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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

—————
Certiorari to Sumter County

Honorable D. Craig Brown, Circuit Court Judge
—————

DERRICK DARBY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-002381
—————

APPENDIX
—————

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South Carolina Commission on Indigent
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ATTORNEYS FOR RESPONDENT

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Mr. Corbett: Your Honor, may it please the Court?

The Court: Yes, sir.

Mr. Corbett: Your Honor, this is State of South Carolina vs. Derrick Darby. He is before the court on a true billed indictment number 2013-GS-43-597. Your Honorable, it is a multi-count indictment including the allegation of murder.

Mr. Darby is represented by attorney Kasha Timmons. Mr. Darby indicates he wishes to tender a plea of guilty to the lesser included offense of voluntary manslaughter.

The Court: Okay.

Bailiff: Raise your right hand.

(Defendant complies)

Bailiff: State your name, please.

Mr. Darby: Derrick Darby.

Bailiff: Do you solemely swear or affirm your testimony to the court to be the truth, the whole truth, nothing but the truth, so help you God?

Mr. Darby: Yes, sir.

Bailiff: Thank you.

Mr. Corbett: Your Honor, I'm sorry, I neglected to say in the initial announcement of the case that it is a negotiated sentence.

The Court: Okay. Mr. Darby, do you want to plead guilty?

1 Mr. Darby: Yes, sir.

2 The Court: Have you had enough time to talk to your
3 lawyer about this decision?

4 Mr. Darby: Yes, sir.

5 The Court: Are you satisfied with her
6 representation?

7 Mr. Darby: Yes, sir.

8 The Court: Do you have any complaints against her?

9 Mr. Darby: No, sir.

10 The Court: Do you understand that manslaughter
11 carries between two and thirty years in prison?

12 Mr. Darby: Yes, sir.

13 The Court: And your lawyer and the State have
14 entered into a negotiated sentence which means that after
15 I hear the facts if I don't think I can follow those
16 negotiations I will let you withdraw your plea, do you
17 understand that?

18 Mr. Darby: Yes, sir.

19 The Court: Has anybody threatened you in anyway or
20 outside of these negotiations offered you anything?

21 Mr. Darby: No, sir.

22 The Court: Are you under the influence of alcohol
23 drugs today?

24 Mr. Darby: No, sir.

25 The Court: Do you have any mental diseases that will

Derrick Darby vs. State of South Carolina

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1 prevent you from understanding what you're doing here
2 today?

3 Mr. Darby: No, sir.

4 The Court: By pleading you are giving up your
5 constitutional right under the Fifth Amendment to remain
6 silent because you're telling me you are guilty, do you
7 understand?

8 Mr. Darby: Yes, sir.

9 The Court: And you're giving up your constitutional
10 right to a jury trial. In that trial you would be
11 presumed innocent and the State would have the burden of
12 proofing you guilty of these charges beyond a reasonable
13 doubt to all twelve jurors. You would be able to sit in
14 the court room and confront each and every witness that
15 would testify against you. And your lawyer could cross
16 exam each one of the State's witnesses. She could
17 subpoena witnesses to testify on your behalf. She could
18 put up any defenses you may have to this crime. When you
19 plead guilty, you're giving all of that up. Do you
20 understand?

21 Mr. Darby: Yes, sir.

22 The Court: Have you had an opportunity to go over
23 discovery material with your lawyer that the State has
24 provided?

25 Mr. Darby: Yes, sir.

1 The Court: So you are satisfied that you have seen
2 everything that you are entitled to see as a result of
3 that?

4 Mr. Darby: Yes, sir.

5 The Court: Do you have any questions about that at
6 all?

7 Mr. Darby: No, sir.

8 The Court: And you understand that voluntary
9 manslaughter is a violent and a most serious offense and
10 is a no parolable offense which means you have to serve
11 at least eight-five (85) percent of whatever sentence you
12 receive. Do you understand that?

13 Mr. Darby: Yes, sir.

14 The Court: And if you get another most serious
15 offense against you, you will be looking at life without
16 the possibility of parole. Do you understand that?

17 Mr. Darby: Yes, sir.

18 The Court: Do you have any questions at all
19 concerning your rights that you want to ask me?

20 Mr. Darby: No, sir.

21 The Court: The Solicitor is going to tell me a
22 little bit about the facts as well as the negotiations
23 and I'm going to come back and talk to you, okay?

24 Mr. Darby: Yes, sir.

25 Mr. Corbett: Thank you, Your Honor. Your Honor,

1 this incident took place on February 27th of 2013 here in
2 Sumter County, specifically Council Street. And, Judge,
3 if I may also note, Detective Litaker from the Sumter
4 Police Department is present in the court room, the
5 investigator assigned to the case. If there is any
6 additional information the court would require, Detective
7 Litaker would be happy to help us with that. But, Judge,
8 Council Street, as I would describe it, it's a
9 neighborhood sort of between South Manning Avenue and
10 Guignard, just on the other side of the railroad tracks
11 here in Sumter.

12 On this particular date, and Judge I have to give
13 you a little bit of context for how these events
14 transpired. On this particular date, two young ladies
15 were basically in the street fighting over some type of
16 argument that had happened earlier, at a earlier time.
17 The Defendant Derrick Darby was present for those events.
18 He and a couple of other young men were acting, from what
19 I saw, almost like they were in charge of the fight, so
20 to speak. Those two young ladies are fighting in the
21 street and it spills into the yard of Ms. Singleton. As
22 that fight proceeds, it is eventually broken up and the
23 mother of one of the combatants and a relative of the
24 other combatant then begin fighting in the yard of Ms.
25 Singleton. A individual jumps into the fight of those

1 two people which creates a chain reaction and a number of
2 people then try to jump in on that fight.

3 At some point in time, and all of the witnesses that
4 we spoke to all of them put the gun in Derrick Darby's
5 hand. At some point in time, Derrick Darby pulls a
6 pistol from his person, pocket, the small of his back,
7 wherever it may have been, based on our investigation he
8 was not entitled or legally allowed to carry a concealed
9 weapon. He produces a hand gun, fires at least one shot
10 from that hand gun. We have had difficulty ascertaining
11 the intended target but what we do know is that Ms.
12 Singleton, it was her home, she was a bystander some
13 distance away from the altercation, she was hit with the
14 shot that was fired. Unfortunately, she was hit in the
15 chest, that proved to be a fatal wound. She was
16 transported to Tuomey Hospital where she was pronounced
17 dead.

18 Mr. Darby fled the scene and as you can imagine
19 everyone starting fleeing the scene. So, officers had to
20 work back from individual descriptions, vehicle
21 descriptions. As they being to take statements from
22 probably a dozen of people or more they begin to piece it
23 together that it was Ms. Darby who fired the shot. He
24 was located and ultimately charged with murder and some
25 related charges to that.

1 After extensive discussions between myself and the
2 family and then correspondingly with Ms. Timmons, the
3 State has agreed to plea on the lesser included offense
4 of voluntary manslaughter with the negotiations.

5 The Court: Okay.

6 Mr. Corbett: And, Judge, for the record, with regard
7 to Victim's Bill of Rights, nine family members and some
8 close friends of the victim are all present in the
9 courtroom including the victim's children.

10 The Court: Okay. Thank you, sir. Mr. Darby, you
11 heard those facts are they correct?

12 Mr. Darby: Partially.

13 The Court: Okay. Well, as far you shooting the
14 victim in this case, is that correct?

15 Mr. Darby: I was trying to break up a fight, sir.

16 The Court: Are you the one that shot the gun?

17 Mr. Darby: Yes, sir.

18 The Court: And as a result of that shot, did she
19 die?

20 Mr. Darby: Yes, sir.

21 The Court: And you want me to take your plea of
22 voluntary manslaughter?

23 Mr. Darby: Yes, sir.

24 The Court: I find as a factual basis for your plea,
25 it is freely and voluntarily entered into. You've had

1 advice of competent counsel, who you tell me you're
2 satisfied and I will accept your plea.

3 Now, do you want me to hear from anybody else?

4 Mr. Corbett: Just one moment please, Your Honor.

5 The Court: Okay.

6 Mr. Corbett: Your Honor, if the court would be so
7 willing, Marvin Singleton, the son of the deceased would
8 like to briefly address the court.

9 The Court: Okay. Yes, sir.

10 Mr. Singleton: Your Honor, on behalf of me and my
11 family I just typed up a few things here and I wrote:

12 It is at my request today that justice be served for
13 the death of our dear Mother, Patricia Singleton. Shot
14 and killed by Derrick Darby. This was a very reckless,
15 pointless, disturbing crime that should have never taken
16 place.

17 My mother was in her home minding her own business
18 when she found herself in her front yard trying to bring
19 peace to a fighting, disrespectful group of kids that
20 didn't listen when she informed them to take the fighting
21 away from her house. Because of the disrespect and
22 character of the group they continued fighting in my
23 mother's yard and by doing so, Mr. Darby, took it upon
24 himself to pull out a gun, shooting in the crowd with the
25 bullet hitting my mother in her chest.

