

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable D. Craig Brown, Circuit Court Judge

RECEIVED

JUL 13 2017

S.C. SUPREME COURT

DIKEEM DARGAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-002416

APPENDIX

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Appellate Defender

South Carolina Commission on Indigent
Defense
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ATTORNEYS FOR RESPONDENT

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

STATE OF SOUTH CAROLINA)
STATE,)

TRANSCRIPT OF RECORD
15-GS-43-331

v.)

DI'KEEM DARGAN,)

DEFENDANT.)

May 16, 2016
Sumter, South Carolina

B E F O R E :

THE HONORABLE W. JEFFREY YOUNG, JUDGE

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

JOHN P. MEADORS, ESQ.
Assistant Solicitor

S. ELAINE COOKE, ESQ.
Attorney for Defendant

FRANCES B. RAY, RPR
Circuit Court Reporter

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(There were no exhibits submitted.)

1 MR. MEADORS: This is the State of South
2 Carolina versus Di'Keem Dargan with his attorney Ms.
3 Elaine Cooke, Sumter County true bill indictment
4 2015-GS-43-0331. He is pleading guilty to murder,
5 Your Honor. There is a armed robbery criminal
6 conspiracy and two weapon charges which will be
7 dismissed as a result of this plea. There's a
8 negotiation if Your Honor would consider it at the
9 appropriate time.

10 THE COURT: Okay.

11 THE CLERK: Raise your right hand. State
12 your name please.

13 THE DEFENDANT: Di'Keem Dargan.

14 WHEREUPON,

15 **DI'KEEM DARGAN,**

16 having been duly sworn by the Clerk, testified
17 as follows:

18 THE COURT: Let me see the attorneys real
19 quick.

20 (WHEREUPON, counsel approached the
21 Bench for an off-the-record discussion.)

22 THE COURT: Ms. Cooke, you represent
23 Di'Keem Dargan under indictment 2015-GS-43-331?

24 MS. COOKE: Yes, Your Honor.

25 THE COURT: And have you had opportunity

1 to explain to him the charges contained in the
2 indictment, the possible punishment he faces, and
3 his constitutional rights?

4 MS. COOKE: Yes, I have.

5 THE COURT: You think he's understood what
6 you told him?

7 MS. COOKE: Yes, Your Honor.

8 THE COURT: Does he wish to plead guilty
9 or not guilty?

10 MS. COOKE: Guilty.

11 THE COURT: And do you agree with his
12 decision to?

13 MS. COOKE: I do.

14 THE COURT: Based upon your investigation
15 of the facts and circumstances, do you believe if
16 this case should go to trial there's a substantial
17 likelihood that he'd be found guilty beyond a
18 reasonable doubt?

19 MS. COOKE: Yes, Your Honor, I do.

20 THE COURT: All right. Now Mr. Dargan, I
21 need to ask you a series of questions to make sure
22 that you're entering into this plea freely,
23 voluntarily, knowingly, and intelligently; but the
24 first question is, are you under the influence of
25 any alcohol or drugs today?

1 THE DEFENDANT: No, sir.

2 THE COURT: Are you taking any medication
3 that would cloud your judgment?

4 THE DEFENDANT: No, sir.

5 THE COURT: Are you aware of any physical,
6 emotional, or nervous condition that would keep you
7 from understanding what's happening today?

8 THE DEFENDANT: No, sir.

9 THE COURT: Now the indictment that you're
10 pleading guilty under, count one, says that Marquez
11 Shakeem Tyron Stevens and Di'keem Dargan did in
12 Sumter County on or about December 1st, 2014,
13 willfully, feloniously, and intentionally kill the
14 victim Lance Meyers with malice aforethought either
15 expressed or implied by means, by means, by shooting
16 the victim with a firearm, and the victim did die as
17 a proximate result thereof on or about December 1st,
18 2014 in Sumter County in violation of section
19 16-3-10 of the South Carolina Code of Laws 1976 as
20 amend. Is what's stated in the indictment the
21 truth?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: What are the facts?

24 MR. MEADORS: Judge, this happened on
25 December 1st of 2014 in the area of Miller Road and

1 Shop Road, specifically the address of Shop Road,
2 city limits of Sumter, Sumter County obviously. It
3 was about 4:50 officers of the Sumter Police
4 Department were called to respond. They talked to
5 several witnesses there. They also found the body
6 of Lance Meyers deceased, Your Honor, 25 years of
7 age with a gunshot wound to his body. Mr. Meyers is
8 in the courtroom represented by his mother Sandra
9 and Markell (ph). Please just stand up so the judge
10 can see you, Mr. and Ms. Meyers, along with Ms.
11 Harrison. Thank you.

12 Once police got there they started talking
13 to numerous witnesses to what the witnesses
14 described from the scene were two black males that
15 were chasing another black male and appeared that a
16 shot was fired as the individual that was ultimately
17 hit, Mr. Meyers, was running. After he was hit he
18 fell down and the witness described what they
19 thought looked like people going and checking his
20 pockets for money or whatever. Judge, that was at
21 4:50 p.m. on 12/1/14. 8:30 that same evening on
22 12/1/14 the word is out on the street, I mean, and
23 there's names going out there. The defendant turns
24 himself in to the Sumter Police Department, gives a
25 statement where he says I'm the shooter, I did the

1 shooting, I went with my co-defendant. This was
2 supposed to be a drug deal, all deference to the
3 family they do not believe that, but these what I'm
4 telling you came from the defendant and the
5 co-defendant that this was a deal to buy marijuana
6 and/or some other substance. That once the victim
7 got there the first statement Mr. Dargan gave was of
8 the defendant attempted to rob him and then he shot
9 him. Well, Judge, the next morning the co-defendant
10 turns himself in and says, yes, it was supposed to
11 be a drug deal, we were going to rob him, but that
12 when Mr. Meyers got there Mr. Dargan just shot him.
13 He was the shooter and there wasn't any rushing or
14 any part of Meyers to try to rob them is what
15 Mr. Dargan had said in his first statement, if I may
16 consent. The next day Mr. Dargan goes back to law
17 enforcement and says he wants to tell the truth and
18 at that point, again, it was a drug deal. And they
19 both say, both the co-defendants say the other one
20 is the one that set it up. I do believe Mr. Stevens
21 is probably set up the drug deal, and there never
22 was intent to sell any drugs or exchange drugs. The
23 intent was to rob. At this point in his, in Mr.
24 Dargan's second statement he says that Mr. Stevens
25 actually fired a gun, it didn't go off, and then the

1 victim rushed him; and that's when he reached for
2 his gun and shot the victim as he was running away
3 and only meant to shoot him in the leg. He hid the
4 gun, Mr. Dargan did, took law enforcement to the gun
5 where it was buried, got a picture of that, got a
6 picture of where the gun is. You know, got great
7 circumstantial eyewitness testimony of the shooting
8 and ended up being searched, and then we have both
9 co-defendants giving statements putting themselves
10 there.

11 They're admitting to a robbery, admitting
12 to a shooting within a robbery. The co-defendant is
13 prepared to testify, and I informed Ms. Cooke of
14 that. Obviously with Bruton now, under the rules we
15 can't go forward with both of them. We decided we
16 were going to go forward on the shooter. I think
17 it's in dispute whether Mr. Dargan is the trigger
18 man.

19 Judge, the cause of death is
20 exsanguination due to a laceration of the heart and
21 lungs due to a gunshot wound of the chest. I'd like
22 at some point to go over the negotiation, how we
23 came up with it, when you tell me too.

