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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

—————  
Certiorari to Berkeley County

Honorable Jean H. Toal, Circuit Court Judge

—————  
BRANDON JENKINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-002366

—————  
APPENDIX  
—————

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**INDEX**

INDEX ..... i

PLEA HEARING TRANSCRIPT (June 16, 2014) .....1

APPLICATION FOR POST-CONVICTION RELIEF .....31

RETURN.....42

POST-CONVICTION RELIEF HEARING TRANSCRIPT (September 16, 2016).....48

ORDER OF DISMISSAL.....78

INDICTMENTS .....87

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF BERKELEY	)	
State of South Carolina	)	
	)	
v.	)	Case No. 12-GS-08-0817 <i>et. al.</i>
	)	
Brandon A. Jenkins,	)	
	)	
Defendant	)	

### TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on June 16, 2014, before The Honorable R. Markley Dennis in Courtroom E of the Berkeley County Courthouse, 300 California Avenue, Moncks Corner, South Carolina; attended by counsel as follows:

#### APPEARANCES:

Bryan Alfaro, Deputy Solicitor  
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Moncks Corner, South Carolina 29461  
Appearing for State of South Carolina

Chad Shelton, Public Defender  
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Moncks Corner, South Carolina 29461  
Appearing for Defendant

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## State of South Carolina v. Brandon A. Jenkins

Case No. 12-GS-08-0817, *et al.*

Hearing of June 16, 2014

Before The Honorable R. Markley Dennis

1

(DEFENDANT PRESENT)

2

THE COURT: You are Brandon Jenkins?

3

DEFENDANT: Yes, sir, Your Honor.

4

THE COURT: Mr. Jenkins, I have two

5

indictments. You're standing with your

6

lawyer. Has he explained to you the nature

7

of these charges?

8

DEFENDANT: Yes, Your Honor.

9

THE COURT: Has he explained to you the

10

possible punishment -- there are three

11

indictments.

12

SOLICITOR ALFARO: He is pleading to two,

13

Your Honor.

14

THE COURT: What is he pleading to?

15

SOLICITOR ALFARO: He's pleading to

16

voluntary manslaughter, the lesser of murder,

17

and attempted murder.

18

THE COURT: And the attempted ---

19

SOLICITOR ALFARO: Attempted murder.

20

There is an attempted armed robbery, which is

21

being dismissed.

22

THE COURT: Okay. I've got it. Thank

23

you. I picked up the wrong thing. I'll get

24

organized in a moment. Do you understand the

25

two charges?

## State of South Carolina v. Brandon A. Jenkins

3

Case No. 12-GS-08-0817, et al.

Hearing of June 16, 2014

Before The Honorable R. Markley Dennis

- 1           DEFENDANT:     Yes, sir.
- 2           THE COURT:     You've been charged with
- 3 two counts, a count of murder and a count of
- 4 attempted murder. Do you understand that?
- 5           DEFENDANT:     Yes, Your Honor.
- 6           THE COURT:     Your lawyer has explained
- 7 those charges to you?
- 8           DEFENDANT:     Yes, Your Honor.
- 9           THE COURT:     And the possible punishment
- 10 in each case?
- 11          DEFENDANT:     Yes, Your Honor.
- 12          THE COURT:     For the attempted murder,
- 13 which is Indictment 12-GS-08-0818, the 2012
- 14 charges, I could sentence you up to thirty
- 15 years in jail. Do you understand that?
- 16          DEFENDANT:     Yes, Your Honor.
- 17          THE COURT:     But you have negotiated a
- 18 range of fifteen to thirty. Is that correct?
- 19          DEFENDANT:     Yes, Your Honor.
- 20          THE COURT:     Which you understand that
- 21 if I accept the negotiated sentence, and my
- 22 options are either to accept it or reject it.
- 23 You understand that?
- 24          DEFENDANT:     Yes, Your Honor.
- 25          THE COURT:     Your lawyer has explained

## State of South Carolina v. Brandon A. Jenkins

Case No. 12-GS-08-0817, et. al.

Hearing of June 16, 2014

Before The Honorable R. Markley Dennis

1           that?

2           DEFENDANT:     Yes, Your Honor.

3           THE COURT:     I would sentence you to not  
4           less than fifteen years nor more than thirty  
5           years. Is that your understanding?

6           DEFENDANT:     Yes, Your Honor.

7           THE COURT:     Understanding the nature of  
8           that offense and the possible punishment of  
9           fifteen to thirty years, how do you plead?

10          DEFENDANT:     I plead guilty.

11          THE COURT:     Indictment 12-GS-08-817  
12          charges you with the offense of murder. Do  
13          you understand that?

14          DEFENDANT:     Yes, Your Honor.

15          THE COURT:     Your lawyer has explained  
16          that charge to you, and the lesser-included  
17          offense of voluntary manslaughter?

18          DEFENDANT:     Yes, Your Honor.

19          THE COURT:     Is that correct?

20          DEFENDANT:     Yes, Your Honor.

21          THE COURT:     And you understand that for  
22          the voluntary manslaughter that I could  
23          sentence you from zero up to thirty years?

24          DEFENDANT:     Yes, Your Honor.

25          THE COURT:     You have negotiated a

## State of South Carolina v. Brandon A. Jenkins

5

Case No. 12-GS-08-0817, *et al.*

Hearing of June 16, 2014

Before The Honorable R. Markley Dennis

1 sentence in that case of the range similar to  
2 the other of fifteen to thirty years; is that  
3 correct?

4 DEFENDANT: Yes, Your Honor.

5 THE COURT: You understand that my  
6 options are either to accept it or reject it?

7 DEFENDANT: Yes, Your Honor.

8 THE COURT: Understanding that I could  
9 sentence you to not more than thirty but not  
10 less than fifteen years for this offense, how  
11 do you plead?

12 DEFENDANT: Guilty.

13 THE COURT: Are you totally satisfied  
14 with your lawyer?

15 DEFENDANT: Yes, Your Honor.

16 THE COURT: Solicitor, any other terms  
17 of your negotiated sentence?

18 SOLICITOR ALFARO: Indictment 12-GS-08-  
19 0819 for attempted armed robbery will be  
20 dismissed as a part of this negotiated plea.  
21 The two charges that he is pleading to are to  
22 run concurrent, Your Honor.

23 THE COURT: All right. Is that your  
24 understanding, Mr. Shelton?

25 CHAD SHELTON: Yes, Your Honor.

## State of South Carolina v. Brandon A. Jenkins

Case No. 12-GS-08-0817, et. al.

Hearing of June 16, 2014

Before The Honorable R. Markley Dennis

1 THE COURT: You have discussed this  
2 matter totally with your client?

3 CHAD SHELTON: Yes, Your Honor.

4 THE COURT: Has he been advised of his  
5 rights and the consequences of his plea?

6 CHAD SHELTON: Yes, Your Honor.

7 THE COURT: Do you believe the terms of  
8 the negotiated sentences to be in your  
9 client's best interest?

10 CHAD SHELTON: Yes, Your Honor.

11 THE COURT: And do you agree with his  
12 decision to enter the guilty pleas, based on  
13 your investigation?

14 CHAD SHELTON: Yes, Your Honor.

15 THE COURT: Is that true, Mr. Jenkins?

16 DEFENDANT: Yes, Your Honor.

17 THE COURT: Then you understand and  
18 realize that if I accept your pleas that you  
19 give up the right to have a jury trial, the  
20 right to confront the witnesses against you,  
21 and the right to remain silent?

22 DEFENDANT: Yes, Your Honor.

23 THE COURT: Have there been any threats  
24 made to you to get you to plead guilty?

25 DEFENDANT: No, Your Honor.

State of South Carolina v. Brandon A. Jenkins  
Case No. 12-GS-08-0817, et al.  
Hearing of June 16, 2014  
Before The Honorable R. Markley Dennis

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25

THE COURT: Other than the promises contained in the negotiated sentence, any other promise that's been made to you?

DEFENDANT: No, Your Honor.

THE COURT: Are you under the influence of any alcohol or any medication here today?

DEFENDANT: No, Your Honor.

THE COURT: Have you been treated for any emotional illness, any mental problems?

DEFENDANT: Yes, Your Honor.

THE COURT: Tell me about it.

DEFENDANT: I had to go see a doctor for my ADHD.

THE COURT: When was that?

DEFENDANT: I want to say in 2012.

THE COURT: Other than that have you had any treatment for emotional or mental problems?

DEFENDANT: No, sir.

THE COURT: Do you believe your condition is in any way affecting your ability to make this decision here today?

DEFENDANT: No, sir.

THE COURT: You understand what you're doing?

## State of South Carolina v. Brandon A. Jenkins

8

Case No. 12-GS-08-0817, et al.

Hearing of June 16, 2014

Before The Honorable R. Markley Dennis

- 1                   DEFENDANT:     Yes, sir.
- 2                   THE COURT:     You've had sufficient time
- 3                   to think about it?
- 4                   DEFENDANT:     Yes, sir.
- 5                   THE COURT:     You have had sufficient
- 6                   time to talk to your lawyer about what you're
- 7                   doing?
- 8                   DEFENDANT:     Yes, sir.
- 9                   THE COURT:     He's answered any concerns
- 10                  or questions that you may have had about
- 11                  this; is that right?
- 12                  DEFENDANT:     Yes, sir.
- 13                  THE COURT:     You understand that I am
- 14                  going to be relying on your responses today?
- 15                  DEFENDANT:     Sir?
- 16                  THE COURT:     Do you understand that I am
- 17                  going to be relying on your responses today?
- 18                  DEFENDANT:     Sir?
- 19                  THE COURT:     You understand that I am
- 20                  going to rely on what you're telling me?
- 21                  DEFENDANT:     Yes, sir.
- 22                  THE COURT:     And I am relying on it
- 23                  being the truth?
- 24                  DEFENDANT:     Yes, sir.
- 25                  THE COURT:     And I am relying on that

State of South Carolina v. Brandon A. Jenkins  
Case No. 12-GS-08-0817, et al.  
Hearing of June 16, 2014  
Before The Honorable R. Markley Dennis

1 you're not answering any question unless you  
2 understand the question; is that correct?

3 DEFENDANT: Yes, Your Honor.

4 THE COURT: And furthermore that your  
5 answer is a complete answer, your answer, and  
6 not what someone has told you that you have  
7 to say. Is that right?

8 DEFENDANT: Yes, Your Honor.

9 THE COURT: Is that right?

10 DEFENDANT: Yes, Your Honor.

11 THE COURT: Tell me the facts,  
12 Solicitor, if you would.

13 SOLICITOR ALFARO: Thank you, Your  
14 Honor. On September 26th, 2011, Berkeley  
15 County Sherriff's Office deputies responded  
16 to a shooting at in  
17 the St. Stephens area of Berkeley County.

18 When law enforcement arrived, they  
19 found the victim, Brittany Aigoro, was found  
20 deceased on the front porch. She had  
21 sustained a gunshot wound to her torso that  
22 perforated her lung, stomach and liver.  
23 There was an additional gunshot wound to the  
24 upper back, and two further gunshot wounds to  
25 her upper left arm.

## State of South Carolina v. Brandon A. Jenkins

10

Case No. 12-GS-08-0817, *et al.*

Hearing of June 16, 2014

Before The Honorable R. Markley Dennis

1 Another victim, Kendrick Shire, who  
2 was the resident at that address was also at  
3 the scene. He had also -- by that time he  
4 had been transported to MUSC for treatment  
5 for a gunshot wound that he sustained to his  
6 side.

7 Through the investigation, it was  
8 determined that this defendant, along with  
9 multiple other codefendants, had come up with  
10 a plan to rob Mr. Shire, who was the victim  
11 of the attempted murder, and who was also  
12 known to a drug dealer in that area.

13 So they had entered into a plan  
14 where female accomplices, including the  
15 victim Brittany Aigoro, female codefendant  
16 Alicia Stokes, and another female codefendant  
17 Deanna Shaw, uh, the plan was that they would  
18 go into the home. They would party with the  
19 victims inside, including having Miss Stokes  
20 engage in sexual activity with at least one  
21 of the people inside the home. At that time  
22 one of the codefendants was to leave the door  
23 open so that this defendant and the other  
24 defendants involved could come into the  
25 house, complete the armed robbery; taking

## State of South Carolina v. Brandon A. Jenkins

11

Case No. 12-GS-08-0817, et al.

Hearing of June 16, 2014

Before The Honorable R. Markley Dennis

1 money, drugs and anything else that was  
2 inside the home.

3 As often is the case in these  
4 things, this plan went a little bit awry.  
5 The resident of the home had had a previous  
6 dealing with Miss Shaw and wanted Shaw and  
7 some of his friends to go get beer. So they  
8 left the residence. That left Mr. Shire and  
9 Mr. Shire's brother, the victim Brittney  
10 Aigoro and the other codefendant, Bernisha  
11 Stokes, inside the home.

12 This defendant and the codefendants  
13 arrived at the home. At that point it  
14 becomes a little unclear as to what triggered  
15 the shooting. But the other codefendants  
16 state that this defendant fired first.

17 All of the male codefendants were  
18 armed when they went to the home. The house  
19 was essentially almost blown apart by gun-  
20 shots. At the scene, law enforcement found  
21 ten SKS shell casings, which is an assault  
22 rifle. They found ten shell casings matching  
23 that firearm. They found three shotgun  
24 shells and four additional shotgun shells  
25 were found at a codefendant's home after the

## State of South Carolina v. Brandon A. Jenkins

12

Case No. 12-GS-08-0817, *et al.*

Hearing of June 16, 2014

Before The Honorable R. Markley Dennis

1 investigation. Multiple shots were fired  
2 inside the home from the outside. As I  
3 indicated, Miss Aigoro was shot several  
4 times. Mr. Shire was struck inside the home  
5 one time.

6 This defendant does not have a prior  
7 record -- well, I take that back, Your Honor.  
8 This defendant does have a prior record. In  
9 2003 he was convicted in Family Court, DJJ,  
10 for indecent exposure; in 2008 he had two  
11 convictions for possession with intent to  
12 distribute cocaine.

13 The only codefendant at this point who  
14 has pled guilty is Sheldon Goodman. He pled  
15 before Judge Young last month, to the same  
16 terms by negotiation. He received a twenty-  
17 three year sentence. The State's position at  
18 that time was that we asked for a thirty-year  
19 sentence, which is in accord with what the  
20 victim's family wanted. Mr. Goodman did  
21 receive a twenty-three year sentence.

22 The State's position again would be to  
23 ask for the thirty years. I understand that  
24 Mr. Goodman was a codefendant in this and did  
25 receive the twenty-three year sentence,

## State of South Carolina v. Brandon A. Jenkins

13

Case No. 12-GS-08-0817, et al.

Hearing of June 16, 2014

Before The Honorable R. Markley Dennis

1           however Mr. Goodman had no prior record. So  
2           the State feels that Mr. Jenkins could be  
3           treated differently in this case,  
4           appropriately different with a higher  
5           sentence than the twenty-three years that Mr.  
6           Goodman received.

7           Mr. Shire was notified of the plea and is  
8           not in attendance.

9           As I stated, Miss Aigoro's mother, Gail  
10          Jenkins, as well as her grandmother are  
11          present in the courtroom. I don't believe  
12          that they want to address Your Honor. I  
13          believe that they just want to be here. They  
14          have anger, frustration and sadness.  
15          Brittany was clearly involved in the plan,  
16          however nobody expected this and nobody  
17          deserves what she got.

18          So, again, the State is asking for a  
19          thirty-year sentence for Mr. Jenkins.

20          THE COURT:     Okay. Are those facts  
21          correct, Mr. Jenkins?

22          DEFENDANT:     Yes, Your Honor.

23          THE COURT:     You hesitated. Is there  
24          some concern that you have about those facts?

25          CHAD SHELTON:     The statement that the

## State of South Carolina v. Brandon A. Jenkins

14

Case No. 12-GS-08-0817, et al.

Hearing of June 16, 2014

Before The Honorable R. Markley Dennis

1 codefendants say that he shot first, we would  
2 contest that; but that is essentially what  
3 took place, Your Honor.

4 THE COURT: You understand that  
5 you're giving up the right to have self-  
6 defense or mutual combat, or -- I can't think  
7 of anything -- but self-defense for sure. Do  
8 you understand that?

9 DEFENDANT: Yes, Your Honor.

10 THE COURT: Most importantly,  
11 you're giving up the right to have the  
12 State's case challenged by cross-examination.  
13 Do you understand that?

14 DEFENDANT: (No verbal response).

15 THE COURT: Do you understand that  
16 if you went to trial -- you've talked with  
17 your lawyer about what would happen?

18 DEFENDANT: Yes, Your Honor.

19 THE COURT: The State would have  
20 to put up witnesses. They have to prove --  
21 you don't have to prove anything. They've  
22 got to disprove self-defense. But your  
23 lawyer could cross-examine those witnesses,  
24 do you understand?

25 DEFENDANT: Yes, Your Honor.

## State of South Carolina v. Brandon A. Jenkins

15

Case No. 12-GS-08-0817, et al.

Hearing of June 16, 2014

Before The Honorable R. Markley Dennis

1 THE COURT: That's not going to happen  
2 because you're waiving your right to a jury  
3 trial?

4 DEFENDANT: Yes, Your Honor.

5 THE COURT: And you are admitting your  
6 guilt here today?

7 DEFENDANT: Yes, Your Honor.

8 THE COURT: Based on your conversations  
9 with your lawyer, what he has explained about  
10 the nature of the charges and that that is  
11 what the State would have to prove to obtain  
12 a conviction, you are -- any question in your  
13 mind about your guilt here?

14 DEFENDANT: No, sir.

15 THE COURT: I find the plea to be  
16 freely, voluntarily, knowingly and  
17 intelligently made and entered. He's had the  
18 benefit of very competent counsel, with whom  
19 he's indicated that he is totally satisfied.  
20 I will accept the plea as to its voluntari-  
21 ness. Now I will be delighted to hear from  
22 you, Mr. Shelton, as to why I should impose  
23 and accept the negotiated sentence.

24 CHAD SHELTON: Thank you, Your Honor,  
25 may it please the court. I do want to hand

## State of South Carolina v. Brandon A. Jenkins

16

Case No. 12-GS-08-0817, et al.

Hearing of June 16, 2014

Before The Honorable R. Markley Dennis

1 up ---

2 THE COURT: Sure.

3 CHAD SHELTON: --- I apologize that I  
4 didn't get this to you before the plea.

5 THE COURT: That's all right.

6 CHAD SHELTON: It is an evaluation by  
7 Dr. Mallory (phonetic) on Brandon.

8 THE COURT: Okay. We're going to make  
9 this evaluation -- have you seen this,  
10 Solicitor?

11 SOLICITOR ALFARO: I have, Your Honor.

12 THE COURT: It will be the State's --  
13 I mean will be Court's Exhibit 1 for the  
14 purposes of this plea and is to be retained  
15 with all other pleadings in this file.

16 (SO ENTERED AS COURT'S EXHIBIT 1)

17 CHAD SHELTON: Your Honor -- and I  
18 want to say that we were thinking about self-  
19 defense. The biggest thing that we're  
20 thinking about with the case is the hand of  
21 one is the hand of all.

22 It's always been Brandon's  
23 contention, in his interviews with the police  
24 and everything, that he was driving, that he  
25 never got out of the car. I had to obviously

## State of South Carolina v. Brandon A. Jenkins

17

Case No. 12-GS-08-0817, et. al.

Hearing of June 16, 2014

Before The Honorable R. Markley Dennis

1 explain to him and go over the law, and I had  
2 to do my research and I had others do  
3 research to help me out, and to explain to  
4 him that his accomplice liability and his --  
5 that he took part in this and how he is  
6 guilty of murder, and how he is guilty of  
7 these charges here today, Your Honor. It  
8 took some time.

9 What you can see in Dr. Mallory's report  
10 is that he has an IQ of 73, borderline  
11 intellectual functioning, Your Honor. From  
12 the day that I met him, I couldn't tell you  
13 that that is what his IQ was because he's a  
14 very outgoing person. His 993 days in jail  
15 has changed that. He's changed to a  
16 completely different person since that, since  
17 -- 993 days in jail tends to do that to you,  
18 especially in our detention center. I've  
19 seen that. I've seen it in Brandon. But he  
20 was an outgoing person and I think that  
21 outgoingness, that energy, masked some of his  
22 intellectual functions, his abilities and  
23 what was really there. I think the testing  
24 and all that showed that. It showed what he  
25 was capable and what his understanding is.