Derrick Darby vs. State of South Carolina

1 As her lifeless body laid on the ground --- as her
 2 lifeless body laid on the ground mostly everyone left her
 3 for dead seeking no help. Mr. Darby has never offered a
 4 sincere apology. But, as you can see, and I always kept
 5 this, as a month of being incarcerated, this is what he
 6 thought of the crime. (Holds up a paper). So, with
 7 this, Your Honor, watching someone be granted mercy for
 8 this behavior, this is a life that has been taken, do we
 9 want to see a recurring event taking place? Yeah, we may
 10 hear that this is his only charge or he don't have any
 11 other records but we have to look at the nature of the
 12 crime and that crime has been charged and the crime he
 13 has been charged with was murder. Yeah, we hear that Mr.
 14 Darby was a good person, son, et cetera, and they may be
 15 true facts, but who is responsible for his actions. I
 16 believe it will be Derrick Darby. This young man took the
 17 life of my mom, Patricia Singleton, a woman's who life
 18 shouldn't end the way that it did. But, because of Mr.
 19 Darby's actions my mom is no longer living. He took that
 20 away from us. There will be no more birthdays celebrated,
 21 Thanksgiving days, Christmas days, because he took that
 22 away from me and my family. Our family hasn't been the
 23 same since our mother got her life taken away.

24 I found myself looking through pictures to ease my
 25 pain, something no one should ever had to go through. I

1 found myself listening to voice recorded messages that
2 she left days before Mr. Darby shot and killed her
3 checking on me, saying she loves me. Our lives has
4 changed since me and my sisters have laid our mom to
5 rest. Picking out caskets, going to funeral homes. It
6 hasn't only affected us, but her grand kids as well.
7 This is something that no one should ever have to go
8 through. My mom being a person loved by many people and
9 loved within her community. Her life didn't have to end
10 the way it did. If they all would have just leave her
11 property. He took the life of a friend, a mother, a
12 grandmother, a great grandmother and a sister. She has
13 missed her grand kids being born, missed her daughter
14 getting married because of Mr. Darby's reckless and
15 careless actions. How can you make an accuse for the
16 life that has been taken. So, it is at my request today,
17 Your Honor, that you sentence this man accordingly so me
18 and my family can try to move forward in our lives. For
19 there is no sentence that can replace our loving mother.
20 Lock him up where he belongs, even though he will still
21 have food to eat, a place to lay, families to love as he
22 took that away from us, shooting and killing our mom with
23 a bullet to her chest. Leaving our hearts hurting and
24 confused and the only response we get in return is this.

25 The Court: Thank you, sir. Anything else, Mr.

Derrick Darby vs. State of South Carolina

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1 Corbett?

2 Mr. Corbett: Judge, that's all we have. Thank you.

3 The Court: Ms. Timmons.

4 Ms. Timmons: Thank you, Judge. It is certainly a
5 very tragic situation. Ms. Patricia is dead. My client,
6 at the time of that incident, he was 18 years old. Ms.
7 Patricia was the family friend. He referred to her as
8 his own. He pretty much saw her on a daily basis. On
9 the date, whenever he saw his sister and his mom attacked
10 he made a terrible decision, a terrible poor judgment
11 that he will have to suffer with the consequences. Ms.
12 Patricia's family has to live with his consequences.
13 However, he was 18 years at that time, Your Honor. He's
14 going to spend all of his young life in prison and he
15 realizes that and he is very sorry for it. During our
16 conversations in jail, Mr. Darby has been very remorseful
17 about this incident. He has been very sorry that Ms.
18 Patricia is dead. He is here with his family. They are
19 all sitting in the back of the courtroom, if they could
20 please stand up. (Family members rise). And, Your Honor,
21 I believe some of them would like to address you, if
22 possible.

23 The Court: Okay.

24 Speaker: Hi, Your Honor. I'm --- Johnson. I just
25 wanted to let you know that the young man that you're

1 looking before you, Your Honor, he's not an animal. It
2 was an accident. I understand Marvin and I understand
3 everything. I understand how they are feeling, Your
4 Honor, because Patricia was like a mother to me as well.
5 Patricia, we always was at Patricia's house or she was
6 always at my sister's house. I did everything I could
7 for Patricia, Your Honor. So, just to let you know some
8 of the things. His mother and his sister was out there
9 in that altercation fighting in that yard. He tried to
10 help. I know he didn't make the right decision and I'm
11 not trying to take that from him, Your Honor, I'm not,
12 Your Honor, but he's not an animal. Your Honor, he
13 didn't mean to kill Patricia. He loved Patricia like she
14 was his own mother. If he did, I apologize to the family
15 if he did do it, Your Honor. He's taken this plea, he's
16 manning up, because he was scared. But he's manning up
17 and accepting responsibility, Your Honor, and I ask that
18 you take that into consideration as well. Your Honor, I
19 apologize on behalf of all of us. I apologize that the
20 Singleton family got to go through that, but we deal with
21 it too, Your Honor. Patricia birthday, we celebrate.
22 Birthdays, Christmas, we go on. We look at photos. Your
23 Honor, we did everything we could for Patricia when she
24 was living, we was there. They might not want to admit
25 to it, Your Honor, but we was there. And, I apologize,

Derrick Darby vs. State of South Carolina

15

1 Your Honor.

2 The Court: Thank you.

3 Speaker: Your Honor, she been my babysitter ...

4 The Court: Tell me what your name is, please?

5 Ms. Davis: I'm Teresa Davis.

6 The Court: What's your last name?

7 Ms. Davis: Davis.

8 The Court: Okay.

9 Ms. Davis: I'm Derrick's momma. Katrina is my
10 cousin. We're all blood, we were raised up together. She
11 babysit my kids. She mentor me. Derrick would never do
12 nothing to hurt her. He would never do nothing to hurt
13 her. He just made a mistake. Everybody been out there.
14 There was about twenty girls been on my daughter, one big
15 girl jump on me. We was defending ourselves. We live two
16 doors down from Patricia. Where Patricia live at, her
17 house right there, you've got the street then our house
18 right there. Two houses right beside. All us been out
19 there, sir. I made a mistake by letting my daughter
20 fight. I made a mistake by even coming out the door when
21 I should have just stayed inside, sir. It ain't Derrick
22 fault. I love my child, I love my family. Everybody
23 know, we doing this together, sir. Like, I miss Trina, I
24 miss all of them. It just hurt me that my son have to be
25 in this predicament like this. It's just tragic and I

1 ask for forgiveness for my boy and for my family, just
2 please forgive my son and have mercy on him, please.

3 Speaker: Sir, can I say something?

4 The Court: Yes, tell me what your name is first.

5 Mr. Shaw: I'm Kevin Shaw. I'm Derrick's
6 stepfather.

7 The Court: Okay.

8 Mr. Shaw: I raised Derrick from a little baby.
9 Derrick ain't no monster, I know Derrick, I'm his father.
10 I mean, I'm not his biological father but I'm his father.
11 He is not a monster. I raised him. He might of, when me
12 and his momma separated for those three, four, five years
13 he might have wander out in those streets and did some
14 things that he know he ain't had no business doing, but
15 he right there and he know he listen to me. I have always
16 encouraged him to do right and I always encouraged him to
17 do the best thing to try to make, you know, his momma
18 happy because he was the only son that we had. I know
19 that when me and his momma split apart he kind of
20 wondered off. I can of take fault for it myself. Even
21 though I wasn't even no where near the incident, but he's
22 like a son to me. I raised him since he was six years
23 old. He got way from me and start growing up and what
24 every little normal boy do, you know, ain't none of us
25 perfect. I grow up I did wrong things. I been punished

Derrick Darby vs. State of South Carolina

1 for it. But as a man, I taught Derrick better. He is
2 not a monster.

3 The Court: Thank you, sir.

4 Mr. Shaw: Yes, sir.

5 Speaker: My name is Selicia(sp) Montgomery. Derrick
6 Darby is my cousin as well as Patricia Singleton was. I
7 know the feeling of losing a mother and I do feel that
8 they should give forgiveness because we don't want to
9 live with that all in our heart. Derrick isn't a bad
10 person. Things did get rowdy and Patricia died. He
11 wouldn't want that on nobody. He didn't want to kill her
12 on purpose. She saw the incident in her yard dealing
13 with her family, just like Derrick Darby, she wanted to
14 protect everyone one in the yard. She wanted the
15 situation to come out there. The only thing I'm saying,
16 Your Honor, is give Derrick another try at life. He's a
17 better person then everybody is putting it to you. Thank
18 you.

19 The Court: Thank you, ma'am. Anything else?

20 Ms. Timmons: Yes, judge. The solicitor and I, per
21 negotiations, we were thinking about the twenty (20) year
22 sentence. That's the recommendation. It will still give
23 Mr. Darby a chance to have a life once he's released. He
24 told me that he will get his GED while he's in prison and
25 hopefully get his associates degree in Business

1 Management. He plans to start a construction business.
2 In fact, he's always dreamed about building a home for
3 his momma. Hopefully he will be able to start a family
4 of his own. Also, Mr. Darby would like to address the
5 court.

6 Mr. Darby: I just want to apologize to the family.
7 Even though I tried many times they refused to talk to my
8 peoples to though and since I got lock up, the police
9 they talk to Katrina and I told her I was sorry for
10 everything that happened, but I guess, I guess it went in
11 one ear and out the other they don't want to hear it. I
12 want to apologize to them.

13 The Court: Well, it's a negotiated sentence so
14 therefore I can't change it. The sentence of the court
15 is that you are committed to the Department of
16 Corrections for a term of twenty (20) years.

17 Mr. Corbett: Thank you, Your Honor.

18 (End of plea)

19
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CERTIFICATE

This is to certify that the plea transcript in the matter of Derrick Darby vs. State of South Carolina, consisting of Eighteen (18) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

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

IN WITNESS WHEREOF I have hereunto set my hand and seal this 9th day of February, 2017.

Melissa R. Singletary

Melissa R. Singletary
Certified Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of Sumter)

IN THE COURT OF COMMON PLEAS

Derrick Darby 366539
Full name and prison number (if any) of Applicant

CERTIFIED TRUE COPY
OF ORIGINAL FILE

2016-CP-43-2011

Barbara Stange
DEPUTY CLERK OF COURT

SUMTER COUNTY APPLICATION FOR
SOUTH CAROLINA

State of South Carolina)

POST-CONVICTION RELIEF

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CLERK OF COURT
SUMTER COUNTY, S.C.
2016 OCT 24 11:3:28
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INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention S.C. DOC Lee Correctional Institution
2. Name and location of Court which imposed sentence Sumter County General Sessions Third Circuit
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-65-43-0597, Murder, Possession of a
 - (b) Weapon during the commission of a violent crime

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(c) Unlawful carrying of a pistol, Possession of a stolen Pisto:

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

(a) December 8, 2015

(b) 20 yrs violent Voluntary Manslaughter

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

yes

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

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

i. The South Carolina Court of Appeals

ii. _____

iii. _____

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

i. Court ~~denied~~ denied the appeal

ii. _____

iii. _____

(c) the date of each such result:

i. 2/18/16

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

(a) Ineffective assistance of counsel

(b) Trial counsel gave erroneous advice

(c) to take the plea

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

(a) _____

(b) _____

(c) _____

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

(a) any petition in a State Court under South Carolina Law? _____

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

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

(a) which grounds have been presented:

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

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

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

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

- (a) _____
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? _____
- (b) your trial, if any? _____
- (c) your sentencing? Yes Katarzyna Krystyna Timmons
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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

- (a) the name and address of each attorney who represented you:
 - i. Katarzyna Krystyna Timmons, Sumter County Public Defender office 215 N. Harvin St
 - ii. _____
 - iii. Tiffany Butler
- (b) the proceedings at which each such attorney represented you:
 - i. Preliminary hearing, Bond hearing and Plea hearing
 - ii. _____
 - iii. _____

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

Vacation of sentence

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

N/A

STATE OF SOUTH CAROLINA)
County of Sumter)

VERIFICATION

I, Derrick Darby, 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.

x Derrick Darby

SWORN to and subscribed before me this 18 day of Oct, 2014.

Dane Eastley (L.S.)
Notary Public

My Commission Expires: 3/3/2017

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

I, Derrick Darby, hereby apply for leave to
proceed in this action without prepayment of fees or costs or security therefor. In support of my
application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Derrick Darby
Applicant

SWORN or affirmed to and subscribed before me this

18 day of Oct, 2014.

Debra Eastredge
Notary Public

My Commission Expires: 3/3/2016

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER)	THIRD JUDICIAL CIRCUIT
)	
Derrick Darby, #366339,)	2016-CP-43-02011
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	

In response to the post-conviction relief application filed on October 24, 2016, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Sumter County Clerk of Court's orders of commitment. Applicant was indicted by the May 2013 term of the Sumter County Grand Jury for Murder, Unlawful Carrying of a Pistol, Possession of a Stolen Pistol, and Possession of a Weapon During the Commission of a Violent Crime (2012-GS-32-00349). Katarzyna K. Timmons, Esquire, represented him. On December 8, 2015, Applicant pled guilty to the lesser included offense of voluntary manslaughter before the Honorable R. Ferrell Cothran, Jr. The remaining charges were dismissed. Judge Cothran sentenced Applicant to twenty years in prison.

Applicant filed a timely notice of appeal. An appeal was perfected by Robert Dudek, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Darby, Appellate Case No. 2015-002586 (S.C. Ct. App. 2016). The Remittitur was returned on March 8, 2016.

II.

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

1. "Ineffective Assistance of Counsel"
 - a. "Trial Counsel gave erroneous advice to take the plea"

Respondent denies Applicant is entitled to relief on any of these claims and demands strict proof thereof. Applicant must specify any claims he intends to raise at the PCR trial. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing. For the purpose of this Return, Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections' records, the guilty plea transcript, and the record on appeal. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

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

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland

v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland, 80 L.E.2d 674). Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

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

V.

WHEREFORE, the Respondent requests that an evidentiary hearing be held solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

JULIE A. COLEMAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

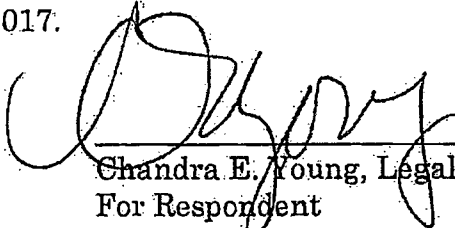
March 3, 2017

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER)	
)	
)	2016-CP-43-2011
DERRICK DARBY, #366339)	
)	
Applicant,)	
)	
vs)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	
_____)	

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

Timothy L. Griffith, Esquire
360 West Wesmark Blvd., 2nd Floor
Sumter, SC 29150

DATED this 3rd day of March, 2017.



Chandra E. Young, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

COURT OF COMMON PLEAS

DERRICK A. DARBY)
366339)
PETITIONER,)

TRANSCRIPT OF RECORD
16-CP-43-2011

v.)

STATE OF SOUTH CAROLINA,)
RESPONDENT.)

July 24, 2017
Sumter, South Carolina

BEFORE :

THE HONORABLE D. CRAIG BROWN, JUDGE

APPEARANCES:

LANCE S. BOOZER, ESQ.
Attorney for the Applicant

JULIE COLEMAN, ESQ.
Attorney for the State

FRANCES B. RAY, RPR
Circuit Court Reporter

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EXHIBITS

APPLICANT'S:

No.	Description	I.D./EVD.
1	Plea offer letter	10/10
2	Letter	11/11

1 MS. COLEMAN: May it please the Court,
2 this is Derrick Darby versus State of South
3 Carolina, docket number 2015-CP-43-2011. Applicant
4 is currently incarcerated at the State Department of
5 Corrections pursuant to orders of the Sumter Court
6 Clerk of Court. Applicant was indicted at the May
7 2013 term of the Sumter County grand jury for
8 murder, unlawful carrying of a pistol, possession of
9 a stolen pistol, and possession of a weapon during
10 the commission of a violent crime. Katarzyna
11 Timmons, Esquire, represented him. On December 8th,
12 2015, applicant pled guilty to the lesser included
13 of voluntary manslaughter before the Honorable R.
14 Ferrell Cothran, Jr. The remaining charges were
15 dismissed. Judge Cothran sentenced applicant
16 pursuant to a negotiated sentence to 20 years in
17 prison. Applicant filed a timely notice of appeal
18 and appeal was prosecuted by Bob Dudek, Esquire.
19 The South Carolina Court of Appeals affirmed
20 applicant's conviction and sentence remittitur was
21 returned March 8th, 2016.

22 Applicant filed a timely application for
23 post-conviction relief on October 24th, 2016,
24 alleging that he was being held in custody
25 unlawfully based on allegations of ineffective

1 assistance of counsel, trial counsel gave advice to
2 take the plea. The State filed its return
3 March 3rd, 2017. He's present today represented by
4 Mr. Lance Boozer.

5 THE COURT: Mr. Boozer.

6 MR. BOOZER: Thank you, Your Honor, please
7 the court. Judge, I just have a couple of
8 preliminary issues. This case is a little bit
9 unique, the first being that I'd like to make an
10 oral amendment that's been given to the State prior
11 to, and I believe the State contends to this. Mr.
12 Darby originally filed his PCR application alleging
13 failure to enforce the plea agreement. I just
14 wanted it to be clear that the amendment reflects
15 his lawyer was ineffective for failing to raise this
16 to the court or any court to enforce a prior plea
17 offer.

18 Judge, I would kind of, I'll give some
19 background on that because it seg-weighs into my
20 second sort of preliminary issue is that Mr. Darby
21 is not here for a new trial. Mr. Darby specifically
22 wants to be able to go back to general sessions and
23 accept what he claims was a plea offer that was made
24 that he was not able to accept. Judge, as an
25 officer of the Court, I've interviewed his prior

1 lawyer Ms. Timmons who, of course, will testify
2 today, that basically she wrote to Mr. Darby a
3 letter indicating that he had an offer for voluntary
4 manslaughter with sentencing cap of 0 to 15 years.
5 Mr. Darby has indicated to me that he wanted
6 Ms. Timmons to attempt to get a better deal; but if
7 she couldn't do that, that he would take that offer.
8 It's my understanding that Ms. Timmons went to the
9 Solicitor's Office to try and get a better offer and
10 was also informed that the prior offer of 0 to 15
11 had not been offered or they didn't remember making
12 that offer, and that's when the 20 came in. This
13 wasn't brought up when he entered a plea to the 20,
14 which is the part that we're amending on the
15 allegation as to why his lawyer was ineffective.