24 THE COURT: All right, I will.

25 Mr. Dargan, do you agree with the facts as

1 stated by the solicitor?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Are you, in fact, guilty?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And you understand that this
6 charge is a violent most serious charge that carries
7 up to life in prison, you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You understand they've
10 negotiated something less than that, that which
11 means I can either accept it or not accept it; but
12 your attorney and solicitor have negotiated
13 something less than a life sentence. You understand
14 that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You understand that whatever I
17 sentence you to you will have to serve day for day?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You won't get any parole or
20 anything like that. You will serve, if I give you
21 30 years you're gonna serve 30 years. Now you get
22 credit for time served, but you will serve 30 years
23 on this sentence. You understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now you understand if you

1 should commit another crime 'cause of violent most
2 serious that you could be charged under a life
3 without possibility of parole sentence again. Do
4 you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. Knowing all that
7 you still want to plead guilty?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You understand too that when
10 you plead guilty you waive certain constitutional
11 rights. The first right you waive is your right
12 against self-incrimination. Neither this court or
13 any other court in this great land would you ever be
14 required to testify against yourself; however, when
15 you plead guilty you're doing exactly that. You
16 understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: So do you wish to waive your
19 right against self-incrimination and proceed with
20 this plea?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. You also
23 understand that when you plead guilty you're waiving
24 your right to have a jury trial where twelve
25 citizens of Sumter County would listen to the

1 evidence, and only after they had heard evidence of
2 your guilt beyond a reasonable doubt could you be
3 convicted.

4 Now during the course of the trial if you
5 decided not to testify I would explain to the jury
6 they couldn't hold that against you. Further,
7 Ms. Cooke could artfully cross-examine the witnesses
8 presented by the State, could call witnesses on your
9 behalf, could raise any legal defenses. When you
10 plead guilty the State doesn't have to prove
11 anything, and you don't get to ask any questions
12 about the evidence. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. Knowing that you still
15 wish to waive your right to have a jury trial and
16 confront the witnesses against you?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Has anybody
19 threatened you in any way to get you to plead
20 guilty?

21 THE DEFENDANT: No, sir.

22 THE COURT: Has anybody promised you
23 anything other than the possibility of a negotiated
24 sentence to get you to plead guilty?

25 THE DEFENDANT: No, sir.

1 THE COURT: Is the reason that you're
2 pleading guilty is because you are, in fact, guilty?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Are you satisfied with the
5 services of Ms. Cooke?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Has she done everything that
8 you've asked her to do for you in this case?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And has she done anything that
11 you wish she had not have done?

12 THE DEFENDANT: No, sir.

13 THE COURT: Do you need anymore time to
14 speak to Ms. Cooke?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You need a few minutes to
17 speak with her?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right.

20 (Ms. Cooke confers with the defendant.)

21 THE DEFENDANT: No, sir.

22 THE COURT: Okay. Have you understood all
23 of my questions?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You have any questions for me?

1 I'm gonna give you an opportunity to speak. Do you
2 have any specific questions for me?

3 THE DEFENDANT: I don't have any specific
4 questions. I just want to say that —

5 (Ms. Cooke confers with defendant.)

6 THE COURT: I'm gonna give you an
7 opportunity to talk. And do you understand that if
8 you change your mind about your decision to plead
9 guilty or the sentence that I give you, is that you
10 will only have ten days in which to file an appeal?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now Mr. Dargan, under
13 indictment 2015-GS-43-331 charging you with murder,
14 how do you plead, guilty or not guilty?

15 THE DEFENDANT: Guilty.

16 THE COURT: All right. I find there's a
17 substantial factual basis for the plea. I find the
18 defendant has entered into it freely and
19 voluntarily, knowingly and intelligently. He has
20 had the advice of counsel he says he is well
21 pleased. I will accept the plea. Tell me about the
22 negotiated sentence.

23 MR. MEADORS: Thank you, Your Honor. And
24 I want to thank Mr. Miller and Ms. Harrison for
25 their help in this case. Judge, oftentimes it's

1 just easier to try a case than to try to work out a
2 sentence. But in this case we met with the Meyers
3 family and also one of Lance's other brothers, went
4 over in detail the case, the facts. We do believe
5 it's a very strong case. We came to the fact that
6 they want him to plead to murder and take
7 responsibility, and I do for the record want to
8 thank him for taking responsibility. And we talked
9 about the potential sentence and, Your Honor, we
10 were all comfortable in we think it's appropriate if
11 you do, that we certainly do, the 31 years. Shawn
12 Gill, the investigator, detective, was also involved
13 in these negotiations. He is behind this and thinks
14 it's a, respectfully, if you consider it that under
15 the circumstance of the case that it might be
16 something appropriate for Your Honor to consider.

17 He's got no prior record. They obviously,
18 the Meyers love their son, got a very tight family,
19 very close knit family, miss him. They started a
20 family cemetery out in the Rembert area and he's the
21 first one there. And anyway, I want to thank them
22 too for their patience and how they worked with us.
23 Your Honor, we respectfully ask that you consider
24 the negotiated 31 years.

25 THE COURT: Would the victims like to say

1 anything?

2 MR. MEADORS: Your Honor, we talked about
3 that beforehand. They're here. They just want to
4 thank Your Honor and they miss their son and just
5 want justice and hopefully we, hopefully this is it.

6 THE COURT: All right, thank you.

7 MR. MEADORS: Judge, I do, one other thing
8 that I did neglect. In addition to the defendant's
9 two statements there is another statement that he
10 wrote of apology to the Meyers family, and I hand
11 that up to the Court I know without objection.

12 (Pause.)

13 THE COURT: Ms. Cooke.

14 MS. COOKE: Yes, Your Honor. Mr. Dargan
15 was 18 years old. He was in high school. When this
16 happened he did some work with his, with his
17 friend's father, did work with a friend's father at
18 Morris College cleaning, doing maintenance. We
19 agree with the State that the co-defendant is the
20 one that set up the drug deal, Your Honor. And
21 Mr. Dargan did, he turned himself in the very next
22 day to law enforcement, took him to the gun, wrote a
23 letter of apology to the victims, told me the first
24 time I saw him, you know, I know I'm gonna have to
25 do 30 years. And it's my understanding that the

1 police were looking at someone else for this and he
2 went, turned himself in, and it cleared that
3 person's name. And we would ask that you take all
4 that into consideration and accept the negotiated
5 offer, Your Honor. And I believe Mr. Dargan had
6 something to say.

7 THE COURT: Mr. Dargan.

8 THE DEFENDANT: Your Honor, I just want to
9 say that I'm sorry for what happened. I'm sorry for
10 their loss and the victim family.

11 MS. COOKE: And he has spent 531 days in
12 jail.

13 MR. MEADORS: Your Honor, this was one of
14 the trials next week and...

15 THE COURT: Okay. Anything further from
16 the State?

17 MR. MEADORS: No, sir, thank you.

18 THE COURT: I'm gonna accept the
19 negotiated sentence of 31 years. It appears
20 reasonable under the circumstances. I'm sorry to
21 the victim's family that I couldn't — it seems
22 reasonable under the circumstances. It would
23 probably have been easier to do this than go through
24 a full trial so this is what y'all want, and that's
25 why I'm going to do it, not because what he wants

1 but because the victim's family wants this so I will
2 accept it. And the sentence is that you be
3 committed to the State Department of Corrections for
4 a period of 31 years. Good luck.

5

6 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 7th day of March, 2017.

Frances B. Ray

FRANCES B. RAY, RPR

FORM 5

RECORDED

CERTIFIED TRUE COPY OF ORIGINAL FILE

STATE OF SOUTH CAROLINA

2016 NOV 10 10 11 AM 2016

COURT OF COMMON PLEAS

County of Sumter

JAMES C. CAMPBELL CLERK OF COURT

DEPUTY CLERK OF COURT

D'heem Dargan (#368191)

SUMTER COUNTY S.C.

SUMTER COUNTY

2016 CP-43-2128

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

If the application is taken in 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 County Institution
- 2. Name and location of Court which imposed sentence _____
- 3. Name(s) of co-defendant(s) (if any) Marquez Shakeem-Tyrone Stevens
- 4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014A4320100700 -
 - (b) 2014A4320100701 -

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NOV 23 2016

Referred to PCR/dm
Answered deliberate

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 16, 2016 31 Years
 - (b) _____
 - (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty yes
 - (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?
N/A
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. N/A
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) N/A
 - (b) _____

(c) _____

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

- (a) Ineffective assistance of Counsel.
- (b) Counsel fail to advise. Ineffective
- (c) assistance of Counsel. Counsel fail to investigate

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

- (a) Counsel did not advise applicant of
- (b) the different plea arrangements
- (c) Counsel failed to present applicant with rule five

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

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

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. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____

- (c) the disposition thereof:
 - i. _____ *N/A*
 - ii. _____
 - iii. _____
 - iv. _____

- (d) the date of each such disposition:
 - i. _____ *N/A*
 - ii. _____
 - iii. _____
 - iv. _____

- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____ *N/A*
 - ii. _____
 - iii. _____
 - iv. _____

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

_____ *N/A*

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

- (a) which grounds have been presented:
 - i. _____ *N/A*
 - ii. _____
 - iii. _____

- (b) the proceedings in which each ground was raised:
 - i. _____ *N/A*
 - ii. _____
 - iii. _____

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

- (a) Applicant entered a plea of Guilty
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (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. N/A
 - ii. Elaine Cooke Sumter County
public defender 215 N. Harvin^{st.}
 - iii. Room 151 Sumter, S. C. 29150
- (b) the proceedings at which each such attorney represented you:
 - i. Plea arrangement
 - ii. _____
 - iii. _____

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

Applicant seeks new trial and/or
resentencing

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

No

STATE OF SOUTH CAROLINA)
County of Sumter)

VERIFICATION

I, Dikeem Dargan, 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.

