additionally, Applicant has failed to present any evidence of what Counsel would have discovered had he pursued further investigation or what other defenses such investigation would support. This Court finds Counsel's investigation was reasonable. Therefore, these allegations are denied and dismissed with prejudice.

*Failing to request mental evaluation*

Applicant alleges he was convicted while mentally incompetent which denied him due process of the law. In a PCR action, a petitioner has the burden of proving by a preponderance of the evidence that he was incompetent at the time of his guilty plea. Matthews v. State, 358 S.C. 456, 458, 596 S.E.2d 49, 50 (2004) (quoting Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595-596 (1992)). Applicant was not evaluated as part of this PCR proceeding nor did he introduce any records to establish that he currently or previously lacked sufficient competency to stand trial. Applicant testified he had a history of mental health and that he told Counsel's investigator that he was seeing a therapist. Applicant also claimed he was seeing a therapist for post-traumatic stress disorder and anxiety. Applicant was not sure what a mental evaluation would have shown, but merely speculated it "could've helped" his case. Applicant's mother also testified regarding issues from Applicant's past, for which he was treated, but also admitted she never discussed Applicant's mental health with Counsel. Counsel testified he never had any indication Applicant needed or would benefit from a mental evaluation.

This Court finds Applicant has failed to meet his burden of proving Counsel was ineffective for failing to request a mental evaluation. Furthermore, this Court finds Applicant's testimony on the matter not credible. Particularly compelling are the statements Applicant made under oath at the time of his guilty plea. Applicant told the plea judge he discussed his personal circumstances and background with Counsel, he graduated from high school and was employed

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at Tietex in the heating and air department, he had never been treated for a mental illness or emotional disturbance, and he did not suffer from a mental illness or emotional disturbance at the time of the plea. Applicant's testimony that he lied to the plea judge because Counsel told him to is not credible. This Court finds Applicant has offered no valid reason to be allowed to depart from the truth of the statements made under oath during his guilty plea. See Crawford v. United States, 519 F.2d 347 (4th Cir.1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976) (Statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements.). Furthermore, the record from Applicant's guilty plea, as well as the way Applicant testified at the PCR hearing, both show Applicant is educated, coherent, and fully able to effectively communicate. Although Applicant's mother appeared credible, this Court finds even taking her testimony as truthful, Applicant still cannot meet his burden to prove he was incompetent to stand trial at the time of his plea. Therefore, this allegation is denied and dismissed with prejudice.

*Allowing State to introduce involuntary statement*

Applicant alleges Counsel was ineffective for allowing the State to admit into evidence his statement he claims was involuntary and induced by a promise of leniency. Applicant conclusively claimed Counsel should have moved to suppress his admission to law enforcement. However, he presented no evidence as to why Counsel should have moved to suppress the statement or show a basis for such a motion. Applicant presented no evidence the statement was involuntary, as he alleged in his application.

This Court finds Applicant has failed to meet his burden of proof as to this allegation. Although Applicant alleged the State admitted his statement into evidence, the record reflects the

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statement was never admitted. Also, Applicant pled guilty, therefore, any admission of the statement would have merely been for the record in any subsequent proceedings, not as a basis for determining Applicant's guilt or sentence. Therefore, this allegation is denied and dismissed with prejudice.

*Failing to put State's case through adversarial testing and raise defenses*

Applicant alleges Counsel did not put the State's case through an adversarial test. Specifically, Applicant testified Counsel did not pursue a defense of others defense. Although Applicant now contends Counsel should have pursued a defense of others defense, he also admitted his original story was premised on a self-defense theory. Counsel testified the version of events Applicant offered at his PCR hearing was a variation of that which Applicant told Counsel during his representation. This Court finds Counsel's testimony more credible on this issue. Counsel discussed self-defense, the Castle Doctrine, and defense of others with Applicant. It was Counsel's learned and professional opinion that the evidence (eye witness accounts, ballistics, the fact Applicant shot the victim *four* times) in this murder case did not support any of these defenses. This Court also notes Applicant knowingly and voluntarily waived any defenses to the charge against him by virtue of pleading guilty. As such, this Court finds Applicant has failed to meet his burden of proving ineffective assistance of counsel on this issue. Therefore, the allegation is denied and dismissed with prejudice.

**II. Involuntary Guilty Plea**

Applicant also asserts his plea was involuntary. The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional

rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137-38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138-39, 654 S.E.2d at 874. (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 747 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be

intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record fully supports the knowing and voluntary nature of Applicant's plea. To the extent Applicant is attacking his guilty plea based on ineffective assistance of counsel, this Court finds Counsel was in no way ineffective, as more fully addressed above. Applicant has failed to meet his burden of proving his guilty plea was involuntary.

CLERK OF COURT  
PATRICIA M. COOPER  
2017 OCT 18 AM 10:07  
M. OPPERLACKLEY

**CONCLUSION**

Based on all the foregoing, this Court finds and concludes Applicant has not established any violations that would require this Court to grant his application. This Court finds Applicant has failed to prove any deficiencies on the part of Counsel and further, Applicant has failed to prove prejudice from any alleged deficiencies in Counsel's representation of him. Therefore, as Applicant has failed to meet his burden of proof in this post-conviction relief action, his application is denied and dismissed with prejudice.


This Court notifies Applicant he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a

Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRPC. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

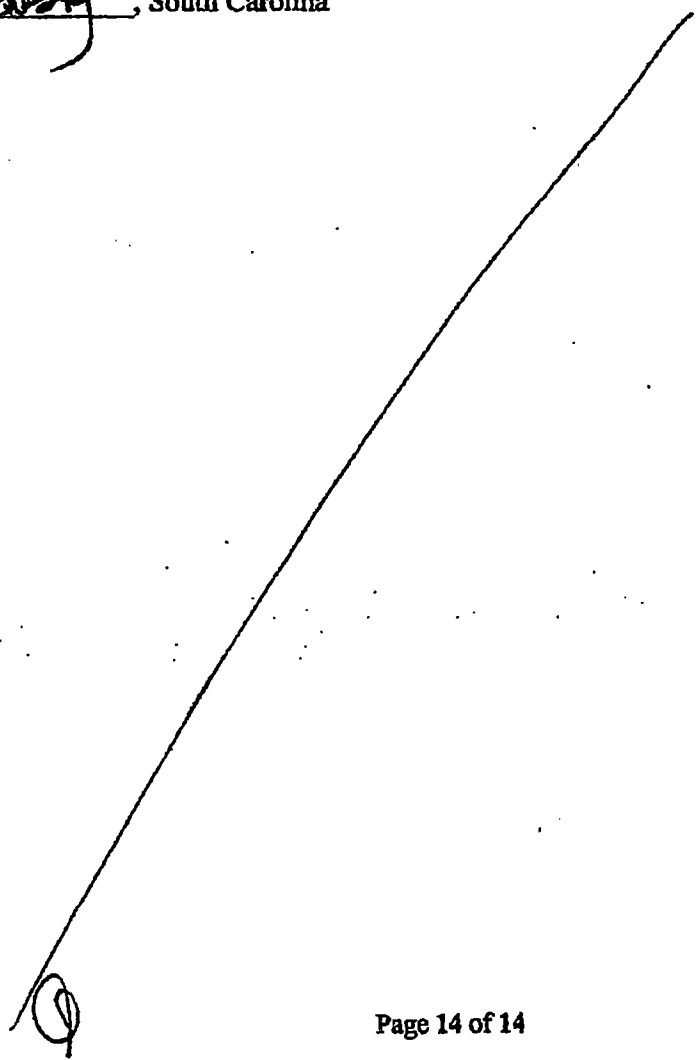
1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 16 day of October, 2017.

  
 \_\_\_\_\_  
 GRACE GILCHRIST KNIE  
 Presiding Judge  
 Seventh Judicial Circuit

Sprietabony, South Carolina

CLERK OF COURT  
 STATE OF SOUTH CAROLINA  
 2017 OCT 18 AM 10:07  
 M. HOPE BLACKLEY



WITNESSES

*M. Clyn*

Spartanburg County Sheriff's Office

2. REPORT KNOWN

3. CARD-PULLER

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. RETURNED AND  
RECORDED INDEX

ARREST WARRANT NUMBER

2014A4210202914

ACTION OF GRAND JURY

**True Bill**

*Clyn*

DEC 11 2014

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO  
**14-GS-42-5917**

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

DEC 15 2014

TERM

THE STATE

vs.

Keylan Dejuan McClintock

Indictment for

**MURDER**

SC Code 16-03-0010, 0020

CDR Code 116

Class FEL-EXM

2014 DEC 17 PM 1:44  
M. HOPE BLANKLEY

CONFIRMED

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

INDICTMENT


DEC 11 2014

At a Court of General Sessions, convened on \_\_\_\_\_, the  
Grand Jurors of Spartanburg County present upon their oath:

**MURDER**

The Defendant, Keylan Dejuan McClintock, did in Spartanburg County on or about September 5, 2014, feloniously, willfully, and with malice aforethought, kill one Donald Travis Harper, by shooting the victim and the victim died as a proximate result thereof, all in violation of Section 16-3-0010, 0020, 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.

  
\_\_\_\_\_  
Deputy Solicitor