1                   Since that time, I have been very,  
2                   very diligent in asking him, 'Do you under-  
3                   stand what I am saying?' 'Do you understand  
4                   what we are talking about?' 'Do you under-  
5                   stand this word?'

6                   I've seen now that he didn't really  
7                   understand everything that we were talking  
8                   about at first and I've had to go over things  
9                   we'd gone over before again, to explain  
10                  things in a different manner. But he knows  
11                  exactly what is going on here. I think that  
12                  he fully appreciates what difficulty that we  
13                  would have had at trial, especially given his  
14                  statements to the police about driving and  
15                  taking them out there.

16                  Your Honor, I've gone through the  
17                  discovery and -- it's unfortunate what  
18                  happened to Miss Aigoro. Her -- a family  
19                  member did provide a statement to the police  
20                  about her being scared of doing this robbery.  
21                  In that statement she indicated to her family  
22                  member that it was Sheldon and Deanna that  
23                  set it off, that were setting up this  
24                  robbery. There is also another statement  
25                  from someone else that Deanna was trying to

## State of South Carolina v. Brandon A. Jenkins

19

Case No. 12-GS-08-0817, et al.

Hearing of June 16, 2014

Before The Honorable R. Markley Dennis

1 recruit other people to commit this robbery.  
2 It doesn't take away anything that Brandon  
3 did, I just -- Your Honor -- they've started  
4 to, some of these codefendants have started  
5 to paint Brandon as the one that was the main  
6 person in this.

7 I have two letters that were passed up  
8 from codefendants. If Your Honor would like  
9 to see them, I have them available for Your  
10 Honor. One was threatening him not to  
11 testify, not to go to the police, to retract  
12 his statement. The other one actually admits  
13 that it was his gun that shot and killed Miss  
14 Aigoro. So I have both of those statements.

15 They threatened him to also include  
16 trying to get him to fire me as his attorney.  
17 They filed a Motion in his name, in their  
18 handwriting, not Brandon's, to have me  
19 removed from the case. I think a lot of that  
20 was because I was trying to explain to  
21 Brandon what was going on.

22 Your Honor, this is -- it's tough, it's  
23 really tough. I've come to know Brandon over  
24 these nine hundred and ninety-three (993)  
25 days and, uh, I -- he made some really bad

## State of South Carolina v. Brandon A. Jenkins

20

Case No. 12-GS-08-0817, *et al.*

Hearing of June 16, 2014

Before The Honorable R. Markley Dennis

1 choices at that time and that day. He was  
2 under the influence of marijuana and he was  
3 promised to get more marijuana, and that's  
4 one of the reasons that he decided to drive  
5 out there. At some point in time, he should  
6 have realized what was going on and taken  
7 himself out of that position, should have  
8 alerted the people who need to be alerted,  
9 and this never would have happened. But he  
10 made the choice not to do that. He made the  
11 choice to continue with what was going on,  
12 and that's why he is here taking  
13 responsibility.

14 He has got some family members in the  
15 courtroom. I know at least one wants to  
16 address Your Honor, and -- these are all his  
17 family right here, these two rows. I would  
18 ask that the person who wants to address the  
19 judge come up. His uncle, Your Honor.

20 THE COURT: Okay. Who was the  
21 individual that was sentenced by ---

22 SOLICITOR ALFARO: Sheldon Goodman.

23 CHAD SHELTON: That is who -- there is  
24 some evidence that he was part of the persons  
25 that set it up.

## State of South Carolina v. Brandon A. Jenkins

21

Case No. 12-GS-08-0817, et. al.

Hearing of June 16, 2014

Before The Honorable R. Markley Dennis

1 THE COURT: Okay. Mr. Goodman?

2 CHAD SHELTON: Sheldon Goodman. Yes,  
3 sir.

4 THE COURT: Okay. And the other one  
5 that you were talking about ---

6 CHAD SHELTON: The two ---

7 THE COURT: Two other persons have been  
8 sentenced?

9 CHAD SHELTON: No, the two that have  
10 provided those letters have not been  
11 sentenced, Your Honor.

12 THE COURT: Okay. Yes, sir, if you  
13 would just give me your full name for the  
14 record, please.

15 ALBERT PERRY: Albert Perry.

16 THE COURT: Thank you, Mr. Perry. I  
17 will be happy to hear from you, sir.

18 ALBERT PERRY: Sir, I've known  
19 Brandon for a long time. A lot of times they  
20 get in bad company. Now, when somebody is  
21 not used to driving a car and these guys know  
22 that, they would often offer him the key to  
23 drive. A lot of times they don't know what  
24 they're getting into, but they will drive.  
25 I've seen similar situations like that.

1 My grandson has been in a situation like  
2 that. He was driving the car and everybody  
3 in there was drunk, and he was drinking too.  
4 I said, 'You should have been in the  
5 backseat, boy.'

6 But what I think he did was they just  
7 give him the key and tell him 'just drive us  
8 around.' You've got girls in the car, boys  
9 in the car, that seemed fun to him so he  
10 drives. He probably didn't know what was  
11 going on. But then a bad thing happened.  
12 Sometimes you get in with bad company and it  
13 be too late. So I ask you to have mercy on  
14 him.

15 THE COURT: Thank you, sir. Appreciate  
16 you being here, Mr. Perry. I appreciate all  
17 the others coming and showing support for him  
18 too.

19 CHAD SHELTON: This is his aunt, Your  
20 Honor. I know his mother -- I've been in  
21 constant contact with her. He was, on and  
22 off, helping her out. She does have MS, so  
23 he was helping her with that. She's had some  
24 bad days and some good days but she's always  
25 been there for him too.

## State of South Carolina v. Brandon A. Jenkins

23

Case No. 12-GS-08-0817, et al.

Hearing of June 16, 2014

Before The Honorable R. Markley Dennis

1 BRIDGETT CAPERS: Good afternoon, my  
2 name is Bridgett Capers (phonetic).

3 THE COURT: Good afternoon, Ms. Capers.

4 BRIDGETT CAPERS: I am the auntie to  
5 Brandon. Brandon has always been a very  
6 passionate person, full of passion, full of  
7 love. People tend to draw to him. Even Chad  
8 -- when I met Chad, I said to myself, 'He's  
9 hooked, too. He's hooked.' He's just that  
10 kind of person. He is not a violent person.  
11 However, I do understand a violent act  
12 occurred.

13 It's been difficult, very difficult for  
14 him as well as his family. I mean, not just  
15 because of what took place with him but  
16 because of what took place with Brittany as  
17 well. My daughter's name is Brittany. It  
18 could have just as well as that happened to  
19 that Brittany, that could have been me in  
20 that situation. So we're sadden for her  
21 loss. We have been in prayer for that family  
22 as well.

23 We just want you to know that Brandon is  
24 a very passionate person, a very loving  
25 person. That other day that we visited, he

## State of South Carolina v. Brandon A. Jenkins

24

Case No. 12-GS-08-0817, *et al.*

Hearing of June 16, 2014

Before The Honorable R. Markley Dennis

1 hugged and just squeezed his mom and told her  
2 how sorry he was that this took place.

3 Brandon also, I think, fell through the  
4 crack. I've been in the school system for  
5 twenty-five years, and Brandon fell through  
6 the crack. He -- with his mental conditions,  
7 he should have gotten a lot more help than  
8 what he had. He had been going to Mental  
9 Health but once he reached a certain, a  
10 teenage boy, and started looking at girls, of  
11 course going to Mental Health became  
12 embarrassing. That happens with young  
13 people.

14 And, so, I think that -- you know even  
15 leaving the jail Friday, I felt that I failed  
16 him as well. He should have had some help to  
17 help with his condition.

18 I just wanted to share who he is, who he  
19 really is. Thank you so much for your time.

20 THE COURT: Thank you.

21 CHAD SHELTON: I know that Brandon  
22 would like to say something, briefly.

23 THE COURT: Certainly.

24 DEFENDANT: I want to say that I'm  
25 sorry for what happened to the victim, and I

## State of South Carolina v. Brandon A. Jenkins

25

Case No. 12-GS-08-0817, et al.

Hearing of June 16, 2014

Before The Honorable R. Markley Dennis

1 want to apologize to the family.

2 I ask that you have mercy on me. I just  
3 want to say that I am sorry for the actions,  
4 for what happened in my case.

5 THE COURT: You've talked with your  
6 lawyer about the principle of law hand of one  
7 is the hand of all. Do you understand that?

8 DEFENDANT: Yes, sir.

9 THE COURT: And he has explained it to  
10 you so that you have had the opportunity to  
11 decide -- because the State has to prove more  
12 than that you were just merely present. They  
13 have to prove some involvement. Do you  
14 understand?

15 DEFENDANT: Yes, sir.

16 THE COURT: While you differ with  
17 whether you shot first, there is no question  
18 that you were involved in this whole scheme;  
19 correct?

20 DEFENDANT: The shooting, sir?

21 THE COURT: Yes. There is no question  
22 in your mind that you were involved as an  
23 actor, a person that was part of the group,  
24 that you weren't along just for the ride.

25 DEFENDANT: Yes, Your Honor.

1           THE COURT:     Well, life is a learning  
2           experience for all of us in this room, for  
3           everybody that is blessed to live another day  
4           we learn something. I hope that I learn  
5           something every day of my life, because  
6           that's what we are here to do. We are  
7           striving for perfection.

8                         But one thing that I hope that  
9           you've learned, and I've heard it for over  
10          twenty years, and I guess one of my greatest  
11          frustrations is that we can't for some reason  
12          convey the message. I hope that all the  
13          folks that are here, in support of both  
14          sides, the victim's side and you, will strive  
15          to make an earnest effort to try to get all  
16          young people to understand, to think about  
17          things before and not after. To say you're  
18          sorry, it almost implies 'well, I thought  
19          about it and decided I was going to go ahead  
20          and do it.' You acted impulsively and  
21          compulsively. The problem is that we have to  
22          think about consequences.