Dikeem Dargan

SWORN to and subscribed before me this 20
day of Oct, 2016.

Debra Eastidge (L.S.)
Notary Public

My Commission Expires: 3/3/2021

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

I, Di'keem Dargan, 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.

Di'keem Dargan
Applicant

SWORN or affirmed to and subscribed before me this
20 day of Oct, 2014.

Debra Eastledge
Notary Public


My Commission Expires: 3/3/2020

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)
)
Di'Keem Dargan, #368191)
 Plaintiff,)
 vs.)
)
State of South Carolina)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 THIRD JUDICIAL CIRCUIT

CASE NO.: 2016-CP-43-2128

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Plaintiff's Attorney: Lance S. Boozer, Bar No. _____ Address: 1400 Laurel St, Ste 4A Columbia, SC 29210 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Julie A. Coleman, Bar No. 102214 Address: PO Box 11549 Columbia, SC 29211-1549 Phone: 803-734-3737 Fax 803-734-4113 E-mail: _____ Other: _____									
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)										
SECTION I: Hearing Information										
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO										
SECTION II: Motion/Order Type										
<input checked="" type="checkbox"/> Written motion attached. <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.										
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	June 13, 2017 Date submitted									
SECTION III: Motion Fee										
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STATE OF SOUTH CAROLINA)
 COUNTY OF SUMTER)
)
 Di'Keem Dargan, #368191,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 THIRD JUDICIAL CIRCUIT

2016-CP-43-2128

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on November 10, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. In March 2015, the Sumter County Grand Jury indicted Applicant for murder, armed robbery, and criminal conspiracy (2015-GS-43-0331). Elaine Cook, Esquire, represented Applicant. Assistant Solicitor John P. Meadors, Esquire prosecuted the case. On May 16, 2016, Applicant pled guilty as indicted to murder before the Honorable W. Jeffrey Young. The other charges were dismissed in exchange for Applicant's guilty plea. Judge Young sentenced Applicant to imprisonment for thirty- one years. Applicant did not appeal his conviction or sentence.

Attached to this Return and incorporated by reference are the guilty plea transcript, the records of the Sumter County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective Assistance of Counsel
 - a. "Counsel did not advise Applicant of the different plea arrangement"
 - b. "Counsel fail to investigate"
 - c. " Counsel failed to present Applicant with rule five"

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his 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, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have 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 to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that 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.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

V.

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

VI.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claim of ineffective assistance of plea counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JULIE A. COLEMAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

June 13, 2017

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER)	
)	
)	2016-CP-43-2128
DI'KEEM DARGAN., #368191)	
)	
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 in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire
1400 Laurel Street, Suite 4A.
Columbia, SC 29201

DATED this 13th day of June, 2017.


Chandra E. Young, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

COURT OF COMMON PLEAS

DIKEEM DARGAN)
PETITIONER,)

v.)

TRANSCRIPT OF RECORD
16-CP-43-2128

STATE OF SOUTH CAROLINA,)

RESPONDENT.)

July 25, 2017
Sumter, South Carolina

B E F O R E :

THE HONORABLE D. CRAIG BROWN, JUDGE

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

LANCE S. BOOZER, ESQ.
Attorney for the Petitioner

JULIE COLEMAN, ESQ.
Attorney for Respondent

FRANCES B. RAY, RPR
Circuit Court Reporter

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EXHIBITS

RESPONDENT'S:

	No. Description	I.D./EVD.
	1 Letter	23/23
	2 Letter	27/27

1 MS. COLEMAN: May it please the Court,
2 this is Dikeem Dargan versus State of South
3 Carolina, 2016-CP-43-2128. Applicant is presently
4 confined at the Department of Corrections pursuant
5 to orders of commitment of the Sumter County Clerk
6 of Court. In March 2015 the Sumter County grand
7 jury indicted applicant for murder, armed robbery,
8 and criminal conspiracy. Elaine Cooke, Esquire,
9 represented the applicant. Assistant solicitor John
10 Meadors, Esquire, prosecuted the case. On May 16th,
11 2016, applicant pled guilty as indicted to murder
12 before the Honorable W. Jefferey Young. The other
13 charges were dismissed in exchange for his guilty
14 plea.

15 Judge Young sentenced applicant pursuant
16 to negotiated sentence to imprisonment for 31 years.
17 Applicant did not appeal his conviction or his
18 sentence. Applicant filed a timely application for
19 post-conviction relief on November 10th, 2016,
20 alleging that he was being held in custody
21 unlawfully based on the following allegations.
22 Ineffective assistance of counsel, counsel did not
23 advise applicant of the different plea arrangements,
24 counsel failed to investigate, and counsel failed to
25 present applicant with Rule 5. The State filed its

1 return on June 13th, 2017, and he's present today
2 represented by Mr. Lance Boozer.

3 THE COURT: Mr. Boozer.

4 MR. BOOZER: Thank you, Your Honor, if it
5 pleases the Court. Judge, I do have a preliminary
6 matter to address and that would be a motion for
7 continuance. Judge, by way of background,
8 Mr. Dargan, part of his PCR application is that he
9 was not provided with his Rule 5 material leading to
10 obviously an involuntary guilty plea. I had
11 received the material from the Public Defender's
12 Office. I believe it was the same day that I
13 received the material I forwarded it to Mr. Dargan
14 to his institution, and that's been over a month
15 ago. It was early, mid June. Apparently when they
16 received it, when they — and it was fairly numerous
17 discovery materials. When they receive it they vet
18 the material, send them back to Columbia, presumably
19 Broad River. And then at Broad River, or Columbia,
20 they look through it and determine what, I guess,
21 he's entitled to and what he's not entitled to and
22 they'll send it back to his institution where he can
23 be provided with a copy. Or if there's certain
24 sensitive materials there, I think it's my
25 understanding at most institutions they're allowed

1 to see. It may be in some sort of special area I
2 believe. In any event, I discussed with Mr. Dargan
3 last week if he received the materials back in
4 Columbia yet; he indicated he had not. And I said,
5 okay, well, let's see if you get them back next
6 week, which was this past week. Did not hear back
7 from Mr. Dargan. Mr. Dargan has let me know that
8 they were delivered to him, he thinks, on this past
9 Friday, and I don't think he's had opportunity to
10 look through all of the materials. Like I said, it
11 is pretty voluminous. And for those reasons, Judge,
12 we would ask for a continuance only to the next
13 scheduled term of court, which is November. I don't
14 know if this case has been on the roster before.
15 There's been no continuances requested. While I've
16 been Mr. Dargan's lawyer this would be the first
17 request, Your Honor.

18 MS. COLEMAN: And Your Honor, I oppose the
19 motion for continuance. We have a witness who's
20 traveled here today for the hearing. The State is
21 ready to proceed. Although I understand that he
22 would want to look through the Rule 5, we don't
23 think it's necessary for him to try the case. His
24 attorney has seen the materials before and has had a
25 chance to prepare, and we believe the testimony will

1 show that he did receive his Rule 5. And I don't, I
2 don't know that the actual Rule 5 materials would be
3 able to show anything otherwise.

4 THE COURT: I'm gonna respectfully deny
5 your request for a continuance on this matter.
6 We're going to go forward. Call your first witness,
7 Mr. Boozer.

8 MR. BOOZER: Your Honor, we'd go ahead and
9 call Mr. Dargan to the stand.

10 THE COURT: Can the lawyers approach a
11 second.

12 (WHEREUPON, counsel approached the
13 Bench for an off-the-record discussion.)

14 THE CLERK: Place your left hand on the
15 Bible, raise your right hand. State your name.

16 THE WITNESS: Dikeem Dargan.

17 WHEREUPON,

18 **DIKEEM DARGAN,**

19 having been duly sworn by the Clerk, testified
20 as follows:

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

23 THE WITNESS: Dikeem Dargan D-A-R-G-A-N.

24 **DIRECT EXAMINATION**

25 BY MR. BOOZER:

PW - D. DARGAN - DIRECT

1 Q Mr. Dargan, how are you?

2 A I'm doing fine, and you?

3 Q Good, thank you. Mr. Dargan, do you understand
4 why it is that you're here today?

5 A Yes, sir.

6 Q Okay. You filed what's called an application for
7 post-conviction relief?

8 A Yes, sir.

9 Q All right. And you understand -- let me ask you
10 this, what are you currently serving time for?

11 A Murder charge.

12 Q Okay. Did you have a plea to that charge?

13 A I got a plea like at the -- when I was out to
14 court I was, around May, May 15th when we, through
15 14th through the 16th.

16 Q Okay. Let me ask you this, what did you, what's
17 your sentence?

18 A 31 years.

19 Q All right. And what was the ultimate charge that
20 you pled to?

21 A Murder.

22 Q All right. Now you understand that the only
23 thing that this court can do for you is basically
24 grant you a new trial in the event they grant your
25 application, which would mean you would start your

PW - D. DARGAN - DIRECT

1 case completely over on the original charge so that
2 plea would come undone and you would go back and
3 presumably have a trial on that original charge, you
4 understand that?

5 A Yes, sir.

6 Q Okay. And you and I have discussed the risk and
7 benefits in this. There is some risk in going back.
8 You can certainly, if everything did not go your
9 way, get more time than what you got from your plea
10 or what you have left to serve. You understand that
11 risk?

12 A Yes, sir.

13 Q And understanding that, you wish to still go
14 forward with your PCR?

15 A I would.

16 Q Okay. Now who represented you for your plea?

17 A Ms. Elaine Cooke.

18 Q All right. Do you recall -- when were you first
19 arrested?

20 A December 1st.

21 Q Of what year?

22 A 2014.

23 Q All right. And your plea was in May of 2016?

24 A Yes, sir.

25 Q Between -- when did Ms. Cooke first come on your

PW - D. DARGAN - DIRECT

1 case?

2 A It was, I was known, when I went to my
3 preliminary hearing.

4 Q When was that you think?

5 A Like December, December.

6 Q Was it pretty soon to when you'd gotten arrested,
7 pretty close to that time?

8 A Yes, sir.

9 Q So Ms. Cooke represented you for a long while?

10 A Yes, sir.

11 Q All right. Do you know about how many times you
12 may have met with Ms. Cooke prior to your plea?

13 A When I first got lock up I met with her at my
14 preliminary hearing. That was the first time. And
15 my second time meeting with her it was when I went
16 to my bond hearing.

17 Q Okay. Do you know when the second, or when the
18 bond hearing may have been?

19 A The second time was January the 26th or 27.

20 Q And at that point were you talking about your
21 case, or not really?

22 A Not really.

23 Q All right. Now did you see her again sometime in
24 the summer of 2015 thereabout?

25 A I don't think I saw her. I got a letter from

PW - D. DARGAN - DIRECT

1 her.

2 Q Okay. Well, let me ask you this. What were
3 y'all discussing, if anything, while she was
4 representing you?

5 A I was asking about my motion for discovery. And
6 I was asking like, well, the time range for, like,
7 the charges.

8 Q Okay. And what was her response to some of that
9 about you requesting your discovery?

10 A Motion for discovery she was like she had to get
11 it. She had to get my motion for discovery. And
12 when I got my motion for discovery I didn't get all
13 the motion of discovery.

14 Q Okay. Do you know what may have been missing
15 from that?

16 A What was missing from my motion for discovery?

17 Q Yes, sir.

18 A It was a lot missing from my motion of discovery.
19 I can't even like, certain things, all of it wasn't
20 together.

21 Q Okay. And let me ask you this, if it's missing
22 you don't, it'd be hard for you to say what's
23 missing; is that right?

24 A Yes, sir.

25 Q Okay. And of course, as we've done before this

PW - D. DARGAN - DIRECT

1 hearing began, I have received and provided you with
2 what has been given to me by the Public Defender's
3 Office a copy of your discovery?

4 A Yes, sir.

5 Q Okay. And I provided that to you at SCDC but
6 they have since been gathering that and I guess
7 vetting it to make sure you can have it. Have they
8 since provided that to you?

9 A Yes, sir.

10 Q Was it pretty recent when they gave it to you?

11 A Yes, sir.

12 Q When did they give it to you?

13 A It was, I received it -- well, I received other
14 form report that Wednesday.

15 Q Okay.

16 A But when I went Thursday it was closed so I had
17 to get it that Friday.

18 Q You think we're talking about -- today is
19 Tuesday, we're talking about this past Friday?

20 A Yes, sir.

21 Q And from the documents that you've gotten a copy
22 of, was it a fairly thick package?

23 A Yes, sir.

24 Q Okay. And you have not had a chance to review
25 all those materials yet?

PW - D. DARGAN - DIRECT

1 A No, sir.

2 Q All right. Does it appear that what I have sent
3 to you is greater or larger amount than what was
4 provided to you by Ms. Cooke?

5 A Yes, sir.

6 Q All right. What did you -- did you ever ask
7 Ms. Cooke, is there more stuff or is there discovery
8 missing?

9 A I asked, but she said she had to get more. That
10 was all motion for discovery.

11 Q Okay. Did she ever get anymore of it to your
12 knowledge?

13 A No, sir.

14 Q Did she ever show you anything else discovery
15 wise that she received?

16 A No, sir.

17 Q Okay. In total, how many times do you think you
18 met with Ms. Cooke?

19 A Probably like five or six times.

20 Q Did y'all have any sort of trial strategy or
21 defenses or anything like that?

22 A Well, we talk about trial. We ain't, it was
23 around the time I was getting my plea offers.

24 Q Okay, and let me ask you about that. Did you
25 have some plea offers before this one?

PW - D. DARGAN -- DIRECT

1 A No, sir.

2 Q You didn't have -- were there any offers that had
3 been made before ---

4 A It was one.

5 Q What was that?

6 A That was 35.

7 Q 35 years? Okay.

8 A Yes, sir.

9 Q What was your response to that?

10 A I wasn't taking it.

11 Q Okay. How close was that offer made to when you
12 ended up pleading to 35 year offer?

13 A A week later, a couple of days later.

14 Q All right. Were you ever on any sort of trial
15 docket, or were y'all going, about to have a trial?

16 A No, sir.

17 Q All right, when was the 31 year offer extended?

18 A I think it was two days before I went to court.
19 It was like 14.

20 Q It was two days before you went and entered the
21 plea?

22 A Yes, sir.

23 Q Okay. Tell me about that discussion with your
24 lawyer.

25 A Well, she was like, if I didn't get to take 31

PW - D. DARGAN - DIRECT

1 years I would have been going to trial. And if I
2 had go to trial I would possibly that I lost trial
3 knowing that my co-defendant was going to come to
4 trial as a witness.

5 Q Okay. You had a co-defendant?

6 A Yes, sir.

7 Q Okay. Do you know what -- did he enter any sort
8 of plea or anything?

9 A I still don't know.

10 Q Okay. Let me ask you this, let me jump back.
11 When you went, entered the plea to 31 years, when
12 y'all are having this discussion two days before
13 your plea, had you seen any additional discovery
14 other than what you had been provided earlier by Ms.
15 Cooke?

16 A No, sir.

17 Q Okay. Let me ask you this, why was it that you
18 went ahead and entered the plea?

19 A At the time, at the time like I was, I was 18, so
20 I really didn't, like, understand, really, certain
21 things. And at the time I was sitting in county
22 jail I was like, they wouldn't give me a bond, and
23 they wouldn't, they wasn't giving me no, like, no
24 lower pleas at the time whatever, and I had asked
25 for lower pleas but didn't hear back on that. So

PW - D. DARGAN - DIRECT

1 that was the only plea. I was the last plea because
2 she told me if I had lose at trial I'd got life
3 without parole.

4 Q Did you understand it's not automatic if you lose
5 at trial that you will get a life sentence, that
6 that would be up to the judge?

7 A Yes, sir.

8 Q Were you on any sort of notice or had you been
9 served that they were seeking what's called LWOP, or
10 life without parole?

11 A No, sir.

12 Q Okay. Did you understand that if you went to
13 trial and let's say you got found guilty of murder,
14 that it's possible you'd be sentenced to 30 years
15 and not life, did you understand that?

16 A Now that I do, but she said I would have spend
17 the rest of my life in jail.

18 Q Okay. So at the time, all you thought is if you
19 went to trial and you got found guilty you would
20 receive a life sentence?

21 A Yes, sir.

22 Q You didn't understand that the judge had
23 sentencing discretion you could have been sentenced
24 to 30 years on a minimum of it?

25 A Yes, sir.

PW - D. DARGAN - DIRECT

1 Q Okay. Did your lawyer talk to you about any, the
2 possibility of, you know, having a lesser, being
3 guilty of a lesser charge such as voluntary
4 manslaughter?

5 A No, sir.

6 Q All right, had — and this is all stuff you have
7 since learned since you, after your plea?

8 A Yes, sir.

9 Q Okay. And had you had known all this would you
10 have entered the plea or would you have gone to
11 trial?

12 A I would have gone to trial.

13 Q All right. Do you, do you want a trial in this
14 case?

15 A I want one. Then again, I have to, I ain't gone
16 over my motion discovery yet.

17 Q You want a trial when you're able to look at all
18 of your discovery?

19 A Yes, sir.

20 Q Okay. Mr. Dargan, this of course is your day to
21 be in court, and we've covered a number of topics
22 and I think we've covered everything but I want to
23 make sure. Is there anything that we've not covered
24 about your application or your allegations or any of
25 your issues with your former lawyer or the process?

PW - D. DARGAN - CROSS

1 A No, sir.

2 Q Okay. Please answer any questions the State may
3 have for you. Thank you.

4 THE COURT: Ms. Coleman.

5 MS. COLEMAN: Thank you, Your Honor.

6 **CROSS-EXAMINATION**

7 BY MS. COLEMAN:

8 Q Mr. Dargan.

9 A How are you doing today?

10 Q You testified that you met with your attorney
11 five or six times before your plea; is that right?

12 A Yes, sir — I mean, yes, ma'am.

13 Q At any of those meetings did you review the
14 discovery with her? Did she show you anything or
15 explain anything to you?

16 A No, ma'am.

17 Q Okay. Did you give her any leads or witnesses to
18 investigate?

19 A No, ma'am.

20 Q No, okay. Do you recall waiving your
21 constitutional rights at the guilty plea, like your
22 right to remain silent and your right to a jury
23 trial?

24 A Yes, ma'am.

25 Q Okay. Do you remember telling the plea judge

PW - D. DARGAN - CROSS

1 that you were satisfied with your attorney's
2 services?

3 A Yes, ma'am.

4 Q And you didn't have any complaints against her at
5 the time, right?

6 A No, ma'am.

7 Q Why didn't you tell the judge that you wanted to
8 see your discovery and you never got it?

9 A I write her about discovery and she told me she
10 was gonna get the rest of my discovery. I thought
11 before that I went to court that I was going to get
12 the rest of my discovery; but at that time, I didn't
13 never receive my discovery. The rest of my
14 discovery I just got copies of the same thing and
15 like the other case that have to do with the charge
16 that I had.

17 Q And that was before the guilty plea?

18 A Yes, ma'am.

19 Q Why didn't you tell the judge that you didn't get
20 all the pieces of discovery?

21 A Because at the time when she bring, when she was
22 telling me to plead and all that I was like, I
23 thought around that time she was going to send the
24 rest of it, but she didn't. And at the time I was
25 working on getting me a lawyer. My family was

PW - D. DARGAN - CROSS

1 trying to pay for a lawyer at the time.

2 Q Why did you plead guilty if you wanted to wait
3 and get all of your discovery first?

4 A I plead guilty because at the time I wasn't
5 understanding certain things.

6 Q Okay. Did you ask her again before the guilty
7 plea for the rest of your discovery?

8 A Yes, ma'am.

9 Q Okay. And you went forward anyway even though
10 you didn't have it?

11 A Yes, ma'am.

12 Q Do you remember telling the judge that no one was
13 promising you or threatening you to plead guilty?

14 A Yes, ma'am.

15 Q Do you remember telling the judge that you were
16 guilty?

17 A Yes, ma'am.

18 Q And you agreed with the facts as the Solicitor
19 presented them?

20 A Yes, ma'am.

21 Q And you apologized to the victims at the guilty
22 plea; is that correct?

23 A Yes, ma'am.

24 Q And you wrote them a letter apologizing too?

25 A Yes, ma'am.

PW - D. DARGAN - CROSS

1 Q Okay. Your co-defendant was gonna testify
2 against you at the trial if you had gone to trial,
3 right?

4 A That all she tell me.

5 Q Okay, thank you. Nothing further.

6 THE COURT: Mr. Boozer, anything?

7 MR. BOOZER: No redirect, Your Honor.

8 THE COURT: Sir, you may step down. Thank
9 you.

10 Any other witnesses?

11 MR. BOOZER: No, Your Honor.

12 THE COURT: Ms. Coleman.

13 MS. COLEMAN: The State calls Elaine
14 Cooke.

15 THE CLERK: Place your left hand on the
16 Bible, raise your right hand. State your name
17 please.

18 THE WITNESS: Elaine Cooke.

19 WHEREUPON,

20 **ELAINE COOKE,**

21 having been duly sworn by the Clerk, testified
22 as follows:

23 THE CLERK: Thank you. Have a seat up
24 here please. Please state your full name and spell
25 your last name for the record.

PW - E. COOKE - DIRECT

1 THE WITNESS: Elaine Cooke, C-O-O-K-E.

2 **DIRECT EXAMINATION**

3 BY MS. COLEMAN:

4 Q Hi, Ms Cooke, how are you?

5 A I'm fine.

6 Q How long have you been practicing law?

7 A Since 2001.

8 Q Were you appointed or retained in this case?

9 A I was a public defender so I was appointed.

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

12 A I do not recall.

13 Q Okay. Would you agree that it might be somewhere
14 around five or six times, as he testified?

15 A I really have no recall how many times I met with
16 him. I know it was several.

17 Q Okay. Did you file any Rule 5 or Brady motions?

18 A I did.

19 Q And did you review this discovery material with
20 the applicant?

21 A Yes.

22 Q Okay. When did you do this?

23 A Well, I, I wrote him a letter on June 22nd of
24 2015. Obviously I had given him his discovery and
25 he had complained that he didn't have all of it

PW - E. COOKE - DIRECT

1 because I wrote him a letter and I said I have
2 included what I can from your discovery. You are
3 not entitled to victims' or witnesses' personal
4 information such as phone numbers, addresses, social
5 security numbers. Also, our, I do not distribute
6 NCICs to my clients; I think that's prohibited. And
7 also, the Solicitor's Office is allowed to keep
8 witness statements back until they testify; and some
9 Solicitor's Offices don't do that, some do. This
10 Solicitor's Office does, especially Mr. Meadors. So
11 I did not have the witness statements because he
12 does not generally turn those over until trial.

13 Q Okay.

14 A And I wrote that in the letter.

15 Q Okay. Could I see a copy of that letter?

16 MS. COLEMAN: May I approach?

17 THE COURT: Yes.

18 BY MS. COLEMAN:

19 Q And where did this letter come from?

20 A That was, I generated that off the computer in
21 the Public Defender's Office.

22 Q Okay. So this was part of your file?

23 A Yes.

24 Q Okay.

25 MS. COLEMAN: And if we may just take a

PW - E. COOKE - DIRECT

1 moment to have Mr. Boozer look at it.

2 (Pause.)

3 BY MS. COLEMAN:

4 Q Now this, the copy that you handed me of this
5 letter does not have a signature on it, but is this
6 a true and accurate copy of the letter that you
7 would have sent to —

8 A It is.

9 Q Okay. And that was on June 22nd, 2015?

10 A Oh, yes. The date is generated by the defender
11 data system.

12 Q Okay.

13 MS. COLEMAN: The State at this time would
14 move to introduce this as Respondent's Exhibit 1.

15 MR. BOOZER: Without objection.

16 THE COURT: So admitted.

17 (WHEREUPON, Respondent Exhibit No. 1 was
18 marked for identification and admitted
19 into evidence.)

20 BY MS. COLEMAN:

21 Q Did you tell the applicant that you would be
22 sending any of those materials later or that he was
23 —

24 A Well, I told him that he couldn't, like he
25 couldn't have, he couldn't have the personal

PW - E. COOKE - DIRECT

1 information of the victims and that the statements
2 are not available, do not have to be, do not have to
3 be given to us until they testify at trial so I
4 don't believe I did. I didn't in this letter.

5 Q Okay. Did you ever have a chance to sit down and
6 show those things to him?

7 A Well, I never got the statements because he pled.

8 Q Okay. And ---

9 A Or, let me clarify that. I don't have any
10 specific recall of exactly what happened in this
11 case. Sometimes when we get close to trial,
12 sometimes Mr. Meadors will let me see the statements
13 or give me the statements with a --- I don't know the
14 word to use --- with direction that I don't show them
15 to my client until trial so I may have seen the
16 statements. But if I did, it would have been with
17 the direction not to show my, not to give them to my
18 client until after testimony at trial for safety of
19 the witnesses.

20 Q Okay. Who were the statements from in this case?

21 A I know his co-defendant was testifying against
22 him and there was also, there was a witness on the
23 scene. I'm not sure if that witness actually sat
24 down and gave a written statement or if it was just
25 an oral statement to the police.

PW - E. COOKE - DIRECT

1 Q You said the co-defendant was going to testify
2 against him at trial. Were you prepared for a
3 trial?

4 A Yes, he, he was on the trial list. Mr. Meadors
5 told the judge that he was on the trial list during
6 the plea. And so, yes, I was ready to go to trial
7 for a murder. This case was about as cut and dry as
8 it could get. It was a, it was a shooting where he,
9 Mr. Dargan turned himself in to the police soon
10 after, gave two statements that he was the shooter,
11 wrote an apology letter to the victim's family then
12 admitting what he did. And he told me the very
13 first time I met him — this is what I told Judge
14 Young during the plea — that, yes, I did that and I
15 know I'm gonna have to do 30 years, and from the
16 very beginning he asked me for a plea. So basically
17 the whole time I was trying to get Mr. Meadors to
18 give me some kind of offer plea this case; but there
19 was certainly, certainly wasn't anything that, there
20 wasn't much prep needed for trial. It was very cut
21 and dry and not a lot of witnesses.

22 Q Okay. But he wanted to plead from the beginning?

23 A Yes.

24 Q Okay. How would you characterize the State's
25 evidence against him in this case?

PW - E. COOKE - DIRECT

1 A Overwhelming.

2 Q Overwhelming? Did you explain to him the
3 sentencing range that he would receive if convicted
4 at trial?

5 A When he was asking me for a plea, asking me for a
6 plea bargain, I wrote him a letter on July 12th,
7 2015. I said you do not have to go to trial,
8 however, the only options are going to trial or
9 pleading guilty. I do not believe that you wish to
10 plead guilty right now because if you pled straight
11 up you would face a mandatory minimum of 30 years to
12 life. You would go to prison for 30 years at least,
13 possibly and probably more and would have to serve
14 that day for day so unless you wish to plead
15 straight up and serve at least 30 years, then we
16 need to sit and wait and see if the prosecutor on
17 the case offers you some type of plea deal for a
18 charge less than murder, and it is your choice.

19 Q Thank you.

20 MS. COLEMAN: And may I approach to see a
21 copy of the letter.

22 THE COURT: Yes.

23 MS. COLEMAN: Thank you.

24 BY MS. COLEMAN:

25 Q Did this come from your file as well?

PW - E. COOKE - DIRECT

1 A Yes.

2 Q Okay. And again, this doesn't have your
3 signature on it, but is this a true and accurate
4 copy of the letter you would have sent on July 2nd,
5 2015?

6 A It is.

7 Q Okay.

8 MS. COLEMAN: I'm gonna allow Mr. Boozer
9 to look at it.

10 (Pause.)

11 MS. COLEMAN: At this time the State moves
12 to enter this as Respondent's Exhibit 2.

13 MR. BOOZER: Without objection.

14 THE COURT: So admitted.

15 (WHEREUPON, Respondent Exhibit No. 2 was
16 marked for identification and
17 admitted into evidence.)

18 BY MS. COLEMAN:

19 Q Ms. Cooke, based on this letter that you sent to
20 him and your communications with your client, was it
21 your understanding that he was aware of the fact
22 that he could get 30 years but he might get up to
23 life in prison —

24 A Yes.

25 Q —if convicted at trial?

PW - E. COOKE - DIRECT

1 A Yes.

2 Q Okay. Did you believe it was in his best
3 interest to accept the negotiated plea?

4 A I did.

5 Q Okay. Did you discuss his constitutional rights
6 that he was waiving before this plea?

7 A Yes.

8 Q And did he ever say he didn't understand
9 something?

10 A No.

11 Q Okay. Did you explain the difference between a
12 straight up plea, a recommendation, and a negotiated
13 sentence?

14 A I don't specifically remember having that
15 conversation. I have to — I can't imagine because
16 we did a negotiated plea that I wouldn't have told
17 him either the judge takes this or doesn't.

18 Q Okay. What was the offer from the State?

19 A It was 31 years.

20 Q Okay. And in addition to that they dropped the
21 other charges?

22 A Yes.

23 Q Okay. So he just pled to murder —

24 A Yes.

25 Q —correct? Okay. Whose decision was it to

PW - E. COOKE - DIRECT

1 plead guilty?

2 A It was his.

3 Q Did he ever indicate that he wanted to go to
4 trial?

5 A I don't think so. I don't remember him
6 indicating he wanted to go to trial. I remember him
7 wanting a plea offer the whole time.

8 Q Okay.

9 A He wrote me a letter and said that he'd take a
10 cap of 20 years and Mr. Meadors said no.

11 Q Okay. What would your trial strategy have been
12 if you had proceeded to trial?

13 A That it was an accident because he said he shot
14 while he was running away and he didn't mean to kill
15 him, hoping for a lesser included.

16 Q Okay. Thank you. Nothing further.

17 THE COURT: Mr. Boozer.

18 MR. BOOZER: Thank you, Your Honor.

19 **CROSS-EXAMINATION**

20 BY MR. BOOZER:

21 Q Ms. Cooke, how are you?

22 A Good.

23 Q Good. I think you indicated you're not sure how
24 many times you may have met with Mr. Dargan.

25 A I know I met with him four because I've got

PW - E. COOKE - CROSS

1 notes on three different dates that I saw him at the
2 jail. Now I talked to him when Mr. Meadors brought
3 him over. I don't know if I met him anymore than
4 that or not.

5 Q Do you know how old he was at that time?

6 A I don't remember.

7 Q Seventeen, would that sound about right probably?

8 A I don't have any disagreement with that.

9 Q Okay. You, obviously he's young and still is
10 fairly young?

11 A Yes.

12 Q Okay. Did you have any discussion with him about
13 going to trial and sort of if he went to trial, if
14 he were found guilty of the murder, that it would be
15 a range of sentencing from 30 to life? Did you
16 discuss that specifically with him?

17 A I definitely told him that it would be a
18 mandatory minimum day for day 30 years and he could
19 serve up to life. I don't use the term life without
20 parole when we're talking about murder because it's
21 not life without parole, it's just life.

22 Q A life sentence, right. Going back to the
23 discovery, you had indicated that you didn't provide
24 some things to him such as information with, I
25 guess, personal identifiers or whatnot?

PW - E. COOKE - CROSS

1 A Yes.

2 Q Either witnesses or co-defendants?

3 A Well, what I usually do is, like, if there's a
4 document and there's a social security number,
5 address, phone number of the victim, we mark that
6 out with a black magic marker, copy it, mark it out
7 again, copy it, mark it out again, copy it, and then
8 give it to them with like black lines in it.

9 Q Okay. So if someone gives a statement do you —
10 I'm trying to figure out, do you give them the
11 statement or no?

12 A It's — with the Solicitor's Office over here it
13 was kind of a case by case basis 'cause they're,
14 they don't have to give us statements until they
15 testify at trial under Rule 5. Occasionally I get
16 statements. And if I knew, you know, if I knew the
17 solicitor didn't have a problem with it and it, like
18 it wasn't murder or it was a, you know, grand
19 larceny or something, if I got those statements I
20 turn them over. Mr. Meadors does not like to give
21 statements until trial. And if he let me see those
22 statements — I don't specifically recall what
23 happened in this case — he always gave them to me
24 with a direction, now your client is not entitled to
25 those until trial so you don't turn those over or

PW - E. COOKE - CROSS

1 I'm not going to give them to you because I don't
2 have to until a witness testifies. So if he gave me
3 that directive I would not have turned them over to
4 him until trial.

5 Q Would you ---

6 A But I would have had them to prepare for trial.

7 Q Right. So would you discuss them with him or
8 not?

9 A I think we had a general discussion that I knew
10 his co-defendant was a cooperating witness, he was
11 even being called to trial. He, and I knew his
12 co-defendant was gonna testify against him, and I
13 knew that there was some other witness at the
14 apartments. I didn't know if that was going to
15 testify that he was the one that did the shooting.
16 I wouldn't have got into specifics, very specifics
17 about what was said 'cause that would be the same as
18 turning over to him.

19 Q How about if any statements had the language to
20 the effect of he was defending himself or it was an
21 accident or something to that effect, do you think
22 that's important for him to know? Would you have
23 shared that with him?

24 A Yeah, I mean, I think that would be something
25 important that I would have talked to him about.

PW - E. COOKE - CROSS

1 Q 'Cause that would certainly weigh, I guess, in
2 whether he's willing to take a risk and he, I do
3 have an actual defense to go to trial if certain
4 statements are made or those statements are out
5 there so I probably need to go ahead and take the
6 plea because it may be a little risky.

7 A Yeah.

8 Q Okay. So are you pretty certain you did not
9 provide him with everything that was in the Rule 5
10 materials?

11 A The only thing I would have held back would have
12 been the statements. I don't know, I cannot recall
13 if, I cannot recall our conversations about the
14 statements or whether I gave it to him at the last
15 minute since it was being called to trial the next
16 week or not.

17 Q Did he ever express to you any concern that he
18 felt like he wasn't seeing everything discovery
19 wise?

20 A Yeah, yeah, he — and that's, I told him that I
21 had given him everything I could until the trial,
22 that I wasn't gonna turn over NCICs to him and I
23 couldn't give him victims' addresses and phone
24 numbers and that I couldn't, I couldn't give him
25 statements at that time. But I did tell him his

PW - E. COOKE - CROSS

1 co-defendant was testifying against him.

2 Q Were the — other than the 31 year, I guess
3 negotiated plea, were there any other offers that
4 were made or extended?

5 A I don't remember the 35 year offer. I don't
6 dispute that; I don't doubt it. Seems like I kind
7 of vaguely remember it, but I can't specifically
8 recall. But no, we didn't get the, we didn't come
9 to the 31 year negotiation till the last minute. I
10 never tried a case with Mr. Meadors that we didn't
11 come to a plea agreement at the last minute right
12 before trial.

13 Q Did you discuss with him if the strategy whatnot
14 was an accident or something else? Did you discuss
15 with him the possibility that you could request that
16 the judge instruct the jury during trial on lesser
17 included such as voluntary manslaughter?

18 A I remember having discussions with him about
19 trying to get a lesser plea than murder. As far as
20 I remember, he always wanted to plead. From the
21 very beginning he wanted a plea, he wanted a plea
22 offer, wanted a plea offer. Just the plea offer
23 that we got, he didn't, he didn't like, but he ended
24 up pleading to it because he was on the trial list
25 for the next week. But most of our discussions were

PW - E. COOKE - CROSS

1 about pleas because he always wanted a plea. I
2 don't really remember him ever saying I want to go
3 to trial, what'll happen at trial. I remember, I
4 remember that there was, there was some issue, like
5 I said earlier, about him shooting as he went away
6 and not, you know, directly intending to kill so I
7 have to imagine that we discussed that; but I don't,
8 I don't remember the specific conversations that we
9 had.

10 Q Okay.

11 MR. BOOZER: Beg the Court's indulgence.

12 BY MR. BOOZER:

13 Q Thank you, Ms. Cooke, that's all I have.

14 MS. COLEMAN: Nothing further.

15 THE COURT: All right. Ma'am, you may
16 step down.

17 MS. COLEMAN: And the State has no further
18 witnesses, Your Honor.

19 THE COURT: Anything by way of argument by
20 either of you?

21 MR. BOOZER: Nothing further, Your Honor.

22 THE COURT: I'll let you know.

23

24 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

25

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
 COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 1st day of March, 2018.

Frances B. Ray

FRANCES B. RAY, RPR

Elaine Cooke
Sumter County Public Defender
215 N. Harvin Street, Room 151
Sumter, SC 29150
(803)436-2424 / (803)436-2423

June 22, 2015

Mr. Dikeem Keyandre Dargan
C/O Sumter Lee Regional Detention Center
1250 Winkles Road
Sumter, SC 29153

Re: State v. Dikeem Keyandre Dargan

Warrant/Ticket No(s): 2014A4320100700; 2014A4320100701; 2014A4320100702;
2014A4320100703; 2014A4320100691

Dear Mr. Dargan:

I know that it is frustrating for you sitting there with nothing going on with your case and I am sorry. However, with the charges that you have: Murder, you are not going to get out before your trial. Unfortunately, it is completely up to the solicitor's office when that trial is called. It could be next month, or it could be two years from now and our office has absolutely nothing to do with that. Because the judge found you a danger to the community, you will not be able to post a bond. You will remain in jail until your trial and I am sorry about that, and I am sorry about the fact that I cannot tell you when that will be. However, that is completely out of my hands. The court docket rests solely in the hands of the solicitor's office.

I can tell you that you will NOT be tried in July, because I will be trying another murder case in July---one that is older than yours and has been pending longer.

I have included what I can from your discovery. You are not entitled to victim's or co-defendant's personal information, such as phone numbers, addresses and social security numbers, etc. so those have been redacted. Also, we are not entitled to see witness statement until after they have testified at trial.

Since I have another murder case in July that I am preparing for, I will not be out to go over your discovery with you, until after the July term. But, here is the discovery that you can look at.

With kind regards,

Elaine Cooke, Esq.



Elaine Cooke
Sumter County Public Defender
215 N. Harvin Street, Room 151
Sumter, SC 29150
(803)436-2424 / (803)436-2423

July 02, 2015

Mr. Dikeem Keyandre Dargan
C/O Sumter Lee Regional Detention Center
1250 Winkles Road
Sumter, SC 29153

Re: State v. Dikeem Keyandre Dargan

Warrant/Ticket No(s): 2014A4320100700; 2014A4320100701; 2014A4320100702;
2014A4320100703; 2014A4320100691

Dear Mr. Dargan:

I received your letter. No, you do not have to go to trial. However, you only have two options at this point: (1) go to trial, or (2) plead guilty. I do not believe that you wish to plead guilty right now because you are facing A MANDATORY MINIMUM THIRTY YEARS TO LIFE. (30 - LIFE). That means, if you plead guilty right now, you WILL GO TO PRISON FOR THIRTY YEARS, AT LEAST, POSSIBLY AND PROBABLY MORE, and you would have to serve the time DAY FOR DAY. In other words, you get no "good time credits", which lessen your sentence for MURDER. You will be in prison for THE NEXT THIRTY YEARS.

So, unless you wish to plead straight up to MURDER and go to prison for AT LEAST THIRTY YEARS, then, yes, we either have to go to trial, or we can sit and wait and see if the prosecutor on the case, ever offers you some type of plea deal for a charge less than Murder. It is your choice. If you would like to plead, then you don't have to go to trial. But, if you do plead, right now, you will be facing a sentence of THIRTY YEARS.

I don't know why anything about your juvenile charges are in your discovery. I represent you on: Murder, Armed Robbery, Conspiracy, Possession of a Weapon during a violent crime, and unlawful carrying of a pistol. Those are the only charges that I can talk to you about. I don't know anything about any juvenile charges and I do not represent you on those.

You were found to be a 'danger to the community' because you are charged with MURDER AND ARMED ROBBERY. The judge was perfectly in his right to deny you bond based on those charges.

With kind regards,

Elaine Cooke, Esq.



STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED

2017 OCT -2) PM 4:14

) IN THE COURT OF COMMON PLEAS
) THIRD JUDICIAL CIRCUIT

Di'Keem Dargan, #368191,

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

2016-CP-43-2128

CERTIFIED TRUE COPY
OF ORIGINAL FILED

[Signature]
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on November 10, 2016. Respondent submitted its Return on June 13, 2017. An evidentiary hearing into the matter was convened on July 25, 2017, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

At the hearing, this Court had before it a copy of the guilty plea transcript, the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings.

I. PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. In March 2015, the Sumter County Grand Jury indicted Applicant for murder, armed robbery, and criminal conspiracy (2015-GS-43-0331). Elaine Cook, Esquire, represented Applicant. Assistant Solicitor John P. Meadors, Esquire prosecuted the case. On May 16, 2016, Applicant pled guilty as indicted to murder before the Honorable W. Jeffrey Young. The other

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charges were dismissed in exchange for Applicant's guilty plea. Judge Young sentenced Applicant to imprisonment for thirty- one years. Applicant did not appeal his conviction or sentence.

II. ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. "Counsel did not advise Applicant of the different plea arrangement"
 - b. "Counsel fail to investigate"
 - c. " Counsel failed to present Applicant with rule five"

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Elaine Cooke, Esquire (hereinafter "Plea Counsel").

Applicant's Testimony

Applicant testified that he pled guilty to murder and is currently serving a 31 year sentence. He stated he met Plea Counsel at his preliminary hearing and his bond hearing. He stated he wanted to see his discovery, and he did receive a copy of his discovery materials, but it was missing a lot of things. He testified that his PCR attorney sent him a copy of the discovery from his murder charge and it was more than what Plea Counsel had originally sent him. Applicant testified he met with Plea Counsel about five or six times total over the course of her representation. He stated that he rejected a 35 year plea offer from the State, but there were no other plea offers before he accepted the offer he took. Applicant stated he pled guilty because he was only eighteen years old and he would have gotten a life without parole sentence if he were

DCB
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convicted at trial. He stated he did not understand at the time he pled that he could have only gotten a thirty year sentence, and his lawyer did not tell him this.

Plea Counsel's Testimony

Plea Counsel testified that she was appointed to represent Applicant through the Public Defender's office. She stated she met with Applicant several times prior to his guilty plea, and she reviewed all the discovery material with him during their meetings. She stated she sent Applicant a letter on June 22, 2015, after he enquired about his discovery. In this letter, which was entered as Respondent's Exhibit #1, Plea Counsel explained to Applicant that she could not send him certain parts of the discovery, such as witness statements, which they were not entitled to view until after the witnesses testified at trial. Plea Counsel testified that the discovery included witness statements and NCIC reports containing sensitive personal information that she was not allowed to share with Applicant, and that is why she did not send those documents to him. She stated that she never got to share the witness statements with Applicant because he chose to plead guilty.

Plea Counsel testified she believed the State had overwhelming evidence of Applicant's guilt. She stated a codefendant was going to testify against Applicant at trial. She stated the State also planned to use a letter from Applicant that he wrote to the victim, apologizing. She stated Applicant turned himself into the police and that he had asked her for a plea from the beginning of her representation. Plea Counsel testified she informed Applicant that he would serve a mandatory minimum sentence of thirty years and possibly more in a letter she wrote him dated July 2, 2015, which was entered into evidence as Respondent's Exhibit #2. She stated she did not recall any prior plea offers from the State.

Plea Counsel testified her trial strategy was going to be to argue that this killing was an accident, which might allow Applicant to receive a sentence for a lesser included offense rather than for murder. She stated Applicant accepted a plea offer for a 31 year sentence. She stated it was Applicant's decision to plead guilty.

IV. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges Plea Counsel was ineffective in her representation surrounding his guilty plea. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant 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) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985).

In the present case, this Court finds Applicant has failed to meet his burden in proving Plea Counsel was ineffective in any regard. First, Applicant has failed to produce any evidence

that Plea Counsel failed to advise him of any other plea arrangement, or that any other plea offer existed. Plea Counsel credibly testified that she did not recall any other plea offer from the State. This Court finds Plea Counsel properly informed Applicant of all plea negotiations with the State and communicated and discussed with him the risks of pleading guilty and of going to trial. Plea Counsel properly reviewed and explained Applicant's constitutional rights before he pled guilty, and the record reflects Applicant was well aware of the rights he was waiving when he pled.

Applicant has further failed to prove Plea Counsel failed to investigate his charges. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). Applicant has not produced any evidence that could have been investigated and discovered by Plea Counsel that would have changed his decision to plead guilty rather than go to trial.

Finally, this Court finds Plea Counsel was not ineffective for failing to present Applicant with his discovery materials. Plea Counsel credibly testified that she reviewed all the available discovery material with Applicant during one of their several meetings prior to his plea. When he asked her for his discovery, she sent him a copy of everything she was allowed to send him, and she explained to him that some documents were missing because she was not allowed to share them with him per the Solicitor's office policy. She excluded sensitive personal information, such as criminal background NCIC reports, which are private and secure, as enforced by the

CJIS federal agency. Applicant has failed to prove Plea Counsel did not review any piece of discovery with him that she was able to or that any of the evidence he did not see would have changed his decision to plead guilty. Therefore, this allegation is denied and dismissed with prejudice.

VI. CONCLUSION

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

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

[signature page to follow]

DeB
P-7878

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 7 day of Sept., 2017.



D. CRAIG BROWN
Presiding Judge
Third Judicial Circuit

Florence, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT FOR

Murder
Armed Robbery
Criminal Conspiracy
CERTIFIED TRUE COPY
ORIGINAL FILE
Barbara Hays
DEPUTY CLERK OF COURT
Grand Jurors of
SOUTH CAROLINA

At a Court of General Sessions, convened on March 12, 2015 the Grand Jurors of SOUTH CAROLINA

SUMTER County present upon their oath:

COUNT ONE - MURDER

That Marquez Shakeem-Tyron Stevens and Dikeem Dargan did in Sumter County, on or about December 1, 2014, willfully, feloniously, and intentionally kill the victim, Lance Myers, with malice aforethought, either express or implied, by means of by shooting the victim with a firearm, and the victim did die as a proximate result thereof on or about December 1, 2014 in Sumter County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

COUNT TWO - ARMED ROBBERY

That on or about December 1, 2014, in Sumter County, South Carolina, the Defendant, Marquez Shakeem-Tyron Stevens and Dikeem Dargan, at 220 Shop Rd., by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Lance Myers with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

COUNT THREE - CRIMINAL CONSPIRACY

That Marquez Shakeem-Tyron Stevens and Dikeem Dargan did in Sumter County on or about December 1, 2014 combine with each other, and/or with other persons, for the purpose of accomplishing a criminal or unlawful object or an object that is neither criminal nor unlawful through criminal or unlawful means, to wit: Robbery, in violation of Section 16-17-410, S. C. Code of Laws, 1976, as amended.

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

Solicitor

Edward A. Finley III

WITNESSES

N. Kelly Sumter Police Dept.

DOCKET NO. 2015-GS-43-0331

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

March TERM 2015

THE STATE

vs.

MARQUEZ SHAKEEM-TYRON STEVENS

DIKEEM DARGAN

ARREST WARRANT NUMBER

2014A4320100692 2014A4320100698
2014A4320100699
2014A4320100691 2014A4320100700
2014A4320100701

Indictment for

Murder
Armed Robbery
Criminal Conspiracy

ACTION OF GRAND JURY

True Bill

Ernest A. Finney III

Ol. Soff
For a person of Grand Jury
Date: *3-12-15*

ERNEST A. FINNEY, III, SOLICITOR

VERDICT

For a person of Petit Jury
Date: