

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Marlboro County

G. Thomas Cooper, Circuit Court Judge

JUSTIN HENDERSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001822

APPENDIX

TAYLOR D GILLIAM
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHNNY ELLIS JAMES, JR.
Assistant Attorney General
Attorney General Office
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

RECEIVED

APR 30 2017

S.C. SUPREME COURT

INDEX

INDEX	i
GUILTY PLEA TRANSCRIPT DATED DECEMBER 3, 2013	1
APPLICATION FOR POST-CONVICTION RELIEF	16
RETURN.....	26
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JANUARY 11, 2017	32
APPLICANT'S EXHIBIT #1 (BRANDON STEEN'S PUBLIC DEFENDER'S OFFICE NOTES)	116
APPLICANT'S EXHIBIT #2 (NOTES OF BRANDON STEEN WITH JUSTIN HENDERSON JAIL VISIT 11/12/13).....	117
ORDER OF DISMISSAL.....	118
INDICTMENTS	132

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF MARLBORO) COURT OF GENERAL SESSIONS
) No. 2013 GS 34 0106; 0107

3

4 STATE OF SOUTH CAROLINA)
5)
6 versus) TRANSCRIPT OF RECORD
7)
8 JUSTIN HENDERSON)
9 Defendant)

10 Bennettsville, South Carolina

11 December 3, 2013

12

13 B E F O R E :

14 HONORABLE EDWARD B. COTTINGHAM, Judge

15

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

17 For the State: MARY THOMAS LEE, Esq.
18 Assistant Solicitor

19 For the Defendant: BRANDON STEEN, Esq.
20 Public Defender

21 Reporter Present: HATTIE O. GORDON

22

23 HARRIET P. BENNETT
24 Reporter, S. C. Court Administration
 46 Regency Oaks Drive
 Summerville, S. C. 29485

25

I N D E X

1

2

3 Guilty plea entered

p. 3

4

5 Sentencing

p. 14

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (The within matter came before the Court for hearing on
2 December 3, 2013)

3 SOLICITOR: May it please the Court, Your Honor, this
4 is the State versus Justin Henderson. We are here on In-
5 dictment 2013 GS 34 0106, an Indictment for murder.

6 Your Honor, this Indictment for murder was true-billed
7 on April 2nd of 2013. He is pleading guilty to the lesser
8 offense of voluntary manslaughter.

9 Also, Indictment 2013 GS 34 0107, Indictment for posses-
10 sion of a weapon during the commission of a violent crime,
11 also true-billed on April 2nd of 2013. He is pleading as
12 indicted.

13 I am handing up the sentencing sheets.

14 Your Honor, present with me is SLED Agent Mike Anderson
15 who investigated the case with the State Law Enforcement Di-
16 vision.

17 The Defendant is represented by Brandon Steen of the
18 Public Defender's Office.

19 Your Honor, at this time I would like to do the guilty
20 plea and then bring him back later for sentencing.

21 THE COURT: I cannot be here Thursday.

22 SOLICITOR: We have to bring him back during the January
23 27th Term for sentencing purposes if we can do that. The
24 victim's father's number has been disconnected, and we have
25 also been trying to get in touch with the mother of the

1 victim, so we would like to have adequate time for the
2 victim's family to be here for sentencing purposes.

3 If we can get ahold of them this week, we will bring
4 them in, but if not, then January 27th.

5 THE COURT: I will put on the record that the Defendant
6 be confined until the time of sentencing.

7 SOLICITOR: Absolutely, Your Honor.

8 THE COURT: All right.

9 (The Defendant was sworn for purposes of the within
10 proceeding)

11 THE COURT: All right. Mr. Steen, you represent the
12 Defendant?

13 MR. STEEN: Yes, Your Honor.

14 THE COURT: And there have been negotiations in behalf
15 of the Defendant between you and the State of South Carolina,
16 to my understanding.

17 MR. STEEN: Yes, Your Honor.

18 THE COURT: And these negotiations to my understanding
19 provide that for the voluntary manslaughter I will give him
20 a sentence of twenty years, and with regard to the Weapons
21 charge five years consecutive, for a term of twenty-five
22 years.

23 Is that correct?

24 MR. STEEN: Yes, Your Honor.

25 THE COURT: And that he is presently serving a term that

1 expires on 2019. Is that right?

2 MR. STEEN: Yes, Your Honor.

3 THE COURT: And the twenty-five years will run concur-
4 rently with that sentence, as I understand it?

5 MR. STEEN: Yes, Your Honor.

6 THE COURT: Now, as I understand it, this occurred at
7 the Evans Correctional Center, and you will be sent back to
8 Evans.

9 I have no authority over what they may or may not do,
10 and I can only recommend that you not be sent back to Evans
11 for a variety of reasons.

12 Do you understand that?

13 DEFENDANT: Yes, Your Honor.

14 THE COURT: So I cannot guarantee what they may do. Do
15 you understand that?

16 DEFENDANT: YES, SIR.

17 THE COURT: Speak up.

18 DEFENDANT: Yes, Your Honor.

19 THE COURT: And there have been discussions between you
20 and your attorney and the State that you will receive a sen-
21 tence of twenty-five years?

22 DEFENDANT: Yes, Your Honor.

23 THE COURT: Sir?

24 DEFENDANT: Yes, Your Honor.

25 MR. STEEN: Yes, sir.

1 THE COURT: Have any other promises been made to you of
2 any kind whatsoever?

3 DEFENDANT: No, Your Honor.

4 THE COURT: And I'm going to ask that Mike Anderson give
5 me the basis for the murder charge against you to which you
6 are pleading to the lesser included offense.

7 Go ahead.

8 MR. ANDERSON: May it please the Court, Your Honor?

9 On the evening of January 6 at the . .

10 THE COURT: Slow it down a little for me.

11 MR. ANDERSON: Yes, sir, Your Honor.

12 THE COURT: Change sides so you're nearer the microphone
13 there. I need you to talk a little louder.

14 (Brief pause in proceeding)

15 MR. ANDERSON: Your Honor, on the evening of January 6th
16 at the Evans Correctional Institution he and the victim, in-
17 mate Jamie White, were in the cellblock when an altercation
18 occurred between the two.

19 The victim received stab wounds in the back of the throat
20 and neck -- On the evening of January 6th at the Evans Correc-
21 tional Institution Inmate Justin Henderson and Inmate Jamie
22 White were in a cellblock when an altercation occurred be-
23 tween the two of them.

24 The victim received stab wounds to the neck and back of
25 the throat, one across his chest and one across his throat.

1 There were two shanks that were used, and one shank was found
2 in the commode.

3 The victim was taken to the Marlboro Hospital where he
4 was pronounced dead.

5 THE COURT: Tell me about the shanks that were found.

6 MR. ANDERSON: In completing the investigating, we re-
7 ceived information that inmates were making shanks there in
8 the institution at Evans.

9 THE COURT: All right, and was it your intention to take
10 him back to Evans? Is there a problem taking him to Evans?

11 MR. ANDERSON: Yes, Your Honor. I was informed by the
12 C.O. or instructed to take him back to Lee today.

13 THE COURT: All right, thank you so much. I appreciate
14 your being here. I know it will be difficult to take him
15 back to Evans for a variety of reasons. Difficult in-house.

16 MR. ANDERSON: That is correct. Yes, sir.

17 THE COURT: All right. Mr. Defendant, do you understand
18 what was just said?

19 DEFENDANT: Yes, sir.

20 THE COURT: I want you to talk a little louder. I need
21 to be able to hear you clearly.

22 DEFENDANT: Yes, sir.

23 THE COURT: First, do you understand the two offenses
24 you are charged with here?

25 DEFENDANT: Yes, Your Honor.

1 THE COURT: The charges you are facing today?

2 DEFENDANT: Yes, sir.

3 THE COURT: One of them being manslaughter and the
4 other one being possession of a deadly weapon in the commis-
5 sion of a violent crime, a shank.

6 Do you understand that?

7 DEFENDANT: Yes, Your Honor.

8 THE COURT: Do you understand that upon my acceptance
9 of your guilty pleas to manslaughter, I am going to sentence
10 you to twenty years?

11 DEFENDANT: Yes, sir.

12 THE COURT: Upon my acceptance of your guilty plea to
13 possession of a deadly weapon, I am going to sentence you to
14 five years consecutively to the twenty years.

15 Do you understand that?

16 DEFENDANT: Yes, Your Honor.

17 THE COURT: That twenty-five years will run concurrently
18 to your present sentence which I understand expires in 2019.

19 DEFENDANT: Yes, Your Honor.

20 THE COURT: That sentence will run concurrent with that
21 twenty-five years. Do you understand that?

22 DEFENDANT: Yes, Your Honor.

23 THE COURT: Now, I cannot tell you what the Department
24 of Corrections will do as far as whether it will be
25 run concurrently with your present sentence.

1 Do you understand that?

2 DEFENDANT: Yes, sir.

3 THE COURT: I understand that as of now they plan to
4 take you back to Lee. Do you understand that?

5 DEFENDANT: Yes, sir.

6 THE COURT: Have there been any other kind or promises
7 of any kind or hope of reward in return for your guilty plea
8 by anyone?

9 DEFENDANT: No, Your Honor.

10 THE COURT: All right. If you have any questions about
11 anything I've discussed with you, you need to let me know
12 right now. Do you understand that?

13 DEFENDANT: Yes, Your Honor.

14 THE COURT: Mr. Anderson has stated to me the facts upon
15 which these Indictments are based. Do you understand that?

16 DEFENDANT: Yes, sir.

17 THE COURT: Are you pleading guilty to killing -- what
18 was the victim's name?

19 MR. ANDERSON: Jamie White.

20 DEFENDANT: Are you asking if I'm pleading guilty to the
21 facts as he stated?

22 THE COURT: No, I'm asking you if you are pleading
23 guilty to manslaughter of Jamie White?

24 DEFENDANT: Yes, sir.

25 THE COURT: I can understand that the facts may vary

1 one way or another, but by pleading guilty do you understand
2 you are giving up any rights to claim self-defense or any-
3 thing like that?

4 DEFENDANT: Yes, sir.

5 THE COURT: You are pleading guilty to homicide upon Vic-
6 tim White freely and voluntarily?

7 DEFENDANT: Yes, sir.

8 THE COURT: And you are under oath. Do you understand
9 that?

10 DEFENDANT: Yes, sir.

11 THE COURT: What are you presently serving a sentence
12 for?

13 DEFENDANT: Armed robbery.

14 THE COURT: Armed robbery. Did you enter a plea or was
15 there a trial?

16 DEFENDANT: A plea.

17 THE COURT: Sir?

18 DEFENDANT: It was a plea.

19 THE COURT: I suspect you have been around our system
20 for some time. Do you understand you are absolutely entitled
21 to a trial by jury?

22 DEFENDANT: Yes, sir.

23 THE COURT: You are presumed to be innocent and you do
24 not have to prove a thing. A jury would convict you, if at
25 all, from evidence presented by the State that convinces them

1 of your guilt beyond a reasonable doubt. Do you understand
2 that?

3 DEFENDANT: Yes, sir.

4 THE COURT: If you had a jury trial you would have the
5 right to confront the witnesses of the charges against you
6 with your attorney. Do you understand that?

7 DEFENDANT: Yes, sir.

8 THE COURT: You would have a right to testify at a trial
9 if you decided to do that. You are not required to do that.

10 DEFENDANT: Yes, sir.

11 THE COURT: You would have a right to call witnesses in
12 your defense.

13 DEFENDANT: Yes, sir.

14 THE COURT: You are presumed innocent all during that
15 trial, and I would charge the jury that the fact that you
16 did not testify must not be used against you in any way, and
17 I would charge the jury that the fact that you did not testify
18 could not even be discussed by them because you and I both
19 have a constitutional right to remain silent. DO you under-
20 stand that?

21 DEFENDANT: Yes, sir.

22 THE COURT: Now, Mr. Steen, have you discussed with Mr.
23 Henderson his right to a jury trial?

24 MR. STEEN: Yes, Your Honor.

25 THE COURT: And have you explained to him all of his

1 constitutional rights, and do you believe he understands them?

2 MR. STEEN: Yes, Your Honor.

3 THE COURT: Now, do you have any questions about what
4 I have said to you about your constitutional rights?

5 DEFENDANT: No, sir.

6 THE COURT: Do you understand that you have a right to
7 the things I have explained?

8 DEFENDANT: Yes, sir.

9 THE COURT: Do you understand that by pleading guilty
10 you are waiving any alleged defenses that you might have?

11 DEFENDANT: Yes, sir.

12 THE COURT: You understand all of that. All right.

13 I understand that the deadly weapon was a shank?

14 MR. ANDERSON: That's correct, Your Honor.

15 THE COURT: All right, and to that charge, possession
16 of a deadly weapon, you are telling me under oath that you
17 are in fact guilty of that?

18 DEFENDANT: Yes, sir.

19 THE COURT: You would be afforded the same constitutional
20 rights with regard to that charge that I have explained to
21 you for the manslaughter charge. Do you understand that?

22 DEFENDANT: Yes, sir.

23 THE COURT: You are entitled to a trial by jury, you
24 are entitled to testify in your own behalf, you are entitled
25 to remain silent and I will charge the jury they cannot hold

1 that against you.

2 Now, do you have any questions you want to ask me as to
3 either charge?

4 DEFENDANT: No, sir.

5 THE COURT: You are saying to me under oath you are en-
6 tering these pleas of guilty to voluntary manslaughter and
7 to possession of a firearm while incarcerated freely and vol-
8 untarily. Is that correct?

9 DEFENDANT: Yes, sir.

10 THE COURT: Now, do you agree with me that the negotia-
11 tions that your attorney entered into contemplate my giving
12 you twenty years for the homicide and five years for posses-
13 sion of a firearm while at Evans?

14 DEFENDANT: Yes, sir.

15 THE COURT: And let there be no question about that.
16 That is exactly what I'm going to do, no more or no less. I
17 will provide that the twenty-five years run concurrent with
18 the offense for which you are presently serving.

19 Solicitor, is there anything else from the State you
20 wish me to hear?

21 SOLICITOR: No, sir. I think that about covers it.

22 THE COURT: Mr. Steen, we're taking the guilty plea now
23 and see if the Defendant's family wishes to be present for
24 sentencing.

25 MR. STEEN: Yes, Your Honor.

1 THE COURT: The sentence is going to be exactly as I
2 have stated it.

3 I don't want to have to come back for the sentencing so
4 we will take some pleas and see what you can find out about the
5 victim's family.

6 MR. ANDERSON: Your Honor, I would like to say I have
7 tried on two or three occasions to contact the victim's mo-
8 ther without success.

9 THE COURT: They have got some obligations if they wish
10 to attend. They have an obligation to keep in touch.

11 MR. ANDERSON: That's right.

12 (Brief pause in the proceeding)

13 THE COURT: All right, I will accept the guilty pleas. I
14 find beyond a reasonable doubt that the Defendant was under
15 oath and enters the pleas voluntarily and has freely admitted
16 his guilt.

17 I believe he fully understands he will receive twenty
18 years on one charge and five years on the other one, as I
19 have stated.

20 I will give him credit for time served.

21 MR. ANDERSON: Thank you, Your Honor.

22 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

23

24

25

1 CERTIFICATE

2 I, HARRIET P. BENNETT, Official Court Reporter for South
3 Carolina Court Administration, hereby certify that the fore-
4 going Transcript was prepared from the records of Hattie Gordon
5 to the best of my ability, having been heard in the Court of
6 General Sessions for Marlboro County on December 3,
7 2013.

8 FURTHER, I certify that I am neither of kin nor counsel
9 to any party to this matter, nor do I have any interest in the
10 same.

11 January 5, 2015
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FORM 5

STATE OF SOUTH CAROLINA)
)
 County of Marlboro)

IN THE COURT OF COMMON PLEAS

2014-CP-34-00172

Justin Henderson S.C.D.C. # 296885)
 Full name and prison number (if any) of Applicant)

v.

A CERTIFIED
TRUE COPY

APPLICATION FOR

State of South Carolina

William B. Sundbush

POST-CONVICTION RELIEF

CLERK OF COURT
MARLBORO COUNTYINSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution 990 Wisacky Highway
Bishopville, South Carolina 29010
2. Name and location of Court which imposed sentence Court of General Sessions
Marlboro County, South Carolina
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) 2013-65-34-0106 Indictment for Murder

2014 JUN 11 PM 3
 WILLIAM B. SUNDBUSH
 CLERK OF COURT
 MARLBORO COUNTY, S.C.

FILED

(b) 2013 - 65 - 34 - 0107 Indictment for Poss. Weapon During Comm. Violent Crime

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) December 3, 2013 20 year sentence

(b) December 3, 2013 5 year sentence

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

No

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) Was not advised of such right

A CERTIFIED
TRUE COPY

William B. Funderburg

CLERK OF COURT
MARLBORO COUNTY

2014 JUN 11 PM 3 36
WILLIAM B. FUNDERBURG
CLERK OF COURT
MARLBORO COUNTY, SC

FILED

- (b) _____
- (c) _____

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

- (a) See Attachment
- (b) _____
- (c) _____

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

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

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

- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____

A CERTIFIED
TRUE COPY

William B. Zundwiler

CLERK OF COURT
MARLBORO COUNTY

FILED
2011 JUN 11 AM 3 35
WILLIAM B. ZUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, SC

A CERTIFIED
TRUE COPY

William B. Funderburg

CLERK OF COURT
MARLBORO COUNTY

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

FILED
2019 JUN 11 PM 3 36
WILLIAM B. FUNDERBURG
CLERK OF COURT
MARLBORO COUNTY, SC

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

- (a) N/A
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? _____
- (c) your sentencing? Yes
- (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. Attorney T. Brandon Steen
P.O. Box 29
Olney, S.C. 29536
- ii. _____
- iii. _____

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

- i. Plea and sentencing
- ii. _____
- iii. _____

A CERTIFIED
TRUE COPY

William B. Zundorburg

CLERK OF COURT
MARLBORO COUNTY

FILED
2019 JUN 11 PM 3 36
WILLIAM B. ZUNDORBURG
CLERK OF COURT
MARLBORO COUNTY, SC

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

Sentence vacated and new trial on original indictment

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Marlboro)

I, Justin Henderson, 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.

Justin Henderson
JUNE 3RD, 2014

SWORN to and subscribed before me this 3rd
day of June, 2014.

Angela V Smith (L.S.)
Notary Public

My Commission Expires: 9/30/2013

A CERTIFIED
TRUE COPY
William B. Funderburk
CLERK OF COURT
MARLBORO COUNTY

FILED
2014 JUN 11 PM 3 36
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, SC

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

I, Justin Henderson, 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.

Justin Henderson
Applicant JUNE 3RD, 2014

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

Angela V. Smith
Notary Public

My Commission Expires: 9/30/2023

A CERTIFIED
TRUE COPY
William B. Funderburg
CLERK OF COURT
MARLBORO COUNTY

FILED
2014 JUN 11 PM 3 36
WILLIAM B. FUNDERBURG
CLERK OF COURT
MARLBORO COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF MARLBORO

Henderson, Justin SCD# 296885
Applicant,

v.

STATE OF SOUTH CAROLINA
Respondent.

IN THE COURT OF COMMON PLEAS

2014-CP-34-00172

Post-Conviction Relief Attachment Brief

A CERTIFIED
TRUE COPY

William B. Junduburk

CLERK OF COURT
MARLBORO COUNTY

The Applicant, making its attachment to the application for post-conviction relief (PCR) filed on JUNE 3, 2014 would respectfully show the Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to the orders of commitment of the Marlboro County Clerk of Court. The Applicant was indicted at the April 2013 term of the Marlboro County Grand Jury for Murder (2013-GS-34-0106) and Poss. Weapon During the Commission of a Violent Crime (2013-GS-34-0107). T. Brandon Steen, Esquire, represented the Applicant. On December 3, 2013, Applicant plead guilty to Voluntary Manslaughter and Poss. Weapon During the Comm. of a Violent Crime. Presiding Judge sentenced Applicant to twenty-~~five~~ (20) for Voluntary Manslaughter and five (5) years for Poss. Weapon During the Commission of a Violent Crime.

No direct appeal was filed on Applicant's behalf.

II.

In Applicant's current application, Applicant alleges that he is being held in custody unlawfully for the following reason(s):

1. Ineffective assistance of counsel.
2. Involuntary guilty plea.

FILED
2014 JUN 11 PM 3 36
WILLIAM B. JUNDUBURK
CLERK OF COURT
MARLBORO COUNTY, SC

In a post-conviction relief action, the applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, 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. The courts presume that counsel rendered adequate assistance of counsel, and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 586 S.E.2d 624 (1989).

The reviewing courts applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient, under this prong, the court measures an attorneys' performance by its "reasonableness under professional norms." Cherry, 300 S.C. 115 at 117, 586 S.E.2d 624 (1989). (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 proceedings would have been different." Cherry, 300 S.C. at 117-18, 586 S.E.2d 624 at 625.

Applicant submits that he can satisfy both requirements of the Strickland test, and accordingly requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

Ineffective Assistance of Counsel

1. Applicant contends that counsel rendered ineffective assistance of counsel because counsel failed to properly move to quash the indictments for Murder (Docket Number 2013-65-34-0106) and Poss. Weapon During the Comm. Violent Crime (Docket Number 2013-65-34-0107) in accordance with S.C. Code Ann § 17-19-90 (2003). The indictments fails to establish a signed signature by the grand jury foreman, therefore rendering the indictments for both Murder and Poss. Weapon During the Comm. Violent Crime invalid.

Applicant contends that his counsel rendered ineffectiveness because of his failure to timely motion to quash both indictments before they were called upon to be heard by presiding judge. Had counsel objected, and raised the issue properly and at a timely manner, the indictments for both Murder and Poss. Weapon During the Comm. Violent Crime could of been dismissed, or at the very least, sent back in front of the grand jury for reindictment. This prejudiced the Applicant because had not for counsel's error, Applicant could of had both indictments dismissed, thus not being sentenced to 25 years in confinement.

The indictment is a notice document and any challenges to its sufficiency should be made in accordance to S.C. Code Ann § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003).

2. Applicant contends that counsel was ineffective for not informing nor explaining to Applicant his right to a direct appeal, therefore denying him his constitutional right to appellate review. Applicant asserts that he did not knowingly and intelligently waive his right to appeal. Applicant contends that there is no evidence that counsel informed or explained to Applicant of his right to

A CERTIFIED
TRUE COPY

FILED

2014 JUN 11 PM 3 36

CLERK OF COURT

WILLIAM B. FURDERBURK
MARLBORO COUNTY

CLERK OF COURT

MARLBORO COUNTY

appeal following Applicant plea trial, and that the subject of the right to appeal was never brought to attention. Applicant asserts that his claim for direct appeal issue is not procedurally barred and all that all issues should be preserved for appeal.

3. Applicant contends that counsel rendered ineffective assistance of counsel by ordering Applicant to plead guilty to Manslaughter and Poss. Weapon During Comm. of a violent crime charges even though Applicant wanted to go to trial. Applicant contends that prior to plea trial, he and his attorney discussed the probability of his case, and Applicant decided that he wanted to go to trial on both charges. Applicant stated to his lawyer that he felt he had a better chance at trial due to the fact of a self-defense claim that he maintained from the beginning of the investigation. Attorney for Applicant was well aware of this self-defense claim, but against Applicant's wishes, told Applicant to plead guilty. Despite evidence from both Applicant's initial statement and investigative reports from S.L.E.D., where Applicant claimed his innocence through self-defense, counsel for Applicant ignored this evidence and told Applicant to plead guilty. Counsel's error in the effect of ordering Applicant to plead guilty and not stand trial, constituted deficient legal representation in violation of the Sixth Amendment of the U.S. Const. which guarantees competent legal representation in a criminal case. Applicant was prejudiced as a result, because but for the error, Applicant could have asserted his self-defense claim at trial, and his trial could have come out different.

4. Applicant contends that his guilty plea was involuntarily made. On December 3, 2013 Applicant pled guilty to Voluntary Manslaughter and Poss. Weapon During the Comm. of a violent crime. The presiding judge sentenced Applicant to 20 years for Manslaughter and 5 years for Possession of weapon during the comm. of a violent crime. Applicant contends that his plea was not knowingly and voluntarily rendered. To support a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). In Boykin, the United States Supreme Court held that before a court can accept a plea, a defendant must be advised of the constitutional rights he is waiving.

Also, all that is required before a plea can be accepted is that the defendant understand the nature and crucial elements of the charges, the consequences of the plea, mandatory minimum sentence to be served, and parole eligibility. Applicant contends that "both" counsel and trial judge failed to explain this and was deficient in handling this matter correctly.

Applicant contends that had counsel and trial judge explained, he would have withdrawn from his guilty plea if he did not want to accept the offer by the court.

CONCLUSION

Based on the foregoing, Applicant requests that he be awarded an opportunity to direct appeal pursuant to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986). And also, having made his initial brief, the Applicant requests an evidentiary hearing to be held.

A CERTIFIED
TRUE COPY

William B. Funderburk

CLERK OF COURT
MARLBORO COUNTY

MARLBORO COUNTY, SC
CLERK OF COURT
WILLIAM B. FUNDERBURK

2014 JUN 11 PM 3 37

FILED

6 / 3 / 2014

Respectfully Submitted,

Justin Henderson # 296885

Lee Correctional Inst. SMH 150
996 Wilbark Highway
Bishopville, S.C. 29610

Justin Henderson

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARLBORO	)	FOR THE FOURTH JUDICIAL CIRCUIT
Justin Henderson, #296885,	)	Case No. 2014-CP-34-0172
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for Post-Conviction Relief filed June 11, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marlboro County Clerk of Court, the Greenville County Clerk of Court, and the Pickens County Clerk of Court. Only the Marlboro Charges are relevant to this application. In April 2013, the Marlboro County Grand Jury indicted Applicant for murder (2013-GS-34-106) and possession of a weapon during the commission of a violent crime (2013-GS-34-107). T. Brandon Steen, Esquire, represented Applicant. On December 3, 2013, Applicant pled guilty to voluntary manslaughter and possession of a weapon during the commission of a violent crime. The Honorable Edward B. Cottingham sentenced Applicant to twenty years imprisonment for voluntary manslaughter and a consecutive five (5) years imprisonment for possession of a weapon during the commission of a violent crime.¹ Applicant did not appeal his plea or sentence.

¹ The Applicant committed these offenses while serving a prison sentence for his Greenville/Pickens convictions. Judge Cottingham ordered the twenty year sentence is to be served concurrently with the Greenville/Pickens sentences and the five year sentence is to begin upon its completion.

II.

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

1. "Ineffective Assistance of Counsel"
 - a. "Applicant contends that counsel rendered ineffective assistance of counsel because counsel failed to properly move to quash the indictments [...]"
 - b. "Applicant contends that counsel was ineffective for not informing nor explaining to Applicant his right to a direct appeal [...]"
 - c. "Applicant contends that counsel rendered ineffective assistance of counsel by ordering Applicant to plead guilty [...] even though Applicant wanted to go to trial [...]"
2. "Involuntary Guilty Plea"
 - a. "Applicant contends that his guilty plea was involuntarily made [...]"

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRPC.

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

III.

Respondent submits Applicant's allegation of ineffective assistance of plea counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985)

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

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

IV.

Respondent further submits Applicant's allegation his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his

statements.” Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

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

V.

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

VI.

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

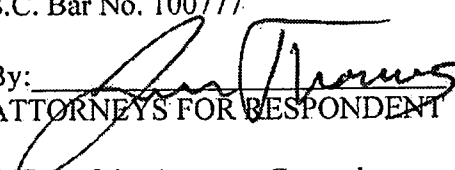
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

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

By: 
ATTORNEYS FOR RESPONDENT

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

June 17, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARLBORO	)	
	)	
	)	2014-CP-34-0172
	)	
JUSTIN HENDERSON, 296885	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

Tristan M. Shaffer, Esquire
Axelrod & Associates, PA
4701 Oleander Drive
Myrtle Beach SC 29577

DATED this 17th day of June, 2015.


 Judy A. C. Carey, Legal Assistant
 For Respondent

In Common Pleas Court of the
Fourth Judicial Circuit
2014-CP-34-0172

)
)
)

)
)

))

)

)

Marlboro, South Carolina
January 11, 2017

The Honorable G. Thomas Cooper

Mr. Lance S. Boozer, Esquire
Attorney for Plaintiff

Lisa Carter
Circuit Court Reporter

I N D E X

WITNESSESPAGE

Justin Henderson:

Direct Examination by Mr. Boozer..... 17

Cross Examination by Ms. Giovanoli..... 42

Brandon Steen:

Direct Examination by Mr. Boozer..... 53

Cross Examination by Mr. Giovanoli..... 75

I N D E X

<u>NO.</u>	<u>DESCRIPTION</u>	<u>EV.</u>
P-1	Brandon Steen's Public Defender's	
	Office Notes	55
P-2	Notes of Brandon Steen With	
	Justin Henderson Jail visit 11/12/13	63

1 MR. BOOZER: Your Honor, I do have an issue to take
2 up before the Court after speaking with Mr. Henderson.

3 THE COURT: All right. Let the Attorney General
4 call the case.

5 MS. GIOVANOLI: Thank you. Your Honor, May it
6 please, the Court? Justin Henderson versus the State of
7 South Carolina. Case number 2014-CP-34-0172. We're before
8 the Court on an application for post-conviction relief
9 filed on June 11, 2014. The applicant is presently
10 confined pursuant to orders of commitment of the Marlboro
11 County Clerk of Court, the Greenville County Clerk of Court
12 and the Pickens County Clerk of Court. Only the Marlboro
13 charges are relevant to this application.

14 In April 2013, the Marlboro County Grand Jury indicted
15 applicant for murder, indictment number 2013-GS-34-106;
16 and, for possession of a weapon during the commission of a
17 violent crime, indictment number 2013-GS-34-107. T.
18 Brandon Steen, Esquire represented applicant on December 3,
19 2013. Applicant pled guilty to voluntary manslaughter and
20 possession of a weapon during the commission of a violent
21 crime. The Honorable Edward B. Cottingham sentence
22 applicant to twenty (20) years imprisonment for voluntary
23 manslaughter and a consecutive five (5) year imprisonment
24 for possession of a weapon during the commission of a
25 violent crime. The applicant committed these offenses

1 while serving a prison sentence for his Greenville and
2 Pickens convictions. Judge Cottingham ordered the twenty
3 (20) year sentence was to be served concurrently with the
4 Greenville and Pickens sentences and the five (5) year
5 sentence it was to be began upon its completion. The
6 applicant did not appeal his plea or his sentence. I'll
7 hand it over to counsel.

8 THE COURT: Mr. Boozer?

9 MR. BOOZER: Thank you, Your Honor. If it pleases,
10 the Court? Judge I spoke with Mr. Henderson and he has
11 indicated to me that in the past few weeks, and this is
12 something that I was not aware of, that he has engaged a
13 private investigator in this case. Obviously, I was
14 appointed in this case. Initially, as part of Mr.
15 Henderson's claim he believed that his lawyer should have
16 investigated a particular witness by the name of Earl
17 Warren.

18 THE COURT: Earl ---

19 MR. BOOZER: Earl Warren.

20 THE COURT: --- Warren.

21 MR. BOOZER: And, basically, the allegations in this
22 case, judge, or that while Mr. Henderson was incarcerated
23 that he had stabbed, I believe, it was his cellmate or
24 another prisoner at SCDC.

25 THE COURT: And he died?

1 MR. BOOZER: And he died, yes, Your Honor. And Earl
2 Warren was there, allegedly there, at the institution and
3 I've located ---

4 THE COURT: An employee or a ---

5 MR. HENDERSON: No, he was an inmate.

6 THE COURT: Inmate.

7 MR. BOOZER: And he's since been released. I
8 located his last known address that I could find, sent him
9 a letter back in August of 2016. I think Mr. Henderson, at
10 that point, tried to send him a letter as well in
11 correspondence so that I could interview him and speak with
12 him and see what it was that he could say, potentially, for
13 the PCR case. We never heard back from Mr. Warren. I
14 didn't hear back from Mr. Warren. Mr. Henderson never
15 heard back from Mr. Warren. Mr. Henderson has notified me
16 that he's hired this private investigator ---

17 THE COURT: When did that occur? When did that
18 occur?

19 MR. BOOZER: Which part, when he hire the
20 investigator?

21 THE COURT: Yeah.

22 MR. BOOZER: I think that he said he's hired the
23 investigator a couple weeks ago and we have spoken in
24 between that time and he didn't inform me of this. He said
25 he didn't feel comfortable when we were having our

1 telephone conference while he was at the institution to
2 tell me certain things.

3 THE COURT: Did he identify the private attorney,
4 um, private investigator?

5 MR. BOOZER: He has to me, today, identified him as
6 Mr. Pete Skidmore.

7 THE COURT: Pete Skidmore?

8 MR. BOOZER: Yes, Your Honor. Junior, Skidmore, Jr.
9 and so he's indicated to me that his family has hired him.
10 That he is trying to locate Mr. Earl Warren. Mr. Henderson
11 has conveyed to me that they have located, I believe, his
12 mother and that she believes he's willing to speak to us or
13 to Mr. Skidmore. I, obviously, had zero contact with Mr.
14 Skidmore because I didn't know about him. So, Your Honor,
15 based on that Mr. Henderson would request a continuance.
16 There's another cog to that, he doesn't have some of, I
17 guess, legal paperwork since he's been transported that he
18 feels he needs it up with him on the stand when he
19 testifies.

20 THE COURT: Where is he housed?

21 MR. BOOZER: He's just been moved. It's Perry now.
22 He just -- he's been moved to quite a bit of places. He
23 was moved pretty recently.

24 THE COURT: Problem or reason?

25 MR. BOOZER: I'm not sure, judge. And that's part

1 of the continuance. But that's what he would request so he
2 could have a full hearing. I guess, and the other aspect
3 of that judge is, in his case I have attempted to get his
4 Rule 5 materials. His position is he's never seen the
5 complete Rule 5 from his case that this was a plea. He
6 tells me he's never seen the Rule 5 materials or all of
7 them. I've communicated with his previous lawyer, Mr.
8 Steen, who provided me everything that he had but he since
9 changed positions in his job and didn't have the Rule 5
10 materials in his office. So I went through PD's office,
11 couldn't get anything from them. I also went through the
12 solicitor's office, couldn't get anything or a response
13 from them so I've never gotten them. I do have Mr. Steen's
14 case notes where he discusses the Rule 5 materials and
15 whatnot. But that would be the basis, judge, for Mr.
16 Henderson's request for a continuance.

17 THE COURT: Well, what does, does he allege this
18 witness could offer to the Court?

19 MR. BOOZER: Judge, I believe it has to do with sort
20 of what would go along with his defense in the case. I
21 believe it has to do with -- I don't think is denied that
22 the incident occurred ---

23 MR. HENDERSON: Could I speak?

24 MR. BOOZER: Your Honor, Mr. Henderson would like to
25 address the Court. I'm not sure, Your Honor, would like to

1 do that or not.

2 THE COURT: I'll be glad to hear from you.

3 MR. BOOZER: If we put him -- he'd be under oath.

4 THE COURT: Come on up here.

5 MR. HENDERSON: I just want to ---

6 THE COURT: Come on up.

7 THE CLERK: Raise your right hand as best as you
8 can and put your left hand on the Bible. Do you swear to
9 tell the truth, the whole truth, and nothing but the truth
10 so help you God?

11 MR. HENDERSON: Yes, ma'am.

12 (Whereupon, the plaintiff was sworn)

13 THE CLERK: And stand in front of this microphone.

14 MR. HENDERSON: Your Honor, I just want to say, you ask
15 about the potential witness, Earl Warren, the incident that
16 occurred with me and the victim, we was locked in the room
17 but the inmate, Earl Warren, he was a run around as a rock
18 and what that is he cleans up and mocks and sweeps while
19 everybody is locked down for count. When the incident
20 occurred Mr. Warren was on the rock, you know, the little
21 compound, what benches and tv's they would clean up and so
22 when the incident occurred I called Mr. Warren, I called
23 him to the door, I said, go get the officer which was Mr.
24 McBride, Officer McBride, he worked that night at the
25 institution. I said, go get him because me and my roommate

1 just had an altercation and he's bleeding really bad. So
2 he went and told Officer McBride and so he came back and he
3 said, I told him and that was more than 5 minutes later,
4 Mr. McBride still did not come. So I called Earl Warren
5 again, I said, go tell him that my roommate is bleeding,
6 you know, it's, you know, his face is turning white, gray,
7 different colors, it looks like he's dying. I think he's
8 gonna die in which he later did hours later. But it took
9 the officer like 30 minutes to even come up to the room to
10 even see about the situation. The reason I'm wanting Earl
11 Warren to come and address the Court is because the officer
12 who wrote the report up he's denying that Earl Warren never
13 came and got him and in his sled investigator reports he's
14 stating that he made a round and he's, basically, saying
15 the only reason he came to know about the incident was
16 because I was standing at the door looking funny and he
17 opened the door and noticed the victim in there. And by
18 him saying that like that it made it seem like had he never
19 did round and noticed me looking at the door, looking
20 funny, he would've never known about the victim when that's
21 untrue when I sent Mr. Earl Warren to him two consecutive
22 times and he failed to come. So my point in that is I just
23 want Earl Warren to testify on my behalf that I actually
24 tried to get some help for my roommate because me and my
25 roommate before this we was all right, we was cool. It

1 happened over some gang related issue. So ---

2 THE COURT: Well ---

3 MR. HENDERSON: I never meant to, you know, I
4 understand he died. Yes, I stabbed him and he stabbed me.
5 His wounds were worse, way worse than mine but it was all
6 unintentional.

7 THE COURT: But see, you know, I can't try that
8 case again, that's not why you're here.

9 MR. HENDERSON: I understand that.

10 THE COURT: Do you really understand that?

11 MR. HENDERSON: I think I do. I can't say I
12 understand.

13 THE COURT: You're the one that file this
14 application ---

15 MR. HENDERSON: I understand that.

16 THE COURT: --- saying you had ineffective
17 assistance of counsel that's what we're here for.

18 MR. HENDERSON: I understand that and I asked Mr.
19 Brandon Steen to interview Mr. Earl Warren, he never did.
20 Even in his case notes he never, he never interviewed
21 anybody I asked him to. I wrote several officers names for
22 him to interview on my behalf. He never interviewed them.

23 THE COURT: Okay. Have a seat.

24 (Whereupon, the applicant complies)

25 MR. BOOZER: And, judge, it's just, basically, it

1 would be a claim that's not, obviously, it's not in
2 original application, he does have a involuntary plea. My
3 intent was to interview Mr. Warren to see what he would
4 say. If he said something that's not assisting his case or
5 potentially hurting his case, then we would not call him as
6 a witness. So I would need to speak ----

7 THE COURT: Where do you think this ---

8 MR. BOOZER: --- to this ---

9 THE COURT: -- logistically, where does Mr. Warren
10 live, I mean, if he lives in San Diego, California ---

11 MR. BOOZER: Well ---

12 THE COURT: --- we've got a problem.

13 MR. BOOZER: ---when I was trying to get a hold of
14 him, he was in Camden or that was his last known address
15 was in Camden when I was trying to get a hold of him. I
16 don't know what now since ---

17 THE COURT: That's where his family ---

18 MR. HENDERSON: His family is in Camden he is currently
19 in Sumter, South Carolina.

20 MR. BOOZER: Mr. Henderson has indicated his family
21 is still in Camden but now he believes that Mr. Warren is
22 in Sumter.

23 THE COURT: All right. Was the State's position?

24 MS. GIOVANOLI: Your Honor, personally, the issues with
25 regard to a self-defense claim were waived by pleading

1 guilty in this case so I do believe that, that issue is
2 beyond the scope of this PCR hearing. He's made claims of
3 ineffective assistance of counsel. I feel it would be
4 sufficient for the applicant's testimony as well as
5 counsel's testimony at this hearing. The State would
6 oppose a continuance because this would be the third
7 continuance.

8 THE COURT: Oh.

9 MS. GIOVANOLI: This is the third time it's been on the
10 roster.

11 THE COURT: Third time?

12 MS. GIOVANOLI: Yes, Your Honor.

13 THE COURT: What was the reason for the other
14 continuance?

15 MS. GIOVANOLI: I don't have the reasons before me.
16 The application was actually filed in June 11, 2014,
17 though, so he's had well over two years to get the ball
18 rolling on this as far as tracking down Mr. Warren. My
19 witness is also present and he is driven from Columbia so
20 the State would ---

21 THE COURT: Well, ask your witness if he knows
22 whether the reasons that this case has already been
23 continued two other times?

24 MS. GIOVANOLI: No, Your Honor, I have to inquire Mr.
25 Boozer.

1 THE COURT: Mr. Boozer? Well, he's been on since
2 2015.

3 MR. BOOZER: Your Honor, if I may address, the Court
4 ---

5 THE COURT: Sure.

6 MR. BOOZER: --- on part of this, I believe
7 procedurally Mr. Henderson initially had Mr. Shaffer as his
8 lawyer.

9 THE COURT: I see that.

10 MR. BOOZER: And I believe that they had some issues
11 and he was relieved from the case.

12 THE COURT: But you've had it eighteen (18) months.

13 MR. BOOZER: I had it eighteen (18) months but I
14 believe, judge, there was and I'm trying to remember back
15 that far, I don't believe I got all of his stuff until much
16 later, his case file. And I know the case was on the
17 roster for July of this past year ---

18 THE COURT: And you moved for a continuance?

19 MR. BOOZER: Yes, Your Honor, I did move for a
20 continuance. I don't have the email in my file that I sent
21 but I did move for a continuance. At that point, moved for
22 a continuance and that's, right after that is when I
23 started digging in on the case in August because I believe
24 I just gotten everything for his file and started the
25 investigation into his case.

1 THE COURT: That was six (6) months ago.

2 MR. BOOZER: Yes, Your Honor, absolutely. It was.
3 And when I sent the letter to Mr. Warren that was back in
4 August as well.

5 THE COURT: Well -- yes, ma'am?

6 MS. GIOVANOLI: The only thing I wanted to add to that
7 was once again that this was a guilty plea so the scope of
8 this PCR hearing isn't as broad as a trial. I understand
9 that his witness would be willing to testify to a defense,
10 of self-defense, and that was pursued by his counsel at the
11 time and we would be willing, we would be able to offer
12 testimony about that today.

13 MR. BOOZER: And, Your Honor, just as an
14 alternative, if I May? If, Your Honor, is not so inclined
15 to grant a continuance maybe we could leave the record open
16 for just a period of time after taking testimony of Mr.
17 Henderson and of Mr. Steen to allow me, through his private
18 investigator he has apparently hired to talk, to speak to
19 Mr. Warren and, Your Honor, can order that I receive the
20 Rule 5 discovery from the solicitor's office and then we
21 can make that a part of the record. Either I submit it --
22 either Mr. Warren submits an affidavit or we do some sort
23 of deposition of Mr. Warren that's certainly another
24 option.

25 THE COURT: All right. I'll do that but I'm not

1 inclined to continue the matter after it's been continued
2 several times ---

3 MR. BOOZER: Thank you, Your Honor.

4 THE COURT: --- prior to today. But I think we
5 need to move ahead with the testimony. I'll -- and I will
6 retain jurisdiction.

7 MR. BOOZER: Your Honor, will retain jurisdiction.
8 Your Honor, is there a time limitation on leaving the
9 record open for purposes of speaking with Mr. Warren?

10 THE COURT: I'll give you ninety (90) days. You
11 let me know if that's an insurmountable problem.

12 MR. BOOZER: And, Your Honor, how would you prefer
13 to have the testimony of Mr. Warren presented that we
14 actually have ---

15 THE COURT: You find him first.

16 MR. BOOZER: Okay. And then as far as the ---

17 THE COURT: If he's willing to testify.

18 MR. BOOZER: Certainly, Your Honor. And then, of
19 course, also on the Rule 5, may I ---

20 THE COURT: You prepare me an order.

21 MR. BOOZER: All right. We're ready to proceed.

22 THE COURT: All right.

23 MR. BOOZER: We call Mr. Henderson to the stand.

24 THE COURT: Yes, sir. Come around Mr. Henderson.

25 MR. BOOZER: And, judge ---

Justin Henderson- Direct Examination by Mr. Boozer: 17

1 THE COURT: He's already been sworn. You've
2 already been swore to tell the truth.

3 THE COURT: You may proceed.

4 MR. BOOZER: Thank you.

5 JUSTIN HENDERSON, first being
6 duly sworn, testified as follows:

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

8 Q. Mr. Henderson, how are you doing?

9 A. I'm doing all right, sir.

10 Q. Mr. Henderson, do you know why you're here today?

11 A. Post-conviction relief.

12 Q. And just speak up and make sure you speak clearly
13 because Madam, Court Reporter needs to take down everything
14 you say, okay.

15 A. All right. I apologize. Post-conviction relief.

16 Q. All right. Did you file an application for PCR?

17 A. Yes, sir.

18 Q. All right. Do you know what it is that you're asking
19 this Court to do for you?

20 A. I'm really not sure. I really hoping for -- really,
21 basically, to get a new trial. I would want -- I would
22 guess.

23 Q. Okay. And that's right and, basically, you understand
24 the only thing that this Court can do for you is,
25 basically, to grant you a new trial or an appeal and start

Justin Henderson- Direct Examination by Mr. Boozer: 18

1 you, start your case, basically, if he grants his
2 application your case will start completely over on your
3 original charge, do you understand that?

4 A. Yes, sir.

5 Q. Okay. This Court can't reduce your sentence or cut
6 your time or make you parole eligible, do you understand
7 that?

8 A. Yes, sir.

9 Q. All right. An you understand that -- what was your
10 original charge?

11 A. Murder and possession of a weapon during the
12 commission of a violent crime.

13 Q. And what did you end up pleading guilty to?

14 A. To voluntary manslaughter.

15 Q. And what sentence did you receive?

16 A. Twenty (20) years.

17 Q. Okay. Is that the total sentence you received on that
18 voluntary?

19 A. It was twenty (20) years for voluntary manslaughter
20 and five (5) years consecutive for the weapon possession.

21 Q. For a total of twenty-five (25)?

22 A. Yes, sir.

23 Q. And is that time running concurrent -- are you serving
24 any time for any other charges currently?

25 A. At that time, I was. I had like four (4) years left

Justin Henderson- Direct Examination by Mr. Boozer: 19

1 before the original sentence ended but for my understanding
2 I assume I was pleading guilty to twenty (20) years which
3 it was to be ran concurrent with my sentence. I had a
4 misunderstanding as to what concurrent was. I was thinking
5 that it was going to be ran concurrent with my sentence. I
6 didn't know that the time that I was doing was going to be
7 knocked off and a fresh twenty (20) year sentence was going
8 to start with a consecutive five (5). And I also thought
9 that the consecutive five (5) was going to be non-violent
10 because I talked to Mr. Steen about it and it was on my
11 sentencing sheets that it would be non-violent and that the
12 other twenty (20) year sentence would be ran concurrent.

13 Q. Okay. But you got a total of twenty (25) years for
14 this new conviction?

15 A. Yes, sir.

16 Q. An you understand that if you go back to trial you
17 would face not the voluntary manslaughter but you would
18 face the murder and possession of a weapon?

19 A. Yes, sir, I understand that.

20 Q. All right. And knowing that you're willing to take
21 that risk and you want to go forward with the PCR?

22 A. Yes, sir.

23 Q. All right. Now, obviously, you filed this PCR
24 application and you got some allegations. You've alleged
25 ineffective assistance of counsel in a voluntary plea,

Justin Henderson- Direct Examination by Mr. Boozer: 20

1 right?

2 A. Yes, sir.

3 Q. All right. One of your allegations is that your
4 lawyer failed to move to quash indictments, is that
5 correct?

6 A. Yes, sir.

7 Q. All right. Explained that allegation, if you would,
8 to the Court?

9 A. The issue with the indictments, I never actually seen
10 my indictment which was part of the Rule 5 that I got after
11 I took my plea. And some case law that I know about, I was
12 really illiterate to the law, I never knew nothing about
13 it, so and I noticed that the indictments it was not true
14 billed. It was only -- it only had a signature from the
15 solicitor. And from what I understand all indictments must
16 -- it's a notice requirement document, I understand that, I
17 only merely got to be notified of what I'm being charged
18 with and the elements of it, but it had no fore (sic) jury
19 grand, fore (sic) grand jury signature. It had no
20 signature other than the solicitor's signature and I never
21 seen it to raise the issue before any court appearance or
22 proceedings. So I would think that by Mr. Steen being my
23 counselor at the time, he should've noticed the indictments
24 and noticed that they was insufficient or even an nullity
25 and bring it up in a timely matter to quash it or at least

Justin Henderson- Direct Examination by Mr. Boozer: 21

1 have a rehearing of the indictments or an investigation
2 into the indictments.

3 Q. Okay.

4 MR. BOOZER: Your Honor, I believe, Your Honor,
5 should have a copy of the indictments in the packet. May I
6 approach the witness, judge?

7 THE COURT: Sure.

8 Q. Mr. Henderson, I'm going to hand you two copies that I
9 just want you to look at for a moment and I know you and
10 I've discussed these. If you could just identify those
11 documents.

12 A. These are the indictments that I got after I filed my
13 PCR application and I argued in the PCR application about
14 the signatures not being on there and I got these back from
15 Clerk of Court, Mr. Funderburk, I think is his name, and it
16 had this signature on it and it had this true bill written
17 on it. It's not even a true bill stamped seal ---

18 Q. Okay.

19 A. --- with the date on them.

20 Q. These indictments that I just handed you which are
21 already a part of your PCR record and package. Are these
22 different than what you saw with your lawyer?

23 A. Yes, sir. And that's another reason I was asking for
24 a continuance because all of my paperwork is in my property
25 bin that I got transferred from another institution.

Justin Henderson- Direct Examination by Mr. Boozer: 22

1 Contraband has to go through my property and they have not
2 done it yet so I have none of my legal work. The
3 indictments that I got, I got them directly from Mr. Steen
4 after the plea proceedings.

5 Q. Okay.

6 A. And they had none of those signatures on there. It
7 had nothing other than the solicitor's signature at that
8 time.

9 Q. And so ---

10 A. That was it.

11 Q. What is it that you feel like your lawyer should've
12 done at the time?

13 A. He should -- if anything, he should've at least
14 address the issue of the indictments to have an
15 investigation done into it or at least quash the
16 indictments because I requested a preliminary hearing and
17 I'm sure if I was at the preliminary hearing and I could've
18 seen the indictments, even though I was illiterate at the
19 time, I might've could have questioned it had I known about
20 it which I probably wouldn't because, like I said, I was
21 illiterate to any of this. I never knew I would be in
22 prison for murder or much less have an indictment for
23 anything like that.

24 Q. And you didn't see those true indictment --
25 indictments that were reported to be true billed, you

1 didn't see those until after ---

2 A. I never seen any indictments until after I took the
3 plea.

4 Q. All right. Now, you also have an allegation that your
5 lawyer failed to file an appeal, is that one of your
6 allegations?

7 A. Yes, sir.

8 Q. Okay. Now, following your plea, did you have any
9 discussion with Mr. Steen about filing an appeal?

10 A. Directly after the plea on the same day, no sir, I
11 didn't. What I did was after, when I got to my
12 institution, I wrote Mr. Steen requesting that he do a
13 direct appeal for me. He wrote me back and stated that, I
14 can't quote word for word because I don't have the
15 paperwork with me, but he stated in so many words that, he
16 sorry, that the time limit for me, for him to file a direct
17 appeal has lapsed and ran out and he sent me like a
18 document stating why and the terms and the time limits of a
19 direct appeal. But I was never aware that I could file for
20 a direct appeal and I feel like by him being my counselor
21 at the time to provide me adequate counseling he should've
22 notified me or at least even asked me to give me the option
23 if I wanted to file a direct appeal on the plea even though
24 I was pleading guilty.

25 Q. Okay. And those documents or that letter that you

Justin Henderson- Direct Examination by Mr. Boozer:

24

1 stated you sent to Mr. Steen asking for an appeal and
2 you've indicated that Mr. Steen sent you a response back,
3 do you have copies of those letters but they're in your
4 paperwork?

5 A. Yes, sir.

6 Q. And when were you transferred from McCormick to Perry?

7 A. I think it was December 11th or the 12th.

8 Q. Okay. And, initially, you and I were supposed to have
9 a conference while you were in McCormick and I discovered
10 the day of that you had been transferred?

11 A. Yes, sir. I had been transferred, I think, to three
12 different institutions since you've been my counselor.

13 Q. And you understand that I made a request to Perry to
14 allow you to have your legal paperwork?

15 A. Yes. I was on the phone with you while you did it,
16 but I still did not receive it.

17 Q. Okay. Now, another allegation that you have is
18 failing to explain the nature of the charges to you. If
19 you would explain that allegation to the Court?

20 A. When you say the nature of the charges, what -- could
21 you -- I don't understand what you're asking.

22 Q. Sure. In your PCR application you've alleged that
23 your lawyer failed to explain, basically, your charges that
24 you were facing to you, do you understand that?

25 A. I understand that I was being charged with murder and,

Justin Henderson- Direct Examination by Mr. Boozer: 25

1 um, I seen Mr. Steen while I was Evans Correctional
2 Institute -- well, before I even met Mr. Steen I was at
3 Evans Correctional Institute this is where the incident
4 took place. And the victim, he was a member of the Folk
5 Nation. I'm a member of a Crypt Organization. So it's a
6 lot of conflict in the institution concerning my safety and
7 I ain't want to put myself and another situation as the
8 situation that I was just in with the victim. So I did a
9 lot of paperwork, grievances request, you know, to get out
10 of the institution and it took me like nine months to get
11 out of the institution in which led me to Lee Correctional
12 Institute. While I was at Lee Correctional Institute, Mr.
13 Steen came to see me twice while he was there and he
14 brought the Rule 5 with him. I never -- he never handed me
15 the Rule 5. I never seen it. All we went over out of that
16 Rule 5 was a letter that the victim wrote to his mother.
17 We went over a time line that Mr. Brandon Steen put
18 together of the incidents that led up to that point. I
19 didn't see the indictments at that time. And we talked
20 about trial, I mean, even in his case notes, I don't have
21 his case notes with me, but even in his case notes he
22 clearly states that I'm intended on going to trial.
23 Q. And we'll talk about that in a moment with your lawyer
24 but let's get back with this question and these kind of go
25 together, I believe, or these issues sort of go together.

Justin Henderson- Direct Examination by Mr. Boozer: 26

1 You've got your lawyer fail to explain the nature of the
2 charges that you were charged with as well as the elements
3 of those charges?

4 A. Yeah.

5 Q. Kind of explain -- well, let's do this, when was --
6 how did Mr. Steen come about representing you? Was he
7 appointed or did you hire him?

8 A. He was appointed to me.

9 Q. All right. Do you know when Mr. Steen was appointed
10 to represent you?

11 A. No, sir, I'm not sure. When I first came to this
12 courthouse right here I was asked to do a Schmerber, a
13 Schmerber I think, that's how you say it.

14 Q. Schmerber.

15 A. And Mr. Steen wasn't in here, it was another attorney
16 in here in place for him and he recommended that I take the
17 Schmerber.

18 Q. Was that Mr. Rick Jones?

19 A. I believe so.

20 Q. Okay.

21 A. But I can't be for sure but it was another, it was
22 another attorney for Mr. Brandon Steen. It wasn't Mr.
23 Steen.

24 Q. All right. Let me ask you this, your plea -- when was
25 your plea?

1 A. December 3, 2013. We discussed it on December 2nd
2 and I came back the next day.

3 Q. All right. When did you first meet with Mr. Steen?

4 A. It was probably, it was probably four months before I
5 took the plea.

6 Q. That was the first time you met with him?

7 A. No. As far as sitting down and having a conversation
8 with him about my case, yes. I spoke with him here at this
9 courthouse right here back in the back and all we talked
10 about he said they were offering a plea for thirty (30) and
11 I said, no, I want to go to trial.

12 Q. All right. So the offer was for thirty (30) and you
13 decline that?

14 A. Yes, sir.

15 Q. All right. During your -- how many meetings in total
16 do you think you had with Mr. Steen?

17 A. I had a total of four.

18 Q. All right. And if your memory is different, would you
19 refer to any notes that Mr. Steen may have about how many
20 meetings he had with you?

21 A. I mean, in his case files notes according to him he
22 only met, he only met with me two times at Lee Correctional
23 Institute.

24 Q. All right. Tell me this, what would you and Mr. Steen
25 talk about during the meetings?

Justin Henderson- Direct Examination by Mr. Boozer: 28

1 A. We, basically, talked about, you know, what happened,
2 my statements. We talked about the trial. We talked about
3 -- I was -- the incident that occurred like I, um, quote,
4 said earlier to the judge about, you know, situation with
5 Mr. Earl Warren and the officer, the way the officer wrote
6 his report, you know, he, basically, lied in his reports
7 and I have no way of proving that. And like I was telling
8 Mr. Steen can we get a polygraph request, a polygraph test
9 and he said, yes. He said, he told me that the State
10 allows, provides money for that and I was like let's do
11 that. And he even went to say, he said, even if you were
12 to fail the polygraph we wouldn't have to say nothing about
13 it, it would be between us, you know, client privilege.
14 And I was like I'm not worried about failing it and so that
15 was on our first visit. The next time he came back to Lee
16 correctional Institute I ask him about the polygraph and he
17 said he had somebody in Columbia that was going to conduct
18 the polygraph in a couple of weeks is what he said. He
19 never told me who. He never said what. And after the plea
20 agreement and all this, after I got his case file it's
21 nowhere in his case file that he talked to anybody to
22 conduct the polygraph test, who he talked to, how much this
23 polygraph would cost or anything. So as far as -- now that
24 I look at it now, I don't believe he ever talk to anybody
25 about a polygraph test.

1 Q. An you and I've, of course, discussed the polygraph,
2 correct?

3 A. Yes.

4 Q. Okay. An you understand that the purposes of the PCR
5 hearing is kind of irrelevant to this case, right?

6 A. Yes, sir. I understand that but we discussed that if
7 I passed the polygraph, me and Brandon Steen, we discussed
8 this he said, if I passed the polygraph he could present it
9 to the prosecutor, to the solicitor, and we maybe work out,
10 you know, a better deal in my behalf.

11 Q. And that could assist in aiding the prosecutor if you
12 decide you want to go forward with the charges or drop them
13 or have a different type of ending, right?

14 A. All I -- yes, Your Honor. All I wanted to prove was
15 that I sent Mr. Earl Warren to officer McBride two times to
16 get help. Also, that I was attacked by the victim with a
17 knife, I mean, and it's clearly evidence it was two knives
18 in the room. His knife and my knife. I'm not denying that
19 I stabbed the victim. I was simply defending myself. We
20 was locked in the room. There was no way for me to run.
21 No way for me to retreat. I was locked in the room.

22 Q. Did you have any discussion with Mr. Steen about sort
23 of what you were talking about earlier with the Court about
24 Mr. Earl Warren?

25 A. Yes. I talked to him about Mr. Earl Warren.

Justin Henderson- Direct Examination by Mr. Boozer: 30

1 Q. What did you ask him to do about Mr. Earl Warren?

2 A. I told him about Mr. Earl Warren about him going to
3 the officer a couple of times, several times. Mr. Brandon
4 Steen was supposed to interview Mr. Earl Warren even though
5 sled investigated, spoke with Mr. Earl Warren. Mr. Earl
6 Warren told sled he did not know nothing. So I do not know
7 if Mr. Brandon Steen went off them notes and took it upon
8 himself, you know, to say well it really is no matter for
9 me to speak with Mr. Earl Warren when he's already told
10 sled he didn't know anything.

11 Q. Did you ask or have any discussion with Mr. Steen
12 about hey, did you talk to Mr. Warren?

13 A. Yes.

14 Q. And what was his response?

15 A. He never talked to him.

16 Q. Okay. And is that something you wanted him to do?

17 A. Yes, sir. I also, and I believe you have the paper
18 over there with you, I don't have it, but I ask him to
19 speak to -- in the sled investigator report that we went
20 over, it was a couple of inmates in there that wrote, they
21 talked to sled, they said they, um, I can't quote word for
22 word but they, basically, said they trusted the victim, Mr.
23 Jamie Dean White. So -- and like I told Mr. Brandon Steen
24 I gave him some names of some officers that work at the
25 institution who knew about the situation, they knew the

Justin Henderson- Direct Examination by Mr. Boozer: 31

1 whole incident and I talked to them and that's Mr. Waddell,
2 Mr. Parker and Mr. Brown and I wrote that down on his time
3 line sheet and ask him to interview these people on my
4 behalf, you know, to give me the credibility that, you
5 know, there's people that trust me too. These officer knew
6 me. Sometimes they would bring me out the cell with no
7 cuffs when they could lose their jobs for not doing that
8 but they trusted me enough not to put me in cuffs.

9 Q. Okay.

10 A. And he never interview those officers neither.

11 Q. Now, you also got an allegation that your lawyer
12 didn't explain the minimum sentencing and parole
13 eligibility with regards to these charges too?

14 A. No, sir.

15 Q. Explain that.

16 A. Like I said earlier, what I understood was I was
17 pleading guilty, we was going to drop the murder charge to
18 voluntary manslaughter and it was going to be ran
19 concurrent with my sentence. He never actually broke down
20 what that concurrent meant. In my mind I'm thinking
21 concurrent means running with the sentence that I got, you
22 know, so I'm thinking they gonna knock eight (8) years off
23 twenty (20) because I done did like eight (8) at that time
24 or maybe nine (9) and I would only have a certain amount of
25 time left. And with the consecutive five (5) it was

Justin Henderson- Direct Examination by Mr. Boozer: 32

1 supposed to be non-violent that would only be like two (2)
2 and a half ($\frac{1}{2}$) years. So I added that up and, you know, it
3 kind of sounded reasonable to me at that time even though I
4 did not want to take that plea because I was clearly, I
5 clearly intended to go to trial.

6 Q. Okay. And had you known that, that was not the case,
7 that at that time you were doing at the time was not going
8 to be counted for this case, would you have taken the plea?

9 A. No, sir.

10 Q. Okay. Now, your plea was in, you said, December of
11 2013, when was it decided, when did you have discussion
12 with your lawyer about entering an actual plea?

13 A. On December 2nd.

14 Q. Okay.

15 A. The day before the plea.

16 Q. To me about that discussion with your lawyer.

17 A. All right. Can I backup a little bit ---

18 Q. Sure.

19 A. --- because it's got relevancy to that ---

20 Q. Go ahead.

21 A. --- if, the Court, will allow it. Um, like I spoke
22 earlier about, you know, I was having issues at Evans
23 getting threats from other inmates that was brothers with
24 the victim and I was trying so hard to get transferred. I
25 finally got transferred to Lee County and Brandon Steen

Justin Henderson- Direct Examination by Mr. Boozer: 33

1 came to see me there twice. Mr. Brandon Steen had me
2 shipped back to Evans where the incident took place at and
3 I was put in the same room around these same people. And
4 so I get here and I talked to investigator Mr. Brockenberry
5 who was over the case and I was like why am I here and she
6 said, your lawyer does not want to travel back and forth to
7 Lee County. He's from here. He wants you here at the
8 courthouse. Near the courthouse. It's convenient for him
9 to travel. He does not want to travel. So now -- and she
10 was like -- I was like, well, how long am I going to be
11 here and Ms. Ruby Brockenberry she stated that I would be
12 here until the court proceedings is over with and trial
13 wasn't supposed to start until January 27th. So they come
14 into here on December 2nd and now he's talking about a
15 plea. So I was like, well, what about a polygraph and he
16 was like well that still a couple of weeks off. But he
17 told me it was a couple of weeks off like the last time I
18 seen him at Lee County. So, now that I look back on it he
19 probably never even talk to anybody about this polygraph
20 test that which I would've passed and we could've took to
21 the solicitor or prosecutor or whoever with the results of
22 that test and they could've help me because I actually was
23 telling the truth. Just like the Court's automatically
24 presume that a counselor provides adequate assistance, the
25 same thing can be said about an inmate. I'm already

Justin Henderson- Direct Examination by Mr. Boozer: 34

1 convicted and chained down so my word is not credible. So
2 that polygraph is the only way for me to prove, you know,
3 I'm telling the truth.

4 Q. And I understand that and we've talked about that and
5 that's on the record now.

6 A. All right.

7 Q. Let's kind of continue to move forward, so the day
8 before your plea is when you had a discussion with your
9 lawyer about entering a plea?

10 A. Yes, sir.

11 Q. All right. Up until that time, were you intent on
12 going to trial?

13 A. Yes, sir.

14 Q. All right. So what change that particular day that
15 made this flip over from a trial to a plea?

16 A. All right. Let me back up a little more, during those
17 two visits at Lee County we talked about a trial. He told
18 me about the jury selection. He even said that he could
19 file a motion to have the jury or the judge inform the jury
20 to only, like I think he said, to put a cap on to where
21 they could charge me with involuntary manslaughter or just
22 manslaughter if I go to trial. And even in his case file
23 notes, you have them, he clearly states that I intended on
24 going to trial. And I also want to add this, he clearly
25 states that I'm concerned about my safety in his case file

1 notes. Now, he brought me back to Evans so now I'm in the
2 same environment that I left from where I caught this
3 unfortunate incident with me and the victim so now I'm
4 getting threats again. So he called me up here and, you
5 know, he's talking about a plea and I'm like what about the
6 trial because I got my hopes up now. We gonna take a
7 polygraph test I know for fact I'm going to pass my
8 questions and I'm expecting to go to trial and all of a
9 sudden he's got me back at Evans knowing that I do not want
10 to be there and now he's talking about a plea. And I'm
11 like you got me at Evans I'm not even thinking straight.
12 Now, that I look back on his case file it's like he playing
13 on my fears. He knew I did not want to be there. He knew
14 the judge even allowed a prison transfer to be part of the
15 deal.

16 Q. Well, let me ask you this, why was it, ultimately,
17 that you ended up entering a plea?

18 A. I honestly did not -- I was under pressure being back
19 at Evans. I'm receiving these threats. I was going to
20 have to wait until January for the trial, you know, I was
21 going to be at this same institution, you know, everybody
22 and it's even on record that it's a good possibility that
23 my safety was in jeopardy by being at that institution and,
24 you know, I asked him I was like what about the trial and
25 he sounded just like so discouraged like well, you know, we

Justin Henderson- Direct Examination by Mr. Boozer: 36

1 can still go. It just didn't feel right to me. Like, I
2 felt like he wasn't going to put forth his effort into it.
3 And, now that I look back on his case file, he did nothing
4 to prepare us for any type of defense to even go to trial,
5 he did nothing other than create a trial transcript. So,
6 now that I look back on it, it seemed like he was intent on
7 me taken a plea because them couple of times he talked to
8 me I'm pretty sure he knew that I was very illiterate,
9 though, of what was going on as far as trial, this charge,
10 and things like that because he never interviewed anybody.
11 He never went through with the polygraph like he was
12 supposed to and he told me this.

13 Q. Did you guys discuss on that day before the actual
14 plea, did y'all talk about some sort of trial strategy or
15 did y'all talk about any trial strategy before then?

16 A. Only thing we talked -- no, we didn't talk about a
17 trial strategy. All we talked about was he told me about
18 the jury striking or the jury selection. That we would be
19 able to ask question to this juror and that juror and we
20 would be able to pick them. And he said that he would be
21 filing a motion to the judge or somebody to have it to
22 where I could get convicted if found guilty for involuntary
23 manslaughter or manslaughter. But if that's the case
24 that's so much better, that would've been so much better in
25 my behalf to, at least, get involuntary manslaughter

1 instead of me, instead of him just wanting me to take this
2 plea out of the blue when you got my hopes up about going
3 to trial and this polygraph test because we could've -- you
4 said we've done went over that but that's what I'm
5 thinking, my mind is set on trial.

6 Q. Now, obviously, at your plea you made certain
7 statements to the Court indicating your guilt and that you
8 understood what you were doing there that day and that you
9 were happy with your lawyer and whatnot, do you remember
10 that?

11 A. Not word for word but I do remember that day. I don't
12 know if it was the State or the prosecutor or solicitor or
13 whoever states the State side of the case, but they was
14 saying things and the judge ask me did I agree to that and
15 I was like, you mean what he said and I was like no, I
16 don't agree to that, but I am pleading guilty.

17 Q. You disagreed with some ---

18 A. Yeah.

19 Q. --- of the facts alleged by the State?

20 A. Yeah. Yes.

21 Q. Okay. But why did you -- let me ask you this, why did
22 you go through with the plea and not stop it and say, hey,
23 I don't want to do this. I want to go to trial. I am
24 being pressured into doing this. Why didn't you speak up
25 and say something then?

Justin Henderson- Direct Examination by Mr. Boozer: 38

1 A. Because I was like, listen, get me out of Evans
2 Correctional Institution. Get me out of Evans Correctional
3 Institution. So they called SCDC and whoever and they made
4 it part of the deal that they would transfer me that day to
5 another institution where I was suppose to be at in order
6 for this plea to go through. And the judge even, he asked
7 me some questions, was pleading guilty to possession of a
8 firearm and I said, yeah. I wasn't even in court for that
9 and I said that to say this I was just saying, yeah, you
10 know, to get out of there because -- and then they had a
11 classroom of students back there in the back, I was already
12 embarrassed about being here in front of all of them. It
13 was like a little show. They had a class of young kids in
14 here, students. But the judge nor Brandon Steen never told
15 me the minimum that I would do off of my sentence or the
16 maximum. Judge Cunningham neither. All he asked me was do
17 I know I'm pleading guilty to manslaughter or voluntary
18 manslaughter. Yes. Do I understand that I'm pleading
19 guilty to twenty (20) years? Yes, I understand that but at
20 the same time I'm thinking this is going to be concurrent
21 to the sentence that I'm serving. But my -- my -- if he
22 would have broke it down to me explain like this is
23 concurrent, this is what's going to happen, I would've
24 never did it.

25 Q. Okay. And I believe we covered everything in your

Justin Henderson- Direct Examination by Mr. Boozer: 39

1 application in your testimony today. This is, obviously,
2 your day in court, is there anything else in regards to
3 your PCR application that you've not testify to that you
4 want to bring to the Court's attention?

5 A. I don't -- I would like to say something but I don't
6 know if it had relevancy to the question you just asked me.
7 I would like to say that now -- I would like to say that
8 throughout the whole time I was charged with this murder I
9 never seen my Rule 5 period. I asked Mr. Steen several
10 times, I said Mr. Steen, "do you see me getting convicted
11 of murder?" He stated, "no." I said, "Mr. Steen, what is
12 the state using against me to convict me of murder?" He
13 said, "he does not know." But throughout this whole time
14 even his case notes reflect it while he represented me for
15 the murder charge he never even had a full Rule 5. In his
16 case notes he states that he got the Rule 5. I don't have
17 the paper with me to quote the dates for the Court. He
18 stated that I received Rule 5. Two months later he writes
19 in his case notes I just noticed I'm missing a lot of
20 discovery. I have to write such and such to get more. So
21 he wrote. He received more discovery and he wrote again.
22 I'm still missing discovery. So while he was coming to Lee
23 Correctional Institute to discuss my case with me he never
24 even had a whole full Rule 5 of everything ---

25 Q. Since then have you been provided with any Rule 5

Justin Henderson- Direct Examination by Mr. Boozer:

40

1 materials?

2 A. He signed -- the day after the plea he gave me his
3 Rule 5 out of his trial binder, you know, the binder, he
4 gave me that right then and they was not the complete Rule
5 5 and even his case notes will reflect that it's not the
6 Rule 5.

7 Q. Well how -- let me ask you this, how do you know it's
8 not the complete Rule 5?

9 A. The investigator reports was missing pages. Like the
10 letter from the victim. The letter that I wrote my family
11 after the incident was not in there. It was a bunch of
12 medical reports that was suppose to be together that was
13 labeled, that was missing. The second Rule 5 that he sent
14 me after the plea he gave me one after the plea proceeding,
15 hand-to-hand, he handed it to me. Then one came in the
16 mail. Well, he came to Lee County at that first visit and
17 he said, "I gotcha Rule 5 here with me but they won't let
18 me leave it." But he said, "what I'm gonna do is I'm going
19 to put some stamps on it and I'm going to put it in the
20 mail." So, and this was months later on December 2nd and I
21 said, "man, I still ain't got my Rule 5." He was, "like
22 you didn't get it." He said, "I put a whole bunch of
23 stamps on it and dropped it in the mailbox." I was like, "
24 no, I didn't get it." But when I got his case notes he
25 stated that he was unaware that I moving back to Evans.

1 There was no way that he was unaware that I moved back to
2 Evans when Ruby Brockenberry clearly stated that he wanted
3 me back at Evans because he did not want to travel back and
4 forth from Camden to Lee County, Bishopville to see me.
5 It was more convenient for me to be at Evans so he could
6 see me.

7 Q. Okay. And other than that, other than the Rule 5, is
8 there anything else that we've not discussed as part of
9 your PCR application?

10 A. I can't -- I can't even think -- that's why I asked I
11 have, you know, my notes with me. Everything that I had
12 for my case of everything I wrote from the time I met him
13 up until now, up into the last time we talked, I have none
14 of that with me so I want to get everything on the record
15 but, you know, I know later if I leave here I'm going to be
16 like I forgot to say this, I forgot to say that because I
17 don't have my paperwork here with me. That's another
18 reason why asked for the continuance. I really wanted my
19 Rule 5 and its entirety and that's including warrants,
20 indictments, full investigative reports. Everything that
21 was supposed to be in the Rule 5 and its entirety.

22 Q. An you understand the judge is allowing us to get
23 that?

24 A. Yes, sir. Yes, sir.

25 Q. Okay. I understand that you want some notes and that,

Justin Henderson- Cross Examination by Ms. Giovanoli: 42

1 that has not been provided to you from your institution but
2 you've lived through this case so going off of this, you've
3 told me certain things, of course ---

4 A. Yeah.

5 Q. --- in our meetings, tell me, I mean, is there
6 anything else that you feel like you are leaving out right
7 now that you can recall?

8 A. Yeah. I really want to say that now that I look back
9 on everything that happened after the plea, you know, and
10 after reviewing his case file of my case, it just, it just
11 seems like he went through the motions coming to see me
12 like I, basically, got drugged through the mud, you know,
13 he never had intention of taking me to trial.

14 Q. Okay.

15 A. As I clearly wanted. His case file states that I'm
16 intent on going to trial. We talked about a trial. Jury
17 selection and all this. He never had intentions of doing
18 it.

19 MR. BOOZER: Mr. Henderson, that's all the questions
20 I have please answer any the State may have.

21 A. Yes, sir.

22 **Cross Examination by Ms. Giovanoli:**

23 Q. Good afternoon.

24 A. Good afternoon.

25 Q. Let's start with your misunderstanding of your

1 concurrent sentence. Can you just explain to me what your
2 understanding of concurrent means?

3 A. Can I give you an example?

4 Q. Sure.

5 A. All right. Say I was serving a sentence of twenty
6 (20) years, all right, and they give me twenty (25) years,
7 concurrent to me is like is running together with that
8 twenty (20).

9 Q. Okay.

10 A. But if I had done like eight (8) years off at twenty
11 (20) then that eight (8) years will be knocked off of this
12 twenty (25) that I just got which I was under the
13 impression of.

14 Q. You were under the impression that the sentence would
15 be applied retroactively? Meaning, backdated to when you
16 first went in on your original charges?

17 A. Yes, ma'am.

18 Q. Okay. Did your attorney tell you that?

19 A. No, ma'am.

20 Q. Did you ever ask him what concurrently meant?

21 A. I never thought to ask him because like I said he
22 should have explained that to me. The elements of this
23 plea, exactly what I'm facing, minimum/maximum sentence,
24 parole eligibility.

25 Q. He never told you what the minimum/maximum sentence is

Justin Henderson- Cross Examination by Ms. Giovanoli: 44

1 you could receive?

2 A. No, ma'am.

3 Q. And what particular point did you decide to plead
4 guilty to these charges?

5 A. On December 2nd.

6 Q. Is that your date of trial?

7 A. No. The date of the trial was supposed to be January
8 22nd.

9 Q. Were you in court when you made this decision to plead
10 guilty?

11 A. No. We was in the back and, you know, the little
12 holding cells where we was at and we talked right there,
13 just me and Mr. Steen.

14 Q. But you were at the courthouse?

15 A. Yes, I was at the courthouse.

16 Q. Do you remember why you were at the courthouse?

17 A. Why I was at the courthouse?

18 Q. Mmm, hmm.

19 A. I didn't even know I was coming back to court. I was
20 never even notified. They tell me pack up at Lee County,
21 they said you was going to Evans. I was like, Evans. I
22 just went through a lot to get away from Evans so I ain't
23 know why I was going back to Evans. So, now I'm like, I'm
24 worried, like, why am I going back to Evans. So the next
25 morning they tell me to get ready I'm going to court and

Justin Henderson- Cross Examination by Ms. Giovanoli: 45

1 that's when I see Mr. Steen and that's the first thing I
2 heard about him wanting me to plea.

3 Q. Okay. So that day you were at the court, you didn't
4 know why you were in court?

5 A. No, ma'am.

6 Q. Your testimony is you weren't there for trial?

7 A. No, ma'am. The paper that I had on his trial line, it
8 says trial, January 27th.

9 Q. Okay. And in that discussion that you have with Mr.
10 Steen at the courthouse, what did he say that indicated to
11 you -- let me rephrase -- what did he say to you to make
12 you change your mind to plead guilty?

13 A. He came in the room, he asked me how I was doing, you
14 know, I asked him what, you know, why am I back Evans and
15 he said you're here for, they're offering another plea, cuz
16 they already offered thirty (30) and I turned it down. And
17 he said they're offering a plea and I was like a plea, I
18 was like, what about a trial, what about this polygraph,
19 and he was like, that several weeks away. And I was like
20 what about trial, he was like well, you know we can still
21 do it, but he said in a way like he had no confidence, he
22 had no confidence in him like he -- you can read another
23 person that you're talking to eye to eye. I could sense it
24 in him that he really didn't want to go to trial and I felt
25 at that time that he would not represent me like to the

Justin Henderson- Cross Examination by Ms. Giovanoli: 46

1 fullest and now that I look at his case file notes, what
2 could he -- what did he do to provide a defense for me or
3 for us at a trial.

4 Q. Let's talk about that meeting that you were having
5 right then when you didn't have his case notes. So when
6 you got there, he was informing you of a State's offer?

7 A. Yes, ma'am.

8 Q. And what was that second offer?

9 A. He said twenty (20) years, they would drop the murder
10 to voluntary manslaughter, twenty (20) years, and a
11 consecutive twenty (25) for the weapon. And I was like,
12 well, why does it got to be consecutive. He said something
13 about it's state law, it's mandatory.

14 Q. Okay. And was there any other parts to that plea
15 deal?

16 A. Yes. A prison transfer.

17 Q. Okay. A prison transfer to where?

18 A. Back to Lee Correctional Institute where I was
19 supposed to be at. I was never supposed to be back at
20 Evans where that homicide was committed at.

21 Q. Okay. And so, is it safe to say that was your main
22 concern getting away from Evans and to Lee?

23 A. I think that had a big deal in it, yes. I was worried
24 about -- I was not trying to stay there until January 27th.
25 That would've been like a whole month.

1 Q. So you were willing to accept the benefit of a plea
2 bargain as far as the prison transport?

3 A. I didn't want to take the plea at all. At that time,
4 I just did it just to get out of here, just to get out of
5 Evans. I said, man, y'all get me out there today and they
6 made calls or whoever made cause the solicitor, the
7 prosecutor, they went to Evans and got my stuff. I never
8 even went back. They drove me straight to Lee County.

9 Q. So that day you were willing to plead guilty to get
10 transported out of Evans?

11 A. Yeah. Cuz, I ain't -- it was another way for me to
12 get out of there. I should have never been back to begin
13 with. And now by him being my counselor, by him being my
14 lawyer he should have, he should have never allowed a
15 prison transfer be part of a deal anyway.

16 Q. Earlier you testified that you got the prison transfer
17 as part of the deal, did you negotiate that with the
18 solicitor?

19 A. No. I spoke to Mr. Brandon Steen about that. I don't
20 know who he spoke to.

21 Q. So Mr. Steen got you that deal?

22 A. Yes, ma'am.

23 Q. Okay. Let's talk about what actually happened in the
24 cell, the incident, that arose. In your words, what
25 happened in the cell?

Justin Henderson- Cross Examination by Ms. Giovanoli: 48

1 A. Between me and the victim?

2 Q. Yes.

3 A. I mean, is that relevant? I mean, cuz they already
4 said I waived my self-defense claim.

5 COURT REPORTER: I don't understand what you're
6 saying. You have to speak up a little bit.

7 A. I asked -- can I confer with my lawyer, please?

8 MR. BOOZER: Judge, I ---

9 A. If it will please, the Court?

10 MR. BOOZER: I was going to make an objection as to
11 relevancy, it's in the transcript. The facts that are
12 alleged I'm not where this is going.

13 THE COURT: Well, make a motion.

14 MR. BOOZER: I'm sorry.

15 THE COURT: Make that motion.

16 MR. BOOZER: Just objection to relevancy on this
17 question.

18 THE COURT: What's the relevance, Madam?

19 MS. GIOVANOLI: Your Honor, the applicant has testified
20 extensively to some of the facts of this case so I would
21 like to clear those up.

22 THE COURT: Well, there in the record. Let's move
23 on.

24 MS. GIOVANOLI: Okay.

25 Q. You also mentioned previously that your trial counsel

1 was going to try to get you a charge of involuntary
2 manslaughter, is that correct?

3 A. No, ma'am. What I said was, what I said was, when he
4 visited me at Lee Correctional Institute he said at trial
5 he said that could file a motion to have the judge to
6 instruct the jury if I'm found guilty to charge me with
7 just manslaughter or maybe even involuntary manslaughter.

8 Q. And what is your understanding of involuntary
9 manslaughter?

10 A. I know it's, I know it's more adequate description of
11 the offense that happened between me and the victim.

12 Q. But wasn't your claim self-defense?

13 A. Yes, ma'am, from the beginning. He knew that. Even
14 the reports reflect it.

15 Q. And you were aware that if a jury found that you were
16 acting in self-defense, you would not be convicted of
17 involuntary manslaughter or murder?

18 A. I wasn't aware that. I was aware that if we went to
19 trial he would instruct them to charge me with involuntary
20 manslaughter or manslaughter. He never told me that I
21 wouldn't get no time. He never said that.

22 Q. Do you recall taken an oath that day when you made
23 your guilty plea?

24 A. Yeah. Yes, ma'am.

25 Q. You know what the purpose of an oath is?

Justin Henderson- Cross Examination by Ms. Giovanoli: 50

1 A. To state that I am telling the truth. That I would
2 tell the truth.

3 Q. Were you telling the truth whenever you answered all
4 of the judge's questions that day?

5 A. Which question? I mean, they asked me questions ---

6 Q. Were you ---

7 A. --- that was not true.

8 Q. They asked questions that were not true?

9 A. Yeah.

10 Q. And you answered untruthfully?

11 A. Listen, it's in the -- I don't know if my lawyer has
12 the -- I have a copy of the plea transcript, every question
13 that was asked. And the judge asked me, he said, "so do
14 you understand you're pleading guilty to possession of a
15 firearm?" And I said, "yes, Your Honor." I was never
16 charged with possession of a firearm. But my point in
17 saying that is, I was here at the hearing but I really
18 wasn't at the hearing. He could've asked me was I pleading
19 guilty to rape and I would've said, yeah. He even asked me
20 three, four, maybe even five times to speak up.

21 Q. Do you remember when the judge asked you if you
22 understood that you are pleading guilty, you're waiving any
23 alleged defense, any alleged defenses you had?

24 A. Yes, I remember him asking me that.

25 Q. He asked that and your response was, actually on page

Justin Henderson- Cross Examination by Ms. Giovanoli: 51

1 12, line 11, your answer was, "Yes, sir." And he also
2 asked that similar question on page 9, line 25, "I can
3 understand the facts may vary one way or another but by
4 pleading guilty, do you understand you're giving up any
5 rights to claim self-defense or anything like that?" And
6 your response was, "Yes, sir." Do you remember that?

7 A. Yes, ma'am. But could you backup to the question
8 before that?

9 Q. Sure. On page 9, he also asked on line 22, it's
10 actually starting on line 17, the Court asked, "Are you
11 pleading guilty to killing, what was the victim's name?"
12 Your response or Mr. Anderson said, "Jamie White." You
13 then said, "Are you asking me if I am pleading guilty to
14 the facts as he stated?" Line 22, the Court, "No, I'm
15 asking if you are pleading guilty to manslaughter of Jamie
16 White?" Your response, "Yes, sir."

17 Q. Yes, ma'am. Because they stated facts that I was not
18 -- I was not pleading to what -- Mike Anderson, the sled
19 agent that was over the case, he stated some, you know, he
20 stated his claim and the facts that he was aware of or
21 whatever they had on record that I did not agree with and
22 when the judge asked, do you understand this or are you
23 agreeing to that and I was like, to what he just said, no.
24 And that's when he said I understand that it may vary from
25 side to side. Just because I pled guilty to the charge

Justin Henderson- Cross Examination by Ms. Giovanoli: 52

1 does not mean that I willfully killed the victim because I
2 did not.

3 Q. Okay. Just so I can fully understand, had your
4 sentence, the concurrent sentence that you receive, applied
5 the way you thought it did and you were transported to Lee
6 as part of that plea offer, would you be here today
7 contesting the conviction?

8 A. I'm not, I'm not sure. But I know one thing I know if
9 it would've been concurrent like I thought it was and the
10 consecutive five (5) would've been non-violent -- right now
11 I'm doing a violent twenty-five (25) year sentence I had no
12 idea I was going to be doing that much time.

13 Q. Okay.

14 A. Like I stated earlier.

15 Q. Thank you.

16 MS. GIOVANOLI: Nothing further.

17 THE COURT: Mr. Boozer?

18 MR. BOOZER: No further question of Mr. Henderson.

19 THE COURT: All right. You can come down. Thank
20 you. Next witness.

21 MR. BOOZER: I call Brandon Steen to the stand, Your
22 Honor.

23 THE CLERK: Do you swear to tell the truth, the
24 whole truth, and nothing but the truth so help you God?

25 MR. STEEN: I do.

1 THE CLERK: Have a seat and state your full name
2 please.

3 MR. STEEN: Timothy Brandon Steen.

4 BRANDON STEEN, first being
5 duly sworn, testified as follows:

6 **Direct Examination by Mr. Boozer?**

7 Q. Mr. Steen, how are you doing today?

8 A. Good. Thank you.

9 Q. Now, do you recall representing Justin Henderson?

10 A. Yes, sir.

11 Q. All right. And how did you come about representing
12 Mr. Henderson?

13 A. He was brought over by the prosecutor, by the
14 solicitor's office, Ms. Johnson Lee, to have someone
15 appointed to him and the judge that they had appointed, my
16 office by virtue me as the Marlboro County Public Defender
17 to represent him.

18 Q. And that's when you were at the public defender's
19 office for Marlboro County?

20 A. Yes, sir.

21 Q. How long had you been there?

22 A. A year at the point I was appointed to Mr. Henderson's
23 case.

24 Q. Okay. And had you just started practicing or had you
25 been practicing before that somewhere else?

Brandon Steen- Direct Examination by Mr. Boozer:

54

1 A. I started in 2012, is when I started here working at
2 the public defender's office. This was my first job out of
3 law school.

4 Q. Okay. Had you had any murder cases before Mr.
5 Henderson's?

6 A. I had.

7 Q. Okay. And we'll certainly give -- you've provided me,
8 and I greatly appreciated it, some of your case notes and
9 whatnot?

10 A. Yes, sir.

11 Q. And we'll take a look at those in a moment but
12 independently, do you recall about how many times you may
13 have met with Mr. Henderson?

14 A. Mr. Henderson was correct. I met with him two times
15 at Lee Correctional. My notes tell me including the day I
16 was appointed, three times at the courthouse so five total.

17 Q. Okay. What would you two talk about in your meetings?

18 A. The first meeting when I was appointed was, basically,
19 me saying hey I'm going to be your attorney. Let me work
20 together. Let me get your Rule 5. As soon as I get all
21 the information, I'll come talk to you about the case. At
22 Lee I took, I had the Rule 5's with me and I went over them
23 with Mr. Henderson pretty much all of the evidence in the
24 case.

25 MR. BOOZER: May I approach the witness, Your Honor?

1 THE COURT: Yes.

2 Q. All right. Mr. Steen, I'm going to hand you a
3 document and this is something I've discussed earlier, you
4 email to me, if you could identify that for me?

5 A. These are the notes I would've made into our case
6 management system, Defender Data.

7 Q. Okay. Are these notes for the case you handled for
8 Mr. Henderson?

9 A. Yes, sir.

10 Q. And are these all notes that you personally entered?

11 A. Yes, sir. For the most part.

12 Q. Okay. And is this a true and accurate copy of those
13 notes?

14 A. Yes, sir.

15 MR. BOOZER: All right. We'll go ahead and have
16 this entered. I move to mark this exhibit, Applicant's
17 Exhibit 1.

18 THE COURT: Give it to the court reporter.

19 (Whereupon, the Brandon Steen's Public Defender's Office
20 Notes has been marked and entered into evidence as
21 Plaintiff's Exhibit No. 1)

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

23 THE COURT: Yes.

24 Q. Mr. Steen, if you would just take a look at this, I'm
25 looking, it looks like this goes somewhat chronologically

1 from the earliest is at the bottom to the latest is up or
2 the most recent is at the top. Looking at the bottom, it
3 appears case note added new client, date, April 15, 2013.
4 Would that be when his case came into your office,
5 thereabout?

6 A. Yes, sir. I believe it was April 10th is the day we
7 had the hearing. We got like the application filled out
8 and I was assigned by my office on the 15th, officially,
9 through our system.

10 Q. Okay. And then the next entry is on it looks like --
11 well, the entry, the date of the action is 4/10/2013 where
12 it looks like bond hearing waived, consented to Schmerber
13 hearing, handled by Rick Jones, informing you of that on
14 April 16, 2013. You recall what that was?

15 A. That was the day I was appointed. I couldn't enter
16 notes into our system until I was, until the client was put
17 into our system. So it's just my handwritten notes that I
18 transferred to Defender Data. That would've been, I know I
19 would've been handling a lot of stuff that day and that was
20 the day he was appointed and Mr. Jones handled the
21 Schmerber and bond hearing for me.

22 Q. Okay. And I'll skip, let's see, skip up to what's
23 listed as a log for August 24, 2013.

24 A. Okay.

25 Q. It says, you went through discovery. Created a trial

1 notebook. You realize you were missing a lot of discovery.
2 You needed to contact the solicitor to get the rest of it.
3 Do you recall that being an issue?

4 A. There was a lot of discovery in this case. I received
5 a great deal. I went through it all. At that point, is
6 when I realized some of the stuff was missing. I wrote it
7 all out and handed it to the prosecutor office which I
8 believe they provided me, I guess, in November I got, there
9 were additional discovery from the prosecutor's office.

10 Q. Okay. And then you got a note September 9, 2013, you
11 got the rest of the Rule 5 from the solicitor's office. Is
12 that what you understood, you thought you had gotten the
13 rest of it, at that point?

14 A. Yes, sir. And the additional one that I received was
15 a something I didn't realize I didn't have but there was no
16 -- just stuff that I asked for was stuff I could tell that
17 was missing based on the file that I had.

18 Q. All right. Then on, the next entry is October 2,
19 2013, status conference still missing part of the
20 discovery. What was the status conference?

21 A. I do not recall the basis for that status conference.
22 It may have been discovery issues.

23 Q. And you know if that's something that Mr. Henderson
24 would've been present for?

25 A. He would've been present, yes, sir.

Brandon Steen- Direct Examination by Mr. Boozer:

58

1 Q. Okay. But you still got noted that you are still
2 missing part of discovery?

3 A. Yes, sir.

4 Q. All right. So then let's hop over couple of lines 2
5 to case note 11/7/2013, where you apparently have a meeting
6 with the solicitor's office and receives some additional
7 sled reports and two disc. Do you know if that was all of
8 the discovery or do you know?

9 A. That is the last bit of discovery that I received ---

10 Q. Okay.

11 A. -- from the solicitor's office. At that point, I
12 mean, I assumed I had everything that they had. The
13 solicitor's office here had a very open file system and I
14 was here for over two years. Never had an issue once with
15 getting full discovery.

16 Q. All right.

17 A. So I do believe I had everything that, that office had
18 at the time.

19 Q. All right. Now we hop up to November 22, 2013 where
20 it indicates, went to Lee CI, I guess, Correctional
21 Institution, to meet with client. Met with him for couple
22 of hours. I brought his Rule 5 to him. The ECI said I had
23 to mail it. Clients primary concern right now is his
24 safety. He would like to get moved to McCormick, Broad
25 River or Perry. Apparently, client was already flagged at

1 Lee. I told him I would look into it. Was there -- were
2 there some safety concerns that your client express you?

3 A. Yes, sir.

4 Q. What, what were the concerns about his safety being at
5 Lee?

6 A. I don't remember the exact. I know it has something to
7 do with the gang information. Mr. Henderson, based on the
8 crime being committed at SCDC, he believed inmates and
9 correctional officers ---

10 THE COURT: Excuse me.

11 A. I'm sorry.

12 THE COURT: Would you move over here.

13 MR. BOOZER: Absolutely, Your Honor. He's talking
14 to that wall. I can't quite hear everything he's saying.

15 A. I apologize.

16 THE COURT: It's not your fault. It's his. I'm
17 blaming it on him.

18 MR. BOOZER: It's my fault.

19 Q. Okay. If you would continue on. I think we were
20 talking about the safety. You may have already finished
21 that sentence.

22 A. Yeah, he had safety issues with both, you know,
23 inmates and correctional officers. He had a lot of
24 complaints about SCDC. He believed that was having an
25 effect on his safety.

Brandon Steen- Direct Examination by Mr. Boozer:

60

1 Q. Okay. Now, the incident that occurred with him where
2 he was charged with this murder, that happened at Evans?

3 A. Yes, sir.

4 Q. Okay. Was he ever transferred back to Evans during
5 this time?

6 A. He was, but I had nothing to do with that.

7 Q. And ---

8 A. My first knowledge that he was at Evans is when I had
9 mailed him his Rule 5 to Lee. He told me he didn't get
10 it. I called Lee and I was notified and I was told that he
11 had been transferred to Evans.

12 Q. Did you ever express to SCDC or anyone else that Lee
13 was too far of a drive for you to make?

14 A. Not that I'm aware of.

15 Q. Would Lee be a further distance to travel versus Evans
16 ---

17 A. Of course.

18 Q. --- for you?

19 A. Yes, sir.

20 Q. Okay.

21 A. Evans is in Bennettsville.

22 Q. And continuing on that same case note and this is
23 November 22, 2013, with regards to trial or plea, client
24 seems on intent to taking it to trial. In your meetings
25 with Mr. Henderson, was he pretty adamant about having a

1 trial?

2 A. Yes, sir.

3 Q. Okay. Did you take to him any plea offers from the
4 State?

5 A. I didn't have any at that time.

6 Q. Did y'all -- how many offers did y'all receive, if
7 any?

8 A. I received the one, it was plea to murder to thirty
9 (30) years. That is why he was brought to court on
10 December 2nd to either accept or reject that offer.

11 Q. Okay. Did -- was that offer ever made earlier ---

12 A. No, sir.

13 Q. --- in this case?

14 A. Sorry. No, sir.

15 Q. Okay. With regard to November 26, 2013, I want to
16 look, we'll get to that, but as of November 22nd your
17 understanding is, he wants a trial?

18 A. Yes, sir.

19 Q. What, at that point, was the trial strategy in the
20 case?

21 A. At that time, like I said, there was a lot of
22 complaints about SCDC. I subpoenaed, at the time I had
23 already subpoenaed SCDC records to get the inmate
24 information and basic information concerning Mr. Warren and
25 such like that. Self-defense was based on what Mr.

Brandon Steen- Direct Examination by Mr. Boozer:

62

1 Henderson told me he claimed it was self-defense. If we
2 went to trial that would've been the strategy.

3 Q. Okay. What type of investigation did you, do you
4 recall doing in this case?

5 A. I had subpoenaed the records. I had, obviously, gone
6 through all of the discovery. Before I hired someone to
7 conduct a polygraph, I've always like to have all the
8 information with the case that's why was waiting to get
9 information back from SCDC at the time. My last
10 communication with SCDC, actually, they found out about a
11 week after the plea that he had pled. I had gotten an
12 email from SCDC kind of complaining that I didn't tell them
13 because they were still trying to compile all the records.
14 But that meant the trial was scheduled for the next year,
15 so I was beginning to prep for that trial at that time,
16 after the November 22nd meeting.

17 MR. BOOZER: Your Honor, May I approach Mr. Steen?

18 THE COURT: You may.

19 Q. Mr. Steen, if you would I'm gonna hand you another
20 document that you provided to me as part of your case file,
21 could you identify that for me?

22 A. This would have been the notes from my meeting with
23 him on November 12th.

24 Q. And is that a true and accurate copy of your notes
25 from that meeting?

1 A. Yes, sir.

2 MR. BOOZER: And, Your Honor, we would move to
3 introduce as Applicant's Exhibit Number 2.

4 THE COURT: Any objection?

5 MS. GIOVANOLI: No objection.

6 MR. BOOZER: And it's already been marked, judge.

7 (Whereupon, the Notes of Brandon Steen With Justin
8 Henderson, Jail visit 11/12/13 has been marked and entered
9 into evidence as Plaintiff's Exhibit No. 2)

10 Q. Mr. Steen, this is from your visit on 11/12, you
11 stated?

12 A. Yes, sir.

13 Q. Okay. And would this kind of be the first meeting you
14 guys had where you're actually sitting down together and
15 not together just for purposes of a status conference or
16 anything like that?

17 A. Yes, sir.

18 Q. All right. And looking at it, you've got looking kind
19 of almost halfway or three quarters down the page, told
20 Earl Warren to get x 2; Warren told McBride ten to fifteen
21 minutes, do you see that?

22 A. Yes, sir.

23 Q. What is, what's your recollection of what that was?

24 A. I believe that was when Mr. Henderson told me that he
25 told Earl Warren but it still took ten to fifteen more

Brandon Steen- Direct Examination by Mr. Boozer:

64

1 minutes before SCDC to come and check on the victim in this
2 case. This is based on my best recollection.

3 Q. Sure. And looking at this, obviously, you guys talked
4 about Earl Warren because it's in your notes. Do you
5 recall anything else that you talked about with Mr.
6 Henderson about Mr. Warren are looking into him?

7 A. I don't.

8 Q. Do you know if that -- is that someone that you were
9 going to investigate?

10 A. Yes, sir.

11 Q. Okay. Did you ever speak to Mr. Warren?

12 A. I did not.

13 Q. Okay. Did you ever try to speak to Mr. Warren?

14 A. I did not. Like I said, at the time I was trying to
15 subpoena records so I could start the investigation on the
16 case prior to trial.

17 Q. Okay. Skipping down, you've got stars surrounding
18 polygraph, do you recall what that was about?

19 A. Mr. Henderson wanted a polygraph conducted in this
20 case.

21 Q. And what, specifically, was y'all's discussion about
22 that?

23 A. That he wanted one and I would see what I can do to
24 arrange that.

25 Q. Okay. Was that ever arranged?

1 A. It was not. Again, I was waiting on the SCDC records.
2 Once that was the main concerns -- the main question from
3 the polygraph would be used from the SCDC records.

4 Q. Did you ever receive the SCDC records?

5 A. I did not. Like I said, about a week after I pled Mr.
6 Henderson I received an email from them saying hey, we
7 heard he pled, why didn't you tell us that you no longer,
8 that you no longer needed these records.

9 Q. So they were kind of mad about it?

10 A. Yes, sir.

11 Q. Okay. Well, do you think that was something important
12 -- well first of all, it sounded like that was sort of you
13 jumping off going to start your investigation was once you
14 got these records?

15 A. Yes, sir.

16 Q. All right. So once you had received these records,
17 were your next step going to be to investigate Earl Warren
18 and request a polygraph?

19 A. Yes, sir. Depending on the SCDC records.

20 Q. All right. Are those all the things that Mr.
21 Henderson also wanted you to do?

22 A. Yes, sir.

23 Q. All right. And it never happened because you never
24 got the records because there was a plea?

25 A. Yes, sir. I didn't -- when he pled like I wasn't

Brandon Steen- Direct Examination by Mr. Boozer:

66

1 prepared for it to be a plea either. It was going to be a
2 status conference that day. Based on my communication
3 with Mr. Henderson I assumed he was going to reject the
4 offer and that's when we would moved forward with preparing
5 for trial.

6 Q. Okay. So talk, talk a little bit more about that.
7 You were set up for a status conference on the 2nd?

8 A. Yes, sir.

9 Q. On December 2, 2013?

10 A. Yes, sir.

11 Q. All right. And what happened?

12 A. We had the status conference. Mr. Henderson rejected
13 the thirty (30) year offer to murder. That would've been
14 consecutive to the time his max out date for his armed
15 robbery. After the status conference, Judge Cottingham
16 called myself, assistant solicitor, Mary Johnson, um, Mary
17 Thomas Johnson-Lee and I think it was investigator Anderson
18 from sled, back into his chambers to discuss the case. He
19 wanted a deal worked out. He made -- well, he asked the
20 solicitor to come off of murder down to voluntary. She
21 finally agreed and that's when the judge asked that he be
22 brought back the following day.

23 Q. All right. And so what was -- what did happen the
24 following day?

25 A. I met with Mr. Henderson to explain the new, kind of

1 negotiated offer with the judge. During our meetings, I
2 was in my mind the best case scenario would've been a
3 voluntary manslaughter conviction to get. So when the
4 judge pushed that offer forward that we could get a
5 voluntary manslaughter, I advised Mr. Henderson that, you
6 know, he should take that.

7 Q. Okay. Did y'all talk about that in the event he goes
8 to go to trial, you could've potentially make a request for
9 involuntary manslaughter charge to the jury?

10 A. Not involuntary. Voluntary, I would -- kinda, you
11 know, par the course, but the murder trial, I would've
12 waited to see what came out of the murder trial but I'm
13 assuming I would ask for that charge during the jury
14 conference.

15 Q. How did -- did y'all discuss self-defense?

16 A. We did.

17 Q. Okay. Did you discuss with Mr. Henderson the fact
18 that if the jury found that he was acting in self-defense,
19 he would be acquitted of the murder?

20 A. Yes, sir.

21 Q. Okay. You discussed that with him?

22 A. I did.

23 Q. Let me ask you this, were you in the courtroom while
24 Mr. Henderson testified today?

25 A. I was.

Brandon Steen- Direct Examination by Mr. Boozer:

68

1 Q. Do you recall his testimony being that he views some
2 indictments that did not appear to be signed or true
3 billed, do you recall that?

4 A. Yes, sir.

5 Q. Did you ever review with him any indictments that were
6 not true billed or were not signed?

7 A. He was indicted before I was appointed. So the only
8 documentation that I've ever had was the documents that
9 were true billed and signed. I would've -- if I would have
10 presented those to him they would've been in the copies
11 that were received in the packet for this hearing. I don't
12 know how he would've had a copy without the true billed on
13 it.

14 Q. Okay. If you had seen any issues with them, would you
15 have made a motion to quash indictments or what would you
16 have done?

17 A. If the indictment wasn't true billed?

18 Q. Correct.

19 A. I mean, the case wouldn't have moved forward at that
20 point, I mean, it wouldn't have been an indicted case. I
21 could not have quash the indictment because the indictment
22 wouldn't have existed.

23 Q. Going back to the Rule 5 materials, do you believe
24 that you received a complete copy of the Rule 5 eventually
25 or no?

1 A. I do.

2 Q. And looking back at exhibit number one which I believe
3 you still have with you. At the very top there's an entry
4 on January 30, 2013, received letter from client.

5 Responded. Sent client his Rule 5 again. Did you send him
6 whatever Rule 5 you had in your file, in your file?

7 A. I believe I sent -- the day he pled I gave him my
8 personal, my file.

9 Q. Okay.

10 A. And we, the way my office worked, we scan in
11 everything into our case management system. When I
12 received his letter I sent him, I printed off every copy
13 that we had in our case management system and I sent it
14 back to him.

15 Q. So if there was anything -- if you didn't notice
16 anything missing in the Rule 5, you would just presume you
17 had the whole Rule 5?

18 A. Yes, sir. I mean, I was very thorough with my Rule 5.
19 I mean, I constantly added. Every time I noticed something
20 was not missing, not there, I would asked for it and I
21 would get it.

22 Q. But as far as what was sent to Mr. Henderson, Mr.
23 Henderson got this Rule 5 that you sent him, they were
24 documents missing?

25 A. He got everything that -- he literally got everything

Brandon Steen- Direct Examination by Mr. Boozer:

70

1 that I had like the day of his plea. I gave him my file on
2 the case.

3 Q. Going back, we've talked about the sentencing, did you
4 explain to Mr. Henderson about how, I think you talked
5 about the first time of thirty (30) would actually be
6 consecutive to what he was serving currently?

7 A. Yes, sir.

8 Q. All right. And did you have any discussion with Mr.
9 Henderson about the second plea offer or however it came to
10 be the twenty (20) on the voluntary with the five (5)
11 consecutive to each other, did y'all have any discussion
12 about how that would be applied as to his existing
13 sentence?

14 A. I don't recall but I'm assuming. We discussed the
15 difference between concurrent and consecutive. I would
16 explain -- I don't recall explaining to him exactly word
17 for word but I would assume that I explained it to him that
18 it would only start, he would only get credit from the day
19 the warrant was taken out on this arrest, concurrent from
20 that day on versus the consecutive which the thirty (30)
21 would have been on top of his armed robbery sentence.

22 Q. How much time did you guys have to discuss the plea
23 itself and whether to accept it?

24 A. I don't recall how much time we had on December 3rd,
25 but we had talked several hours leading up to that point.

1 But I don't recall exactly how long. We were -- I know I
2 was going back and forth between Mr. Anderson and the
3 solicitor's office trying to negotiate him being
4 transferred out of Evans.

5 Q. Was that part of the plea deal ---

6 A. It was.

7 Q. --- for him to be transferred from Evans to Lee?

8 A. As much as the transcript stated there was no way we
9 could guarantee that, that would happen, but I think we all
10 did the best of our, did the best we could to make sure
11 that he was not taken back to Evans. Like I said, I
12 believe the van pulled up in front of Evans, he didn't even
13 get out. They went inside and got his belongings. They
14 took him straight to Lee, I mean

15 Q. Was that something, being transferred to Evans to Lee,
16 was that something that was a big concern for him?

17 A. That was.

18 Q. Okay. Did that play a big factor in him entering a
19 plea?

20 A. When I presented him with the twenty-five (25) year
21 offer, he told me he would take it as long as he didn't
22 have to go back to Evans. So that's when I went back and
23 tried work that out to the best that I could.

24 Q. Okay. So caveat to him accepting that plea was that
25 he would not go back to Evans?

Brandon Steen- Direct Examination by Mr. Boozer:

72

1 A. Yes. With the understanding that we couldn't
2 guarantee that but we would do the best that we could to
3 get that, to get that to happen.

4 Q. After -- after the plea, did you have any
5 correspondence or any communication with Mr. Henderson
6 about filing an appeal?

7 A. Yes, sir. I believe from my notes I received a letter
8 from Mr. Henderson on December 16th. I believe he was
9 asking for another copy of his Rule 5, apparently,
10 something had happen with the other copy and that he would
11 like to file an appeal. The next, I mean, I looked at the
12 letter. I looked at the time limits. I realized it was
13 over the ten (10) days since he had pled on December 3rd.
14 So I mailed him a letter stating that and mailed him a copy
15 of, another copy of his discovery.

16 Q. Okay. So he did ask you to file an appeal?

17 A. He did.

18 Q. But by that point, I guess, when you responded or
19 whatnot it was too late?

20 A. Yes.

21 Q. Okay. So if --had it been timely, you would've filed
22 the appeal for him?

23 A. Yes. As I received his letter wanting an appeal
24 within the ten (10) days I would have definitely would have
25 filed the appeal.

1 Q. Okay. And you had, you had communicated a good bit
2 with folks who are detention centers or in prison?

3 A. Yes, sir, I have.

4 Q. And sometimes the mail is a bit slow getting to you?

5 A. Yes, sir.

6 Q. Okay. So do you know when he sent that letter to you
7 asking for the appeal?

8 A. I don't.

9 Q. Did y'all have any discussions in court about filing
10 the appeal?

11 A. No, sir.

12 Q. Okay.

13 MR. BOOZER: The Court's indulgence, Your Honor.

14 (Whereupon, Mr. Boozer took a moment to talk to his client)

15 Q. Mr. Steen?

16 A. Yes, sir.

17 Q. Did you ever have a discussion with Mr. Henderson
18 where he sought your opinion on if they can convict him of
19 murder?

20 A. I don't recall having a conversation but I'm sure we
21 did.

22 Q. Do you recall ever advising him that you didn't think
23 that they could convict him of murder at a trial?

24 A. Did I advise him they could not convict him?

25 Q. That you didn't think that, that they would convict

Brandon Steen- Cross Examination by Ms. Giovanoli:

74

1 him of murder?

2 A. No, sir.

3 Q. Okay. Going back to the subpoena for the, were those
4 SCDC records?

5 A. Yes, sir.

6 Q. Going back to the subpoena, going back to Earl Warren,
7 and the polygraph, do you think that to fully develop the
8 case and investigation and in order for him to make an
9 informed decision about whether to plead guilty or go to
10 trial and to assist you and advising him whether you
11 thought it was in his best interest to plea or go to trial,
12 do you think it would've been prudent to first gotten all
13 of that information and conducted that investigation?

14 A. I believe that information would have helped get the
15 conviction for voluntary manslaughter at trial which it was
16 to go with this information. But when the judge offered or
17 when the prosecutor offered voluntary, I don't think it
18 would've been relevant at that point.

19 Q. And do you think the polygraph had, the examination
20 had come back very favorable to Mr. Henderson, do you think
21 that would've assisted you in negotiating with the
22 solicitor's office about, (a) either moving forward with
23 the charges or some more of a shorter plea offer, do you
24 think that would've been any assistance you?

25 A. I believe they would've offered a plea to voluntary

1 manslaughter.

2 MR. BOOZER: Thank you, Mr. Steen. That's all the
3 questions I have.

4 A. Thank you.

5 THE COURT: Cross examination?

6 MS. GIOVANOLI: Thank you, Your Honor.

7 **Cross Examination by Mr. Giovanoli:**

8 Q. Good afternoon, Mr. Steen. Thanks for being here. So
9 you were appointed to this case while you were at the
10 Marlboro County PD's office?

11 A. Yes, ma'am.

12 Q. And you had been there for a year?

13 A. Yes, ma'am.

14 Q. And earlier you testified that you met with the
15 applicant two times at Lee County Correctional, is that
16 correct?

17 A. Yes, ma'am.

18 Q. Did you ever meet him at Evans?

19 A. No, ma'am. I've never step foot in Evans myself.

20 Q. So you didn't have him moved?

21 A. No. I did not have him moved to Evans.

22 Q. Do you have the authority to have inmates moved?

23 A. I don't.

24 Q. As a public defender, did you have the authority?

25 A. No, ma'am.

Brandon Steen- Cross Examination by Ms. Giovanoli:

76

1 Q. Also with referenced the defense, Plaintiff's Exhibit
2 1 and 2, your case notes, you stated there that this was
3 all of them for the most part, does that mean that
4 something is missing from these case notes?

5 A. What are you referring?

6 Q. The two that have been admitted into evidence that was
7 Plaintiff's Exhibit's 1 and 2?

8 A. Those are my notes that I physically typed in. Most
9 of my handwritten notes would have been scanned into our
10 case management system.

11 Q. Okay.

12 A. So I'm not aware what could have been in those. The
13 one page of notes that was presented to me today is notes
14 that I actually carried in my personal file that I took
15 with me when I left Marlboro County.

16 Q. Are you aware if there are any more notes?

17 A. There probably should be paper copies.

18 Q. Okay.

19 A. The documentation of the notes that I put into my
20 notes that I presented here today.

21 Q. Okay. Understood. During your meetings with the
22 applicant, did you discuss all of the discovery that you
23 had received at that point?

24 A. Yes, ma'am.

25 Q. And as you received more, were you able to have more

1 conversations with the applicant about the discovery?

2 A. Yes, ma'am.

3 Q. Can you briefly describe what was part of the
4 discovery in this case?

5 A. Yes, ma'am. There were statements provided by several
6 inmates. The pictures and the autopsy photos. Mr., um,
7 the victim in this case was stabbed in the back of the neck
8 with the shank. So I sent the photos of the autopsy with
9 those wounds and in the back. While there was mainly SCDC
10 documentation but mainly the photos and the autopsy report.

11 Q. Were any other people in that cell at the time of the
12 incident?

13 A. No, ma'am.

14 Q. So only the victim and the applicant was present in
15 the cell?

16 A. Yes, ma'am.

17 Q. And you say that the evidence indicated that the
18 victim had been stabbed in the back and in the back of the
19 neck?

20 A. Yes, ma'am.

21 Q. In your opinion, would that have been good evidence to
22 take forward on a self-defense claim?

23 A. No, ma'am.

24 Q. Do you think voluntary manslaughter was the best that
25 this applicant could have received?

Brandon Steen- Cross Examination by Ms. Giovanoli:

78

1 A. Yes, ma'am.

2 Q. Now, you also mentioned that the trial wasn't
3 scheduled until the following year ---

4 A. Yes, ma'am.

5 Q. --- following this plea?

6 A. Yes, ma'am.

7 Q. Okay. You still have time to prepare for a trial,
8 correct?

9 A. Oh, yes, ma'am.

10 Q. Is it safe to say that you were at the beginning
11 phases of your preparations?

12 A. Yes, ma'am.

13 Q. Earl Warren was mentioned to you by the applicant and
14 you never contacted him, correct?

15 A. No, ma'am.

16 Q. But you would have had he proceeded through with the
17 trial?

18 A. Yes, ma'am.

19 Q. Was it a common practice to hire polygraphs done in
20 murder cases for you?

21 A. No, ma'am.

22 Q. Were you expecting to have a polygraph test done on
23 the applicant in this case?

24 A. Yes, ma'am. If we would have gone to trial, again, to
25 try to get a voluntary plea offer.

1 Q. And you said that you were waiting for the SCDC
2 records in order, basically, to determine what your next
3 step in trial preparation would be and that those SCDC
4 records were important for the safety issue, can you
5 explain a bit more of what those records would have
6 contained that would help you with safety issues?

7 A. Like Mr. Henderson -- I'm sorry.

8 Q. If I can rephrase, what exactly were you looking for?

9 A. Basically, their file of Mr. Henderson's story about
10 Mr. Warren. I was trying to get the videos from outside,
11 outside the cells into the common areas to see how long it
12 did take. The only thing I had at that moment was Mr.
13 Henderson's statements to me.

14 Q. Did you inform the applicant of all of his
15 constitutional rights, his right to a jury trial and the
16 right to testify or not to testify, his right to call
17 witnesses?

18 A. Yes, ma'am.

19 Q. Did you -- when you advised him of the plea offer, if
20 I'm not mistaken, your advice to him was to take the plea
21 offer, right?

22 A. Yes, ma'am.

23 Q. Did you, at that same time, tell him that he could
24 decide to go to a jury trial?

25 A. Yes, ma'am.

1 Q. Did you express any lack of confidence whenever you
2 were advising him to plead guilty?

3 A. The lack of confidence?

4 Q. Into going to trial?

5 A. I would've advised him since it would be his favor to
6 take the voluntary plea because I thought that was the best
7 case scenario at trial.

8 Q. Did you inform him that if he chose to go to trial
9 that you would prepare for trial?

10 A. Yes, ma'am. I was already prepared. As he said I had
11 a trial notebook. I was moving forward that way because I
12 assume it was going to trial until we got this offer.

13 Q. Your discussion about the terms concurrent and
14 consecutively, um, you explained the difference between
15 those two words to the applicant?

16 A. Yes, ma'am.

17 Q. Did he ever express any confusion that he didn't
18 understand that?

19 A. No, ma'am.

20 Q. Now, what again was his main concern at that meeting
21 right before he pled guilty?

22 A. Not going back to Evans.

23 Q. Is it fair to say that, that was kind of a dealbreaker
24 whether you guys can help him get out of that prison and
25 transferred to another prison as part of the plea deal?

1 A. I'm not sure if it was a deal breaker because we
2 would've probably continued our conversations but when he
3 told me he would plea if that would happened that's the
4 direction that I went in.

5 Q. And to the best of your knowledge, he was transported
6 that same day?

7 A. Yes, ma'am.

8 Q. Moving to the indictments, so it's correct you did not
9 move to quash these indictments?

10 A. Yes, ma'am.

11 Q. And at the time of this case, were you aware of the
12 case of Pringle v. State, it's a 1986 case where the
13 Supreme Court held an indictment which the grand jury
14 foreperson failed to sign was proper and the lower court
15 had jurisdiction where there was evidence and the regular
16 indictment procedure had been followed. The jury foreman's
17 signature was not essential to the indictment. Were you
18 aware of that case?

19 A. I wasn't.

20 Q. Did you ever discuss with the applicant his right to
21 appeal?

22 A. I did not.

23 Q. Did you ever threatened the applicant to plead guilty?

24 A. No, ma'am.

25 Q. Did you ever promise him anything?

1 A. No, ma'am.

2 MS. GIOVANOLI: Nothing further, Your Honor.

3 THE COURT: All right. Redirect?

4 MR. BOOZER: No redirect, Your Honor.

5 THE COURT: All right. You may come down.

6 A. Thank you, sir.

7 THE COURT: May this witness be excused?

8 MS. GIOVANOLI: Yes, Your Honor. No objection.

9 MR. BOOZER: Absolutely.

10 THE COURT: Without objection. Anything further?

11 MR. BOOZER: Nothing further, Your Honor.

12 THE COURT: From the State?

13 MS. GIOVANOLI: The State has no witnesses.

14 THE COURT: All right. Mr. Boozer, when I said
15 thirty (30), ninety (90) days that seems in thinking about
16 it the case goes stale after a while, can you make that
17 sixty (60) days? In other words trying to locate that
18 witness and get the Rule 5, if it's available.

19 MR. BOOZER: Yes, Your Honor, sixty (60) days is
20 fine.

21 THE COURT: All right. Let's move it. I amend my
22 earlier order, the applicant's has sixty (60) days to
23 supplement the record.

24 MS. GIOVANOLI: Thank you, Your Honor.

25 THE COURT: All right. If not, then I'll expect

1 proposed orders, I assume, at the end of the sixty (60)
2 days.

3 MR. BOOZER: That's fine.

4 THE COURT: All right. Good. Thank you very much.

5 MS. GIOVANOLI: Just to clarify, Your Honor, sixty (60)
6 days for a purposed order from the State?

7 THE COURT: Yeah.

8 MS. GIOVANOLI: Okay. Thank you.

9 (CONCLUSION OF THE HEARING ON JANUARY 11, 2017)

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fourth Circuit Court for Marlboro County, South Carolina, on the 11th day of January, 2017.

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

Lisa S. Carter

Lisa S. Carter

Circuit Court Reporter

November 26, 2017

01/30/2013 Murder

Case Notes

Received Letter from Client on 12/16/13. Responded on 12/17/13. Sent client his Rule 5 again. See Documents for reply letter. Letter and Rule 5 mailed together on 12/17/13.

12/17/2013 01:06 PM Steen, Brandon

Return Phone Call 12/12/2013 3:15PM

Returned phone call to Camille with SCDC, left message that I no longer needed any records

12/12/2013 04:46 PM Steen, Brandon

Case Notes

Call Camille 803-896-1667 re: subpoena

12/12/2013 08:40 AM Ocean, Emma

Case Notes

ADDED GS PUBLIC INDEX 2013A3420100041,42 CASE CLOSED

12/04/2013 11:38 AM White, Harriett

Case Notes

Mailed Subpoena for Records to SCDC on 11/23/13. Faxed the Same.

12/03/2013 05:11 AM Steen, Brandon

Return Phone Call 12/02/2013 1:30PM

Returned call to Dayne Hale, with SCDC General Counsel's Office. Had to correct some inmate numbers on the subpoena. Ms. Hale states she will have the records by end of December

12/03/2013 05:10 AM Steen, Brandon

GS COURT 12/02/2013 12:00PM

Discussed case with MTJL and Judge Cottingham in chambers. Cottingham asked the Solicitor to take a plea of Voluntary and the Judge stated that he would give Henderson 20 years. (MUCH BETTER THAN THE WITHDRAWN 30 YEARS TO MURDER OFFER). Cottingham asked us to bring Justin to Court on 12/3/13 to try to work out the plea.

12/03/2013 04:59 AM Steen, Brandon

Case Notes

MAILED CLIENT HIS RULE 5 TO LEE CI ON 11/30/2013. When mailed I was unaware that Justin had been moved back to Evans CI.

12/03/2013 04:57 AM Steen, Brandon

Jail Visit 11/12/2013 10:00AM

Met with client at LEE CI for a about 2 hours. We went through all his evidence. Discussed everything in detail. Going to subpoena any internal SCDC investigative records.

11/26/2013 04:27 AM Steen, Brandon

Jail Visit 11/22/2013 12:00PM

Went to LEE CI to meet with client. Met with him for a couple hours. I brought client's Rule 5 to give to him, but LEE CI said I had to mail it. Client's primary concern right now is his safety. He would like me to attempt to get him moved to McCormick, Broad River or Perry (Pelzer). Apparently client was already flagged at LEE CI. Told him I would look into it. With regards to trial or plea, client seems intent on taking it to trial.

11/26/2013 04:25 AM Steen, Brandon

Case Notes

On 11/19/13, Emailed Ms. Pugh at Lee CI about setting up a visitation with client. Want to set up visitation for Friday (11/22).

11/20/2013 11:24 PM Steen, Brandon

Case Notes

11/7/13 Solicitor Meeting - discussed case with Solicitor, Received some additional SLED reports and 2 additional discs. Discs include (C/S photos, Evidence photos, and Autopsy photos)

11/11/2013 04:10 PM Steen, Brandon

GS COURT 12/03/2013 9:00AM

Status Conference to Reject or Accept Offer: Plead Guilty. Sentenced to 20 years on Voluntary, 5 years on Weapon. Case Closed

11/07/2013 11:47 PM Steen, Brandon

Case Notes

On 11/4/13, contacted Evans to set up a visitation. Found out client had been moved to Lee. Left voicemail for Windy Pugh at Lee Correctional to set up visitation. - On 11/5/13 at 8:30, called Pugh back. She told me to email her my visitation request. I did. - On 11/5/13 at 9:15, I attempted to return a phone call to Donna Henderson, first number was disconnected, second number was wrong number. - Received Email from MTJL about him being moved. See Documents for all documentation

11/06/2013 02:01 AM Steen, Brandon

GS COURT 10/02/2013 2:00PM

Status Conference (Still missing part of discovery)

10/01/2013 09:49 PM Steen, Brandon

Case Notes

Got rest of Rule 5 from MTJL

09/09/2013 04:04 PM Steen, Brandon

Case Notes

Went through the discovery and created a trial notebook. I realized I am missing a lot of discovery. I need to contact MTJL to get the rest of discovery.

08/24/2013 02:20 PM Steen, Brandon

Case Notes

Received Rule 5 on 6/27/13

06/27/2013 02:29 PM Steen, Brandon

Case Notes

Talked to MTJL about this case today. Client got caught with another Shank. Does not know if another charge is forthcoming. MTJL states that client likely needs mental evaluation. Need to go see client at Evans CI.

05/28/2013 07:30 PM Steen, Brandon

GS COURT 04/10/2013 9:00AM

Bond hearing waived. Consented to Schamber hearing. Handled by Rick Jones for me.

04/16/2013 10:04 AM Steen, Brandon

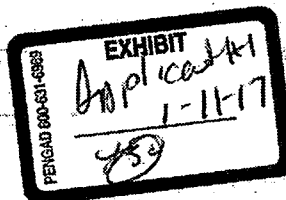
Case Notes

Added new client

04/15/2013 11:02 AM Morgan, Sandy

01/30/2012 Weapons

No Notes



2013 APR 1 10 4 52
 FILED
 CLERK OF COURT
 MARIETTA COUNTY, GA

11/12/13 Jan 1 Unit

Justin Henderson, 28

438-99070

Petzer

Donna

505-5640

Early

Josh Henderson

W. H. Hines

Earl Warren

Officer Louie

Roommate - 3 or 4 mts

White - Folk

L killed someone before

Subpoena - Inmate Requests

L request after request

Max - Out - 2019

4-10 - direct order

"Woof" - to act seriously

"Wet" - to shed blood

6:15 - Count ~ 6:45

Warren told McBride 10-15 mins

Told Earl Warren to get XZ

Fat Mack (Folk)

SCDC Investigation

Subpoena SCDC Protocol

Polygraph

Stand Your Ground

FILED

2017 JAN 11 PM 4 52

ANITA M. WILLIAMS
CLERK OF COURT
MARLBORO COUNTY, MASS.

STATE OF SOUTH CAROLINA
COUNTY OF MARLBORO

Justin Henderson, #296885,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT

Case No. 2014-CP-34-0172

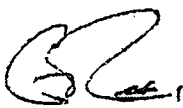
**ORDER OF DISMISSAL
WITH PREJUDICE**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 11, 2014. Respondent made its Return on June 17, 2015. An evidentiary hearing into the matter was convened on January 11, 2017 at the Marlboro County Courthouse. Lance Boozer, Esquire, represented Applicant. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on his own behalf. Applicant's plea counsel, T. Brandon Steen ("Counsel"), also testified. This Court had before it a copy of the records of the Marlboro County Clerk of Court, records from the South Carolina Department of Corrections, the application, Respondent's return, and the Guilty Plea transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marlboro County Clerk of Court, the Greenville County Clerk of Court, and the Pickens County Clerk of Court. Only the Marlboro Charges are relevant to this application. In April 2013, the Marlboro County Grand Jury indicted Applicant for murder (2013-GS-34-106) and possession of a weapon during the commission of a violent crime (2013-GS-34-107). T. Brandon Steen, Esquire, represented Applicant. On December 3, 2013,



FILED
2013 APR 13
CLERK OF COURT
MARLBORO COUNTY, S.C.

Applicant pled guilty to voluntary manslaughter and possession of a weapon during the commission of a violent crime. The Honorable Edward B. Cottingham sentenced Applicant to twenty years imprisonment for voluntary manslaughter and a consecutive five (5) years imprisonment for possession of a weapon during the commission of a violent crime.¹ Applicant did not appeal his plea or sentence.

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

1. "Ineffective Assistance of Counsel"
 - a. "Applicant contends that counsel rendered ineffective assistance of counsel because counsel failed to properly move to quash the indictments [...]"
 - b. "Applicant contends that counsel was ineffective for not informing nor explaining to Applicant his right to a direct appeal [...]"
 - c. "Applicant contends that counsel rendered ineffective assistance of counsel by ordering Applicant to plead guilty [...] even though Applicant wanted to go to trial [...]"
2. "Involuntary Guilty Plea"
 - a. "Applicant contends that his guilty plea was involuntarily made [...]"

At the hearing, Applicant proceeded on his claims of ineffective assistance of counsel and involuntary guilty plea.

At the start of the hearing, Applicant requested a continuance on the basis that Applicant had hired a private investigator, but that the investigator had failed to produce anything for Applicant. Applicant insisted on finding another inmate, Earl Warren, who he claims he asked to get help after stabbing his cell mate. Applicant's PCR counsel, Mr. Boozer, and Applicant had both attempted to reach this other inmate, with no success. Applicant also addressed the Court under oath, and provided details of the incident. Applicant claimed that he stabbed the victim

¹ Applicant committed these offenses while serving a prison sentence for his Greenville/Pickens convictions. Judge Cottingham ordered the twenty year sentence to be served concurrently with the Greenville/Pickens sentences and the five year sentence is to begin upon its completion.

FILED
 2023 JUN 29 11 33
 ANTHONY M. WILLIAMS
 CLERK OF COURT
 GREENVILLE/PICKENS COUNTY, S.C.

and the victim stabbed Applicant² and then he asked Warren to get help from an officer twice. Respondent argued that Applicant filed his application in June of 2014 and was appointed counsel shortly thereafter in August 2014. Applicant has had ample opportunity to track down this alleged witness. Furthermore, Respondent argued that the case had been previously set for hearing twice and that two continuances had already been granted for the same reason. Additionally, Respondent's witness travelled from Columbia for this case. This Court denies the request for a continuance, but will allow Applicant to supplement the record for a period not to exceed sixty days from the date of the PCR hearing.

SUMMARY OF TESTIMONY

Applicant testified as follows:

Applicant was charged with murder, but pled guilty to voluntary manslaughter. He also pled guilty, as indicted, to possession of a weapon. He received five years for the weapon charge, consecutive to the voluntary manslaughter sentence. He was sentenced to 20 years for voluntary manslaughter. Applicant assumed that his sentence was concurrent to the sentence he was already serving at the time of the incident. Applicant thought that concurrent meant that he would get the credit for the time he had been serving on his previous sentence, however, a new twenty year sentence was started after he pled guilty. Applicant also thought that his voluntary manslaughter sentence was non-violent, but it is classified as violent. Applicant claims that Counsel should have moved to quash his indictment because there was no true billed signature on the face of the indictment.

Applicant and the victim were members of rival gangs. Prior to the killing, Applicant filed many grievances to get transferred out of Evans. Applicant testified that he first met

² The record and the evidence therein indicate that the victim was stabbed in the back of the throat, the neck, across the chest, and across the throat. Nothing in the record indicates Applicant received any wounds. Additionally, Applicant attested to those facts, under oath, during his guilty plea.

FILED
APR 11 33
CLERK OF COURT
HARTCO COUNTY, S.C.

Counsel at Evans Correctional Institute. Applicant was later transferred to Lee Correctional Institute and Counsel came to visit him there twice. Counsel brought his Rule 5/discovery material with him. Counsel only reviewed it with Applicant, but did not leave Applicant a copy. Applicant recalls the state offered him thirty (30) years and he rejected the offer, informing Counsel that he wanted a trial. Applicant says that the plea was not discussed until the day of his trial. Applicant recalls four (4) total meetings with Counsel. In those meetings, they discussed what happened, statements given, and trial.

Applicant claims that Counsel told him Applicant could take a polygraph at the State's expense and the results would be confidential. Counsel also told him that he arranged for a polygraph test a couple weeks later. Applicant reviewed Counsel's case notes and noticed that there were no notes indicating Counsel had spoken to anyone to arrange a polygraph test. Applicant testified that after the stabbing, he yelled to another inmate, Earl Warren, who was performing janitorial tasks at the time, to get a correctional officer's help. Applicant told Counsel about Warren. SLED spoke to Warren. Warren told SLED he knew nothing. Applicant assumes Counsel read that in the report and did not pursue contacting Warren. Counsel never spoke to Warren.

Applicant testified that he later found the State's offer was reasonable because he thought concurrent meant that he would receive credit for the time he had already served on an unrelated conviction. Applicant testified that he was transferred out of Evans to Lee, but then his Counsel arranged to have him transferred back, despite Applicant's concern for his safety, because it was more convenient for Counsel to visit him at Evans. Applicant alleges that Counsel also used his location at Evans as coercion to get him to plead guilty, by offering transport to a different facility as part of the plea deal.

FILED
 29 APR 11 23
 CLERK OF COURT
 M. H. WILLIAMS
 MILBURN COUNTY, S.C.

Applicant asked Counsel about going to trial and Counsel informed him that he could still proceed to trial. Applicant recalls discussing jury selection and motions for charges on voluntary and involuntary manslaughter. Applicant claims that he did not speak up about wanting a trial at his plea because he just wanted out of Evans. Applicant was also embarrassed because there were a class of students present in the court. Applicant claims when he asked Counsel what evidence they had against him, Counsel replied that he did not know.

Counsel gave Applicant a copy of his Rule 5 material at his plea and also mailed one to Applicant. Applicant complains that investigative reports were missing pages and medical reports and letters were missing. Applicant testified that he was never aware of his right to appeal his conviction and sentence. Applicant admitted that he had no discussion of an appeal with Counsel. Sometime after Applicant's guilty plea, Applicant sent Counsel a letter asking about an appeal. Counsel wrote back to him and explained that the time to file an appeal had lapsed.

Counsel testified to the following:

Counsel was appointed to Applicant's case as a Marlboro County Public Defender. Counsel had been with the Public Defender's Office for one year at the time. Applicant had handled prior murder cases. Counsel recalls meeting Applicant twice at Lee Correctional Institute and three other times at the courthouse. Counsel reviewed all of the evidence with Applicant. Counsel did not notice any flaws in the indictment. There was a lot of discovery in the case and Counsel reviewed all of it. When he noticed something was missing, Counsel would request it from the solicitor. Counsel received additional discovery from the assistant solicitor.

Counsel authenticated his case notes which were then moved into evidence as

ANITA S. WILLIAMS
CLERK OF COURT
MARLBORO COUNTY, S.C.

2017 AUG 29 AM 11:33

FILED

62-5

Applicant's exhibit 1. Counsel recalled that Applicant's primary concern was his safety. Counsel testified that he played no part in where Applicant was housed or any transfers. Counsel confirmed his notes indicating that he mailed Applicant's Rule 5 material to Lee, unaware that Applicant had been transferred back to Evans. It was an important part of the ultimate plea deal to ensure Applicant would not stay at Evans. Counsel testified that he received an offer from the State for thirty years for murder and relayed it to Applicant. On December 2, 2013, in chambers, Judge Cottingham encouraged the State to accept a plea to the lesser included offense of voluntary manslaughter and indicated that he would sentence Applicant to twenty years. A hearing was held December 3, 2013 for Applicant to accept or reject plea offer.

Prior to Applicant's plea, Counsel was preparing the case for trial. Counsel had subpoenaed records from South Carolina Department of Corrections. The case was scheduled for trial the next year, so Counsel felt he had plenty of time to prepare the case and was doing so. Counsel authenticated his hand written notes taken during a meeting he had with Applicant. The notes were introduced into evidence as Applicant's exhibit 2. Counsel and Applicant discussed Earl Warren during the meeting. They also discussed a polygraph test and self-defense. Counsel testified that he did not receive the SCDC records prior to Applicant's plea, but that had he received them and continued to prepare for trial, he would have reviewed them and interviewed any potential witnesses. Applicant had not spoken to Warren, but it was still early in trial preparations.

Counsel was not prepared for Applicant to plead guilty at the December hearing. He expected Applicant to reject the offer and continue to prepare for trial. Counsel testified that the December hearing, in which Applicant ultimately pled guilty, was not the trial date. Counsel did advise him that a plea to voluntary manslaughter was in his best interest, but also advised him

FILED
2013 DEC 11 11:33
CLERK OF COURT
MARLBOROUGH COUNTY, S.C.

26

that it was his decision. Counsel informed Applicant of the difference in concurrent and consecutive with regard to his sentence. Applicant never expressed any confusion with regard to the term concurrent and never asked for clarification. Applicant's only expressed concern in the negotiated plea was being transferred out of Evans. Applicant informed Counsel that he would accept the plea offer if he could be transported to a different facility. After Applicant's guilty plea, he was transported out of Evans, pursuant to his plea agreement.

Counsel received a letter requesting an appeal and responded in a letter informing Applicant that it was too late for an appeal. Counsel would have filed a notice of appeal on Applicant's behalf had he requested one within the required time period. Counsel recalls no discussion of an appeal with Applicant, outside of the untimely request letter. Counsel claims that the information from SCDC would have helped drop the murder charge to voluntary manslaughter, but that Applicant ultimately pled to voluntary manslaughter anyway.

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 can weigh their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). This Court finds the testimony of Counsel to be credible. This Court finds that Applicant's testimony is generally not credible, but that some of his testimony was credible, as discussed in detail below.

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. Applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence. (Rule 711(e))

CZ

FILED
2017 MAR 9 11 33
ANITA S. WILLIAMS
CLERK OF COURT
MARLBOROUGH COUNTY, S.C.

SCRCP). When an applicant alleges ineffective assistance of counsel, 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 (1984); Butler v. State, 286 S.C. 441, 334 S.E. 2d 813 (1985).

Applicant must prove that counsel's performance was deficient. Attorneys are held to an objective standard of "reasonably effective assistance" under "prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E. 2d at 625, citing Strickland. The presumption will always be that counsel was effective and the applicant must overcome the presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E. 2d 624 (1989). The probability must lie that because of counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the proceeding. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984). A guilty plea defendant is entitled to effective assistance of counsel. In a PCR action, the guilty plea defendant must prove that because of counsel's deficient performance, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366 (1985).

I. Failure to move to quash indictment

This Court finds Applicant has failed to meet his burden to prove Counsel rendered ineffective assistance for failing to move to quash Applicant's indictment. Applicant alleges his indictment is fatally flawed because it lacks the grand jury foreperson's signature. Respondent submits that the flaw is not fatal, but rather a scrivener's error.

First, because defects in the indictment do not affect subject matter jurisdiction, this Court need only address Counsel's failure to move to quash the indictment. See State v. Gentry, 363

CL 48

FILED
2017 NOV 9 AM 11:33
ANITA J. WILLIAMS
CLERK OF COURT
MARLBOROUGH COUNTY, S.C.

S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). *See also* S.C. Code § 17-19-20 (2003). Proceedings in a court of general jurisdiction will be presumed regular absent evidence to the contrary. *Pringle v. State*, 287 S.C. 409, 339 S.E.2d 127 (1986). In *Pringle*, the Supreme Court of South Carolina held an indictment which the grand jury foreman failed to sign was proper and the lower court had jurisdiction where there was evidence the regular indictment procedure had been followed. However, the jury foreman's signature is not essential to the validity of the indictment. *Id.*

In this case, Applicant has presented no evidence that the proceedings of the grand jury were irregular or that the proper procedure in securing the indictment was not followed. Simply the lack of a grand jury foreman's signature, alone, does not render the indictment defective. Therefore, Applicant has failed to show how moving to quash his indictment would have changed the course of events in his case. Applicant pled guilty and admitted, under oath, to the crime of voluntary manslaughter. Applicant also admitted to this court, under oath, that he stabbed the victim. No evidence has been presented that had Counsel moved to quash the indictment, Applicant would not have pled guilty. Applicant presents no evidence that a motion to quash the indictment would have been successful either. Furthermore, had Counsel moved to quash the indictment, the solution would have been to simply amend the indictment.

This Court finds that Applicant has failed to meet his burden to demonstrate how Counsel's failure would have changed Applicant's knowing and voluntary decision to plead guilty. Therefore, this claim is denied and dismissed with prejudice.

II. Failure to inform Applicant of right to appeal



FILED
2017 DEC 29 AM 11:33
ANITA H. WILLIAMS
CLERK OF COURT
FLEETWOOD COUNTY, S.C.

This Court finds that trial counsel was not ineffective for failing to file an appeal. The United States Supreme Court has rejected a "bright-line rule that counsel must always consult with the defendant regarding an appeal." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036, 145 L. Ed. 2d 985 (2000). They instead held that "counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Id. "[A]lthough not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." Id.

This Court finds that this allegation is without merit and Applicant has failed to carry his burden of proving Counsel was ineffective for failing to inform Applicant of his right to appeal. This Court finds that Counsel had no reason to think a rational defendant would want an appeal or that Applicant, specifically, demonstrated to Counsel that he was interested in appealing. This Court finds Applicant's testimony that he never discussed an appeal with Counsel and that the only time he expressed a desire to appeal was in his letter requesting an appeal, after the time for an appeal had expired, to be credible. This Court finds Counsel gave credible testimony that Applicant had never discussed an appeal with him and that Counsel received a letter from Applicant requesting an appeal, but that it was too late. Counsel also testified that had Applicant made a timely request to him, he would have filed a notice of appeal on Applicant's behalf. This Court finds that there is no evidence that a rational defendant would want to appeal or that the Applicant indicated he wanted to appeal.

GC 10

FILED
JUN 29 AM 11 33
ANNE H. WILLIAMS
CLERK OF COURT
KIDDER COUNTY, S.C.

Because this Court finds Counsel was not deficient for failing to inform Applicant of his right to appeal, this claim is denied and dismissed with prejudice.

III. Counsel ordered Applicant to plead guilty instead of going to trial (Involuntary Guilty Plea)

This Court disposes of Applicant's claim that he was ordered by Counsel to plead guilty in conjunction with Applicant's involuntary guilty plea claim. This Court finds Applicant has failed to meet his burden to prove that his guilty plea was involuntarily entered or that Counsel was ineffective in advising Applicant to plead guilty.

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

This Court finds the transcript reflects that the pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Boykin, supra; Dover, supra. Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, 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. Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's

El...

FILED
2017 FEB 29 11 34
ANTHONY WILLIAMS
CLERK OF COURT
HARBOR COUNTY S.C.

errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to this claim, the Court finds the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel.

This Court finds Applicant's allegation that Counsel ordered him to plead guilty instead of going to trial meritless. Counsel's case notes indicate and Counsel gave credible testimony that he was preparing to take this case to trial. Counsel was aware of Applicant's desire to pursue trial and had initiated his preparations by meeting with Applicant and discussing trial, a self-defense claim, potential witnesses, and a polygraph test. Counsel also subpoenaed records from the South Carolina Department of Corrections to assist in his trial preparations. Counsel had reviewed all of the discovery and evidence he received from the assistant solicitor, and on more than one occasion, requested more. This Court also finds credible Applicant's testimony that he met with Counsel at least four times and they discussed what happened, statements given, trial, a polygraph test, and Earl Warren. Applicant also admitted that Counsel brought the Rule 5 discovery and reviewed it with Applicant. Applicant's testimony that Counsel had him transported back to Evans in order to coerce Applicant to plead guilty is not credible, nor is any allegation that Counsel forced Applicant to plead guilty.

This Court also finds credible Counsel's testimony that he advised Applicant that accepting the plea offer was in Applicant's best interest, but always told Applicant that it was his decision to plead guilty and go to trial and Counsel would proceed based on Applicant's decision. Additionally, the record reflects that the plea court, in fact, inquired if Applicant was pleading freely and voluntarily to which Applicant, under oath, replied that he was.

FILED
2018 NOV 29 11 34
CLERK OF COURT
WILLIAMS
MALEBRO COUNTY, S.C.

10, I. 5-7. This Court finds no reason to depart from the statements made during Applicant's guilty plea. Applicant has presented insufficient evidence to prove that he was forced or coerced to plead guilty. Therefore, this Court finds Counsel was not ineffective in his advice to Applicant that a guilty plea was in his best interest and that Applicant entered his plea freely and voluntarily.

This Court finds that Applicant's guilty plea was entered into knowingly and voluntarily and upon the sound advice of competent counsel who was effective in his complete representation of Applicant. As such, this claim is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice. This Court also finds that Applicant failed to present evidence as to the other allegations, and thus, this Court deems the other allegations abandoned.

This Court notifies Applicant that 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), SCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

Handwritten signature/initials

FILED
2017 AUG 29 AM 11 34
ANITA H. WILLIAMS
CLERK OF COURT
MARLBORO COUNTY, S.C.

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 24 day of August, 2017.



G. THOMAS COOPER, JR.
Presiding Judge
Fourth Judicial Circuit

Camden, South Carolina

FILED

2017 AUG 29 AM 11:34

ANITA H. WILLIAMS
CLERK OF COURT
MARLBORO COUNTY, S.C.

WITNESSES

Ruby Brockenberry

S C Department Of Corrections

Law Enforcement Case #: SCDC

347

WAIVER OF PRESENTMENT

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

Defendant

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

Defendant

ARREST WARRANT NUMBER
2013A3420100041

ARRESTED ON: 2013-01-30

ACTION OF GRAND JURY

Juanita B. Holt
641 02 1 13

Grand Jury Foreperson

Date

VERDICT

True Bill

Petit Jury Foreperson

Date

DOCKET NUMBER:
2013-GS-34-0106

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

Term:
April 2013

THE STATE

vs.

Justin Henderson**INDICTMENT FOR****Murder**

§16-03-0010; 16-03-0020

CDR Code: 0116

William B. Henderson
CLERK OF COURT
MARLBORO COUNTY

William B. Rogers, Jr., Solicitor

A CERTIFIED
TRUE COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF MARLBORO)

INDICTMENT FOR

Murder

§16-03-0010; 16-03-0020

At a Court of General Sessions, convened on April 2, 2013, the Grand Jurors of Marlboro County present upon their oath:

*A CERTIFIED
TRUE COPY*

MURDER

CDR: 0116 16-03-0010,0020

William B. Sunderbush

*CLERK OF COURT
MARLBORO COUNTY*

That Justin Henderson did in Marlboro County, on or about January 6, 2013, willfully, feloniously, and intentionally kill the victim, Jamie Dean White, with malice aforethought, either express or implied, by means of, a homemade "shank" and stabbed said victim, and the victim did die as a proximate result thereof on or about January 6, 2013, in Marlboro County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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

William B. Rogers, Jr.

WILLIAM B. ROGERS, JR.
SOLICITOR

134

WITNESSES

Ruby Brockenberry

S C Department Of Corrections

Law Enforcement Case #: SCDC

347

WAIVER OF PRESENTMENT

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

Defendant

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

Defendant

ARREST WARRANT NUMBER
2013A3420100042

ARRESTED ON: 2013-01-30

ACTION OF GRAND JURY

Grand Jury Foreperson

Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2013-GS-34-0107

The State of South Carolina

County of Marlboro

COURT OF GENERAL SESSIONS

Term:
April 2013

THE STATE

vs.

Justin Henderson

INDICTMENT FOR

Poss. Weapon During the Commission of a
Violent Crime

§16-23-0490

CDR Code: 0549

William B. Rogers, Jr., Solicitor

A CERTIFIED
TRUE COPY

William B. Henderson
CLERK OF COURT
MARLBORO COUNTY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF MARLBORO) INDICTMENT FOR
) Poss. Weapon During the Commission of a Violent
) Crime

§16-23-0490

At a Court of General Sessions, convened on April 2, 2013, the Grand Jurors of Marlboro County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME

CDR: 0549 16-23-0490

That Justin Henderson did in Marlboro County, on or about January 6, 2013, possess what appeared to be a knife, during the commission or attempted commission of a violent crime, to wit; did have a homemade knife, "shank" in his possession during the commission of murder, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

A CERTIFIED
 TRUE COPY
William B. Funderburg
 CLERK OF COURT
 MARLBORO COUNTY

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

William B. Rogers, Jr.

WILLIAM B. ROGERS, JR.
 SOLICITOR