23                        The disturbing thing to me, and I confess  
24          that maybe I am just getting older but the  
25          disturbing thing to me is the violence of

## State of South Carolina v. Brandon A. Jenkins

27

Case No. 12-GS-08-0817, *et al.*

Hearing of June 16, 2014

Before The Honorable R. Markley Dennis

1 young people towards young people in this  
2 state and in this country. I agree with our  
3 President, how in the world can we be a  
4 country that leads the list in killing young  
5 people? How in the world can we do that with  
6 everything that we have at our disposal, that  
7 we have simply turned into a society that has  
8 that much -- really lack of compassion for  
9 others, with no understanding of the harm  
10 that you create when you shoot a firearm.

11 After the incident that occurred,  
12 tragically, here in this county at a  
13 graduation party afterwards. I can tell you  
14 I went to some graduation parties when I  
15 graduated from high school and there weren't  
16 any guns, didn't see anybody shooting  
17 anybody, didn't have to worry about that.  
18 There was probably some alcohol consumed by  
19 people that shouldn't have been consumed  
20 then, but -- you know what? Nobody had guns.  
21 Nobody shot anybody.

22 In fact, in my whole high school career,  
23 and I grew up in Berkeley County and it was a  
24 rural town compared to now. To go to  
25 Charleston was a trip. I can think of one

## State of South Carolina v. Brandon A. Jenkins

28

Case No. 12-GS-08-0817, et al.

Hearing of June 16, 2014

Before The Honorable R. Markley Dennis

1 incident when one of the high school student  
2 had a gun, and every single person in the  
3 group said, 'What in the world is wrong with  
4 that guy? Is he crazy? There's something  
5 wrong with him.' That was a horrible slang  
6 word that we used, but we thought it was  
7 absurd for people to have guns.

8 Did we have disagreements? You bet. I  
9 went down dirt roads and watched people hit  
10 each other a couple times, somebody would hit  
11 a good blow and that would be the end of that  
12 fight. Then we'd go and make up and that  
13 would be it. Nobody shot anybody, nobody  
14 killed anybody.

15 I don't understand the violence, I really  
16 don't. I believe that you are sincere when  
17 you say you're sorry. I am not minimizing or  
18 trying to ridicule you at all. I just hope  
19 and pray that during this time you will  
20 reflect on that so that you will be more  
21 likely to make a decision that will be a  
22 proper decision. You know, the simple thing  
23 to me that if you have a loved one, would you  
24 want your loved one to experience this?

25 DEFENDANT: No, sir.





STATE OF SOUTH CAROLINA

County of BERKELEY.

In the Court of Common Pleas

BRANDON A. JENKINS  
Full name and prison number (if any) of Applicant,

vs.

STATE OF SOUTH CAROLINA  
Name of Respondent.

2015-CP-08-1201

APPLICATION FOR  
POST-CONVICTION RELIEF

2015 MAY 19 AM 9:49  
CLERK OF COURT  
BERKELEY COUNTY, SC

FILED

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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention BROAD RIVER CORRECTIONAL INSTITUTION  
4460 BROAD RIVER RD COLUMBIA SC. 29210
2. Name and location of Court which imposed sentence BERKELEY COUNTY COURT OF  
GENERAL SESSIONS 300A CALIFORNIA AVE MONKES CONVE SC. 29461
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
  - (a) INDICTMENT FOR MURDER (2012-65-08-0817)
  - (b) INDICTMENT ATTEMPTED MURDER (2012-65-08-0819)
  - (c) INDICTMENT ATTEMPTED ARMED ROBBERY (2012-65-08-0819)
4. The date upon which sentence was imposed and the terms of the sentence:
  - (a) JUNE - 16 - 2004 - ALL IMPOSED TO CONCURRENT TO
  - (b) SERVE 24 YEARS
  - (c) \_\_\_\_\_

CHT

5. Check whether a finding of guilt was made

- (a) after a plea of guilty YES
- (b) after a plea of not guilty NA
- (c) after a plea of nolo contendere NA

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

- NO -

7. If you answered "yes" to (6), list

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

- i. N/A
- ii. N/A
- iii. NA

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

- i. N/A
- ii. N/A
- iii. N/A

(c) the date of each such result:

- i. N/A
- ii. N/A
- iii. N/A

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

- i. TIME LIMIT EXPIRED
- ii. N/A
- iii. N/A

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) COURT APPOINTED ATTORNEY DID NOT FILE WITHIN THE
- (b) (10) TEN DAY LIMIT.
- (c) N/A

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

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) GUILTY PLEA WAS NEITHER VOLUNTARILY NOR
- ~~(c)~~ KNOWINGLY MADE

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) SEE STRULLAND V WASHINGTON 446 US 668 (1984)
- (b) SEE HILL V LOCKHART 474 US 52 (1985)
- (c) SEE ATTACHED MEMORANDUM IN SUPPORT OF APPLICATION

11. 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 petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court?  
NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. W/A -
- ii. W/A -
- iii. W/A -

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

- i. W/A -
- ii. W/A -
- iii. W/A -

15. If any ground set forth in (9) 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) POST CONVICTION IS THE PROPER AVENUE
- (b) /
- (c) /

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? W/A -
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? W/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. PUBLIC DEFENDER  
CHAD SHELTON
- ii. DONT KNOW  
W/A -
- iii. W/A -  
W/A

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

- i. PLEA AND SENTENCING
- ii. W/A -
- iii. W/A -

18. State clearly the relief you seek in filing this application.

REVOKE UNLAWFUL CONVICTION AND SENTENCE AND  
REMAND FOR A TRIAL, AND/OR ANY OTHER JUST RELIEF

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

NO

STATE OF SOUTH CAROLINA

VERIFICATION

County of BERKELEY

I, BRANDON A. JENKINS # 360373, 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.

Brandon A. Jenkins

SWORN to and subscribed before me this 13<sup>th</sup>

day of May 2015.

[Signature] (L.S.)  
Notary Public

My Commission Expires: Nov. 14 2014

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

I, BRANDON A. JENKINS # 360373, 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 therefor.

Brandon A. Jenkins  
Applicant

SWORN or affirmed to and subscribed before me this

23<sup>rd</sup> day of April 2015

[Signature]  
Notary Public

My Commission Expires Nov. 14 2015

STATE OF SOUTH CAROLINA FILED

COUNTY OF BERKELEY

2015 MAY 19 AM 9:49

IN THE COURT OF COMMON PLEAS.

BRANDON A. JENKINS  
# 360373  
APPLICANT  
CITY OF TOWN  
BERKELEY COUNTY, SC

CASE NO. 2015-CP-08-1201

v

MEMORANDUM IN SUPPORT  
OF  
APPLICATION FOR P.C.R.

STATE OF SOUTH CAROLINA  
RESPONDENT

I

IN HIS APPLICATION FOR P.C.R, Petitioner asserts he is being held unlawfully on the following grounds:

- (9-(a): INEFFECTIVE ASSISTANCE OF COUNSEL; and
- (9-(b): GUILTY PLEA WAS NOT THE VOLUNTARILY NOR KNOWINGLY MADE.

IN Support of his allegations, Applicant respectfully asserts the [SIXTH AMENDMENT] of the federal constitution provides that "[I]n all criminal prosecutions, the accused shall enjoy the right . . . to have assistance of counsel for his defence." THE guarantee of counsel, however, "CAN NOT be satisfied by mere formal appointment."

ADERY V ALABAMA, 309 U.S. 441 (1940). To be sure, "THE right to counsel is the right to [THE] effective assistance of counsel." McMANN V RICHARDSON 397 U.S. 759 (1970).

Said another way:

THE [SIXTH AMENDMENT]. right to counsel protects the integrity of the adversarial system of criminal justice by INSURING that all persons accused of a crime have access to effective assistance of counsel for their defence.

THE right is grounded in the presumed inability of a defendant to make informal choices about the preparation and conduct of his defence.

STATE V QUATTEBAUM, S.C.  
527 SE<sup>2d</sup> 105 (2000).

[IN] this instant case, applicant was denied this right, to the effective assistance of counsel.

Perhaps, more precisely, rather applicant was denied the effective assistance of counsel that is considered to be a fundamental component of the "due process of law" that is guaranteed by the FOURTEENTH AMENDMENT, to defendants in the CRIMINAL COURTS OF THE UNITED STATES.

GIDEON V WAINWRIGHT. 372 U.S. 335 (1963).

ALSO - PERETTA V CALIFORNIA. 422 U.S. 806 (1975).

(THE "assistance of counsel clause" supplements the other rights that are fundamental and necessary to accord a full defence).

## II

[IN] South Carolina the post conviction Act ( §§ 17-27-10 to 160) provides an adequate corrective process "for challenging the validity of the conviction or sentence.

(S.C. CODE ANN. § 17-27-20(b) (Supp 2001)). See ALSO, FINKLEA V STATE 273 SE<sup>2d</sup> 447 (1979)  
ALSO, CASE V NEBRASKA, 381 U.S. 336 (1965).

[IN] a post conviction proceeding, the applicant bears the burden of proving the allegations in his application. RULE 71.1, SE R.C.P.

BUTLER V STATE 334 SE2d 913 (1995).

[WHEN] an application for post conviction relief alleges ineffective assistance of counsel as a ground for relief, the applicant must show both:

(1) that his counsel failed to render reasonably effective assistance under prevailing professional norms; and

(2) that he was prejudiced by his counsel's ineffective performance.

STRICKLAND V WASHINGTON, 466 US. 668 (1984)

ALSO - JUDGE V STATE 471 SE2d 146 (1996). [IN]

HILL V LOCKHART - 474 US. 52 (1985) the court held that the two part standard adopted in STRICKLAND applies to guilty plea challenges based on ineffective assistance of counsel. see also...

ALEXANDER V STATE, 402 SE2d 484 (1991) in order to satisfy the second, or "PREJUDICE" requirement, however, the applicant must show that there is a reasonable probability that, but for counsel's errors, he would not have plead guilty and would have insisted on going to trial. nevertheless, the "PREJUDICIAL" determination involves the concepts of reliability and fairness.

LOCKHART V FLETWELL 506 US. 364 (1993) (The bench mark of the right to counsel is the fairness of the adversary proceeding).

III

[THE] applicant respectfully submits that the allegations set forth in 9-(a) and 9-(b) of his application for Post conviction relief raise factual issues that are conclusively refuted by the record. Moreover, the allegation of ineffective assistance of counsel sets forth a prima facie violation of the applicant's fundamental Constitutional rights. See -

CLAYTON V STATE-(S.C.) 301 SE<sup>2d</sup> 133 (1983).

[THE] applicant would further submit that, among other things, he can meet the requisite burden of proof to overcome the attached presumption that counsel rendered effective assistance, provided, however, that this court will appoint competent counsel and preserve his right to amend this application with specificity in advance of his right to an evidentiary hearing.

S.e. Code ann. § 17-27-60 and § 17-27-90.

(Supp 2001).

IV

[WHEREFORE], applicant prays this court will allow him an adequate opportunity to present his claims by convening an evidentiary hearing to fully resolve the issues. See -

SHARPER V STATE - SC. 305 SE<sup>2d</sup> 247 (1983)

CLAYTON V STATE - SUPRA.

RESPECTFULLY  
SUBMITTED,

s/ Brandon A. Jenkins

BRANDON A. JENKINS # 360373  
B.P.C. SALUDA B-112  
4400 BEAD RIVER RD.  
COLUMBIA SC. 29210

This April day of 22, 2015.  
COLUMBIA, SOUTH CAROLINA.

DEAR CLERK.

would you please file my P.C. 12 with  
the proper authorities.

Along with my memorandum of support.

Could you please provide me with a  
clock stamped copy.

IN ALL due respect.

S/ Brandon H. Jenkins

STATE OF SOUTH CAROLINA )  
 COUNTY OF BERKELEY )  
 )  
 )  
 )  
 )  
 Brandon A. Jenkins, #360373, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT

2015-CP-08-1201

**RETURN**

The Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed May 19, 2015, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. The Applicant was indicted at the May 2012 term of the Berkeley County Grand Jury for Murder (2012-GS-08-0817), Attempted Murder (2012-GS-08-0818) and attempted armed robbery (2013-GS-08-0819). Chad Shelton, Esquire, represented the Applicant. On June 16, 2014, the Applicant pled guilty to Voluntary Manslaughter as a lesser included offense of murder, attempted Murder and Attempted Armed Robbery. The Honorable R. Markley Dennis, Jr. sentenced the Applicant to confinement for twenty-four (24) years Applicant did not appeal his sentence or plea.

Attached herewith and incorporated herein are the records of the Berkeley County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the application, and the plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

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

1. "Ineffective Assistance of Counsel"
2. "Guilty Plea was neither voluntary nor knowingly made"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

## III.

The Applicant's first claim is an allegation of ineffective assistance of plea counsel. The Respondent submits plea counsel rendered effective assistance of counsel. 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 (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. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, she 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).

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

#### IV.

The Applicant's remaining claim is an allegation that his guilty plea was not voluntarily made. The Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant 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 defendant would not have pled guilty and would

have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that her guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why she should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> Cir. 1976).

The Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

JOHANNA VALENZUELA  
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON  
Assistant Deputy Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

3/30, 2016.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BERKELEY )  
 )  
 )  
 )  
 BRANDON A. JENKINS, #360373 )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent. )

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IN THE COURT OF COMMON PLEAS


2015-CP-08-1201

AFFIDAVIT OF SERVICE BY MAIL

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

**Lance S. Boozer, Esq.**  
**The Boozer Law Firm, LLC**  
**807 Gervais Street, Suite 203**  
**Columbia, SC 29201**

DATED this 30<sup>th</sup> day of March, 2016.



\_\_\_\_\_  
 Jocelyn Baker, Legal Assistant  
 For Respondent



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E X A M I N A T I O N S

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
BRANDON JENKINS	4	15	--	--
CHAD SHELTON	19	21	27	--

1 (September 16, 2018.)

2 THE COURT: All right. This is the matter of  
3 Brandon A. Jenkins. This is 2015-CP-08-1201. Mr.  
4 Jenkins is in the courtroom. He is represented by  
5 Mr. Lance Boozer. Rutledge Johnson is in the courtroom,  
6 and this case will be presented by one of his students  
7 from the Charleston County school of law whom he will  
8 introduce to the Court.

9 MR. JOHNSON: Your Honor, this is Jack Frost,  
10 a 3-L, Charleston County school of law.

11 THE COURT: Good afternoon, Mr. Frost.

12 MR. FROST: Good afternoon, Your Honor. May  
13 it please the Court: This is the case of Brandon  
14 Alexander Jenkins versus the State. The applicant was  
15 indicted in the May 2012 term of the Berkeley County  
16 grand jury for murder, attempted murder, and attempted  
17 armed robbery. On June 16, 2014, the applicant pled  
18 guilty to voluntary manslaughter of a lesser included  
19 offense of murder and attempted murder. He was  
20 represented at that hearing by Mr. Chad Sheldon. The  
21 Honorable R. Markley Dennis, Jr. sentenced the applicant  
22 to confinement of 24 years. He did not appeal the  
23 sentence or the conviction.

24 The applicant timely filed an application for  
25 post-conviction relief on April 22, 2013, and the State

1 filed its return on March 30th, 2016. Mr. Jenkins is  
2 represented here today by Lance Boozer, and the matter is  
3 before the Court.

4 THE COURT: Very good. Mr. Boozer?

5 MR. BOOZER: Thank you, Your Honor. May it  
6 please the Court: We would go ahead and call as our  
7 first witness Mr. Jenkins.

8 THE COURT: Very well.

9 BRANDON JENKINS,  
10 having been first duly sworn,  
11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 THE COURT: Thank you, Mr. Jenkins. Your  
14 witness.

15 BY MR. BOOZER:

16 Q. Mr. Jenkins, how are you doing today?

17 A. All right.

18 Q. Do you know why you're here today? What are we  
19 doing here today?

20 A. To talk about why did I plead guilty.

21 Q. That's right. And to get here today, you filed  
22 what's called an application for post-conviction relief;  
23 is that correct?

24 A. Yes, sir.

25 Q. All right. Currently you're serving a 24-year

1 sentence?

2 A. Yes, sir.

3 Q. And what were the charges you pled guilty to?

4 A. Voluntary manslaughter and attempted murder.

5 Q. Did you plead guilty to voluntary manslaughter and  
6 attempted armed robbery?

7 A. (Shakes head.)

8 Q. Well, what were your original charges?

9 A. Murder, attempted murder, and attempted armed  
10 robbery, alleged armed robbery. That's what he said.

11 Q. Okay. And you understand that what we're asking  
12 this Court for today is to give you an opportunity to go  
13 back and have a new trial in those original charges? Do  
14 you understand that?

15 A. Yes, sir.

16 Q. And is that something you want to do, to go back  
17 and have a trial on those original charges?

18 A. Yes, sir.

19 Q. And you understand if you did have a trial, you  
20 could, of course, be found not guilty, which would be  
21 your goal; you could be found guilty of a lesser included  
22 in all or some of those charges, or you may be found  
23 guilty of those charges, and there is a chance you could  
24 get more time than what you initially received. Do you  
25 understand that?

1 A. Yes, sir.

2 Q. And knowing that, you wish to go forward on your  
3 PCR?

4 A. Yes, sir.

5 Q. Now, who represented you for your plea?

6 A. Chad Shelton.

7 Q. All right. You filed a couple of allegations  
8 against Mr. Shelton. You allege he provided you with  
9 ineffective assistance of counsel. Is that one of your  
10 claims?

11 A. Yes, sir.

12 Q. And you also alleged that your guilty plea was  
13 involuntary?

14 A. Yes, sir.

15 Q. All right. Do you recall when you were first  
16 arrested for these charges?

17 A. Yes, sir.

18 Q. When was --

19 A. September the 28th, 2011.

20 Q. How did Mr. Shelton become involved and become  
21 your lawyer?

22 A. He was appointed.

23 Q. Do you remember when he was appointed to represent  
24 you?

25 A. Not exactly.

1 Q. All right. Well, do you remember how many times  
2 you met with Mr. Shelton?

3 A. Not offhand. It was a good many times, though.

4 Q. During your meetings, what would you and  
5 Mr. Shelton talk about?

6 A. Getting it down to a lesser plea and lesser  
7 service.

8 Q. Tell me a little bit more about that specifically.  
9 What was he kind of telling you?

10 A. Basically, I was asking him what's the worst  
11 scenario. He was saying no more than 20 years the way he  
12 see it, and that's what I really thought it was. The  
13 hand of one, hand of all, whatever my codefendant would  
14 get, that's what I would get, but it ain't went like  
15 that.

16 Q. What did you get?

17 A. I got more.

18 Q. What did your codefendant receive?

19 A. Twenty-three years. The other one got 15.

20 Q. Okay. What was he telling you about what he  
21 thought -- what ultimately you would end up pleading  
22 guilty to? Did he tell you what he thought you'd be  
23 pleading guilty to?

24 A. At first, it wasn't all this. The way he was  
25 looking at it, he made it seem like it was going to be

1 lesser than what it was, and I asked him, when I first  
2 came down because I was telling -- him, like, I asked him  
3 to help me. I told him, help me, like. If I be locked  
4 up for armed robbery, to be honest, I look in your eyes,  
5 and I said I ain't kill nobody, so I felt like what's the  
6 purpose of me -- just because I been there, what is the  
7 purpose of me serving all those years and time for  
8 somebody I ain't never killed? I never pulled the  
9 trigger not one day of my life, and so I asked him, is  
10 there a possible way and could he help me.

11 He said he would try his best and he looked me in  
12 my eye, just like you look me in the eye when I talk to  
13 you, told me he was going to help me. He told my parents  
14 the same thing.

15 Q. What specifically did he tell you he would do to  
16 help you in the case?

17 A. He told me he was going to fight.

18 Q. Did you feel like he was doing that for you?

19 A. At first he showed signs of fighting but in the  
20 end he showed signs of giving up, so I gave up.

21 Q. Let's talk a little bit more and tell about that.  
22 What do you mean at first you felt like he was fighting  
23 for you and not so much toward the end when you say you  
24 gave up? Tell us about that.

25 A. Like at first, the things he was saying, like, how

1 he explain it, like, things were going good, but once we  
2 changed -- once the solicitor changed up, because at  
3 first, we had Benjamin Shelton as a solicitor. Then once  
4 we got Brian Alfaro, it just changed up to, I don't want  
5 to take the trial, I don't want to do this, and I don't  
6 want to do that, and it kind of like -- kind of nerve  
7 wracking.

8 I didn't really know what to do, because if you're  
9 my lawyer, you should be fighting it as much as me. I  
10 didn't go to school for this, and that's how I looked at  
11 it.

12 Q. So what do you feel like changed when a new  
13 solicitor became involved in the case?

14 A. It start sounding like more time.

15 Q. Well, did it start off initially as he thought you  
16 might get a certain number of years on your sentence?

17 A. Yes, sir.

18 Q. And what was that?

19 A. Thirty, life, fifty.

20 Q. Did y'all discuss having an actual trial in the  
21 case?

22 A. At first, I told him I want to crank up, but he  
23 keep saying there ain't no win. He don't see us winning  
24 because of this person's testimony and that person's  
25 testimony, and being that I put myself on the scene is he

1 was just saying all kinds of -- leading me like I don't  
2 know what else to do, and it kind of lead me to --

3 Q. And did y'all have any sort of discussion about  
4 defenses, such as maybe that you withdrew from the crime  
5 when it was committed or anything like that?

6 A. I mean, really; not really, that I can remember.

7 Q. Did you ever have any meetings with Mr. Shelton or  
8 anyone else or any other family members?

9 A. No, sir.

10 Q. He met with your family?

11 A. Yes, sir.

12 Q. Do you have any knowledge of any conversations  
13 between he and your family?

14 A. From what she told me.

15 Q. And what was that?

16 A. That I get no time with my codefendant. If  
17 anything, I would get the same thing.

18 Q. Tell the Court about the date of your plea. Do  
19 you remember it?

20 A. Not offhand.

21 Q. Well, did you want to actually go to court and  
22 enter a guilty plea?

23 A. Not really, I didn't.

24 Q. Tell this Court why it is that you went in and  
25 pled guilty to these charges.

1           A. Because he had me feeling like there was no more  
2 hope. That's how I felt. How did he explain it to me?  
3 I took as, well, no more hope. And he's, like, If you go  
4 to trial, we're going to lose. This is going to happen.  
5 They're going to bring this person out to testify against  
6 you.

7           So I took it as, well, how can they use this  
8 person? When I first came down, you seen this person got  
9 this amount from a statement, this person got this amount  
10 of statements, and then they're going to say they are  
11 going to bring these people and use it against the  
12 prosecution. And that's when he brought and it said we  
13 ain't going to win, and I felt if we ain't going to win,  
14 there ain't no hope. So I went with what he wanted me to  
15 do.

16          Q. We'll get to that in a minute, about did you ever  
17 have an attempt to have Mr. Shelton relieved as your  
18 lawyer?

19          A. I tried, but it didn't work.

20          Q. What did you do specifically?

21          A. At first I start writing the courthouse because I  
22 told them since day one I want a lie detector test, and I  
23 know I got it on file. If you look up at the courthouse,  
24 that I was getting what they call clock stamped, write in  
25 the report, getting clock stamped. I was doing search

1 stuff and never --

2 Q. You stated you tried to have him relieved. Did  
3 you actually appear before a judge and ask a judge to  
4 relieve --

5 A. No, sir, not one time.

6 Q. Did you discuss with Mr. Shelton about that?

7 A. Yes, I did. I told him I was thinking about doing  
8 it. I was thinking about me hiring a new lawyer.

9 Q. What was his response to that?

10 A. He said if I do that, maybe that would be a good  
11 thing, but he don't see me going very far with it.

12 Q. You alluded to this earlier, but were you told how  
13 to answer questions?

14 A. Yes. Because I told I him I didn't understand it.  
15 I didn't understand what was going on, so he sit down and  
16 explain it to me what to say, how to say it, and that's  
17 how I took it.

18 Q. Do you recall at the plea, you did indicate that  
19 you were pleading guilty, that you were guilty and that  
20 you were satisfied with your attorney, and you indicate  
21 yes. Do you know why you made those statements?

22 A. Yes.

23 Q. Why is that?

24 A. Because he said, Say yes, sir; no, sir.

25 Q. So that wasn't really exactly true at the time?

1           A. No, sir, not at the time, if I know all this was  
2 going to occur.

3           Q. And when you refer to all of this, what is it that  
4 you're referring to?

5           A. That I got 24 years I got to do off and on, which  
6 is 20 years and six months.

7           Q. And you feel like if Chad -- or Mr. Shelton,  
8 excuse me, had done some other -- taken some other  
9 actions or tried to defend you better you would have felt  
10 more comfortable with him and you would have gone to  
11 trial?

12          A. Yes.

13          Q. And you do want a trial in this case?

14          A. Yes, a trial or a resentence.

15          Q. And you understand that what this Court can do is  
16 give you a new trial if you're successful today?

17          A. Yes, sir.

18          Q. Now, we've covered your allegations as far as  
19 ineffective assistance of counsel and involuntary plea.  
20 Is there anything else associated with your allegations  
21 or that you have complaints about Mr. Shelton's  
22 representation of you or anything else you want to tell  
23 the Court about why it was that you plead guilty that  
24 day?

25          A. The only reason I plead guilty is because he was

1 going to recommend that if I get 15 to 30, I won't get no  
2 more than 20 years.

3 Q. So there was a recommendation -- or there was a  
4 negotiation for a 15- to 30-year sentence?

5 A. Yeah, it was a basically like a plea bargain, 15  
6 to 30.

7 Q. And what did Mr. Shelton tell you about that  
8 sentence?

9 A. He was going to get me less than what my  
10 codefendant got or anything. Worse scenario, I would get  
11 the same thing, which is 23 years.

12 Q. Okay. Did you think that you could get more than  
13 what your codefendant got?

14 A. Yeah, in a way, from what he was saying, this  
15 person willing to say this about me or this person  
16 willing to say that about me or write this and testify,  
17 but other than that, are you talking about as in the  
18 case?

19 Q. I'm talking about in the plea.

20 A. No, sir.

21 Q. Did you think that you would get more than what  
22 your codefendant got?

23 A. Oh, no, sir.

24 Q. Even though the sentence negotiation was between  
25 15 and 30?

1           A. Yes, sir. I thought I was going to get more than  
2 23 years.

3           Q. Had you known you could not receive a sentence  
4 that was more than what your codefendant received would  
5 you have pled guilty?

6           A. No, sir.

7                   MR. BOOZER: That's all the questions I have  
8 with Mr. Jenkins.

9                   THE COURT: All right. Cross-examination,  
10 Mr. Frost?

11                   MR. FROST: Thank you, Your Honor. May it  
12 please the Court:

13                                   CROSS-EXAMINATION

14 BY MR. FROST:

15           Q. Mr. Jenkins, you testified you met with  
16 Mr. Shelton a good many times, correct?

17           A. Yes, sir.

18           Q. What is your characterization of a good many  
19 times? Is that 5 or is that 25?

20           A. Maybe around 10 or 15.

21           Q. And ultimately you did plead guilty to voluntary  
22 manslaughter and attempted murder; is that correct?

23           A. Yes, sir.

24           Q. And did anyone threaten you or force you to plead  
25 guilty?

1 A. No, sir.

2 Q. So it was your decision to plead guilty, correct?

3 A. Yes, sir.

4 Q. And you had spoken with Mr. Shelton a good many  
5 times about the charges before you pled so you understood  
6 those charges, correct?

7 A. Yes, sir.

8 Q. And Mr. Shelton explained to you the possible  
9 punishment in reference to those charges that could be  
10 between 15 and 30 years, correct?

11 A. Yes, sir.

12 Q. You understood that you could receive -- without  
13 the negotiated plea, you could receive up to life, 30  
14 years to life; is that correct?

15 A. Yes, sir.

16 Q. Isn't it true that Judge Dennis found your plea to  
17 be freely and voluntarily given at the time of your plea?

18 A. Say that again?

19 Q. When you entered your guilty plea --

20 A. Yes, sir.

21 Q. -- isn't it true Judge Dennis found that plea to  
22 be entered by you voluntarily?

23 A. Yes, sir.

24 MR. FROST: No further questions, Your Honor.

25 THE COURT: Be patient with me just for a

1 second, Mr. Jenkins.

2 Mr. Jenkins, in your own words, what is it  
3 you felt your lawyer did wrong in your plea situation? I  
4 know you don't like the amount of time you got, and I  
5 understand that, but you feel like you should have gotten  
6 less than your codefendant, who got 23 years.

7 What did your lawyer fail to do or do wrong  
8 in connection with this plea?

9 THE WITNESS: I felt like I lacked  
10 representation pushing forward, as in, like, a trial. It  
11 was as clear as day. I done told him and I begged him, I  
12 wanted to go harder than what he was doing because I know  
13 deep down inside I don't kill nobody, and like I'll tell  
14 him and I'll look him in his eye right now, I told him,  
15 just like I even cried when I told him, I'm not about to  
16 take this time for somebody I didn't kill, and that's how  
17 I feel.

18 THE COURT: I understand. And when you made  
19 the plea, your lawyer projected to the judge that you  
20 were just the driver of the car. You did not commit the  
21 murder in terms of shooting anyone.

22 THE WITNESS: Yes, ma'am.

23 THE COURT: Do you remember that?

24 THE WITNESS: Yes, ma'am.

25 THE COURT: And did your lawyer explain to

1 you that there is a doctrine, in the law called the hand  
2 of one is the hand of all, which means you could be  
3 charged for a murder or a manslaughter even if you were  
4 not the one that pulled the trigger if you were involved  
5 with others in committing the crime? Was that explained  
6 to you?

7 THE WITNESS: Yes, ma'am.

8 THE COURT: All right, sir. And that was  
9 done before you decided to plead guilty to voluntary  
10 manslaughter?

11 THE WITNESS: Yes, ma'am.

12 THE COURT: You understand I can't do  
13 anything about just reducing your sentence. They don't  
14 let me do that.

15 THE WITNESS: Yes, ma'am.

16 THE COURT: All right. I think that's all  
17 the questions I have, Mr. Jenkins. Is there anything  
18 else you would like to say?

19 THE WITNESS: No, ma'am. Thank you.

20 THE COURT: Yes, sir. You may come down,  
21 Mr. Jenkins.

22 Anything further, Mr. Boozer?

23 MR. BOOZER: Nothing further.

24 THE COURT: Mr. Frost, anything further from  
25 the State?

1 MR. FROST: Yes, Your Honor. We would like  
2 to call Chad Shelton.

3 CHAD SHELTON,

4 having been first duly sworn,  
5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. FROST:

8 Q. Good afternoon, Mr. Shelton.

9 A. Good afternoon.

10 Q. Do you remember becoming involved in Mr. Jenkins's  
11 case?

12 A. Yes, definitely.

13 Q. Do you remember approximately how many times you  
14 met with Mr. Jenkins?

15 A. Yes. I went back through my records, and I  
16 counted up 22 times in the time that I represented Mr.  
17 Jenkins.

18 Q. Do you know about how long a span of time that was  
19 when you met 22 times?

20 A. It was from -- the first meeting I had was  
21 November 15th of 2011, and the last documented meeting I  
22 had was April 24th, 2014.

23 Q. Okay. Thank you. So it was approximately  
24 two-and-a-half years?

25 A. Yes.

1 Q. During those meetings, did you explain to  
2 Mr. Jenkins the charges that he was facing at that time?

3 A. Yes, yeah.

4 Q. And did you also explain the consequences of those  
5 charges?

6 A. Yes.

7 Q. And when Mr. Jenkins decided to plead guilty, was  
8 that after you explained all of the charges he was facing  
9 and the consequences?

10 A. Yes.

11 Q. Do you feel like Mr. Jenkins understood those  
12 charges?

13 A. I do. Part of this is that I did come across some  
14 information about maybe a low IQ and we delved into  
15 Mr. Jenkins's history. I got a doctor that did an  
16 evaluation on Mr. Jenkins to determine competency first  
17 and then also created a mitigation report for us at  
18 sentencing, and so I was sure to go over everything to  
19 continue to ask questions if he understood everything,  
20 and to the best of my knowledge know that he understood  
21 it when I left in our meetings.

22 Q. Thank you. Was it Mr. Jenkins's decision to plead  
23 guilty?

24 A. Yes.

25 Q. Did you force him to plead guilty?

1 A. I didn't force him, no.

2 Q. Did you coerce him in any way to plead guilty?

3 A. No.

4 Q. Do you believe Mr. Jenkins knowingly pled guilty?

5 A. Yes.

6 Q. Do you believe he voluntarily pled guilty?

7 A. Yes.

8 MR. FROST: We have no further questions,  
9 Your Honor.

10 THE COURT: Very good. Mr. Boozer?

11 MR. BOOZER: Court's indulgence, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. BOOZER:

14 Q. Mr. Shelton, how are you?

15 A. Good.

16 Q. I guess you had some concern about Mr. Jenkins's  
17 intellectual ability?

18 A. Yes.

19 Q. What was the nature of that?

20 A. The -- his mother, in meeting with his mother and  
21 his family, they indicated some concerns, and so we went  
22 and pulled some of his school records, and his IQ was put  
23 at 73. So it was close to -- or it was borderline  
24 intellectual functioning.

25 Q. Did you have any difficulties communicating with

1 Mr. Jenkins throughout your representation?

2 A. I really didn't. Brandon and I got along pretty  
3 well at the jail. There were a lot of issues going on at  
4 the jail with his codefendants and such, so I really  
5 thought we were communicating well. After a couple of  
6 the meetings, in talking with his parents, that maybe  
7 some of the things that I was saying were going over his  
8 head, that he wasn't understanding everything, so we -- I  
9 would, in the subsequent meetings after that, make sure  
10 to continue to ask if he understood and repeat back.

11 Q. Let me ask you this: This was a negotiated  
12 sentence in this case?

13 A. Right.

14 Q. And it was between 15 and 30?

15 A. Right.

16 Q. Did you describe and explain to Mr. Jenkins what a  
17 negotiated sentence is and what those bracketed numbers  
18 also meant?

19 A. Right, yes.

20 Q. I think you indicated your last meeting would have  
21 been April of 2015.

22 A. That's the last documented meeting. I  
23 unfortunately didn't document every time I went to jail  
24 so I did think there was probably from April to June at  
25 least one time I met with him. I can't 100 percent be

1 sure on that, but I know I would have explained the  
2 negotiation and what it means definitely right before the  
3 plea, if I didn't prior to that.

4 Q. Considering the issues you considered in some of  
5 his, I guess, intellectual function, do you think that  
6 concept of negotiated sentence and the time that he could  
7 be given as a result of that sentence, do you think that  
8 is something that could have gone over his head?

9 A. Not necessarily negotiation, because that means  
10 the judge can't change anything between the brackets, so  
11 not the negotiation. I don't think that is something  
12 that went over his head.

13 Q. Did you ever explain to him or discuss with him  
14 that he would get the same sentence or less than what his  
15 codefendant received?

16 A. Not in the way that he testified. I did say that  
17 I was hoping for -- that it wouldn't go over the 23, the  
18 codefendant, that I really, in my heart, believed he  
19 deserved less than the codefendant, and I would argue  
20 that to the judge, so I believe he deserved the 15. That  
21 was what I believed, and that's what I wanted to argue  
22 for.

23 Q. Was that codefendant actually identified as the  
24 perpetrator of the murder?

25 A. It was one of them that set it up. It was the

1 armed robbery that led to a codefendant of the armed  
2 robbery being shot and killed.

3 Q. And do you think he understood, though, that he  
4 could potentially get more than what the codefendant got?

5 A. He -- I believe he understood that the voluntary  
6 manslaughter and attempted murder carry up to 30, so I  
7 believe he understood that, yeah, the judge had that  
8 power to go between the 15 to 30, and the benefit versus  
9 going to trial, the day for day murder was the minimum  
10 was 30. I did print off the some early State  
11 calculations for him of different possibilities to show  
12 day for day 30, which is best case if he was found guilty  
13 at trial versus even 30, 85 percent, and what the  
14 difference in the amount of time that is.

15 Q. Initially, was Mr. Jenkins pretty adamant about  
16 having a trial?

17 A. Initially, he actually provided me with -- that he  
18 wasn't there. I investigated that claim, and we weren't  
19 able to verify that, and then we get his statements from  
20 the police at a later point in time to show that he was  
21 there. We had talked about the hand of one, the hand of  
22 all, accomplice liability, actually had an intern in our  
23 office do the case law research on accomplice liability,  
24 and the fact that he was just there, whether that was a  
25 good defense or not.

1           We talked about that. We even went over possibly  
2 him testifying if we went to trial and how he would  
3 testify and what he would say, and there were problems,  
4 in my opinion, as to how he would testify and what he  
5 would be saying if he testified at trial. So we did go  
6 over the trial.

7           As far as being adamant, I mean, it kind of  
8 wavered. He had codefendants in his ear over at the jail  
9 that were threatening him, sending him threatening  
10 letters, and so that was going back and forth. So as to  
11 whether he was adamant or not, it changed throughout the  
12 representation.

13         Q. How far in advance of the plea were y'all aware  
14 that he was going to go and enter this plea? Do you  
15 remember?

16         A. I don't, sorry.

17         Q. Did he ever ask or convey to you that he wanted to  
18 have you relieved as counsel?

19         A. I received the notice of him wanting to be  
20 relieved as counsel. I went over to talk to him, and he  
21 told me that he never filed that. It was his  
22 codefendant. It was his codefendant's handwriting. I  
23 actually have where he did handwriting samples for me.  
24 Just in my experience in getting handwriting experts --  
25 and we were going to get a handwriting expert if we

1 needed it, but he expressed to me he never filed that.  
2 He did not want me off the case and that he -- that it  
3 was the codefendant that actually filed that and signed  
4 his name.

5 Q. I was just conversing with my client. Do you  
6 recall any sort of letter? He wanted me to ask about any  
7 letter that was out there about the codefendant making an  
8 admission and that presumably is what the handwriting  
9 expert was for?

10 A. There wasn't a letter from the -- that the  
11 codefendant had sent him saying that he knows Brandon  
12 didn't have anything to do with it. It wasn't Brandon's  
13 gun that shot.

14 Q. Was that in any way presented as any sort of  
15 mitigation?

16 A. Absolutely. I presented that to the solicitor  
17 that was also -- I handed up and presented that to the  
18 judge at the plea, that the codefendant expressed that.

19 Q. Did anything change -- was there a change in who  
20 was handling the case at the solicitor's office?

21 A. Yes, there was, and is that was a big issue. The  
22 original solicitor and I talked about the case, and it  
23 was my feeling in my investigation that a couple other of  
24 the codefendants were the main perpetrators in it and  
25 that it was my understanding that that solicitor was

1 going to go after those other main perpetrators.

2 The new solicitor got the case. The new solicitor  
3 indicated that it was his research and his talking with  
4 other people that Brandon was actually the main person.  
5 Brandon was the one that first shot, and so that is how  
6 he was going to present it and how he intended to call  
7 Brandon for trial first.

8 Q. Going back, this initial solicitor was going to go  
9 after the other codefendants. Was there any offer  
10 associated with that?

11 A. There was no offer.

12 Q. Beg the Court's indulgence, Your Honor.

13 MR. BOOZER: No further questions. Thank  
14 you, Mr. Shelton.

15 THE COURT: Redirect?

16 REDIRECT EXAMINATION

17 BY MR. FROST:

18 Q. Mr. Shelton, did you promise Mr. Jenkins a length  
19 of time for his sentence?

20 A. No, never promised him anything.

21 MR. FROST: Nothing further, Your Honor.

22 THE COURT: Very good. Mr. Shelton, you may  
23 step down.

24 THE WITNESS: Thank you.

25 THE COURT: Anything further?

1 MR. FROST: Nothing further.

2 THE COURT: Anything, Mr. Boozer?

3 MR. BOOZER: Nothing, Your Honor.

4 THE COURT: Ruling of the Court is the  
5 following: It is with a great deal of regret that I have  
6 to say this petition, this application, is denied. It  
7 seems clear from this record that Mr. Jenkins was kind of  
8 taken into camp by other codefendants who kind of set him  
9 up for the fall. He was the driver.

10 He perhaps was not as sharp as they were and  
11 the mitigation case that was presented on his plea, these  
12 matters were gone into in detail. The biggest thing I  
13 think Mr. Jenkins has a concern about, and I share his  
14 concern about this, is the length of his sentence, but,  
15 unfortunately, Mr. Jenkins, that is something I cannot  
16 address. There's a limit to what I can address in terms  
17 of legal issues, as I'm sure your counsel has explained  
18 to you, and you and I have talked about that when you  
19 first went up on the stand, and so based on the matters  
20 that have been placed before me, I find nothing  
21 involuntary about the plea, nor do I find that counsel  
22 failed in any way to vigorously represent Mr. Jenkins, so  
23 the application is denied, and I wish you the best of  
24 luck, Mr. Jenkins.

25 Thank you.

1 MR. FROST: We'll prepare an order, Your  
2 Honor.

3 THE COURT: Very good.

4 - - -

5 (Whereupon, the proceedings were concluded.)

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I, the undersigned, Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Berkeley County, South Carolina, on the September 16, 2016.

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

February 12, 2018

*Amanda K. Haffenden*

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Circuit Court Reporter

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Brandon A. Jenkins, #360373

2015-CP-08-1201

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 19, 2015. Respondent made its Return on March 30, 2016. An evidentiary hearing into the matter was convened on September 16, 2016 at the Berkeley County Courthouse. Lance Boozer, Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, and Jack Frost, a 3L student at the Charleston School of Law, after being granted permission to argue under South Carolina Supreme Court Rule 401 (Student Practice Rule) by Justice Toal, represented Respondent.

At the hearing, Applicant testified on his own behalf. Chad Shelton, Esquire also testified. This Court had before it a copy of the records of the Berkeley County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return and the guilty plea transcript.

2017 NOV -9 PM 12:45  
HARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

**PROCEDURAL  
HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. The Applicant was indicted at the May 2012 term of the Berkeley County Grand Jury for murder (2012-GS-08-0817), Attempted Murder (2012-GS-08-0818), and Attempted Armed Robbery (2012-GS-08-0819). The Applicant was represented by Chad Shelton, Esquire. On June 16, 2014, the Applicant pled guilty to the lesser included offense of voluntary manslaughter and attempted murder. The Applicant was sentenced by the Honorable R. Markley Dennis to confinement for a period of twenty-four (24) years. The Applicant did not appeal his conviction or sentence.

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

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

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

### SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified that he pled guilty to the lesser included offense of voluntary manslaughter and attempted murder. Applicant stated that he was represented by Chad Shelton and that they met "a good many times." He testified that he understood the charges and that he could get more time but that he believed that he would be sentenced to no more than twenty (20) years. The Applicant stated that one of his co-defendants received twenty-three (23) years and the other received fifteen (15) years. He testified that he believed he would receive a lesser sentence because he did not "pull the trigger." Applicant also stated he thought Counsel should have "fought harder" on his behalf and that he wanted to "crank it up" when discussing proceeding to trial.

#3  
JMS  
Applicant testified that he was scared and that his attorney did "not really" discuss possible defenses. He stated that he did not meet with Counsel and his family at the same time. Applicant stated that he did not want to plead and that he only accepted the plea because Counsel made him feel like there was no hope. Therefore, he went along with Counsel's advice. Applicant also stated that Counsel told him how to answer the judge's questions during the plea. The Applicant testified that if Counsel had done more, he would have proceeded to trial. Applicant stated that he attempted to have Counsel relieved but that it didn't work because he never went before a judge. He stated that he told Counsel that he was going to hire another attorney.

On cross-examination, Applicant qualified his "good many times" to mean that he met with his attorney ten (10) to fifteen (15) times prior to pleading guilty. The Applicant

further testified that he was not threatened or promised anything in exchange for pleading guilty and that it was his decision to plead guilty. The Applicant stated that he understood the charges and the possible negotiated punishment of between fifteen (15) and thirty (30) years imprisonment. He also stated that he understood that if he did not accept the negotiated plea, he would be facing thirty (30) years to life. The Applicant stated that his guilty plea was voluntarily given. Furthermore, upon questioning from the Court, the Applicant stated that he told Counsel that he wanted to go to trial and that he was only the driver of the car. The Applicant admitted that Counsel explained the concept of the hand of one is the hand of all.

*H4*  
*SMS* Counsel testified that he was appointed to the case and that he had documented that he had met with the Applicant twenty-two (22) times leading up to the guilty plea. Counsel stated that he explained the charges and the consequences. Counsel also stated that the Applicant understood and made the decision to plead guilty after the explanation. Counsel testified that he had the Applicant submit to a mental evaluation and that it showed the Applicant to be competent. Counsel stated that he believed that the Applicant had knowingly and voluntarily entered the guilty plea and that he did not force or threaten the Applicant to do so.

On cross examination, Counsel stated that he and the Applicant's mother, had concerns about the Applicant's mental health and that the Applicant may not totally understand everything. Counsel stated that he was diligent in explaining everything and that if he felt the Applicant did not fully understand, he would explain further. Counsel testified that he had negotiated a guilty plea with a sentencing range of between fifteen (15) and thirty (30) years. Counsel also stated that he explained to the Applicant that he had hoped to receive a similar

sentence as the co-defendants, but that the judge had the power to sentence between fifteen (15) and thirty (30) years. Counsel further testified that he explained to the Applicant that the original murder charge carried a thirty (30) years to life sentence and that sentence would be carried out on a day-for-day basis. Counsel testified that the Applicant initially stated that he was not present at the scene. However, police statements confirmed that the Applicant was indeed present at the scene. Counsel stated that the Applicant admitted to being at the scene, but that he was merely the driver of the car. Counsel stated that he explained the concept of the hand of one is the hand of all to the Applicant. Counsel testified that he had received a notice that the Applicant wanted to relieve him as counsel. After a meeting with the Applicant, it was determined that the notice was not in the Applicant's handwriting and was submitted by a co-defendant.

On re-direct examination, Counsel testified he did not promise the Applicant a specific amount of time he would receive from the Court.

#### **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 (2003)

### Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCF). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but

for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985). This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible.

This Court also finds Counsel provided effective assistance of counsel in this case. Counsel advised Applicant of all of the charges and the sentence each charge carried. Specifically, Counsel testified he discussed all of the elements of murder, voluntary manslaughter, involuntary manslaughter, self-defense and accident with Applicant. Counsel also negotiated with the State in Applicant's best interest. Specifically, Counsel negotiated a plea to a lesser included offense of murder to a cap of 30 years and a plea of guilty to attempted murder with a cap of 30 years. The charges were to run concurrent. This Court finds Applicant made the decision to plead guilty on his own accord with the help of learned counsel. Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone else. Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty.

This Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel’s performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

### CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice. This Court also finds as to all other allegations that Applicant failed to present evidence of such claims and thus, this Court deems them abandoned.

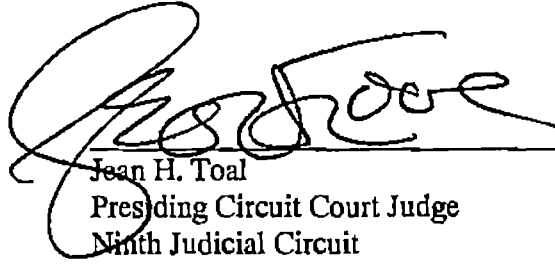
#8  
SM

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) 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 PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant’s behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

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

**AND IT IS SO ORDERED:**



Jean H. Toal  
 Presiding Circuit Court Judge  
 Ninth Judicial Circuit

#9

Oct 10, 2017

Columbia, South Carolina

2758

2015-CP-08-1201

BTS2011-10-01386

WITNESSES

Berkeley County Sheriff's Office

*[Handwritten Signature]*

AGENCY CASE NUMBER

201109041460

ARREST WARRANT NUMBER

M334375

DATE OF ARREST

September 29, 2011

ACTION OF GRAND JURY

**True Bill**

*[Handwritten Signature]*  
Foreperson of Grand Jury  
Date: 5/16/12

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012-GS-08-0817

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

May Term

THE STATE

vs.

BRANDON ALEXANDER JENKINS

DOB: [REDACTED]

B/M

Indictment for

Murder

§16-03-0010

CDR: 0116

2012 MAY 16 PM 12:57  
MARY P. SMITH  
CLERK OF COURT  
BERKELEY COUNTY, SC

FILED

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BERKELEY )


## INDICTMENT

At a Court of General Sessions, convened on May 16, 2012 the Grand Jurors of Berkeley County present upon their oath:

**Murder**

That BRANDON ALEXANDER JENKINS did in Berkeley County on or about September 26, 2011, willfully, feloniously, and intentionally kill the victim, Brittany Aigoro, with malice aforethought, either express or implied, by means of a firearm, and the victim did die as a proximate result thereof on September 26, 2011, in violation of §16-03-0010 of the South Carolina 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.

  
BENJAMIN T. SHELTON  
ASSISTANT SOLICITOR

BTS2011-10-01386

WITNESSES

Berkeley County Sheriff's Office

*Renee Ramsey*

AGENCY CASE NUMBER

201109041460

ARREST WARRANT NUMBER

M334390

DATE OF ARREST

September 3, 2011

ACTION OF GRAND JURY

*True Bill*

*D. Peters*  
Person of Grand Jury

Date: 5/16/12

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012-GS-08-0819

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

May Term

THE STATE

vs.

BRANDON ALEXANDER JENKINS

DOB: 1989

B/M

Indictment for

Attempted Armed Robbery

§16-11-0330(B)

CDR: 0026

MARY H. BROWN  
CLERK OF COURT  
BERKELEY COUNTY

2012 MAY 16 PM 12: 57

FILED

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BERKELEY )

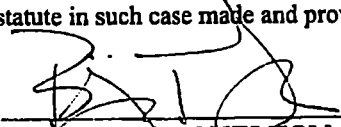
INDICTMENT

At a Court of General Sessions, convened on May 16, 2012 the Grand Jurors of Berkeley County present upon their oath:

**Attempted Armed Robbery**

That BRANDON ALEXANDER JENKINS did on or about September 26, 2011, in Berkeley County, South Carolina, while armed with a deadly weapon, attempt to take and carry away the personal property from or in the immediate presence of Kendrick Shirer, with intent to permanently deprive him of possession by use of force, threats, or intimidation, in violation of §16-11-0330(B) of the South Carolina 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.

  
\_\_\_\_\_  
BENJAMIN T SHELTON  
ASSISTANT SOLICITOR