16 Judge, I believe it is in this Court's
17 purview to remand the case to general sessions if
18 Your Honor finds that the plea was offered and he
19 accepted it, but was not able to accept it because
20 of whatever reason, that you could send this back —
21 and I do have case law on that, Your Honor. As far
22 as the remedy is concerned that would be Custodio v.
23 State, which is 644 Southeastern 2d 36 because it's
24 based on contract principles and specific
25 performance is the remedy. So he doesn't not want a

1 new trial. I just want to make that clear that
2 that's what he seeks in this case, Judge.

3 THE COURT: All right. Ms. Coleman,
4 anything?

5 MS. COLEMAN: And Your Honor, I'm happy to
6 maybe argue this at closing argument at the end of
7 the testimony.

8 THE COURT: No, I want to hear testimony.

9 MS. COLEMAN: Okay, Judge.

10 MR. BOOZER: Your Honor, we'll go ahead
11 and call Mr. Darby to the stand.

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

15 THE WITNESS: Derrick Darby.

16 WHEREUPON,

17 **DERRICK DARBY,**
18 having been duly sworn by the Clerk, testified
19 as follows:

20 THE CLERK: Thank you. Have a seat up
21 here. Please state your full name, spell last name
22 for the record.

23 THE WITNESS: Derrick Antoine Darby,
24 D-A-R-B-Y.

25 **DIRECT EXAMINATION**

PW - D. DARBY - DIRECT

1 BY MR. BOOZER:

2 Q Mr. Darby, how are you doing today?

3 A I'm doing fine.

4 Q Okay. Mr. Darby, do you know why you're here
5 today?

6 A Yes, sir.

7 Q And are you here because you filed an application
8 for post-conviction relief?

9 A Yes, sir.

10 Q And what are you currently serving time for?

11 A Voluntary manslaughter.

12 Q All right. And was that what you were originally
13 charged with?

14 A Murder.

15 Q Okay, so it was reduced. And what was the
16 sentence you ended up receiving?

17 A Twenty years.

18 Q All right. Now Mr. Darby, in your original
19 application you allege that your lawyer failed to
20 enforce the plea agreement and then by amendment
21 today we made which your lawyer was ineffective for
22 bringing that to the Court's attention that there
23 was a prior plea offer; is that correct?

24 A Yes, sir.

25 Q All right. And now to be clear, you do not want

PW - D. DARBY - DIRECT

1 a new trial on your original charges; is that right?

2 A No, sir.

3 Q Okay. So you do not -- you're not asking this
4 Court to send your case back to trial court for a
5 trial, are you?

6 A No, sir.

7 Q All right. What is it that you're asking this
8 Court to do?

9 A I'm asking can I get the first original plea that
10 was, I thought was offered to me, 15, and I tried to
11 took it. And when my lawyer came back, she said
12 that they say they don't remember offering it.

13 Q Okay, so let's jump back to that. Who was your
14 lawyer that represented you before on these charges?

15 A My first original lawyer was Ms. Butler and then
16 out of the blue I got Ms. Timmons.

17 Q Okay. Did you have a lot of interaction with Ms.
18 Butler, or no?

19 A Yes.

20 Q Okay. But Ms. Timmons specifically, that's who
21 your allegation is against?

22 A Yes, sir.

23 Q All right. So tell me a little bit about that.
24 What sort of offer did you have that Ms. Timmons
25 told you about?

PW - D. DARBY - DIRECT

1 A Well, we were discussing, we were discussing like
2 how we was going to try to attack the case, like,
3 how I was going to try to do it. I was really
4 trying to see how — I was really trying to see how
5 it was going to go, but I had got her letters for 15
6 years so I wrote her back in saying I take that, if
7 she can't get it reduced anymore I'll take that 15
8 years.

9 Q Was that to voluntary manslaughter?

10 A Yes, sir.

11 Q And you got a letter from Ms. Timmons that was
12 written to you about the 15 year offer?

13 A From the Solicitor Office, from...

14 Q Okay.

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

17 BY MR. BOOZER:

18 Q Mr. Darby, if you would, take a moment and review
19 the document that I've just handed to you, to
20 yourself.

21 A Yes, sir.

22 Q Okay. Can you identify that? What is it?

23 A It's a plea offer.

24 Q Okay. Who's this from?

25 A At the bottom it's saying Ms. Timmons.

PW - D. DARBY - DIRECT

1 Q Okay. And that was sent to you?

2 A Yes, sir.

3 Q And dated March 16th, 2015?

4 A Yes, sir.

5 Q Okay. Now I'm gonna hand you another document.
6 If you would, just take a moment and look at it for
7 me.

8 A Yes, sir.

9 Q Okay. Can you identify that document for me?

10 A Yes, sir. That's the letter I wrote back
11 responding to take the plea.

12 Q Okay. Are these true and accurate copies of --
13 well, first, is the first letter from Ms. Timmons to
14 you dated March 16th, 2015, a true and accurate copy
15 of the letter you received from Ms. Timmons about
16 the 0 to 15 plea offer?

17 A Yes, sir.

18 Q Okay.

19 MR. BOOZER: Your Honor, at this time I
20 would move to mark this Applicant's Exhibit 1.

21 MS. COLEMAN: No objection.

22 (WHEREUPON, Petitioner Exhibit No. 1
23 was marked for identification and
24 entered into evidence.)

25 THE COURT: So admitted.

PW - D. DARBY - DIRECT

1 BY MR. BOOZER:

2 Q Mr. Darby, the second letter which you've
3 indicated is your response to Ms. Timmons in regard
4 to that 0 to 15 year offer. Is that a true and
5 accurate copy of the letter that you sent back to
6 Ms. Timmons?

7 A Yes, sir, with my signature.

8 Q Okay.

9 MR. BOOZER: Your Honor, at this time I
10 would move to mark the second letter as Applicant's
11 Exhibit Number 2.

12 MS. COLEMAN: No objection.

13 THE COURT: Without objection so admitted.

14 (WHEREUPON, Petitioner Exhibit No. 2 was
15 marked for identification and entered
16 into evidence.)

17 BY MR. BOOZER:

18 Q Okay, so in this first letter, this Applicant's
19 Exhibit 1, Mr. Darby, it says — from Ms. Timmons to
20 you dated March 16th, 2015, regarding plea offer.

21 "Dear Mr. Darby, please be advised I'm in receipt of
22 the following plea offer, plead to reduced charge
23 voluntary manslaughter with a sentencing cap of 15
24 years." Did you have any discussion or did you
25 respond to Ms. Timmons about that plea offer?

PW - D. DARBY - DIRECT

1 A Yes, sir.

2 Q Okay. How did you respond to her?

3 A I responded, I said, can she see, can we get a 0
4 to 10, but if not, I'll take 15.

5 Q Okay, and so you responded in a letter to her?

6 A Yes, sir.

7 Q All right. And in that letter which has been
8 marked Applicant's Exhibit 2 you indicated to Ms.
9 Timmons that, "You're in receipt of the plea offer,
10 you're really considering it. Since this is my
11 first plea offer though" — and you mentioned 0 to
12 10 with a cap, — "and the Solicitor just to see if
13 he'll bite the bait. If he's not trying to budge,
14 I'll take that offer. I'd like to see you very soon
15 so we can discuss all this." Is that your letter to
16 her if she couldn't get anything less, that you
17 wanted that 15 year offer?

18 A Yes, sir.

19 Q Okay.

20 MR. BOOZER: Your Honor, may I approach?

21 THE COURT: Yes.

22 BY MR. BOOZER:

23 Q As a result of that did you have any further
24 discussions with Ms. Timmons about the 15 year
25 offer?

PW - D. DARBY - CROSS

1 A When she came and saw me and I asked her about
2 it, and she said she went and asked the Solicitor
3 about it and he said he doesn't remember it, he
4 doesn't remember offering me that. She said he got
5 her upset because she felt like he was playing with
6 her.

7 Q Okay. And then ultimately you ended up entering
8 a plea for 20 years?

9 A Yes, sir.

10 Q Did your lawyer make any mention at your plea
11 hearing to the judge or prior to the plea hearing to
12 any Court that, hey, there was a prior offer and we
13 want to enforce that one? Did she do that?

14 A No, sir.

15 Q Okay. Mr. Darby, that's all the questions I
16 have. Please answer any that Ms. Coleman may have
17 for you.

18 THE COURT: Ms. Coleman.

19 MS. COLEMAN: Thank you, Your Honor.

20 **CROSS-EXAMINATION**

21 BY MS. COLEMAN:

22 Q Mr. Darby, you pled guilty to a negotiated
23 sentence of 20 years, right?

24 A Yes, ma'am.

25 Q And you knew at the time that it was a negotiated

PW - D. DARBY - CROSS

1 sentence for 20 years?

2 A Yes, sir -- yes, ma'am. It was either 20 or --
3 the letter I got it was either 20, 0 to 30, or
4 trial.

5 Q Okay. So you chose to do that rather than going
6 to trial?

7 A Yes, ma'am.

8 Q Okay. How many times did you meet with your
9 attorney Tiffany Butler before you went to trial or
10 plea or anything? Did you meet with her in person?

11 A Multiple. I can't really recall, but multiple.

12 Q Okay. And how many times did you meet with Ms.
13 Timmons who actually did the plea?

14 A We met good times, like, 6, 7, 8.

15 Q Okay. And did you review all the discovery with
16 either of these attorneys?

17 A Yes.

18 Q Okay. Which attorney did you review, both or?

19 A Both.

20 Q Okay. Did you discuss possible defenses with
21 your attorneys?

22 A Yes, ma'am.

23 Q Okay. Did you give your attorneys any leads or
24 witnesses to investigate?

25 A The witnesses that they, that the private

PW - D. DARBY - CROSS

1 investigator was going to investigate, like, a lot
2 of them he couldn't find.

3 Q Okay, but he did try to find them?

4 A Yes, ma'am.

5 Q Okay. Do you recall waiving your constitutional
6 rights at the guilty plea like your right to remain
7 silent and your right to a jury trial?

8 A Yes, ma'am.

9 Q Okay. And did Ms. Timmons explain all those to
10 you before the guilty plea?

11 A Yes, ma'am.

12 Q Okay. Do you recall telling the plea judge that
13 you were satisfied with your attorney at the plea?

14 A Yes, ma'am.

15 Q And you didn't have any complaints about her at
16 the time?

17 A No, ma'am.

18 Q Did you mention the fact that you had wanted to
19 plead to 15 years?

20 A No, ma'am, because it was other, it was some
21 other things going on. I felt like I really had no
22 choice.

23 Q Okay. So you never stopped the plea and said,
24 wait a minute, there was an offer for 15 years that
25 I really wanted to take.

PW - D. DARBY - CROSS

1 A No, 'cause I kept asking and being that she said
2 that it's off the table, I just felt like they
3 wouldn't, I didn't know nothing about it so I just
4 felt like they wouldn't go back on it.

5 Q Okay. Do you remember telling the plea judge
6 that nobody was threatening you in order to plea
7 guilty?

8 A Yes, ma'am.

9 Q Okay. And you remember telling the judge that
10 you were indeed guilty?

11 A I plead guilty.

12 Q Yeah. And you agreed with the facts presented by
13 the State at the plea hearing, right?

14 A Yes, ma'am.

15 Q Okay. Do you remember apologizing to the
16 victim's family at the plea?

17 A Yes, ma'am.

18 Q Okay. Do you have anything in writing from the
19 Solicitor's Office about this plea offer for 15
20 years?

21 A I thought they also came from the Solicitor's
22 Office because a lot of the mail used to come, you
23 know, it's the same courthouse so I was thinking
24 that right there was from the Solicitor's Office
25 also.

PW - D. DARBY - CROSS

1 Q But is there anything that was signed by the
2 Solicitor directly to you or to your attorney? Did
3 your attorney give you anything from the Solicitor
4 himself about the 15 year offer?

5 A Not that I can recall.

6 Q Okay.

7 A I just remember that letter.

8 Q Okay. Thank you. Nothing further.

9 MR. BOOZER: No redirect, Your Honor.

10 THE COURT: Hold on just a minute please,
11 sir.

12 (Pause.)

13 THE COURT: You may step down, thank you.

14 MR. BOOZER: Judge, we go ahead and call
15 former counsel Ms. Timmons to the stand.

16 THE COURT: Ms. Timmons, if you'd come
17 around and be sworn please.

18 THE CLERK: State your name please.

19 THE WITNESS: Katarzyna Timmons.

20 WHEREUPON,

21 **KATARZYNA TIMMONS,**

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

24 THE CLERK: Please state your full name
25 and spell your last name for the record.

PW - K. TIMMONS - DIRECT

1 THE WITNESS: It's Katarzyna Timmons,
2 K-A-T-A-R-Z-Y-N-A T-I-M-M-O-N-S.

3 **DIRECT EXAMINATION**

4 BY MR. BOOZER:

5 Q Ms. Timmons, how are you?

6 A I'm good.

7 Q Good. Did you represent Mr. Darby previously
8 much?

9 A Yes, sir.

10 Q And what was he charged with at that time?

11 A He was charged with murder, possession of a
12 weapon during a violent crime, I think UCAP, and
13 other charges.

14 Q Prior to his plea do you recall there being an
15 initial offer made by the State?

16 A Yes. Well, I thought that the Solicitor made the
17 offer of 0 to 15 years plead to reduced charge with
18 a recommendation of 0 to 15 years.

19 MR. BOOZER: Your Honor, may I approach to
20 get two exhibits?

21 THE COURT: Uh-huh.

22 BY MR. BOOZER:

23 Q Ms. Timmons, I'm gonna show you what's been
24 marked as Applicant's Exhibit 1. If you could, just
25 take a moment and look at that. Have you reviewed

FW - K. TIMMONS - DIRECT

1 this document?

2 A Yes, sir.

3 Q And what is that?

4 A It's a standard plea offer letter that our office
5 sends whenever there's an offer made ---

6 Q Okay.

7 A ---by the solicitor.

8 Q And it says that you, that, "Please be advised
9 that I'm in receipt of the following plea offer,
10 plead to reduced charge, voluntary manslaughter with
11 a sentencing cap of 15 years." Did you -- is that
12 what you understood the offer to be?

13 A Yes.

14 Q Okay. How did this offer come about? Did you
15 have any discussions with the Solicitor's Office?

16 A I thought that I had a discussion with the
17 Solicitor and he made this offer; but whenever I
18 approached him later about that offer he says he, he
19 doesn't recall making that offer, that this is not
20 an offer.

21 Q Who is the solicitor?

22 A Jason Corbett.

23 Q Okay. And as a result of you sending the
24 March 16th, 2015 letter marked as exhibit 1, did
25 Mr. Darby respond to you?

PW - K. TIMMONS - DIRECT

1 A Yes.

2 Q Okay. I'm gonna show you what's been marked as
3 plaintiff's exhibit 2, excuse me, Applicant's 2.
4 Can you identify that for me.

5 A Yes. This is the letter that Mr. Darby sent to
6 me.

7 Q Okay. And did you take that letter — how did
8 you interpret that letter?

9 A That, I guess that he would accept the 15 year
10 offer, but he wanted me to see if the solicitor
11 would be willing to offer anything better.

12 Q Okay. So after you received that letter what did
13 you or anyone go do?

14 A I went to talk to the solicitor, and at that
15 time — I think at that time, I'm not sure, he
16 informed me that he doesn't remember making that
17 plea offer, that — yeah, that this, that he never
18 made 15 year offer and I guess I had a discussion
19 with him 'cause I thought he made that offer. So I
20 thought, well, maybe there's something missing in
21 translation, something of that sort.

22 Q So you had a discussion with the solicitor that
23 you thought he had made an offer. Didn't it ring
24 fairly clear he had made that offer?

25 A When I was talking to the solicitor? I thought

PW - K. TIMMONS - DIRECT

1 that he made that offer; and when I talked to him
2 again, I told him that he made this offer and I
3 recall him telling me, no, I have never made that
4 offer, you're like -- he mentioned a different
5 public defender in our office. And I finally go,
6 felt a little bit, well, I don't like that comment
7 he made; but yeah, he just said he doesn't remember
8 making that offer, he never made that offer.

9 Q And for you to put pen and paper and write your
10 client and tell them that there's a 0 to 15 year
11 offer, I mean, that's a very specific offer; is it
12 not?

13 A Yes.

14 Q Okay. So do you think that that's something that
15 you would have -- is it common practice for you to
16 make, to relay offers to your client that have not
17 actually been made?

18 A No.

19 Q So for you to have write that letter, in your
20 opinion there had to have been an offer made
21 concurrent with those terms or specific to those
22 terms?

23 A Well, if I, if the letter was sent to Mr. Darby
24 then I thought that offer was made. But like I
25 said, I thought, well, maybe something was missing

FW - K. TIMMONS - DIRECT

1 in translation. Maybe Mr. Corbett, maybe
2 Mr. Corbett and I were just discussing the number
3 and maybe he thought about some condition that I
4 forgot about.

5 Q So when you learned that Mr. Corbett said that he
6 didn't remember making the offer or didn't make the
7 offer, were you upset about it?

8 A Well, a little bit, yes.

9 Q Okay. And then did you relay that to your
10 client?

11 A Yes, I told Mr. Darby that the solicitor doesn't
12 recall making this offer.

13 Q All right. Now to be clear, the solicitor didn't
14 revoke any offer, he just said he didn't remember
15 making it?

16 A That's correct.

17 Q Okay. So there were — okay. Did you make any
18 sort of motion at his subsequent plea or prior to
19 the plea to bring this to the Court's attention that
20 you thought an offer had been made that the
21 solicitor was contesting had not been made?

22 A No, I didn't bring it up to the Court's
23 attention. It was my understanding that solicitors
24 can make and withdraw offers as they please and only
25 time it can be enforced is whenever the defendant

PW - K. TIMMONS - DIRECT

1 rely on the offer to his detriment.

2 Q You mean, say, for instance, the solicitor says
3 I'm gonna offer you X number of years, Mr.
4 Defendant, you got to give us the goods on this
5 case; and then they do that, and then the solicitor
6 backs off of it. That's what you're talking about,
7 detriment alliance?

8 A That's correct. So because Mr. Darby, 'cause I
9 thought there wasn't any detrimental alliance I
10 didn't even bring it to the Court's attention.

11 Q And you indicated that you thought the solicitor
12 could just revoke an offer any time even after it's
13 accepted before detrimental alliance; is that what
14 you said?

15 A Yeah, I said that I thought that, I thought that
16 solicitors can withdraw the offer unless there's
17 detrimental alliance.

18 Q But to be clear, this wasn't a withdrawn offer,
19 this was an offer that they say that they don't ever
20 remember making?

21 A That's correct.

22 Q Okay. And you never brought that to the Court's
23 attention?

24 A That's correct.

25 Q Okay. Thank you, Ms. Timmons. That's all the

PW - K. TIMMONS - CROSS

1 questions I have.

2 **CROSS-EXAMINATION**

3 BY MS. COLEMAN:

4 Q Hi, Ms. Timmons. Do you have anything in writing
5 from the Solicitor's Office about this plea for 15
6 years?

7 A No, ma'am.

8 Q Okay. It was just an oral conversation?

9 A Yes, it was just -- usually what was going on, I
10 would just go in to the Solicitor's Office, sit down
11 in their office and discuss cases and asking them
12 what offer can be made.

13 Q Okay. So this was in person or on the telephone?

14 A It was in person.

15 Q Okay. You testified just a moment ago that you
16 do not think that the applicant detrimentally relied
17 on that offer; is that correct?

18 A That's correct.

19 Q And when he pled guilty he knew that he was
20 pleading to a negotiated sentence for 20 years,
21 correct?

22 A That's correct.

23 Q Okay. And was it his decision to accept that
24 plea offer?

25 A Yes, ma'am.

PW - K. TIMMONS - CROSS

1 Q Did you review the Applicant's constitutional
2 rights before he pled guilty?

3 A Yes, ma'am.

4 Q Did he seem to understand those rights that he
5 was waiving?

6 A Yes, ma'am.

7 Q How many times did you meet with the applicant
8 before he pled guilty?

9 A I think it was probably as Mr. Darby stated,
10 something between five to ten times.

11 Q Okay. Did you review discovery materials with
12 him?

13 A Yes, ma'am.

14 Q And what kind of evidence did the State have
15 against him?

16 A There were —

17 MR. BOOZER: Objection, Your Honor. This
18 really is irrelevant as far as the narrow issue that
19 we're here on.

20 MS. COLEMAN: And Your Honor, I'd argue
21 that it's relevant.

22 THE COURT: I'm gonna allow it,
23 cross-examination.

24 MS. COLEMAN: Thank you.

25 BY MS. COLEMAN:

PW - K. TIMMONS - CROSS

1 Q The evidence that the State had against him.

2 A There were statements of the witnesses that I
3 guess stated that Mr. Darby was the only person that
4 had a gun during the whole incident. And I think
5 some of them, I'm not sure now, somebody saw him
6 pointing a gun, but I'm not sure. But there's a lot
7 of witnesses that were saying that he was the one,
8 the only one with a gun. And also, whenever the
9 trial was coming up some letters pop up, I guess,
10 that Mr. Darby wrote to a friend of his while he was
11 in jail whenever he — and in those letters he
12 admitted that he was shooting, that he was the
13 shooter.

14 Q Okay. And can you explain just the factual
15 scenario behind the guilty plea here?

16 A Like the facts of the case or—

17 Q Yes, the facts of the case.

18 A Well, Mr. Darby was charged with murder. There
19 was, I guess, a group of people got together for a
20 stage fight and during that fight Mr. Darby is
21 alleged to take his gun out and shoot, I guess,
22 innocent bystander who happened to be his, well,
23 family or friend, excuse me, friend of the family.

24 Q And she was killed as a result of that shot?

25 A Yes, ma'am.

PW - K. TIMMONS - CROSS

1 Q Okay. And he ended up pleading to voluntary
2 manslaughter?

3 A That's correct.

4 Q Okay. And the other charges were dismissed—

5 A That's correct.

6 Q —pursuant to his negotiated plea?

7 A Yes, ma'am.

8 Q Okay. What kind of investigation did you do on
9 this case?

10 A Well, his previous attorney, Ms. Butler, hired
11 John Davis who is a private investigator that our
12 office used so he was doing investigation on that
13 case. I also hired John Grant, I guess who is
14 expert in crime scene. There was a pathologist that
15 we talked to and our investigator talked to, yes.

16 Q Was it ever the plan to go to trial on this case?

17 A We were planning to go to trial. I think that's
18 why all those investigators were hired. And we're
19 talking to pathologist. For a while there was, Mr.
20 Darby was stating that he was shooting in the air,
21 that it couldn't have been him that shot the, shot
22 the victim, but — well, later on we talked to the
23 pathologist and I guess crime scene investigator.
24 They stated that entry wound and exit wound were
25 pretty much on the same level so Mr. Darby was the

PW - K. TIMMONS - CROSS

1 only shooter. It would be impossible for him to
2 shoot in the air and then the wound, excuse me, the
3 gun, I guess, enter and exit the victim's body
4 pretty much on the same, same level.

5 Q Okay. Whose decision was it to plead guilty?

6 A It was Mr. Darby's decision.

7 Q Do you agree with that decision?

8 A Yes. Well, it was — there was a lot of
9 witnesses that were saying that Mr. Darby is the
10 only, was the only shooter, however I knew that the
11 State had some problems with locating them 'cause
12 also our investigator had problems locating them so
13 it was one of those cases where it could be 50/50.
14 We don't know which way the jury could go so it was
15 entirely up to Mr. Darby. I didn't, like I said, I
16 didn't push one way or the other.

17 Q Okay. Thank you. Nothing further.

18 THE COURT: Mr. Boozer.

19 MR. BOOZER: Nothing further.

20 THE COURT: Let me review those letters
21 please, Madam Court Reporter.

22 Ms. Timmons, let me ask you a couple of
23 questions. This letter that's Applicant's Exhibit
24 Number 1 dated March 16th extending this plea offer,
25 also contains within this letter a timeline under

1 which the offer would be revoked; is that correct?

2 THE WITNESS: Yes, sir.

3 THE COURT: Which was April 6th of 2015;
4 is that correct?

5 THE WITNESS: Yes, Your Honor.

6 THE COURT: In looking at Applicant's
7 Exhibit Number 2, do you have any idea when this
8 letter was written by the Applicant?

9 THE WITNESS: No, sir, but also the date
10 on the letter, on the plea offer letter it's, I
11 guess standard procedure in our office that I guess
12 whenever the secretary, administrative assistant,
13 whoever sends those letters, whenever we get the
14 letter they just put the next, I believe the next
15 court date 'cause most of the plea offers that we
16 receive from the Solicitor's office there's no
17 deadline to accept it.

18 THE COURT: But your letter gives a
19 deadline?

20 THE WITNESS: Yes, Your Honor.

21 THE COURT: All right. And he pled guilty
22 in December of that year?

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: Some nine months after you
25 wrote your letter?

1 THE WITNESS: Yes, Your Honor.
2 THE COURT: Okay, all right. Thank you.
3 Anything further from anyone?
4 MS. COLEMAN: Nothing further.
5 MR. BOOZER: Nothing further, Your Honor.
6 THE COURT: You may step down.
7 Did you have a copy of that case, Mr.
8 Boozer, you wanted me to look at? Or I can just
9 pull it myself.
10 MR. BOOZER: I do. May I approach?
11 THE COURT: Anything further from
12 Applicant's counsel?
13 MR. BOOZER: Nothing further, Your Honor.
14 MS. COLEMAN: The State calls Tiffany
15 Butler.
16 THE COURT: All right.
17 THE CLERK: Place your left hand on the
18 Bible, raise your right hand. State your name
19 please.
20 THE WITNESS: Tiffany Butler.
21 WHEREUPON,
22 **TIFFANY BUTLER,**
23 having been duly sworn by the Clerk, testified
24 as follows:
25 THE CLERK: Thank you. Have a seat

RW - T. BUTLER - DIRECT

1 please. Please state your full name, spell your
2 last name for the record.

3 THE WITNESS: It's Tiffany Butler,
4 B-U-T-L-E-R.

5 **DIRECT EXAMINATION**

6 BY MS. COLEMAN:

7 Q Hi, Ms. Butler, how are you?

8 A Hi.

9 Q How did you become involved in this case?

10 A I was appointed through the Public Defender's
11 Office.

12 Q And do you recall when you were appointed?

13 A Not too long after Mr. Darby was arrested and
14 charged because I recall preparing for the bond
15 hearing.

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

17 A Yes.

18 Q And did you review the discovery materials with
19 the applicant?

20 A Yes, I did.

21 Q What kind of evidence did the State have against
22 the applicant?

23 MR. BOOZER: Your Honor, just for purposes
24 of the record I would object to any further
25 testimony. No allegations against Ms. Butler.

RW - T. BUTLER - DIRECT

1 We're just really narrowly confined to the existence
2 or nonexistence of a 0 to 15 hear offer.

3 MS. COLEMAN: And Your Honor, this is just
4 about whether or not his guilty plea was voluntary,
5 the evidence against him, his discussions with his
6 attorney about pleas in general.

7 THE COURT: I'll allow it.

8 MS. COLEMAN: Thank you.

9 THE WITNESS: I recall there were several
10 witness statements describing a fight between I
11 believe one of Mr. Darby's relative's sister in this
12 case and someone else from the neighborhood. That
13 fight started early that day, and it continued later
14 in the neighborhood, I believe, in the yard of the
15 victim or nearby where the victim lived. From what
16 I recall, there were just a lot of people involved.
17 The statements did say that Mr. Darby had the gun.
18 Basically, that's it, witness statements.

19 BY MS. COLEMAN:

20 Q Did you believe this evidence against him was
21 strong?

22 A From what I recall there were some
23 inconsistencies with the statements, and then there
24 was the issue of the victim's gun wounds. I believe
25 there was evidence or statement -- or maybe this is

RW - T. BUTLER - DIRECT

1 coming from Mr. Darby, I can't recall exactly — but
2 that he had a gun, that he shot it up in the air.
3 But based on the victim's wounds, that wasn't
4 possible for him for the shots had come from his
5 gun. Yeah. But from what I recall there was a lot
6 of chaos that day surrounding that fight that had
7 started early that day and moved into the victim's
8 yard.

9 Q Did you ever enter into plea negotiations on the
10 applicant's behalf?

11 A I did not. Like Ms. Timmons testified to
12 earlier, we hired an investigator. He went out to
13 the crime scene. He looked for some witnesses, were
14 able to locate a witness or two, revisit the crime
15 scene; but at that point we were prepared for trial.
16 We hadn't entered into any plea negotiations.

17 Q So were you ever offered anything from the State
18 regarding a 15 year plea deal?

19 A No, not when I was representing Mr. Darby. We
20 didn't, we didn't get any offers from the State.

21 Q And how did it, how were you relieved from this
22 case? What were the circumstances surrounding that?

23 A I left the Public Defender's Office to go work
24 somewhere else.

25 Q And Ms. Timmons was then appointed in your place?

RW - T. BUTLER - DIRECT

1 A She was appointed. I believe she replaced me in
2 the Public Defender's Office and so she inherited my
3 case load.

4 Q Okay. Did you discuss any possible defenses with
5 the applicant?

6 A Just based on some of the inconsistencies we saw
7 in the statements, as well as the pathology, the
8 issues surrounding the pathology and the gunshot
9 wounds and all that, I wouldn't say defenses, but I
10 recall an issue with the gun or the gunshot wound
11 coming from Mr. Darby and I think during the course
12 of the investigation one of the witnesses said
13 someone else possibly had a gun. But right around
14 the time that I left we were exploring that
15 possibility.

16 Q And in your opinion based on the evidence against
17 the applicant and your discussions with him, do you
18 believe this case would have been successful if it
19 had gone to trial?

20 A I mean, I can't really say because we had more,
21 more to investigate. At that point when I left, the
22 investigation was complete. But with that being
23 said, although there were inconsistencies with the
24 statements, a lot of them said the same thing so I
25 think it probably would have been harder to prove

RW - T. BUTLER - CROSS

1 that someone else had a gun. But like I said, we
2 still had more investigation to do so I can't really
3 say there was no possibility.

4 Q. Okay. Thank you. Nothing further.

5 **CROSS-EXAMINATION**

6 BY MR. BOOZER:

7 Q Just briefly. You said no plea offers were made
8 while you were representing him?

9 A No, I don't recall that any offers were extended.

10 Q And you're not privy to any that may have been,
11 may have followed your representation?

12 A I'm not privy to.

13 Q Thank you, Ma'am.

14 THE COURT: Anything further?

15 MS. COLEMAN: Nothing further.

16 THE COURT: You may step down.

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

19 THE COURT: Anything further from the
20 Applicant?

21 MR. BOOZER: Nothing further, Your Honor.

22 THE COURT: Anything further?

23 MS. COLEMAN: Yes, Your Honor, briefly. I
24 would just argue that, I would argue that the
25 applicant had no constitutional right to a plea

1 offer from the State, no kind of bargain or
2 negotiated sentence. That's not something he's
3 necessarily entitled to. The Applicant has not
4 presented any credible evidence, no writing, nothing
5 from the solicitor to show that this plea offer was
6 ever actually made, although counsel testified about
7 it. They don't have any written agreement. She
8 testified that she did not believe in her opinion
9 that he had detrimentally relied on this offer in
10 making this plea so she found no reason to make a
11 motion before the court regarding the plea to bring
12 it back up. The applicant testified himself that he
13 was well aware that he was pleading to a negotiated
14 sentence for 20 years at the time that he pled, and
15 that was his decision to do, according to everyone's
16 testimony. He made that choice for himself. I
17 don't think he's proven that anything about his plea
18 was involuntary or unknowing so I don't think that
19 there's any prejudice. I don't think applicant has
20 shown any ineffective assistance by Ms. Timmons.
21 Even if the plea was offered, she testified that she
22 went back to the solicitor and she tried to accept
23 this offer, he wouldn't do it. It's in the
24 solicitor's discretion whether or not to make offers
25 or to negotiate pleas, and I don't think that she

1 was ineffective in any manner in trying to obtain
2 this offer.

3 THE COURT: All right.

4 MS. COLEMAN: And that's all from the
5 State. Thank you.

6 THE COURT: Mr. Boozer, since she did
7 argue I'll give you last word since you're the
8 applicant if you want to say anything.

9 MR. BOOZER: And I was gonna request that
10 so I do appreciate it, Judge. I didn't realize
11 that's where we were. But Your Honor, just briefly,
12 this is — I have researched and researched and
13 researched and can't find this exact scenario. And
14 when the testimony was elicited about detrimental
15 alliance on the plea, I agree with that. There
16 certainly is case law where an offer gets made and
17 defendant goes through the process of bolting
18 information in another case and the solicitor goes
19 and revokes that case, then that, revokes that
20 offer, and the defendant has done something to
21 detrimentally rely on it, I agree with that; but
22 that's where an offer has been revoked. In this
23 case we have Ms. Timmons who says an offer, I
24 thought an offer was made 0 to 15. She put pen to
25 paper, took it to the defendant. He accepted the

1 offer based on his testimony and Ms. Timmons'
2 testimony; and then when she goes to accept it, he
3 doesn't say, well, it's off the table 'cause your
4 guy is not doing what we wanted him to, we're
5 revoking it 'cause he got this. He just says, I
6 don't remember making that offer and then it sounds
7 like Ms. Timmons is getting into where he accused
8 her of maybe making this up or something. I just
9 think he should, if an offer is made he should be
10 able to accept it. In this case he just, what the
11 testimony is, the solicitor just says they don't
12 remember making it, it's not revoked. So I think
13 his relief should be he be allowed to accept the
14 offer that he accepted initially and this Court send
15 him back to trial court to be resentenced in
16 accordance with that specific plea offer. Thank
17 you, Your Honor.

18 THE COURT: All right. I'll take a look
19 at this case that you submitted to me, I'll let you
20 know.

21

22 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

23

24

25

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

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

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

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

Witness my hand at Florence, South Carolina, this 26th day of February, 2018.

Frances B. Ray

FRANCES B. RAY, RPR

Katarzyna K Timmons
Sumter County Public Defender
215 N. Harvin Street, Room 151
Sumter, SC 29150
(803)436-2424

March 16, 2015

Mr. Derrick Antwan Darby
C/O Sumter Lee Regional Detention Ctr.
1250 Winkles Road
Sumter, SC 29153

Re: **PLEA OFFER**
State v. Derrick Antwan Darby
Warrant/Ticket No(s): 13A4320100190; 13A4320100191; 13A4320100192; 13A4320100200

Dear Mr. Darby:

PLEASE BE ADVISED that I am in receipt of the following PLEA OFFER: **Plead to reduced charge, Voluntary Manslaughter, with a sentencing cap of 15-years.** This offer will be withdrawn after **April 6, 2015**, so if you choose to enter a guilty plea after this deadline you will likely be required to enter the plea without the benefit of a recommendation from the Solicitor. You have a right to a jury trial under the Constitution. Nonetheless, it is important that you inform me as soon as possible whether I need to prepare your case for a trial or for a guilty plea. If you would like to discuss this matter further please contact my office **IMMEDIATELY** to schedule an appointment.

If you have received this letter while in jail, I am aware of your situation and will be out to visit you as quickly as possible. If you know without further discussion that you would like to accept or reject said offer, you can contact my office and leave a message for me indicating your decision and/or any questions surrounding this decision.

Sincerely,
FILE COPY

Katarzyna K Timmons
Katarzyna K Timmons, Esq.



Dear Ms Timmons,

How are you doing? I am in receipt to the plea offer. I am really considering that offer. Since this is my first plea offer though can you mention a O-10 with a cap on the solicitor just to see if he'll bite the bait. If he's not tryin to buldge I'll take that offer but I would like to see you very soon so we can discuss all this. I also want to thank you for putting in the time an patience and representation me I highly appreciate it. Thank You.

Sincerely,

Derrick Darby



STATE OF SOUTH CAROLINA RECORDED IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER 2017 NOV -9 PM 2:44 THIRD JUDICIAL CIRCUIT

Derrick Darby, #366339,

2016-CP-43-02011

Applicant (SUM. C. Ct.)

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on October 24, 2016. Respondent submitted its Return on March 3, 2017. An evidentiary hearing into the matter was convened on July 24, 2017, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

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

I. PROCEDURAL HISTORY

The records before this Court indicate Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Sumter County Clerk of Court's orders of commitment. Applicant was indicted by the May 2013 term of the Sumter County Grand Jury for murder, unlawful carrying of a pistol, possession of a stolen pistol, and possession of a weapon during the commission of a violent crime (2012-GS-32-00349). Katarzyna K. Timmons, Esquire, represented him on the charges. On December 8, 2015, Applicant pled guilty to the lesser

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included offense of voluntary manslaughter before the Honorable R. Ferrell Cothran, Jr. The remaining charges were dismissed. Judge Cothran sentenced Applicant to twenty years in prison.

Applicant filed a timely notice of appeal. An appeal was perfected by Robert Dudek, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. *State v. Darby*, Appellate Case No. 2015-002586 (S.C. Ct. App. 2016). The Remittitur was returned on March 8, 2016.

II. ALLEGATIONS

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

1. "Ineffective Assistance of Counsel"
 - a. "Trial Counsel gave erroneous advice to take the plea"

At the evidentiary hearing, Applicant orally amended his application to include an allegation of ineffective assistance of counsel for failure to enforce a prior plea agreement. Counsel for Applicant explained that Applicant was not seeking a new trial as relief for his PCR action, but he only wanted to get the original plea offer.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Katarzyna Timmons, Esquire (hereinafter "Plea Counsel") and Tiffany Butler, Esquire.

Applicant's Testimony

Applicant testified that he was originally represented on these charges by Attorney Tiffany Butler, but Plea Counsel represented him at the plea. He testified that Plea Counsel sent him a letter explaining to him that he had been offered a plea deal for a fifteen year sentence. Her letter and his response to her letter were entered into evidence as Applicant's Exhibit #1 and #2.

Applicant stated that he wanted to accept the fifteen year plea offer, but when Plea Counsel followed up with the Solicitor about the offer, the Solicitor did not recall making such an offer and indicated he would not extend that offer to Applicant. Applicant testified that Plea Counsel should have enforced the original plea agreement to secure his original plea deal. He stated he had nothing in writing from the Solicitor about the plea offer.

Applicant testified that, even though he was unable to secure the original plea offer, he chose to plead guilty to a negotiated sentence for twenty years' imprisonment. He stated he recalled telling the plea court that he was guilty of these crimes and he agreed with the facts of the crime as presented by the Solicitor. He stated he recalled telling the plea court that he was satisfied with Plea Counsel's services at the guilty plea.

Plea Counsel's Testimony

Plea Counsel testified that she believed the Solicitor made an initial plea offer of a 0-15 year sentence, with a fifteen year cap. She stated she recalled him making this offer orally and did not have any written documentation of his offer. She testified that, when she approached the Solicitor about the offer later, he did not remember making the offer. Plea Counsel stated that she told Applicant that the Solicitor did not remember offering the original plea deal and that she was upset about it, because he seemed to be implying that she was lying about the offer. Plea Counsel testified that she did not make a motion to enforce the plea offer or bring up the original offer to the court. She stated she chose not to do so because the plea offer could only be enforced if the defendant detrimentally relied on the offer, and she did not believe that Applicant detrimentally relied on this plea offer.

Plea Counsel testified about the State's evidence against Applicant, including multiple eyewitnesses, their testimony that Applicant was the only one at the scene who had a gun and

could have shot the victim, and letters Applicant had written admitting that he shot the victim. She stated she was planning to go to trial. She stated that Tiffany Butler had hired a private investigator when she handled the case, and they had retained a pathologist and crime scene investigator. Plea Counsel stated the investigators they hired reported to her that the wounds were on the same level as Applicant, which did not support their defense that Applicant only shot the gun into the air in order to stop the fight. Based on this evidence against him and the lack of support for a defense, Applicant decided to plead guilty.

Tiffany Butler's Testimony

Tiffany Butler testified that she was originally appointed to this case by the Public Defender's office not long after Applicant was arrested. She stated the evidence against Applicant included multiple eyewitnesses and statements. She stated that, when she represented him, there were some inconsistencies in witnesses statements, and there were potential issues with the gunshot wounds that she wanted to investigate. Butler stated she hired an investigator, she went to the scene of the crime, and she attempted to locate witnesses in her investigation. She stated that there were no plea negotiations while she represented Applicant.

IV. APPLICABLE LAW

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

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

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

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

DCB
P. 5-18

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges Plea Counsel was ineffective in her representation surrounding his guilty plea. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985).

In the present case, this Court finds Applicant has failed to meet his burden in proving Plea Counsel was ineffective in any regard. First, Applicant has failed to prove that an original plea offer from the State ever existed. He has provided no written documentation or formal offer from the Solicitor. Plea Counsel credibly testified she truly believed there was a legitimate plea offer for 0-15 years from the State, but the Solicitor did not recall making the offer when asked about it. However, Plea Counsel testified that she did not believe Applicant detrimentally relied on the plea offer, so she chose not to move to enforce the original offer. This Court finds Plea Counsel's actions were reasonable under the circumstances, and nothing about her performance regarding this alleged plea offer was deficient.

Furthermore, Applicant can show no prejudice from the failure to move to enforce the original plea offer. Applicant pled to a negotiated sentence of twenty years, and the testimony

presented and the record clearly show the plea was knowingly and intelligently entered into. Applicant was well aware of the strong evidence against him, and admitted in a written statement that he committed the crime. He further admitted that he knew he pled guilty to a negotiated sentence for 20 years and chose to do so rather than going to trial. This Court finds that Applicant has not shown that he was prejudiced by any of Plea Counsel's actions because he has not proven that he would have accepted the original plea offer, or that he detrimentally relied on an original plea offer. He further failed to prove he did not knowingly or intelligently plead guilty to accept the negotiated 20 year sentence. Accordingly this allegation must be dismissed.

VI. CONCLUSION

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

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

DCB
P. 7 17B

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 6 day of Sept., 2017.



D. CRAIG BROWN
Presiding Judge
Third Judicial Circuit

Florence, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT FOR

Murder

Possession of a Weapon during the Commission
of a Violent Crime

Unlawful Carrying of a Pistol
Possession of a Stolen Pistol

TRUE COPY
ORIGINAL FILE

Barbara Shagan
DEPUTY CLERK OF COURT

At a Court of General Sessions, convened on May 23, 2013 the Grand Jurors of SUMTER COUNTY SOUTH CAROLINA

SUMTER County present upon their oath:

COUNT ONE
MURDER

That Derrick Antwan Darby did in Sumter County, on or about February 27, 2013, willfully, feloniously, and intentionally kill the victim, Patricia Singleton, with malice aforethought, either express or implied, by means of shooting the victim, and the victim did die as a proximate result thereof on or about February 27, 2013 in Sumter County, in violation of Section 16-3-10, South Carolina Code of Laws, 1976, as amended.

COUNT TWO
POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME

That Derrick Antwan Darby did in Sumter County, on or about February 27, 2013, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-490, South Carolina Code of Laws, 1976, as amended.

COUNT THREE
UNLAWFUL CARRYING OF A PISTOL

That Derrick Antwan Darby did in Sumter County on or about February 27, 2013, carry about the person a pistol, such carrying not being authorized by law, in violation of Section 16-23-20, South Carolina Code of Laws, 1976, as amended.

COUNT FOUR
POSSESSION OF A STOLEN PISTOL

That Derrick Antwan Darby did in Sumter County on or about February 27, 2013, possess and carry about the person a stolen Taurus .380 pistol, in violation of Section 16-23-30, 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.

Solicitor

Ernest A. Finney III

WITNESSES

N. Kelly

Sumter Police Dept.

DOCKET NO. 2013-GS-43-0597

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

May TERM 2013

THE STATE

vs.

DERRICK ANTWAN DARBY

ARREST WARRANT NUMBER

2013A4320100190 2013A4320100191
2013A4320100192 2013A4320100200

Indictment for

Murder

Possession of a Weapon during the
Commission of a Violent Crime
Unlawful Carrying of a Pistol
Possession of a Stolen Pistol

ACTION OF GRAND JURY

TRUE BILL

Brenda McDonald

Foreperson of Grand Jury
Date: 5/23/13

VERDICT

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

Foreperson of Petit Jury
Date: