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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County

Michael G. Nettles, Circuit Court Judge

DAVID REAGAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000233

APPENDIX

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State of South Carolina)
County of Charleston) In General Sessions Court
) Ninth Judicial Circuit

State of South Carolina)
 Vs.) 2014-GS-10-02316
David Reagan,)
 Defendant.)

August 11, 2015

Charleston, South Carolina

B E F O R E:

The Honorable R. Markley Dennis, Presiding Judge

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

Bruce DuRant, Deputy Solicitor

Attorney for the State

Luke Malloy, Assistant Public Defender

Attorney for the Defendant

SHARON L. VIZER

CIRCUIT COURT REPORTER

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NO EXHIBITS WERE INTRODUCED

1 Tuesday, August 11, 2015

2 THE COURT: Okay. You are David Reagan?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Mr. Reagan, indictment 2014-2316
5 charges you with the offense of murder; do you understand
6 that, sir?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Your lawyer has explained that charge
9 to you?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: He's also explained in discussing the
12 charge of murder the lesser included offense of voluntary
13 manslaughter?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And the distinction between the two?

16 THE DEFENDANT: True. Yes.

17 THE COURT: It appears from the sentencing sheet
18 your desire to enter a plea to the lesser offense of
19 voluntary manslaughter; is that correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And in reviewing the sentencing sheet
22 which bears your signature it appears this is a
23 negotiated sentence; is that also correct?

24 THE DEFENDANT: That's correct.

25 THE COURT: And, Solicitor, it appears that the

1 agreement or the negotiated sentence is he would be
2 allowed to plead to the lesser included offense with a
3 sentence of 25 years?

4 MR. DURANT: That is correct, Your Honor. Also, as
5 part of the plea negotiations there is a related CSC
6 indictment that's being nolle prossed. That would be
7 2014-GS-10-2326.

8 He also has two other indictments on unrelated
9 matters, 2013-GS-10-2230 for hit and run, and
10 2013-GS-10-1620 for CDV second involving this same
11 victim. All of those will be nolle prossed in
12 consideration of this plea.

13 THE COURT: Okay. Mr. Malloy, is that your
14 understanding as well?

15 MR. MALLOY: It is, Your Honor.

16 THE COURT: Mr. Reagan, understanding -- your
17 lawyer has explained to you the significance of the term
18 negotiated sentence?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And the State, of course, from time to
21 time you may hear a recommendation by the State. The
22 Court is not bound by a recommendation but a negotiated
23 sentence is quite simply I have to hear it all and at the
24 conclusion my options are either to impose a 25-year
25 sentence or reject it in its entirety. I'm not at

1 liberty to modify. Do you understand that?

2 THE DEFENDANT: I understand it.

3 THE COURT: Understanding then, Mr. Reagan, that if
4 I were to accept the negotiated sentence I would impose a
5 25-year sentence and, of course, give you credit for any
6 time that you have served how do you plead, guilty or not
7 guilty?

8 THE DEFENDANT: I plead guilty.

9 THE COURT: Are you totally satisfied with your
10 lawyer?

11 THE DEFENDANT: I'm totally satisfied with my
12 lawyer. Yes, sir.

13 THE COURT: I ask you to raise your hand, please,
14 your right hand.

15 DAVID REAGAN, after having been duly sworn,
16 testified as follows:

17 THE COURT: And the Solicitor has stated for the
18 record all the terms of the negotiated sentences as you
19 understand them?

20 THE DEFENDANT: I do.

21 THE COURT: Are you under the influence of any
22 medication today?

23 THE DEFENDANT: Just my -- I take two medicines
24 regularly and it's a bipolar medicine. It doesn't affect
25 my mentality.

1 THE COURT: All right. If you are taking it for a
2 bipolar it probably works the opposite in the sense it
3 makes you more functional?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And does not affect your cognitive
6 skills whatsoever?

7 THE DEFENDANT: No, sir, it doesn't.

8 THE COURT: And you've had sufficient time to
9 reflect on this?

10 THE DEFENDANT: I have.

11 THE COURT: The amount of medication that you're
12 taking, is that pursuant to a prescription?

13 THE DEFENDANT: Yes, it is.

14 THE COURT: And you've taken it consistent with
15 that prescription?

16 THE DEFENDANT: Yes.

17 THE COURT: And how long have you been taking it,
18 sir?

19 THE DEFENDANT: A couple of years.

20 THE COURT: Okay. You have investigated this
21 matter totally and completely on behalf of your client,
22 Mr. Malloy?

23 MR. MALLOY: I have, Your Honor.

24 THE COURT: And shared the results of the
25 investigations with him?

1 MR. MALLOY: I have.

2 THE COURT: And after discussing it with you he
3 indicated a desire to enter a plea but asked you to
4 negotiate the best arrangement you could for him?

5 MR. MALLOY: Yes, Your Honor.

6 THE COURT: The record now reflects the results of
7 your efforts in that regard?

8 MR. MALLOY: It is.

9 THE COURT: Do you believe the negotiated sentence
10 to be in your client's best interest?

11 MR. MALLOY: I do.

12 THE COURT: He has been advised of the rights that
13 he will be relinquishing as well as the consequences of
14 his decision?

15 MR. MALLOY: He has.

16 THE COURT: And do you concur based on your
17 investigation with his decision to enter a plea to
18 voluntary manslaughter?

19 MR. MALLOY: I do concur.

20 THE COURT: Mr. Reagan, is that true, sir?

21 THE DEFENDANT: It is true.

22 THE COURT: Do you realize and understand that if I
23 accept the negotiated sentence you will then not have a
24 jury trial and therefore the State will not be required
25 to prove your guilt beyond a reasonable doubt? Do you

1 understand that?

2 THE DEFENDANT: I understand.

3 THE COURT: And you, of course, would not have to
4 prove anything. You certainly don't have to prove your
5 innocence. The State instead has to prove every element
6 of the crime to the requisite standard beyond a
7 reasonable doubt and in order to do that they would have
8 to present witnesses. If you had a trial you would have
9 a chance to confront those witnesses. Your lawyer could
10 cross-examine, that is challenge that testimony; you
11 understand that?

12 THE DEFENDANT: I do.

13 THE COURT: You are therefore by entering this
14 plea, if I accept it, giving up your right, your
15 constitutional right to confront the witnesses against
16 you; do you realize that?

17 THE DEFENDANT: I do.

18 THE COURT: You also at all times have an absolute
19 right to remain silent. You are not having to prove
20 anything, and by entering this guilty plea you are now
21 relinquishing that right as well; do you realize that?

22 THE DEFENDANT: I do.

23 THE COURT: Other than the promises contained in
24 the negotiated sentence are there any other promises that
25 have been made to you to get you to pled guilty?

1 THE DEFENDANT: No, sir.

2 THE COURT: Have there been any threats made to get
3 you to pled guilty?

4 THE DEFENDANT: No, sir.

5 THE COURT: Based on your discussions with your
6 lawyer as to the elements of the crime charged is there
7 any question in your mind of your guilt to this charge of
8 voluntary manslaughter?

9 THE DEFENDANT: No, sir.

10 THE COURT: Solicitor, if you would tell me the
11 facts, please, sir.

12 MR. DURANT: Yes, sir, Your Honor. This incident
13 came to light on August the 22nd of 2013. That occasion
14 the Charleston Police Department responded to the Palms
15 Apartments over off of Orange Grove Road in reference to
16 the deceased victim in the case, her name was Kathy
17 Hawkins, being found deceased in her apartment.

18 The management of the apartment complex had
19 conducted a welfare check due to one of the neighbors
20 complaining about the dog running around. They opened
21 the door and observed Ms. Hawkins on the living room
22 floor. She was nude and appeared to be dead.

23 The police department responded and confirmed that
24 she was, in fact, deceased. And at first it was not
25 apparent what the cause of death were. They thought

1 perhaps is was natural causes, and then an autopsy was
2 performed and the autopsy determined that she had died as
3 a result of strangulation, and there was also indication
4 of contusions to the rectal and vaginal area consistent
5 with sexual assault.

6 At that point, Mr. Reagan was already being looked
7 at but he really became a suspect at that point primarily
8 because there was already history of physical abuse in
9 this relationship. He had been convicted of CDV
10 regarding the same victim in the past, and at the time
11 that her body was found there was an additional CDV
12 second charge pending in our office.

13 Based upon that, the police department undertook an
14 investigation. Numerous people had seen Mr. Reagan
15 around the apartment complex about two days previous,
16 which was around the time of the victim's death. He was
17 seen driving a white Lexus SUV which previously belonged
18 to the victim but she had transferred it to him because
19 she had lost her license. And as an aside, both
20 Mr. Reagan and Ms. Hawkins were known alcoholics and had
21 had that type of relationship in the past.

22 They also discovered that Ms. Hawkins' credit cards
23 were being used, still being used after her death to
24 purchase beer and liquor. They were able to get
25 surveillance video at two different locations where

1 Mr. Reagan was observed purchasing beer and liquor using
2 her credit card.

3 He was taken into custody and questioned. He
4 originally claimed not to have seen Ms. Hawkins for some
5 12 days. Upon further questioning he finally admitted
6 that he was with her at the time that she passed away.
7 He admitted that he was the only other one there but
8 denied that knowing how exactly she passed away.

9 There's also forensic evidence in terms of
10 fingerprints and DNA that link him to the scene,
11 particularly some DNA under the victim's fingernails and
12 his DNA on a couple of wine bottles believe to have been
13 used during the potential sexual assault.

14 In terms of prior record, Your Honor, he had a
15 prior record for DUI in '77; bad check in '84; possession
16 of marijuana in '85; resisting arrest and possession of a
17 stolen vehicle in '96; disorderly conduct in 2007; ABHAN
18 in 2007; a CDV first in 2010 involving a different
19 victim; a CDV second in 2012 involving the same victim.

20 I do have the victim's ex-husband, Mr. Ed Hawkins
21 is here. He would like to just briefly address the Court
22 at the appropriate time, Your Honor.

23 THE COURT: Thank you very much.

24 Mr. Reagan, you've heard the factual recitation by
25 the Solicitor. Are those facts accurate?

1 THE DEFENDANT: For the most part, yes, sir.

2 THE COURT: Tell me what's not accurate.

3 THE DEFENDANT: Well, I didn't deny being around
4 there. I know when I was questioned I told them I had
5 been around there. I admitted to being there through the
6 whole situation. I never denied it.

7 THE COURT: Okay. And there's no question that you
8 caused the death of Ms. Hawkins?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: That part is totally accurate?

11 THE DEFENDANT: That part is totally accurate.

12 THE COURT: Have you truthfully responded to each
13 of my questions?

14 THE DEFENDANT: I have.

15 THE COURT: Have you fully understood each of my
16 questions?

17 THE DEFENDANT: I do.

18 THE COURT: And you have given me complete answers
19 to each of those questions?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Your responses are your responses and
22 not the response that someone told you that you would
23 have to make in order to get through the plea
24 so-to-speak?

25 THE DEFENDANT: Sir, they are my answers.

1 THE COURT: And you have had sufficient time, as
2 you stated, to reflect on what you are doing?

3 THE DEFENDANT: I have.

4 THE COURT: And it is your desire and your request
5 that I sentence you consistent with your negotiated
6 sentence?

7 THE DEFENDANT: Yes, sir, I do.

8 THE COURT: You understand that the charge of
9 voluntary manslaughter is a most serious offense?

10 THE DEFENDANT: I do.

11 THE COURT: Do you understand it's a violent
12 offense?

13 THE DEFENDANT: Yeah, I do.

14 THE COURT: And you understand the significance of
15 both of those terms?

16 THE DEFENDANT: I do. I was explained to them this
17 morning.

18 THE COURT: You also understand that it is a non
19 parolable offense?

20 THE DEFENDANT: I do.

21 THE COURT: Meaning that you will not be -- you
22 will have to serve at least 85 percent of this sentence
23 before being released -- or eligible to be released?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Which according to my math is 21.25

1 years.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You also understand that if you are
4 successful in being released after 21.25 years that you
5 will then be required to complete -- satisfactorily
6 complete a two-year community supervision?

7 THE DEFENDANT: I didn't know that but, yes, sir.

8 THE COURT: It's basically a probation that's
9 required and you have to comply fully and if you fail to
10 comply, unlike another probationary matter, you can be
11 returned to prison in increments up to one year until you
12 satisfy the remaining 15 percent of your sentence; do you
13 understand that?

14 THE DEFENDANT: I do.

15 THE COURT: And it's still your desire to go
16 forward with this plea?

17 THE DEFENDANT: It is.

18 THE COURT: I find the plea to be freely and
19 voluntarily, knowingly, intelligently made. I find that
20 Mr. Reagan has had the benefit of competent counsel with
21 whom he's indicated he's totally satisfied. I find that
22 there is a sufficient factual basis to support the plea
23 and I will accept the plea as to voluntariness.

24 And before I hear from you, Mr. Malloy, concerning
25 the negotiated sentences as to why I should accept it.

1 I'll be happy to hear from any representative from the
2 victim.

3 MR. DURANT: Thank you, Your Honor.

4 Mr. Hawkins?

5 THE COURT: If you just give me your full name,
6 Mr. Hawkins.

7 MR. HAWKINS: Good afternoon, Judge. Ed Hawkins.
8 As Mr. DuRant said, I'm the ex-husband of Kathy Hawkins.
9 We share a child. This man murdered Kathy Hawkins on our
10 daughter's tenth birthday. There's not a day that's gone
11 by in the past two years -- it's almost a little over a
12 week from her birthday, so almost two years now, not a
13 day goes by that my daughter doesn't ask the question why
14 this happened, and I can't explain that.

15 The question that really bothers me, Judge, is will
16 he come after me when he gets out. And, Judge, frankly,
17 I don't want him to ever get out. I ask that you accept
18 this plea and give him the full 25 years because I think
19 that almost ensures that he won't get out. That sounds
20 cold. I'm sorry. I'm doing it for my daughter's sake.
21 I don't want her to ever have to worry or any other women
22 to have to worry about him going after them. And I
23 appreciate your time, Your Honor.

24 THE COURT: Thank you for being here. Thank you
25 for your remarks, and I appreciate those remarks.

1 MS. HAWKINS: And, Judge, I have spoken to her
2 family members also and they concur in this, Ms. Hawkins'
3 family members.

4 THE COURT: Thank you, and I would also add that
5 I'm extremely sorry for what brings you here and for the
6 horrible trauma that your daughter has had to experience.
7 Thank you, sir. And you as well. Thank you.

8 Mr. Malloy, I'll be happy to hear from you now,
9 sir.

10 MR. MALLOY: Thank you, Your Honor. May it please
11 the Court. Mr. Reagan has been incarcerated for a total
12 of 752 days. During the time I've represented him I've
13 spent a lot of time getting to know him and I can tell
14 you that this is a very sad case for everyone involved.

15 Of course, you just heard there was a relationship
16 between he and Ms. Hawkins, and obviously you just heard
17 the worst of that from the Solicitor, but over the course
18 of eight years, Your Honor. They met each other in
19 Alcoholics Anonymous. The two shared a common vice.
20 They both had serious drinking problems, and at times
21 they helped each other with those problems; however, at
22 times they fuelled the fire, which was the greatest vice
23 between them.

24 Mr. Reagan has referred to Ms. Hawkins as the love
25 of his life when he has talked about her to me before.

1 To him he says this has been a nightmare ever since he --
2 ever since the night in question, Your Honor.

3 I've spoken to a lot of family members of
4 Mr. Reagan, people who have known him, and every one of
5 those people refers to the span of 10 years between 1995
6 and 2005 when David was sober.

7 During that time he started a painting business,
8 Reagan Painting. He has several employees. He would buy
9 houses and fix them up. At one point he had nine houses
10 around the Charleston area.

11 He was an athlete, Your Honor. In 2002 he ran the
12 Boston Marathon, avid biker, swimmer, competed in
13 triathlons. And, Your Honor, every person who I've
14 spoken to about him indicates that when he wasn't
15 drinking he was an amazing man; however, when he was
16 drinking he just could not hold it together.

17 And most recently in 2006 his former wife left him,
18 and in 2006 his mother also passed away, and from my math
19 judging from his record and my conversations with him
20 that appears to be when he really took a turn for the
21 worse, that he never quite recovered from it.

22 Your Honor, I mentioned his mother passed away.
23 She did not die of natural causes. While David is joined
24 today by two of his brothers another one of his brothers
25 is currently serving time in the Department of

1 Corrections for murdering his mother, and it was
2 something that he never could quite get over. That was
3 -- from his prior record that's when things just started
4 going wrong.

5 He did experience times of sobriety. Since then,
6 as I said, he was very active in his Alcoholics Anonymous
7 group and that's where he met Kathy, which unfortunately
8 led to the terrible, terrible reason that he is here
9 today.

10 Your Honor, I have had several -- I have
11 investigated this case very thoroughly. As first we
12 thought there was an issue with the cause of death. We
13 had a forensic pathologist review the case. He will
14 agree totally with the findings of the autopsy report.

15 And, Your Honor, I've had Dr. Mulbrey meet with
16 David to discuss his issues. As he mentioned earlier he
17 was bipolar. It is in Dr. Mulbrey's opinion that his
18 bipolar disorder, it leads to his alcohol abuse.

19 Your Honor, I realize the Department of Corrections
20 is required to provide him with the medication that he
21 needs. For whatever it's worth I would ask you to
22 consider writing that on the sentencing sheet that he be
23 provided with all medications that he needs, Your Honor.

24 I have done the math with David and I see you have
25 also noted as well the grim reality is that with his age

1 this could be a life sentence. We have discussed that
2 many times. By my math it puts him at about 76 years old
3 upon his release. He understands that. He's never
4 wanted a trial in this matter. He told me he hopes he
5 can outlive it.

6 I can tell you that David has been one of the most
7 courteous and respectful clients that I've ever had.
8 He's been a pleasure to work with. He's made a great
9 impression on the investigators in our office and
10 everyone else who has worked with him, Your Honor.

11 He understand what he is giving up. He understands
12 what he would be facing in a trial and he understands
13 what he's getting here today. I'm just asking you to go
14 along with the negotiated sentence of 25 years.

15 THE COURT: Thank you, Mr. Malloy.

16 Mr. Reagan, is there anything you wish to add?

17 THE DEFENDANT: Yes, sir. I would like to address
18 the Hawkins family. I'm sorry that the rest of them
19 didn't show up. I'm really sorry for this. I wish there
20 was anything that I could do. When I think about
21 Kathy -- every day I think about Kathy and when I do I
22 think about her the same time I know her pain. She loved
23 her momma so much and I know it's got to be impossible to
24 explain. If I could swap places with her I would.
25 There's no doubt. And that's all. I'm sorry.

1 THE COURT: All right. Is there anything else,
2 Solicitor?

3 MR. DURANT: Nothing from the State, Your Honor.

4 THE COURT: Anything else, Mr. Malloy?

5 MR. MALLOY: Nothing further.

6 THE COURT: Well, it brings some closure to this,
7 as little relief as that gives, but it does give some,
8 and I'm sure you're sincere. I just wish people could
9 think of that before instead of after. And we've seemed
10 to have had today a number of criminal domestic violence
11 and I hope and pray that somehow this message is -- that
12 we as a state will change that. It's a tragedy and a
13 travesty that a state as beautiful as this state has to
14 lead the list in that department. I'm sorry.

15 But I think the sentence is probably a reasonable
16 sentence, and I commend both sides. I'll accept it. The
17 sentence of the Court, therefore, Mr. Reagan, is you be
18 committed to the Department of Corrections for 25 years.
19 I'll give you credit for 752 days. Good luck.

20 THE DEFENDANT: Thank you, Judge.

21 THE COURT: I've also said, Provide the defendant
22 with all medication needed.

23 MR. DURANT: Thank you very much, Your Honor.

24 THE COURT: Thank you.

25 (WHEREUPON, the hearing was concluded.)

1 C E R T I F I C A T E

2

3 I, Sharon L. Vizer, Official Court Reporter for the
4 Ninth Judicial Circuit of the State of South Carolina, do
5 hereby certify that the foregoing is a true, accurate and
6 complete transcript of record of all the proceedings had
7 and the evidence introduced in the hearing of the
8 captioned case in Circuit Court on the 11th day of August
9 2015.

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

12

13 August 20, 2016

14 s/Sharon L. Vizer

15 SHARON L. VIZER

16 CIRCUIT COURT REPORTER

17

18

19

20

21

22

23

24

25

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

DAVID MARK REAGAN,
 Full name and prison number (if any) of Applicant
SCDC #365028

vs.

State of South Carolina,
Respondant,

2014-CP-10-2768

IN THE COURT OF COMMON PLEAS
Ninth Judicial Circuit

S.C. Code Ann. § 17-27-10 et. seq.

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

If the application is taken in 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 Broad River Corr Instn Columbia SC 29210
2. Name and location of Court which imposed sentence Charleston County
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014-GS-10-02316 [Involuntary]
 - (b) SC Code § 16-03-50 [Manslaughter]
 - (c) ↓
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) August 11, 2015
 - (b) Twenty-Five (25) years imprisonment
(Violent/Most Serious Offense)

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (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. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Ineffective Assistance of Counsel
- (b) Deived Right to Appeal.
- (c) No grounds/issues preserved for review.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: →

- (a) Please see pgs. 3-1 thru
 (b) X
 (c) X

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

- (a) Please see pgs. 3-1 thru
 (b) X
 (c) X

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

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

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

- (a) the specific nature thereof:
 i. 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

REAGAN V. STATE, POST-CONVICTION RELIEF

ATTACHED PAGE 3-1

10. GROUNDS FOR RELIEF:

APPLICANT ALLEGES THAT HE WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE U.S. CONSTITUTION, AMENDMENT VI, AS APPLICABLE TO THE STATE OF SOUTH CAROLINA BY AND THROUGH THE 14TH AMENDMENT. STRICKLAND V. WASHINGTON, 466 U.S. 668(1984); BUTLER V. STATE, 334 SE2d 813 (1985).

COUNSEL WAS INEFFECTIVE FOR FAILING TO THOROUGHLY RESEARCH, INVESTIGATE, ADVISE ABOUT AND USE MERITORIOUS LEGAL DEFENSE STRATEGY AND PROBATIVE EVIDENCE TO DEFEND THE APPLICANT AGAINST INTENTIONAL HOMICIDE CHARGE. THERE EXISTED PROBATIVE EXCULPATORY EVIDENCE TO DEFEND AND SHOW THAT THE APPLICANT DID NOT INTENTIONALLY KILL THE VICTIM IN THIS CASE, AND COUNSEL FAILED TO USE SUCH EVIDENCE BUT RATHER COERCED THE APPLICANT INTO PLEADING GUILTY TO A CRIMINAL OFFENCE THAT HE IS INNOCENT OF AND DID NOT COMMIT.

HAD COUNSEL PROPERLY ADVISED THE APPLICANT WITH RESPECT TO THE LAW, FACTS OF CASE, AND EVIDENCE, THE APPLICANT WOULD NOT HAVE PLED GUILTY TO INTENTIONAL KILLING BUT RATHER WOULD HAVE EXERCISED HIS CONSTITUTIONAL RIGHT TO A TRIAL BY JURY OF HIS PEERS.. HILL V. LOCKHART, ____ U.S. (1967)

-END OF GROUNDS FOR RELIEF-

11. FACTS SUPPORTING RELIEF:

A. THE APPLICANT, DAVID MARK REAGAN, AND THE "VICTIM" IN THIS TRIAL CASE, KATHY HAWKINS, WERE BOYFRIEND/GIRLFRIEND FOR YEARS LEADING UP TO THE TIME OF HAWKINS DEATH ON OR ABOUT AUGUST 20, 2013, IN CHARLESTON, S.C.

B. PRIOR TO MS. HAWKINS DEATH THE APPLICANT HAD BEEN STAYING WITH HAWKINS AT HER APARTMENT ON ROYAL PALMS BLVD. IN CHARLESTON. THE TWO NORMALLY SPENT THEIR TIME TOGETHER GETTING DRUNK, ENGAGING IN SEXUAL ACTIVITIES AND WATCHING TELEVISION ALL DAY.

C. MS. HAWKINS, AS WELL AS THE APPLICANT, HAD A LONG, TORTURED HISTORY OF ALCOHOL AND SUBSTANCE ABUSE. THE TOXICOLOGY REPORT CONDUCTED AFTER HAWKIN'S DEATH SHOWED SEVERAL PRESCRIPTION DRUGS AND ETHANOL(ALCOHOL) IN HER SYSTEM AT THE

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TIME OF HER DEATH. IN FACT, HAWKIN'S ALCOHOL LEVEL WAS DANGEROUSLY HIGH AT 3.69 B.A.C., WHICH IS FOUR TIMES THE LEGAL LIMIT TO DRIVE (SEE EXHIBIT A).

D. THE APPLICANT, WHO IS PRONE TO BLACK-OUT CAUSED BY EXCESSIVE ALCOHOL CONSUMPTION, HAS PROBLEMS WITH HIS RECOLLECTION OF EVENTS LEADING UP TO MS. HAWKINS DEATH AND SHORTLY THEREAFTER. NEVERTHELESS, APPLICANT INFORMED DEFENSE COUNSEL (LUKE MALLOY) THAT HE (APPLICANT) DID NOT INTENTIONALLY KILL MS. HAWKINS. APPLICANT EXPLAINED TO COUNSEL THAT HE (APPLICANT) AND HAWKINS HAD BEEN DRINKING EXCESSIVELY; THAT THE COUPLE ENGAGED IN GRATUITOUS SEXUAL INTERCOURSE; THAT HAWKINS WANTED APPLICANT TO INSERT OBJECTS (INCLUDING WINE BOTTLES) IN HER ANUS AND VAGINA AT TIMES WHEN APPLICANT SUFFERED ERECTILE DYSFUNCTION; THAT THE TWO (HAWKINS AND APPLICANT) OFTEN EXPERIMENTED WITH SEX AFTER WATCHING PORNOGRAPHY TOGETHER; THAT HAWKINS ASKED THE APPLICANT TO "CHOKER" HER DURING INTERCOURSE; THAT SHE (HAWKINS) WOULD AT TIMES MASTURBATE (STIMULATE HERSELF) WITH A WINE BOTTLE WHILE APPLICANT "CHOKED" HER; THAT HAWKINS TOLD APPLICANT THIS "CHOKING" MADE HER FEEL ORGASM BETTER; THAT APPLICANT MAY HAVE GOTTEN TOO DRUNK AND ACCIDENTALLY APPLIED TOO MUCH PRESSURE TO HAWKINS THROAT WHILE THE TWO WERE ENGAGED IN THIS "CHOKING" ACTIVITY; THAT APPLICANT DID NOT INTEND TO HARM OR KILL MS. HAWKINS; THAT THE TWO WERE NOT FIGHTING OR DISAGREEABLE LEADING UP TO HAWKINS DEATH; THAT THE APPLICANT BECAME PARANOID AND SCARED WHEN HE WOKE UP AND DISCOVERED MS. HAWKINS DEAD; THAT HE (APPLICANT) DIDN'T KNOW WHAT TO DO AND PANICKED, LEAVING HAWKINS APARTMENT WITHOUT NOTIFYING AUTHORITIES.

E. AS THE INVESTIGATION PROGRESSED COUNSEL DISCOVERED, OR SHOULD HAVE DISCOVERED, THAT MANY OF THE INITIAL CRIMINAL CHARGES WERE UNFOUNDED AND OBVIOUSLY WOULD NOT BE PURSUED BY THE AUTHORITIES. ORIGINALLY THE APPLICANT WAS CHARGED WITH MURDER, ROBBERY, AND CRIMINAL SEXUAL CONDUCT (CSC); HOWEVER, POLICE INVESTIGATORS SOON DISCOVERED THAT HAWKINS ALLOWED APPLICANT TO KEEP/USE HER BANK DEBIT CARD FOR MONTHS PRIOR TO HER DEATH, SO APPLICANT DID NOT "STEAL" MONEY FROM HAWKINS BANK ACCOUNT NOR ROB HER TO GET THE CARD. RATHER, APPLICANT USED THE DEBIT CARD JUST LIKE HE HAD BEEN DOING (WITH HAWKINS CONSENT) PRIOR TO HAWKINS DEATH. (SEE EXHIBIT "C"). MOREOVER, EVIDENCE SHOWED THAT THE

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APPLICANT DID NOT "STEAL" MS. HAWKINS CAR BUT RATHER HAWKINS PUT THE CAR IN THE APPLICANT'S NAME FOR REGISTRATION AND INSURANCE PURPOSES-MOST LIKELY BECAUSE HAWKINS DRIVERS LICENSE WAS SUSPENDED DUE TO DRIVING UNDER THE INFLUENCE CONVICTIONS . FINALLY, THE CSC CHARGES WERE UNFOUNDED BECAUSE THE SEXUAL RELATIONS BETWEEN HAWKINS AND THE APPLICANT WERE CONSENSUAL AMONG ADULTS BOTH OVER 18-YEARS OF AGE, SO THERE WAS NO FACTUAL BASIS TO SUPPORT CSC CHARGES.

F. AT NO TIME DID COUNSEL ADVISE APPLICANT THAT THERE WAS EVIDENCE SUPPORTING THE APPLICANT'S CLAIMS OF INNOCENCE. APPLICANT REPEATEDLY ASKED HOW THE PROSECUTOR COULD CHARGE HIM(APPLICANT) WITH CSC AND ROBBERY CHARGES IN LIGHT OF THE FACTS SURROUNDING SUCH ACCUSATIONS. COUNSEL DID NOT REVIEW THE CASE FILES WITH APPLICANT, AND DID NOT EXPLAIN ANY OF THE EVIDENCE DISCOVERED IN APPLICANT'S CASE. INSTEAD, COUNSEL ADVISED APPLICANT THAT HE(APPLICANT) WAS IN SERIOUS TROUBLE AND WOULD BE LUCKY TO ESCAPE WITHOUT THE DEATH PENALTY OR LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE.

G. EVIDENCE COLLECTED BY LAW ENFORCEMENT SHOWED THAT WINE BOTTLES HAD BEEN USED TO PENETRATE MS. HAWKINS ANAL AND VAGINAL CAVITIES. DNA WAS GATHERED FROM THE "CRIME SCENE" (APARTMENT) THAT SHOWED MS. HAWKINS WAS THE DONOR OF DNA IN VARIOUS STAGES OF DEGENERATION (DEGRADATION) -PROVING THAT HAWKINS HAD USED THE BOTTLES OF WINE AT VARIOUS TIMES/DATES LEADING UP TO THE DAY OF HER DEATH. KIM COLLINS, A MEDICAL PATHOLOGIST, STATED DURING INTERVIEW WITH COUNSEL AND INVESTIGATOR THAT WOMEN USING WINE BOTTLES AS SEXUAL TOYS TO INSERT INTO THEIR VAGINAS WAS NOT A "FAR FETCHED" PROBABILITY. (SEE EXHIBIT A). THIS FORENSIC EVIDENCE SUPPORTS THE APPLICANT'S STORY THAT HAWKINS CONSENTED TO WINE BOTTLE SEX AND HAD BEEN DOING SUCH BEFORE THE LAST OCCASION AROUND THE TIME OF HER DEATH.

H. APPLICANT DID NOT INTENTIONALLY KILL MS. HAWKINS BY "CHOKING" HER. APPLICANT LOVED MS. HAWKINS AND NEEDED HAWKINS FOR FINANCIAL SUPPORT AS WELL AS SEXUAL FAVORS, AND BEING APPLICANT'S DRINKING PARTNER. THE APPLICANT MAY HAVE UNFORTUNATELY CAUSED MS. HAWKINS DEATH BY CHOKING HER, BUT DEATH WAS NOT INTENDED BY EITHER PARTIES. INSTEAD, APPLICANT "CHOKED" HAWKINS AT HER REQUEST BECAUSE SHE ENJOYED THE HEIGHTENED ORGASMIC EFFECT SHE EXPERIENCED WHEN APPLICANT "CHOKED" HAWKINS DURING SEX (CLITORAL STIMULATION AND VAGINAL/ANAL INTERCOURSE). MS HAWKINS WOULD DEMAND THAT APPLICANT "CHOKE" HER INTO

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ATTACHED PAGE 3-4

UNCONSCIOUSNESS (OR CLOSE TO PASSING OUT) WHILE THE TWO WERE ENGAGED IN SEX. TRAGICALLY, DURING ONE OF THE COUPLES MUTUALLY DRUNKEN STUPORS, AND WHILE ENGAGING IN SEX, THE APPLICANT "CHOKED" HAWKINS TOO LONG AND HARD, WHICH CAUSED HER UNINTENDED DEMISE.

I. PRIOR TO HAWKINS THE APPLICANT HAD NEVER HEARD OF ANYONE CHOKING THEIR PARTNER DURING SEX, AND IT WAS A RELATIVELY NEW ACTIVITY FOR HAWKINS AS SHE HAD RECENTLY BEEN ASKING APPLICANT TO "CHÖKE" HER. HAWKINS TOLD APPLICANT THAT SHE HAD "DISCOVERED" IT WHILE VISITING A WEBSITE A COUPLE OF MONTHS PREVIOUSLY. THE APPLICANT WAS EXTREMELY APPREHENSIVE ABOUT THE PRACTICE BUT DID IT RELUCTANTLY BECAUSE HAWKINS WAS ADAMANT ABOUT DOING IT. THE PRACTICE INVOLVED APPLICANT PUTTING HIS BARE HANDS AROUND HAWKINS NECK/THROAT AND CUTTING OFF THE BLOOD FLOW TO HER HEAD. SHE WOULD HAVE HIM SQUEEZE AND RELEASE, SQUEEZE AND RELEASE AND HOLD IT LONGER WHEN HAWKINS BEGAN HER ORGASMS. THIS PRACTICE IS READILY KNOWN AS "CONSENSUAL EROTIC ASPHYXIATION" OR " EROTIC ASPHYXIA" AND IS A SEXUAL EXPERIMENTATION/PRACTICE OF WHICH DEATH OFTEN RESULTS, BUT IS NOT THE INTENDED RESULT. FORENSIC EVIDENCE IN THIS CASE SUPPORTS THE LEGAL DEFENSE OF EROTIC ASPHYXIA INASMUCH AS HAWKINS DID NOT SHOW ANY EXTREME OUTSIDE INJURIES TO HER THROAT/ NECK AREA THAT WOULD BE ASSOCIATED WITH A VIOLENT, INTENTIONAL STRANGULATION OF VICTIM. SEXUAL ACTS INVOLVING EROTIC ASPHYXIA ARE CLINICALLY AND LEGALLY RECOGNIZED AS A DEVIANT BEHAVIOR. THE BEHAVIOR HAS BEEN THE SUBJECT OF CRIMINAL PROCEEDINGS. (SEE STATE V. THOMAS, 342 P. 3d628 (CAL. 2014). MS. HAWKINS NECK/THROAT AREA DID SHOW SIGNS OF STRUCTURAL DAMAGE AND A BROKEN CARTILAGE BONE; HOWEVER HAWKINS SUFFERED AN ACCIDENT PREVIOUSLY AND BROKE A BONE IN HER NECK AT THAT TIME WHICH MAY HAVE MADE HER SUSCEPTIBLE TO EASY STRUCTURAL DAMAGE DUE TO PREVIOUS INJURY. (SEE EXHIBIT B, MEDICAL RECORD OF HAWKINS PRIOR TO BROKEN NECK BONE).

J. DEFENSE COUNSEL KNEW, OR SHOULD HAVE KNOWN, ABOUT THE DEVIANT SEXUAL BEHAVIOR WHICH ENTAILED THE "CHOKING" OF A SEXUAL PARTNER (CONSENSUAL EROTIC ASPHYXIATION) . COUNSEL SHOULD HAVE, BUT DID NOT, DISCUSS THIS WITH APPLICANT, AND ATTEMPTED TO ASSUAGE APPLICANT'S SHAME AND EMBARRASSMENT ABOUT THE PRACTICE BY EXPLAINING TO APPLICANT THAT EROTIC ASPHYXIA IS A COMMON SEXUAL PRACTICE

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AMONG DEVIANT SUBCULTURES AND NOT SOMETHING TO BE ASHAMED ABOUT TO THE EXTENT OF GOING TO PRISON FOR FEAR OF BRINGING OUT THE TRUTH. AT NO TIME DID DEFENSE COUNSEL BRING UP THE SUBJECT OF EROTIC ASPHYXIA WITH THE APPLICANT, NOR DID COUNSEL ATTEMPT TO USE THE OBVIOUS FORENSIC EVIDENCE BEING DEVELOPED BY STATE INVESTIGATORS AND EXPERTS THAT POINTED AN OBVIOUS FINGER AT THIS UNORTHODOX SEXUAL PRACTICE.

K. DEFENSE COUNSEL, ALONG WITH INVESTIGATOR HARRY LONG, CONSULTED WITH AND INTERVIEWED DR. KIM COLLINS, A S.C. BOARD CERTIFIED MEDICAL PATHOLOGIST, ON OR ABOUT JUNE 24, 2014. DR. COLLINS STATED THAT "IN HER PAST WORK EXPERIENCES DOING AUTOPSIES, SOME PEOPLE WOULD CHOKE THE OTHER TO CREATE A HYPNOTIC EFFECT TO HAVE A BIGGER ORGASM". (SEE EXHIBIT A).

L. HAD COUNSEL SIMPLY SAT DOWN WITH THE APPLICANT AND DISCUSSED THE SUBJECT OF EROTIC ASPHYXIA, AND THE FORENSIC EVIDENCE SHOWING A PLAUSIBLE STRATEGY BASED ON EROTIC ASPHYXIA, THE APPLICANT WOULD HAVE WELCOMED ASSISTANCE OF COUNSEL. WITHOUT COUNSEL'S PROFESSIONAL OPINION AND INTELLECTUAL INPUT THE APPLICANT WAS AT THE MERCY OF PROSECUTION INASMUCH AS COUNSEL'S DEFICIENT PERFORMANCE FAILED TO PROVIDE APPLICANT WITH ANY MEASURE OF DEFENSE IN THE ADVERSARIAL PROCESS.

M. COUNSEL APPARENTLY DID NOT REVIEW THE RESULTS OF APPLICANTS MENTAL HEALTH EVALUATION WHICH WAS INCONSISTENT WITH HIS CUSTODIAL INTERROGATION IN THAT APPLICANT READILY ADMITTED TO ENGAGING IN UNORTHODOX SEXUAL ACTIVITIES WITH MS. HAWKINS. THIS INCLUDED, BUT WAS NOT LIMITED TO, INSERTING BOTTLES IN HAWKINS VAGINA WHEN APPLICANT SUFFERED ERECTILE DYSFUNCTION (SEE EXHIBIT ¹~~E~~ L.W. MULBRY, JR. M.D., S.C. FORENSIC PSYCHIATRY REPORT). COUNSEL TURNED A BLIND EYE TO A MULTITUDE OF FORENSIC EVIDENCE SUPPORTING A DEFENSIVE STRATEGY BASED ON UNINTENTIONAL HOMICIDE THROUGH ACCIDENTAL DEATH FROM CONSENSUAL EROTIC ASPHYXIATION.

N. APPLICANT'S PRIVATE INVESTIGATOR SPECIFICALLY TOLD THE APPLICANT THAT HE (APPLICANT) SHOULD GO TO TRIAL AND TELL HIS STORY TO THE JURY, BUT ATTORNEY MALLOY NEVER GAVE APPLICANT ANY LEGAL BASIS FOR DENYING THE DEATH OF MS HAWKINS(SEE EXHIBIT ¹~~D~~, NARRATIVE BY INVESTIGATOR HARRY LONG).

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O. ATTORNEY MALLOY ADVISED APPLICANT THAT IT WAS HIS OPINION (AS A PROFESSIONAL DEFENSE ATTORNEY) THAT APPLICANT INTENTIONALLY CAUSED THE DEATH OF MS. HAWKINS AND THEREFORE APPLICANT SHOULD PLEAD GUILTY, OR FACE TRIAL AND SURELY BE CONVICTED OF MURDER AND SENTENCED TO LIFE WITHOUT PAROLE.

P. BASED EXCLUSIVELY ON COUNSEL'S LEGAL ADVICE, APPLICANT PLED GUILTY TO INTENTIONALLY KILLING MS. HAWKINS DESPITE THE FACT THAT IT WAS AN ACCIDENT AND HER DEATH WAS AN UNINTENDED RESULT OF TOO MUCH DRINKING AND EROTIC ASPHYXIATION DONE WITH MS. HAWKINS CONSENT. A TERRIBLE TRAGEDY, BUT AN ACCIDENT NEVERTHELESS. HAD COUNSEL PROVIDED APPLICANT WITH THE EFFECTIVE ASSISTANCE OF COUNSEL REQUIRED, THE APPLICANT WOULD HAVE TAKEN HIS CASE TO TRIAL.

Q. INSTEAD OF TRYING TO HELP APPLICANT, COUNSEL COERCED A GUILTY PLEA OUT OF APPLICANT. COUNSEL SCARED APPLICANT INTO PLEADING GUILTY BY ADVISING HIM THAT THE STATE WOULD GET A GUILTY VERDICT ON ALL CHARGES AND APPLICANT WOULD BE SENTENCED TO LIFE IMPRISONMENT BECAUSE APPLICANT DID NOT HAVE A DEFENSE TO THE CRIMINAL CHARGES LOGGED AGAINST HIM. HAD COUNSEL ADVISED APPLICANT WITH RESPECT TO THE COMMONLY KNOWN PRACTICE OF CONSENSUAL EROTIC ASPHYXIATION AND THE FORENSIC EVIDENCE SUPPORTING THIS SEXUAL ACTIVITY, THE APPLICANT WOULD NOT HAVE PLED GUILTY, BUT RATHER EXERCISED HIS CONSTITUTIONAL RIGHT TO A JURY TRIAL.

STATE V. THOMAS, 342 P.3d 628 (CAL. 2014) (CONVICTION REVERSED BECAUSE "EVIDENCE THAT VICTIM ENGAGED IN AND ENJOYED SEXUAL ACTS INVOLVING AUTOEROTIC ASPHYXIA WAS RELEVANT AT TRIAL AS TO WHETHER THE DEFENDANT INTENTIONALLY KILLED HER BY CHOKING HER WITH A BELT")

STATE V. BRASWELL, 2008 WL 238014 TEM. 1/28/08 (CASE PROVIDES EXPERT DETAILS ABOUT EROTIC ASPHYXIATION).

STATE V. HEMBREE, 770 SE2d 77 (2015)

R. THE APPLICANT SINCERELY REGRETS WHAT HAPPENED TO MS. HAWKINS AT HIS HANDS; HOWEVER, APPLICANT LOVED MS. HAWKINS DEEPLY, WAS NOT HAVING ANY ARGUMENTS WITH OR FIGHTING WITH MS. HAWKINS ANYTIME AROUND THE TIME OF HER DEATH. WHEN HE WOKE UP TO DISCOVER MS. HAWKINS DEAD, THE APPLICANT SHOULD HAVE -BUT

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ATTACHED PAGE 3-7

REGRETFULLY DID NOT- IMMEDIATELY NOTIFY AUTHORITIES. AT THAT TIME APPLICANT THOUGHT MS. HAWKINS DEATH WAS AS A RESULT OF HER DRINKING, NOT HIS "CHOKING", AND HE DID NOT "RUN" OUT OF ANY GUILT FOR KILLING MS. HAWKINS. APPLICANT WAS SIMPLY IN FEAR OF BEING AROUND A DEAD PERSON AND ONLY WANTED TO GET AWAY, GET INTOXICATED AND BE ALONE.

HAD THE APPLICANT BEEN PROVIDED EFFECTIVE REPRESENTATION THERE IS A REASONABLE POSSIBILITY- IN LIGHT OF THE EVIDENCE- THAT A JURY WOULD HAVE ACQUITTED THE APPLICANT OF THE INTENTIONAL HOMICIDE AND FOUND HIM GUILTY OF RECKLESS HOMICIDE OR INVOLUNTARY MANSLAUGHTER AT THE MOST. CONVERSELY, COMPETENT COUNSEL COULD HAVE BROKERED A PLEA AGREEMENT MORE FITTING TO THE CIRCUMSTANCES OF THE CASE (I.E. NON-INTENTIONAL HOMICIDE, FAILURE TO REPORT DEATH, ETC.,) WITH A MORE JUST PRISON TERM THAN 25 YEARS OF IMPRISONMENT AT 85%.

APPLICANT RESERVES THE RIGHT TO AMEND POST- CONVICTION ONCE COUNSEL HAS BEEN APPOINTED. THE APPLICANT REQUESTS AN EVIDENTIARY HEARING IN THIS MATTER.

iv. N/A

(d) the date of each such disposition:

i. N/A

ii.

iii.

iv.

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

i. N/A

ii.

iii.

iv.

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

NO

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

(a) which grounds have been presented:

i. NONE

ii.

iii.

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

i. N/A

ii.

iii.

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

(a) Ineffective Assistance of Counsel, Amend. VI.

(b) Postconviction proper vehicle for collateral review

(c) Incompetence of Petitioner

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? N/A
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A Pro Se
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- Mr. Luke Malloy, Charleston County Public Defender
 - 101 Meeting Street, 5th Floor
 - Charleston, SC 29401-2214 (SC Bar #100169)
- (b) the proceedings at which each such attorney represented you:
- Guilty Plea
 - Sentencing
 - X
19. State clearly the relief you seek in filing this application:
Please See Attached Page 5-A
20. Are you now under sentence from any other court that you have not challenged?
NO.

|||||
DAVID MARK REAGAN #365028
BROAD RIVER CI
4460 BROAD RIVER RD
COLUMBIA SC 29210

INVESTIGATORS REPORT

CHARLESTON COUNTY PUBLIC DEFENDERS OFFICE

DEFENDANT: DAVID MARK REAGAN CHARGE: MURDER

ATTORNEY: LUKE MALLOY DATE: 6-24-14

REF: STATE VS DAVID MARK REAGAN INVESTIGATOR: HARRY LONG

ON 6-24-14, AT APPROXIMATELY 115 PM, ATTORNEY LUKE MALLOY AND I MET WITH KIM COLLINS A MEDICAL PATHOLOGIST CONSULTANT.

MS. COLLINS STATED THAT THE DECEDENT KATHY HAWKINS CAUSE OF DEATH WAS STRANGULATION. MS. COLLINS AGREED WITH THE FINDINGS OF CINDY SCHANDL WHO CONDUCTED THE ORIGINAL AUTOPSY ON KATHY HAWKINS.

I ASKED MS. COLLINS IF THE AMOUNT OF ALCOHOL FOUND IN KATHY BLOOD COULD BE FATAL? SHE REPLIED THAT IT COULD BE FATAL SINCE KATHY'S BAC WAS 3.69 WHICH IS ABOUT 4X THE LEGAL LIMIT TO DRIVE. THE LEGAL LIMIT IS .08. DUE TO THE DECEDENTS FATTY LIVER, IT MAY HAVE BEEN HARD TO PROCESS THE ALCOHOL. MS. COLLINS STATED THAT THE VALUIM AND OTHER DRUGS MIXED WITH THE ALCOHOL COULD BE LETHAL BUT MAYBE NOT IN OF ITSELF.

I ASKED IF THE CAUSE OF DEATH IS STRANGULATION, THEN HOW COME THEIR WAS NO PETRIAL HEMMORRAGES IN THE EYES? MS. COLLINS STATED THAT IT IS POSSIBLE TO NOT HAVE THE PETRIAL HEMMORRAGES IN THE EYES DUE TO THE AMOUNT OF FORCE USED. IN THIS CASE THE PERSON WHO STRANGLED KATHY HAWKINS USED A LOT OF FORCE. / ?

MR. MALLOY ASKED IF SHE WOULD BE ABLE TO TELL IF KATHY'S ASSAILENT WAS POSITIONED IN FRONT OF HER OR BEHIND HER. MS. COLLINS REPLIED, "NO, SHE WOULD NOT BE ABLE TOO".

MS. COLLINS STATED THAT THE RIGHT SIDE HEMMORAGE OVER THE EAR COULD HAVE COME FROM A BLUNT OBJECT, FIST, OR SOMETHING WITH LOTS OF FORCE.

(Exhibit "A")

(12)

I ASKED MS. COLLINS IF MAYBE KATHY CHOKED ON VOMIT INSTEAD OF BEING STRANGLED, AND SHE SAID, "NO, THE THROAT WAS CLEAR AND NOTHING INDICATED SUCH".

I ASKED HOW LONG IT WOULD TAKE SOMEONE TO COMPRESS THE TRACHEA TO DEATH?

MS. COLLINS STATED," CONTINUAL PRESSURE IN A MINUTE OR SO, BUT ON/OFF PRESSURE MAYBE SEVERAL MINUTES.

LUKE ASKED MS. COLLINS TO ADDRESS KATHY AND DAVID'S SEX LIFE AND THE VAGINAL AND ANAL TEARS. MS. COLLINS STATED THAT SHE COULD NOT TELL WHAT POSITION THEY WERE IN AND WITH HER BEING AN ALCOHOLIC SHE WOULD BRUISE EASY AND TIME TO HEAL WOULD BE DIFFERENT ON AN ALCOHOLIC VS A NONALCOHOLIC. I ASKED HER IF THE REASON FOR THE TEARS IN THE VAGINAL WALLS AND ANAL WALLS COULD HAVE BEEN THIN AND TEAR EASY DUE TO HER ALCOHOLISM AND SHE STATED "NO". MS. COLLINS DID SUGGEST THAT USING LARGE OBJECTS SUCH AS DILDO'D IS NOT UNUSUAL IN OUR SOCIETY NOW A DAYS DUE TO THE NEW CULTURE WITH BOOKS SUCH AS 50 SHADES OF GRAY AND ADULT NOVELTY STORES THAT PROMOTE SEX TOYS. SHE FURTHER STATES A WINE BOTTLE MAY NOT HAVE BEEN TO FAR FETCHED. SHE ALSO STATED IN HER PAST WORK EXPIERENCES DOING AUTOPSYS, SOME PEOPLE WOULD CHOKE THE OTHER TO CREATE A HYPOSIC EFFECT TO HAVE A BIGGER ORGASM.

MS. COLLINS WENT ON TO SAY THAT THE MICROSCOPIC SAMPLES STUDIED UNDER A MICROSCOPE OF THE THYROID CARTLIAGE SHOWED SIGNS OF ACUTE HEMMORRAGE AND BLOODY. SHE STATED IT WAS FRESH, AND FRESH WOULD MEAN UP TO THE LAST 24 HOURS (POSSIBLE BEFORE TESTING, I AM NOT SURE)

MS. COLLINS STATED THAT KATHY POSSIBLY HAD COAGULOPATHY WHICH IS EASY BRUISING.

MS. COLLINS STATED THE BRUISES ARE FRESH BECAUSE YOU CAN'T BRUISE AFTER DEATH.

I ASKED MS. COLLINS THAT IN HER OPINION AND TO THE HIGHEST DEGREE OF MEDICAL CERTAINTY DID KATHY HAWKINS DIE FROM STRANGULATION? SHE REPLIED, "Yes"!

THIS INTERVIEW CONCLUDED AT 2: 25PM.

INITIAL/EXTENDED PHYSICIAN'S MEDICATION ASSESSMENT/ORDERS AND SERVICE NOTES/PMA
 Name: KATHY HAWKINS ID: 10203985 Ticket No: 38085096 Date: 06/13/2011

Chief Complaint: Report of Prominent (use of the above words)
 "It's changed my life, being diagnosed with bipolar disorder and taking Depakote."

History of Present Illness:

50 yr. old, separated, was referred for court-ordered, outpatient psych. f/u from MUSC-ICU after her first psychiatric hospitalization, from 5/20/11 thru 6/01/11. Client was admitted to MUSC-MICU from the ER on 5/16/11 after intentional ingestion of Xeroxprol alcohol, and a Glasgow Coma Scale of 3. No pertinent liver or kidney damage was reported. The history was reported as the ingestion was in the context of worsening depression and a hx of Major Depressive Disorder. Once on the psychiatry unit, Lamictal 25 mg/day was started for mood lability associated with mania. Depakote was added and the Lamictal was decreased to 25 mg on Tues, Thurs, and Saturday. Discharge summary was not available until after client was seen today, so Lamictal was left at 25 mg QOD dosing. Plan was later noted to be to gradually increase dose to 200 mg/day. Thiazodone 100mg qhs was continued for insomnia, taken prior to hospitalization. Due to her hx of alcohol dependence, she was court ordered to Outpatient Psychiatric Tx at this MHC. On the unit, client was noted to display mood lability, impulsivity, paranoia under stress, unstable relationships, fit and inappropriate anger. It was noted that the tx team felt the sx's were most likely due to the dx of Borderline Personality Disorder, but felt the dx of BPD, type II needs continuing reassessment. On current Depakote dose, a blood level of 103 was maintained and the 'hypomanic' sx's were only minimally improved.

No previous psychiatric tx, but admitted to MUSC-ICU twice for detox. She was also detoxed at The Charleston Center several times and admitted to a Georgia and a North Carolina rehab. program. During her hospital stay (and today) client adamantly denies that this was a suicide attempt, stating she was living with a roommate in a recovery residence, had 50 days of sobriety and impulsively wanted an alcoholic drink but no BTOH was available, so she drank the Xeroxprol alcohol. She denies ever having SI, plans or any attempts. Denies any self-harm behaviors. No h/o psychotic sx's, panic attacks/anxiety.

Client feels 'extremely good' since dx'd and tx'd for BPD. Admits that prior to recent hospitalization, her sleep was poor, mood was unstable, she was impulsive, describing herself as 'always on the go, a mover and shaker'. 'I used to get frustrated with this way of things and I think the Depakote has changed my attitude and my life'.

Client reports a hx of trauma. In 2009, while riding a bike she was hit by a truck and fractured her neck, pelvis, left arm and shoulder. She's had multiple surgeries to repair these injuries. She had 3 miscarriages (that were traumatic for her). She has a 11 y/o daughter. She denies any hx of abuse and no sx's of PTSD.

Pregnant: No

Substance/Alcohol Use:

None Tobacco Caffeine Alcohol Street Drugs Other (if smoked, describe)
 Long hx of alcohol use, mostly wine, daily drinking at peak, usually drinking in a binge pattern.
 First BTOH use, age 17, last use 5/16/11. Experimental use of cocaine and social use of cannabis, none in the past 5 years, May 11, 2011. First DUI arrest. CDV for outpt. and Charleston Center for detox. MUSC-ICU twice for detox. Talbot Recovery Center in Atlanta x 1 mo (2010) and Hope Valley in N.C. x 26 days.

Psychiatric History/Hospitalizations:
 5/20/11 - 6/01/11 Admitted to MUSC-ICU. Prev. admitted to MICU on 5/16/11 after intentional ingestion of Xeroxprol alcohol.

PCP has rx'd psych. medo in the past; Wellbutrin x 2 after 1st miscarriage, then improved on Zoloft. Stopped Zoloft when pregnant 7 yrs ago. April 2008 started on Prozac 20 mg-40 mg/day. Alcohol use increased.

Social History:

Born in Indiana. With both parents until they divorced when she was 13 yrs. old. Grew up in Jacksonville, FLA and in Charleston, SC since 1992. Both parents remarried, 3 brothers, 2 step-brothers and 1 step-sister. Married x 23 years, separated 11/09 (a time of bike accident) and divorce papers filed 4/11. Worked x 15 yrs for Johnson & Wales and job ended when the company moved to Charlotte, NC. Currently lives in recovery residence. Likes doing pottery, making jewelry. Completed BS in Workforce Educ at S. Illinois Univ, 1 semester grad school. Worked as culinary instructor x 15 years.

Family History (med[cal], psychiatric, substance use):
 Father was depressed in later life (after job loss); never tx'd. Father had cardiac artery stenosis, died from

Initial PMA (page 1)

ID: 10203985

Date: 06/20/2011 09:26:16

Charleston County Coroner
 Hawkins, Kathy 00369

"Exhibit B"

R5 DBD 582

(16)

INVESTIGATORS REPORT

CHARLESTON COUNTY PUBLIC DEFENDERS OFFICE

DEFENDANT: DAVID MARK REAGAN CHARGE: MURDER

ATTORNEY: LUKE MALLOY

DATE: 7-17-14

REF: STATE VS DAVID MARK REAGAN INVESTIGATOR: HARRY LONG

On 7-17-14, I received a letter from Danny Conyers, Bank Fraud Investigator for Wells Fargo Bank, in reference to Kathy Hawkins Homicide case. The letter states that Kathy Hawkins has never reported her card stolen, misused, any fraudulent activity on it up to her death. Kathy let several people including David use that card and never considered it Fraud. See the investigator file for the copy of receipts from Cricket and R pub, showing Davids Signature and use of her bank card.

(EXHIBIT C)

⑪

2-18-15 Investigator Harry Long

HE AND MR. MALLOY WOULD HAVE TO DISCUSS THAT OPTION. HE ASKED IN MY OPINION HOW LONG WOULD HE GET IN PRISON. I TOLD HIM I HAVE NO CERTAIN ANSWER, BUT IT COULD RANGE FROM 18-30 YEARS.

DAVID SEEMS TO UNDERSTAND THAT WE COULD NOT ATTACK THE CAUSE OF DEATH, SO WE NEED TO THINK OF ANOTHER STRATEGY.

I TOLD HIM THAT HIS CASE IS TENTATIVELY SCHEDULED ON THE HIGH PRIORITY DOCKET FOR JUNE 1, 2015. HE STATED HE DID NOT THINK GOING TO TRIAL WOULD BE BEST. I TOLD HIM THAT HIS ATTORNEY IS WORKING HARD ON HIS BEHALF. I TOLD HIM MR. MALLOY AND I AGREE ON EVERYTHING ON HIS CASE EXCEPT THAT I THINK HE SHOULD TAKE THE STAND AND SELL HIMSELF TO THE JUDGE AND JURY. DAVID IS A LIKEABLE GUY, AND IF HE IS FOUND GUILTY THE JUDGE MAY TAKE SOME PITY ON HIM. I TOLD HIM THAT MR. MALLOY DIFFERS WITH ME ON THIS ISSUE, AND HE MUST REMEMBER THAT MY OPINION DOES NOT MATTER, AND HE MUST LISTEN TO HIS ATTORNEY AND ONLY CONSIDER HIS ADVICE NOT MINE. DAVID SHOOK HIS HEAD IN AGREEMENT.

DAVID TOLD ME WHEN I ASKED ABOUT HOW HIS HEALTH IS GOING THAT HE IS EXPERIENCING SHORT TERM AND LONG TERM MEMORY LOSS. HE FEELS THAT HE MAY HAVE EARLY SIGNS AND ONSET OF DEMENTIA OR ALZHIEMERS. I TOLD HIM I WOULD PASS THIS ON TO MR. MALLOY FOR POSSIBLE TESTING IF HE FEELS IT IS BENEFICIAL TO HIS CASE.

("Exhibit D")

Motion For Appointment of Counsel
APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

David Mark Reagan

I, A , 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. ✓

15/ David Mark Reagan
Applicant

SWORN or affirmed to and subscribed before me this
23rd day of April, 2014

[Signature]
Notary Public

My Commission Expires: August 26, 2025

David Mark Reagan
Broad River Court Inst.
4460 Broad River Rd
Columbia, SC 29210
Applicant, Pro Se



STATE OF SOUTH CAROLINA

VERIFICATION

County of Richland
David Mark Reagan

I, David Mark Reagan, 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. to the best of my recollections

/s/ David Mark Reagan

David Mark Reagan

Pro Se, Applicant

SWORN to and subscribed before me this 27th
day of April, 2016.

/s/ Janelle T. Spearman

(L.S.)

Notary Public

My Commission Expires

JANELLE T. SPEARMAN
Notary Public-State of South Carolina
My Commission Expires
August 26, 2025



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

David Mark Reagan, #365028,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

Case No.: 2016-CP-10-2768

RETURN

In response to the post-conviction relief application filed on May 26, 2016, Respondent would show this Court:

I.

Applicant is presently incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment. Applicant was indicted by the April 2014 term of the Charleston County Grand Jury for murder (2014-GS-10-02316). Luke Malloy, Esquire, represented him. Bruce Durant, Esquire, represented the State. On August 11, 2015, Applicant pleaded guilty to the lesser included offense of voluntary manslaughter before the Honorable R. Markley Dennis, Jr. As part of the plea negotiations, the State also dismissed an indictment for a related charge of criminal sexual conduct (2014-GS-10-2326), and unrelated charges for a hit and run (2013-GS-10-2230) and domestic violence, second, involving the same victim (2013-GS-10-1620). Pursuant to a negotiated sentence, Judge Dennis sentenced Applicant to imprisonment for 25 years. Applicant did not appeal his conviction or sentence.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in

custody unlawfully for the following reasons:¹

1. Ineffective Assistance of Counsel, in that:

- a. "Counsel was ineffective for failing to thoroughly research, investigate, advise about and use meritorious legal defense strategy and probative evidence to defend the Applicant against intentional homicide charge. There existed probative exculpatory evidence to defend and show that the Applicant did not intentionally kill the victim in this case, and counsel failed to use such evidence but rather coerced the Applicant into pleading guilty to a criminal offence that he is innocent of and did not commit;
- b. Counsel failed to discuss with Applicant the subject of "erotic asphyxia" and the forensic evidence showing a plausible strategy based on erotic asphyxia. Applicant accidentally caused the death of the victim through choking her, which the victim asked him to do because it heightened her orgasm during sex.
- c. "At no time did counsel advise Applicant that there was evidence supporting the Applicant's claims of innocence...Counsel did not review the case files with Applicant, and did not explain any of the evidence discovered in Applicant's case. Instead, Counsel advised Applicant that he was in serious trouble and would be lucky to escape without the death penalty or life imprisonment without the possibility of parole."
- d. Evidence collected at crime scene indicating that wine bottles had been used to penetrate the victim's anal and vaginal cavities showed that she was the donor of DNA in various stages of degeneration, proving she had used them at various times leading up to the date of her death. This supports Applicant's story that she consented to wine bottle sex and had been doing so at the time of her death.
- e. "Had Applicant been provided effective representation there is a reasonable possibility in light of the evidence that a jury would have acquitted Applicant of the intentional homicide and found him guilty of reckless homicide or involuntary manslaughter at the most. Conversely, competent counsel could have brokered a plea agreement more fitting to the circumstances of the case.
- f. Based on Applicant's legal advice, Applicant pled guilty to intentionally killing the victim despite the fact that it was an accident and her death was the unintended result of too much drinking and erotic asphyxiation done with the victim's consent.
- g. Counsel never gave Applicant any legal basis for denying the death of the victim
- h. Counsel advised Applicant that it was his opinion Applicant intentionally caused the death of the victim and therefore he should plead guilty or face trial and surely be convicted of murder and receive life without parole.

¹ Respondent has summarized the claims Applicant asserts in the 10-page memorandum attached to his application.

- i. Defense counsel, along with investigator Harry Long, consulted with and interviewed Dr. Kim Collins, a S.C. board certified medical pathologist, on or about June 24, 2014. Dr. Collins stated that "in her past work experiences doing autopsies, some people would choke the other to create a hypnotic effect to have a bigger orgasm". (see exhibit a).
 - j. Counsel apparently did not review the results of Applicant's mental health evaluation which was inconsistent with his custodial interrogation in that Applicant readily admitted to engaging in unorthodox sexual activities with Ms. Hawkins. This included, but was not limited to, inserting bottles in Hawkins vagina when applicant suffered erectile dysfunction (see exhibit "F" L.W. Mulbry, JD, MD, SC Forensic psychiatry report). Counsel turned a blind eye to a multitude of forensic evidence supporting a defensive strategy based on unintentional homicide through accidental death from consensual erotic asphyxiation.
2. Involuntary Guilty Plea, in that:
- a. "Had counsel properly advised the Applicant with respect to the law, facts of case, and evidence, the Applicant would not have pled guilty to intentional killing but rather would have exercised his constitutional right to a trial by jury of his peers. Hill v. Lockhart, U.S. (1967)."
 - b. Counsel coerced a guilty plea out of Applicant. Counsel scared Applicant into pleading guilty by advising him that the State would get a guilty verdict on all charges and Applicant would be sentenced to life imprisonment because Applicant did not have a defense to the criminal charges lodged against him. Had Counsel advised Applicant with respect to the commonly known practice of consensual, erotic asphyxiation and the forensic evidence supporting this sexual activity, the Applicant would not have pled guilty but would have gone to trial.

For the purpose of this Return, Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections' records, the plea transcript, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Applicant's allegations of ineffective assistance of counsel are entirely without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper

functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

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

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant further claims his plea was not entered knowingly or voluntarily. To find a guilty

plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, [an Applicant's] right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 (1977). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975) overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985). Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

V.

Each and every allegation contained within the application not hereinbefore either expressly

admitted, qualified or explained is hereby denied.

VI.

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

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

ALICIA A. OLIVE
Assistant Attorney General

By: *Alicia A. Olive*
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
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Columbia, SC 29211
Telephone: (803) 734-3737

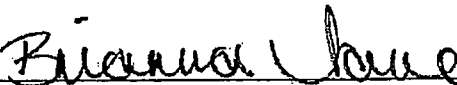
May 15, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2016-CP-10-2768
DAVID MARK REAGAN,	)	
S.C.D.C. No. 365028,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

James Falk, Esquire
Falk Law Firm
PO Box 1058
Charleston, SC 29402

DATED this 15th day of May, 2017.


Brianna Arnone, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON NINTH JUDICIAL CIRCUIT
2016-10-CP-2768

DAVID REAGAN,) TRANSCRIPT OF
APPLICANT,) RECORD
VS.)
DECEMBER 7, 2017
THE STATE OF SOUTH) CHARLESTON, SC
CAROLINA,)
RESPONDENT.)

B E F O R E:

HONORABLE MICHAEL NETTLES

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

JULIE A. COLEMAN, ESQUIRE
Attorney for the Respondent

JAMES FALK, ESQUIRE
Attorney for the Applicant

* * * * *

Ruth C. Weese, RDR
Official Court Reporter
Ninth Judicial Circuit

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1 (The following proceedings were held
2 December 7, 2017, Charleston County, South
3 Carolina, @ 3:37 p.m.)

4 MS. JAMESON: Your Honor, the next
5 matter is David Reagan versus the State of South
6 Carolina, docket number 2016-CP-10-2768. He was
7 indicted during the April 2014 term of the
8 Charleston grand jury for murder. Luke Malloy
9 represented him. On August 11th, 2015, he appeared
10 before Judge Dennis where he pled guilty to the
11 lesser included offense of voluntary manslaughter.
12 As part of plea negotiations the State also
13 dismissed an indictment for a related criminal
14 sexual conduct and unrelated charges for hit and
15 run and a Second Degree criminal domestic violence
16 against the same victim.

17 Pursuant to a negotiated sentence Judge
18 Dennis sentenced applicant to 25 years
19 imprisonment. He did not appeal his conviction or
20 sentence. On May 26th, 2016, he filed an
21 application for post-conviction relief alleging
22 various grounds of ineffective assistance of
23 counsel and involuntary guilty plea that are set
24 forth in his application and I will ask Mr. Falk to
25 summarize those.

1 The State made its return on May 15th,
2 2017. He is represented by James Falk.

3 MR. FALK: Your Honor, I am just going
4 to briefly summarize his claims. It really boils
5 down to my client felt that he had no choice, that
6 he had to accept the plea because he asserts that
7 Mr. Malloy failed to investigate the case and
8 failed to consider some possible defenses to the
9 actions in this case.

10 THE COURT: Very good. You may call
11 your first witness.

12 MR. FALK: We will call Mr. Malloy to
13 the stand.

14 LUKE MALLOY
15 having been duly sworn, testifies as follows:

16 THE CLERK: Please state your full name
17 and spell your last name for the record.

18 THE WITNESS: Luke Malloy, M-A-L-L-O-Y.

19 DIRECT EXAMINATION
20 BY MR. FALK:

21 Q. Mr. Malloy, were you with the public
22 defender's office when you were assigned Mr.
23 Reagan's case?

24 A. I was.

25 Q. And when were you assigned the case,

1 about how long ago?

2 A. I actually represented Mr. Reagan prior
3 to the murder charge that we are here for today on
4 some related charges. I originally was appointed
5 to represent him in January of 2013 and I
6 represented him during the duration of his murder
7 case.

8 Q. Okay. You are no longer with the
9 public's defender office?

10 A. I am not.

11 Q. Since how long?

12 A. Since September 22nd, 2017.

13 Q. Okay. There was some unusual details
14 about this?

15 A. Yes.

16 Q. There was no doubt that Mr. Reagan and
17 the victim in this case were romantically involved?

18 A. That's correct.

19 Q. Was there some testimony that their
20 sexual activities were maybe on the more extreme?

21 A. There was.

22 Q. Because there was some testimony
23 regarding a champagne bottle or wine bottle?

24 A. Yes. That is information that Mr.
25 Reagan shared with me.

1 Q. And that was used as somewhat of a
2 marital aid?

3 A. Yes.

4 Q. Now, she died of strangulation?

5 A. That was determined to be the cause of
6 death.

7 Q. Okay. Didn't my client talk about the
8 fact that strangulation was part of their --

9 A. He never told me that strangulation or
10 him putting his hand around her neck was ever a
11 part of the sexual activities, consensual sexual
12 activities that they engaged in. He never told me
13 that.

14 Q. It seems that there was discussion
15 about -- there was a forensic pathologist involved
16 in this case, right?

17 A. Yes. We consulted with Dr. Collins,
18 Kim Collins, who was a forensic pathologist because
19 we believed there may have been an issue with the
20 cause of death due to the victim, Ms. Hawkins, due
21 to her impaired physical condition at the time of
22 her death.

23 Q. She was an alcoholic?

24 A. Correct.

25 Q. And certainly a belief a lot of

1 bruising that was there could have been a result of
2 long-term alcohol abuse?

3 A. That could be argued, correct.

4 Q. Was there any -- was Dr. Collins ever
5 able to opine how the person was strangled?

6 A. Her opinion was that without a doubt
7 the cause of death was strangulation.

8 Q. Hands from the front, from the back?

9 A. I do not recall if she was able to
10 determine specifically that, but she was able to
11 say in her opinion without a doubt the cause of
12 death was strangulation.

13 Q. There was some discussion in a report
14 from Dr. Collins about petechia?

15 A. Petechia. And that was something I had
16 an investigator who did a lot of work on this case,
17 Harry Long, and he pointed that out to me early on
18 that that was a normal sign of strangulation,
19 petechia. I'm not sure if that's how to pronounce
20 it, but the bulging of the eyes that one would
21 normally see after someone was strangled. In her
22 opinion that was not necessarily -- that wouldn't
23 happen in every strangulation, rather it was a bone
24 in the neck that was crushed that was present in
25 this case that led her to believe that the cause of

1 death was strangulation.

2 Q. Because there were -- there was not
3 this hemorrhaging?

4 A. Correct, that was not present in this
5 case.

6 Q. And you're saying that there was no
7 discussion from my client regarding an explanation
8 for the strangulation?

9 A. There was none.

10 Q. Okay. Now, there was certainly
11 testimony that my client had a -- they were living
12 together; is that correct?

13 A. That's correct.

14 Q. And he -- because originally -- there
15 was a charge of financial charge -- there were
16 charges based on his use of her credit card for
17 example?

18 A. Yes, there was. I believe that was
19 before the murder charge was brought, but there was
20 an allegation that he used her card without her
21 permission after the murder.

22 Q. But there was -- and also used her
23 automobile; is that correct?

24 A. Correct.

25 Q. Because the automobile was actually

1 titled --

2 A. Correct. The automobile actually was
3 titled in Mr. Reagan's name. It was switched from
4 her to his.

5 Q. So what kind of negotiations led up to
6 the plea in this case?

7 A. Mr. Bruce DuRant was the solicitor on
8 the case. He agreed to reduce the murder charge to
9 voluntary manslaughter. There was some negotiation
10 regarding -- it was never a situation where he was
11 going to just plea straight up to manslaughter.
12 There was some negotiation regarding the active
13 sentence that Mr. DuRant would agree to for a plea.
14 I think it started off at 30 and eventually settled
15 at 25. I think I had tried to get him to go lower
16 than that, but the best negotiated plea I could get
17 in this case was for 25 to voluntary manslaughter
18 and his other charges, including the criminal
19 sexual conduct, were dismissed.

20 Q. Did you ever tell my client that if he
21 didn't take this plea he was going to get life or
22 he was -- this possibly could turn into a capital
23 case?

24 A. I don't think I told him it was going
25 to -- I didn't tell him it was going to be a

1 capital case. However, I would have discussed with
2 him penalty ranges of manslaughter versus murder
3 being murder carrying 30 -- with 30 years up to
4 life.

5 Q. Was there some consideration as to my
6 client's age?

7 A. Yes.

8 Q. How old is he? In his mid 50s?

9 A. Yes, and we considered his age. We did
10 the math in terms of his projected release date
11 given the 25-year sentence for voluntary
12 manslaughter. I believe we determined he would be
13 about 76 years old at that point.

14 Q. Why didn't you just try the case? What
15 was the idea -- why didn't you just roll the dice
16 and try the case?

17 A. Mr. Reagan did not want to have a
18 trial.

19 Q. And why was that? What's your
20 testimony as to why he didn't want to have a trial?

21 A. I can't say for sure. I just know on
22 multiple occasions he expressed to me that he was
23 not interested in going to trial.

24 Q. Was that because he thought he was
25 going to get life?

1 A. He knew that was a possibility. He
2 knew that was a possibility.

3 Q. And how much going back and forth was
4 there to get his current offer of 25?

5 A. I can't recall exactly the amount of
6 conversations or e-mails Mr. DuRant and I
7 exchanged, but I know that we -- there was several
8 exchanges. Originally he was offering a negotiated
9 plea for 30 voluntary manslaughter. I was
10 attempting for less than that. And we settled at
11 25.

12 Q. And that was a closed end plea that
13 was --

14 A. Correct. That was a negotiated plea.

15 MR. FALK: I have no further questions.

16 THE COURT: Cross-examination.

17 CROSS-EXAMINATION

18 BY MS. JAMESON:

19 Q. Thank you, Your Honor. Mr. Malloy, how
20 long have you been practicing law?

21 A. Over six years, about six years.

22 Q. And you were with the PD's office when
23 you were appointed to this case?

24 A. That's correct.

25 Q. How many times or do you recall the

1 approximate date of when you were appointed? I
2 think you said January on other charges?

3 A. Correct. It would have been January of
4 2013.

5 Q. And what were those other charges you
6 were appointed to represent him on?

7 A. A criminal domestic violence Second
8 Degree and a leaving the scene of the accident.

9 Q. And that CDV Second what -- was it the
10 same victim as the murder charges here?

11 A. It was.

12 Q. So by the time these murder charges
13 came around you were already actively
14 representing --

15 A. I was.

16 Q. -- Mr. Reagan. Do you recall how many
17 times you met with him?

18 A. I met with him at least 11 times
19 regarding the murder charge. I would have met with
20 him previous to that charge. After he was charged
21 with murder I met with him at least 11 times.

22 Q. Did you file any Brady or Rule 5
23 motions?

24 A. We did file Brady and Rule 5.

25 Q. Did you review that discovery material

1 with Mr. Reagan?

2 A. I did. He was provided with a copy of
3 all of the discovery that we received.

4 Q. Can you give the Court a general
5 overview what the State alleged happened with the
6 murder charge?

7 A. The allegation was that Mr. Reagan
8 strangled the victim Cathy Hawkins who was his
9 significant other and that was the allegation for
10 the murder charge. And regarding the criminal
11 sexual conduct was there was a sexual assault that
12 involved a wine bottle.

13 Q. Were there any other kind of ancillary
14 charges?

15 A. I think there was a financial
16 transaction card fraud that had to do with him
17 using her card after the alleged murder.

18 Q. Did you discuss with him what he
19 recalled happening?

20 A. I did.

21 Q. What did he recall?

22 A. David's recollection was that he and
23 Ms. Hawkins had been staying together for about
24 five days. They had been drinking pretty much the
25 entire time. His recollection was always a little

1 hazy because of that. But to the best of his
2 recollection he informed me on several occasions
3 that on the date that Ms. Hawkins died they had
4 consensual sex using the wine bottle. He went to
5 sleep, he woke up, found her deceased on the couch
6 and at that point left her apartment.

7 Q. Left her apartment. And what did the
8 State allege he did after he left her apartment?

9 A. Used her credit card to buy alcohol.

10 Q. So he couldn't really recall what
11 happened because he was blacked out for lack of a
12 better term?

13 A. That's correct.

14 Q. One of the allegations he's making in
15 this action is that you should have brought up a
16 defense of erotic asphyxiation. Did you ever
17 discuss that with him?

18 A. I considered that defense specifically
19 when we consulted with Dr. Collins. She brought
20 that up that was something that she had heard of
21 before. Just given the fact pattern of our case
22 where it's the practice of engaging in sexual acts
23 while being asphyxiated which is the medical term
24 that results from a strangulation. So that is a
25 defense that I considered and I specifically

1 discussed that with Mr. Reagan. I'm not sure if I
2 used the medical term erotic asphyxiation. But
3 since it would be a viable explanation for her
4 death that would be a defense to the murder charge.
5 I did discuss that with Mr. Reagan. I specifically
6 asked him if they ever did anything like choke each
7 other while they were having sex, consensual sex,
8 and he said that that was not something that he had
9 ever done to her.

10 Q. Did he ever indicate that this was
11 something she had asked him to do?

12 A. He did not.

13 Q. But he indicated using wine bottles
14 during sex acts with the victim?

15 A. Yes, he did.

16 Q. And you consulted with Kim Collins over
17 the cause of death?

18 A. That's correct.

19 Q. And she confirmed that it was due to
20 strangulation?

21 A. She did.

22 Q. Did you investigate regarding the
23 financial transaction fraud charges that he had
24 access to her bank account and credit card?

25 A. Yes, we did. And we did that by

1 looking in the months preceding her death on
2 occasions where he did use her card with her
3 consent and also he was using her vehicle with her
4 consent as well.

5 Q. So to both of those charges, the
6 improper use of the vehicle and the financial
7 transaction card fraud, you had consent defense?

8 A. Correct, and to the criminal sexual
9 conduct charge.

10 Q. So the murder charge is the only one
11 that you didn't have a defense of consent to
12 obviously?

13 A. Correct.

14 Q. Other than the prior CDV with this
15 victim, does Mr. Reagan have any other prior CDV
16 convictions?

17 A. He did have other prior criminal
18 domestic violence convictions.

19 Q. Do you know how many?

20 A. Off top of my head no. At least one,
21 maybe two or three.

22 Q. With other ex partners other than the
23 victim?

24 A. Correct, yes, and I think there was at
25 least one with her, with the victim.

1 Q. I think you mentioned consulting with
2 Kim Collins. What other investigation did you do?
3 It sounds like an investigator was working with
4 you?

5 A. Yes, I did a lot of work on the case.
6 We canvassed the apartment complex where Ms.
7 Hawkins resided. I had spoke to neighbors trying
8 to identify possibly another party that could have
9 been responsible for her death. We also spoke to
10 acquaintances of Ms. Hawkins. We also spoke to
11 acquaintances of Mr. Reagan to get background
12 information about them to explore any defenses that
13 could be available in this case. I also consulted
14 with Dr. Mulbry who is a forensic psychologist and
15 he met with Mr. Reagan to do an analysis on his
16 mental state to -- I was mainly interested in two
17 things, to try to explain his statements to police
18 during his interrogation, but also potential
19 mitigation for -- that could be used at sentencing.

20 Q. When you said interested in explaining
21 his statements to police, could you expand on that
22 for the Court? What were these statements?

23 A. There was a statement, there was
24 basically -- mainly there was a statement where he
25 said something like it was interpreted to be I have

1 killed the love of my life. I interpreted it
2 differently as I can't believe I'm being charged
3 for killing the love of life. But regardless the
4 State was alleging -- was going to present that as
5 a confession. So I wanted to -- I would have
6 attempted to suppress that statement at a Jackson
7 v. Denno hearing using -- with expert opinion
8 regarding his mental state that could have been
9 used during that suppression hearing.

10 Q. But your testimony is he did not want
11 to go to trial?

12 A. Yes. He did not want to go to trial.

13 Q. Did he ever tell you he wanted to go to
14 trial?

15 A. He did not.

16 Q. When did he first ask you to start
17 negotiating plea offers with Mr. DuRant?

18 A. I'm not sure when he asked me to start
19 negotiating plea offers. We had discussions
20 regarding what potential plea offers could be.

21 Q. Was it early or late in your
22 representation?

23 A. I would say it was early. I never want
24 to start discussing -- a case of this magnitude
25 never want to discuss pleading guilty in the very

1 beginning. Always want to wait and investigate the
2 case, see how strong the State's case is before
3 even having that discussion. But it would have
4 been well -- it would have been months in advance
5 of the date that he pled. I know that from my
6 notes I can see we had detailed discussions at
7 least starting on May 28th, 2015, regarding the
8 penalty ranges for murder and manslaughter and also
9 the amount of time that he would be required to
10 serve on active sentences for each.

11 MS. JAMESON: No further questions.

12 Thank you.

13 REDIRECT EXAMINATION

14 BY MR. FALK:

15 Q. How strong was the evidence that the
16 sexual conduct that took place was non-consensual?

17 A. I think it would have been a difficult
18 case for the State to prove due to Mr. Reagan and
19 Ms. Hawkins' prior relationship and the lack of any
20 witnesses who can testify that it was not
21 consensual.

22 Q. Because just to summarize the evidence,
23 the wine bottle was found next to her?

24 A. That's correct.

25 Q. And that was DNA?

1 A. They linked to the wine bottle,
2 correct.

3 Q. How strong was the evidence of the --
4 that he was involved in the murder, just the fact
5 that he was in the house?

6 A. The evidence was, yes, that he was
7 present at the time. We did not have any evidence
8 to suggest that someone else committed the murder.

9 Q. Was there any forensic evidence that
10 linked him to the actual strangulation?

11 A. No forensic evidence. His DNA was
12 found on Ms. Hawkins.

13 Q. But that would be consistent --

14 A. That would have been consistent with
15 consensual sex as well.

16 Q. But was there evidence of skin under
17 her fingernails, evidence of --

18 A. I do not recall any evidence of that
19 sort.

20 Q. Of a struggle?

21 A. Of any forensic evidence supporting
22 that, no.

23 MR. FALK: No further questions.

24 THE COURT: You are free to leave. You
25 may step down.

1 MR. FALK: I would like to call Mr.
2 Reagan to the stand.

3 DAVID REAGAN
4 having been duly sworn, testifies as
5 follows:

6 THE CLERK: Please state your full name
7 and spell your last name.

8 THE COURT: I would ask that you speak
9 loudly and clearly and slowly in order that we can
10 hear everything that you have to say. Start with
11 your full name.

12 THE WITNESS: David Mark Reagan.

13 DIRECT EXAMINATION

14 BY MR. FALK:

15 Q. Do you understand that the only remedy
16 that we can get for you today or that you can get
17 for yourself today is for you to be allowed to
18 withdraw your guilty plea? You can't be
19 resentenced today?

20 A. Yes, sir, I do.

21 Q. And that if we withdraw your guilty
22 plea you understand that then your case would be
23 sent back to the solicitor's office?

24 A. Yes, sir, I do.

25 Q. And that you would be facing murder

1 charges and the CSC charges?

2 A. Yes, sir.

3 Q. And that you can be facing a
4 considerably longer sentence than the 25 years that
5 you are currently serving?

6 A. Yes.

7 Q. Why did you plead guilty?

8 A. Because I didn't have any defense
9 whatsoever. I didn't have an argument.

10 Q. Well, I mean did you think that your
11 lawyer was representing you in this case?

12 A. Mr. Malloy did everything he could do
13 to help me. I believed that going into it and when
14 I made the guilty plea I felt like he had done
15 everything that he could do. He was convinced that
16 the defense -- I mean that the solicitor would find
17 me guilty without a doubt. There was just no
18 question what Mr. Malloy told me was going to
19 happen. He was honest. I didn't -- there was no
20 defense at the time. And that's why I pled guilty.

21 Q. Do you know there are defenses now?

22 A. I do. I feel like if nothing else I'm
23 ashamed of myself considering the situation. I
24 understand why I did it, but I'm ashamed of myself
25 for pleading guilty to Cathy dying a violent death

1 when I know in my heart she didn't, you know. It
2 really troubles me and I would like the truth to be
3 known and I am willing to serve whatever time I
4 have to serve in jail if the solicitor finds me
5 guilty, you know. I just want the truth to be
6 known what happened during that episode.

7 Q. And, of course, it would be a jury that
8 would find you guilty, not the solicitor?

9 A. Right, it would be the jury.

10 Q. Well, in your PCR application you make
11 references to erotic asphyxiation?

12 A. Yes, I so.

13 Q. Is that something that you all
14 regularly engaged in?

15 A. No, it was something we had only done
16 twice before and I was uncomfortable with it when
17 we did it and then I am ashamed of that too. I am
18 ashamed of a lot of things I have done. And I am
19 an alcoholic and she was an alcoholic and we made
20 some really bad decisions and that was definitely
21 the worst.

22 Q. Mr. Malloy testified that you never
23 talked to him about that, that was part of your all
24 sexual behavior?

25 A. I believe, yes. I don't remember -- I

1 don't recall ever telling Mr. Malloy that. I don't
2 remember him ever asking me about it because I
3 tried to be as honest as I could with Mr. Malloy.
4 He was always honest with me. And I trust Mr.
5 Malloy's memory better than I trust my own because
6 he's young and sharp and I'm old and tired. And so
7 he sat up here a few minutes ago and said that he
8 had asked me about that, but I don't recall that.

9 Q. You were not on bond? You were in
10 custody the whole time; is that correct?

11 A. Yes, sir.

12 Q. Prior to your trial? You were arrested
13 and you were in custody?

14 A. Yes.

15 Q. Did you have access to alcohol while
16 you were in custody?

17 A. Oh, yeah, yes, sir.

18 Q. Did that affect some of your
19 conversations with Mr. Malloy?

20 A. No, I wasn't drinking while I was in
21 custody. I had access to it, but I didn't drink
22 nothing.

23 Q. So you were clear headed when you were
24 speaking with him?

25 A. As clear as my head could be. That

1 environment is not -- most of you gentlemen and
2 ladies I hope have never been in that situation,
3 but I find it really difficult to think clearly
4 when I'm so closed in. I think better when I get
5 fresh air and move around and stimulated. But I
6 did the best I could the whole time I was in there,
7 yes.

8 Q. What do you want the Court to do today?

9 A. Well, just to give me the opportunity
10 -- what I hope is the outcome of this first step is
11 to get the opportunity to tell the whole truth to
12 -- I would like her family to finally know that she
13 didn't die that horrible death they have to think
14 she -- when they lay their heads down at night and
15 they think about their loved one they think she
16 died that way. And my mother was murdered and I
17 know how that feels. It is terrible. I don't want
18 it to go on if I can avoid it. It's time to man
19 up.

20 THE COURT: Tell us what happened.

21 THE WITNESS: Well, this is a story, it
22 really could be a who done it story, you know? The
23 reason I didn't ever believe that she died of
24 strangulation is because after we had the sex we
25 were having an evening as usual of drinking and sex

1 and we had got done. I didn't even know they had a
2 name for it, the choking thing. We had done the
3 choking thing and the bottle thing and everything
4 else we did. And then we both recuperated from it.
5 I don't remember exactly what transpired at that
6 time. I know we drank. Drinking was definitely
7 involved and I went -- she was conscious and alert,
8 not alert alert, but she was as alert as she ever
9 was and -- I don't remember what transpired
10 honestly. I just know we got up from what we were
11 doing. And the next thing I remember was going to
12 the bedroom and the next thing I remember after
13 that was waking up in the bed with my head on the
14 pillow and covers over me, you know, just like any
15 other nap. And I got up and I went back into the
16 living room and on my way in there I noticed she
17 was right in front of me. So I noticed her on the
18 floor between the table and the couch.

19 And when I went in there I was going to
20 raise her up and put her back on the sofa, let her
21 lay down on the sofa, but for whatever reason I
22 started to lift her and I didn't. I'd like to tell
23 what -- I said I wanted to tell the whole truth,
24 and I want to tell it and I really don't -- I am
25 not comfortable telling this with the ladies in

1 here, but I'm not sure what to do. Can I speak to
2 my lawyer?

3 BY MR. FALK:

4 Q. Why don't you go ahead. The ladies in
5 here have heard a lot of stuff. You are not going
6 to shock them.

7 A. I thought that it would wake her up,
8 you know, and the way we usually did things, this
9 was not unusual for us, and I inserted the bottle
10 in her and she didn't wake up. So I pulled it back
11 out and I was like she was knocked out. So she
12 stayed in a stupor a lot. And a terrible stupor.
13 I'm a bad alcoholic, but she was the world's worst
14 and it ended up taking her life ultimately, you
15 know, and cost me life in prison. Alcohol is
16 terrible. So I left her still in that position and
17 I went back and I didn't tell Mr. Malloy this
18 because it's such a sick story. I didn't tell him
19 about that trip and trying to wake her up with the
20 bottle. I didn't find that necessary, but at this
21 time I just want it all out of me. I can't stand
22 it.

23 So I went back to bed and I slept sound
24 again and I got up and I went towards the bathroom
25 where I could see her and she was still in that

1 position and I thought that ain't right. I didn't
2 think something was bad wrong, but I just knew it
3 wasn't right. I went in there and I went to raise
4 her up. I grabbed her by the elbow and by her
5 forearm and I was going to raise her on to the
6 couch and she was freezing cold and that's when I
7 went into shock. Honestly this is what happened.

8 And I have the domestic violence abuse
9 charge on me because I'm a piece of crap. I beat
10 women when I was drunk and they did something that
11 I didn't think was worthy of a good alcoholic like
12 me and I did things I'm ashamed of. But knowing
13 the police already had this like predetermination
14 of what kind of man I am, which was deserved, my
15 thoughts raced around in my head and I thought
16 okay. What I came up with was I will go home and
17 when they do the medical exam they will find out
18 that she died of natural causes and that all
19 backfired. It didn't work that way at all, not at
20 all.

21 Q. You have long stretches of a memory
22 loss, don't you?

23 A. Yes, I do. I have got -- my memory is
24 terrible. It is short-term and long term.

25 Q. But it's kind of your recollection that

1 you all had sex, you were kind of recovering from
2 it, you went and took a nap, but she was awake for
3 at least --

4 A. Right. That's why the whole time I
5 didn't believe that she had actually died of the
6 strangulation and in the reports that's why it was
7 so significant to me that the coroner too in my
8 paperwork she said that Cathy may have died from
9 the toxics in her and the combination of the pills
10 and the alcohol could have killed her. But then in
11 the paragraph following that she says that she is
12 absolutely determined it was strangulation.

13 So I still don't know. I honestly
14 don't know, you know. I done my homework on this
15 asphyxiation thing. I found that other men have my
16 story. That the victim -- they claim, I don't say
17 these men are telling the truth, but they claim
18 that the victim moved around before dying. So I
19 don't know. I think it's something should be
20 looked into by somebody who has got enough money
21 like 60 Minutes to see if this happens.

22 MR. FALK: Your Honor, no further
23 questions.

24 MS. JAMESON: No questions, Your Honor.

25 THE COURT: You may step down.

1 Anything further, Mr. Falk?

2 MR. FALK: No, Your Honor.

3 THE COURT: Anything from the State?

4 MS. JAMESON: No, Your Honor.

5 THE COURT: Be glad to hear from you,
6 Mr. Falk.

7 MR. FALK: Your Honor, I'm not sure for
8 whatever reason there was good communication
9 between my client and his Mr. Malloy. I do think
10 that there was a failure to communicate one way or
11 the other as to a possible explanation for the
12 strangulation death in this case. We heard Mr.
13 Malloy say that -- the evidence supporting that the
14 CSC was non-consensual, I think he felt confident
15 that the State would have a hard time proving that
16 that was non-consensual. And sort of a gap in the
17 whole story was whether or not there was some kind
18 of explanation for the strangulation. I think we
19 heard testimony from somebody who was certainly
20 broken up by this fact, not a mean person. I'm not
21 sure what happened. I'm not sure anybody knows
22 what happened. I think it's a regrettable event,
23 but I do believe he loved this woman and it's hard
24 to understand why she died of strangulation and
25 that possibly had there been better communication

1 between the two that this could have been a further
2 development about the actual cause of death or the
3 combination of self-poisoning between the pills and
4 the alcohol.

5 THE COURT: Unfortunately, Mr. Falk,
6 I'm going to deny the application for
7 post-conviction relief. Listening to Mr. Malloy's
8 testimony it was very clear that he did an
9 excellent job of preparing this case. He hired an
10 investigator. They canvassed the whole
11 neighborhood. They looked into all possibilities.
12 They hired a forensic psychiatrist. There was --
13 not only did he not fail to investigate the
14 asphyxia, he did talk with the pathologist about
15 that and talked with the applicant about it.

16 And he indicates that that wasn't a
17 part of their sexual habit. And also I think it is
18 worth noting that Mr. Reagan indicates that he was
19 a severe alcoholic at the time, problems with long
20 and short-term memory and even the applicant
21 himself says that he believes Mr. Malloy's
22 testimony over his own.

23 It was unfortunate the way this
24 situation developed, but I think the case was
25 investigated thoroughly. Mr. Malloy did an

1 excellent job, just not an adequate job, but an
2 excellent job and the plea transcript speaks for
3 itself. He understood his constitutional rights.
4 He accepted -- the facts were given. He
5 acknowledged that he was guilty of what he had been
6 charged of and indicated that no one pushed him
7 into doing it. And there was no coercion
8 whatsoever. Clearly the plea transcript itself
9 establishes it was freely and voluntarily given and
10 that he was satisfied with his lawyer.

11 So based on those things I do indeed
12 deny the application for post-conviction relief.
13 Mr. Reagan, I wish you the best of luck.

14 THE WITNESS: Thank you and I
15 appreciate it.

16 THE COURT: Ms. Jameson, I'm going to
17 ask that you prepare the order. We will stand
18 adjourned.

19 (These proceedings were concluded at
20 4:19 p.m., December 7, 2017, Charleston County,
21 South Carolina.)
22
23
24
25

CERTIFICATE OF REPORTER

I, Ruth C. Weese, Registered Diplomat
Reporter for the State of South Carolina at Large,
do hereby certify that the foregoing transcript is
a true, accurate, and complete record.

I further certify that I am neither related
to nor counsel for any party to the cause pending
or interested in the events thereof.

Witness my hand, I have hereunto affixed my
official seal this 2nd day of March, 2018 at
Charleston, Charleston County, South Carolina.

Ruth C. Weese

Ruth C. Weese

Registered Diplomat

Reporter

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

David Reagan, SCDC # 365028,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2016-CP-10-2768

ORDER OF DISMISSAL

2016 FEB -1
AM 10:21

This matter comes before the Court by way of an application for post-conviction relief filed May 26, 2016, by David Reagan (Applicant). The State (Respondent) made its Return on May 15, 2017, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened December 7, 2017, at the Charleston County Courthouse. Applicant was present at the hearing and represented by James K. Falk, Esquire. Senior Assistant Deputy Attorney General Megan Harrigan Jameson from the South Carolina Attorney General's Office appeared on behalf of the State. Following the evidentiary hearing, this Court denied the application from the bench. This order follows.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During its April 2014 term, the Charleston County Grand Jury indicted Applicant for murder (2014-GS-10-2316) following the strangulation death of Applicant's long-term girlfriend. Applicant was represented by Luke J. Malloy, III, of the Charleston County Public Defender's Office. The case was prosecuted by Chief Deputy Solicitor D. Bruce DuRant of the Ninth Circuit Solicitor's Office prosecuted the case. On August 11, 2015, Applicant appeared in

the Charleston County Court of General Sessions before the Honorable R. Markley Dennis, Jr., circuit court judge, where he pled guilty to the lesser-included offense of voluntary manslaughter. Pursuant to negotiations between Applicant and the State, Judge Dennis sentenced Applicant to the negotiated term of twenty-five years imprisonment. The State also dismissed a related indictment for first-degree criminal sexual conduct and unrelated indictments for hit and run and criminal domestic violence against the same victim. Applicant did not pursue a direct appeal challenging his plea or sentence.

FACTUAL SUMMARY

On August 22, 2013, law enforcement officers with the Charleston Police Department responded to the Palms Apartment for a welfare check based on complaints from a neighbor that the victim's dog was running freely outside. (Plea Tr. 9). When officers entered the victim's apartment, they found her nude and lifeless body on the living room floor. (Plea Tr. 9). An autopsy revealed her cause of death was strangulation. (Plea Tr. 10). The autopsy also found contusions her to rectal and vaginal areas that were consistent with sexual assault. (Plea Tr. 10). Fingerprints and DNA, including under the victim's fingernails, linked Applicant to the scene. (Plea Tr. 11). Additionally, Applicant was seen driving the victim's vehicle and using her credit cards to purchase beer and liquor following her death. (Plea Tr. 10-11). Applicant, who had a pending criminal domestic violence charge involving this same victim, was brought in for questioning. (Plea Tr. 10-11). Applicant originally denied seeing the victim for the past twelve days but eventually admitted to being present when she passed away, although he denied knowing what caused her death. (Plea Tr. 11).

ALLEGATIONS RAISED

Applicant alleged counsel was ineffective based on numerous allegations that counsel was ineffective for failing to thoroughly research and discuss a defense of erotic asphyxiation with him and for failing to discuss a defense of consent to the criminal sexual conduct charge.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant called plea counsel to testify first. Counsel testified he was appointed to represent Applicant while he was employed at the Charleston County Public Defender's Office. He testified he was already representing Applicant on a criminal domestic violence charge against the same victim when Applicant was arrested for the charges subject to this application and assumed representation of Applicant on the new charges, including murder and first-degree criminal sexual conduct. He testified he met with Applicant at least eleven times on these charges. Counsel testified he reviewed all discovery materials with Applicant and also gave Applicant a copy of the discovery. He testified Applicant's DNA and fingerprints were found at the scene, and that Applicant's statements also linked him to the scene.

Counsel testified he used an investigator, Harry Long of the Charleston County Public Defender's Office, who investigated the case as well as accompanied him on visits with Applicant and met with Applicant individually, and came to meeting with potential expert witnesses. Counsel testified he retained and consulted with forensic pathologist Dr. Kimberly Collins, who confirmed the cause of death was strangulation. Counsel elaborated he retained Dr. Collins because the victim was in poor health due to the effects of decades of alcohol abuse and wanted to conclusively determine the victim died from strangulation rather than some other cause. Counsel testified he canvassed the apartment complex where Applicant and the victim

lived and spoke with numerous acquaintances of the couple while investigating the case. Counsel also had Applicant evaluated by a forensic psychiatrist, Dr. Mulbry, to ensure Applicant was competent and to potentially use during an attempt to suppress the statements Applicant gave to law enforcement, such as, 'I've killed the love of my life.'

Counsel testified Applicant and the victim were romantically involved and often engaged in extreme sexual activities, including inserting wine bottles into various body cavities. Based on this history, Counsel testified he thought that Applicant and the victim had possibly been engaged in erotic asphyxiation and that could have led to the victim's death. Counsel testified he discussed this possibility with Applicant, who adamantly denied that he and the victim had engaged in erotic asphyxiation or any type of strangulation.

Counsel testified Applicant and the victim had been on a "five-day bender" at the time of her death and based on all of the alcohol he had consumed, Applicant was unable to clearly recall what had happened to the victim. Counsel testified Applicant told him he recalled using a wine bottle to penetrate the victim as part of their routine sexual activity, but he could not recall anything further or how she was strangled. Counsel testified he had a defense of consent to the criminal sexual conduct charge, but based on his investigation, consultation with Dr. Collins, and conversations with Applicant, there was no apparent defense to the murder charge.

Counsel testified Applicant consistently told him wanted to plead guilty to these charges and did not want to proceed to trial. Based on these conversations, Counsel entered into plea negotiations with the State and was eventually able to secure a plea deal to the lesser-included offense of voluntary manslaughter for a determinate term of twenty-five years imprisonment and the dismissal of all other pending charges. He testified he discussed the plea offer with

Applicant, the anticipated time he should expect to serve within the department of corrections, and the likely age he would be when released. Counsel testified it was ultimately Applicant's decision to accept the State's plea offer. Counsel testified he never threatened or coerced Applicant to plead guilty. He similarly testified he never told Applicant that the State would seek the death penalty if he did not enter a guilty plea.

Following Counsel's testimony, Applicant testified on his own behalf. Applicant testified helped guilty because he had "no defense whatsoever" and that he would have been convicted if he had proceeded to trial. Applicant testified Counsel did everything he could to help him. He testified he is ashamed of himself for pleading guilty to the victim's death. He testified he and the victim, his longtime girlfriend, had previously engaged in erotic asphyxiation twice but that he did not like the practice. He testified that he did not recall discussing erotic asphyxiation with Counsel, but trusts Counsel's memory and that they did discuss it if Counsel said they did. Applicant testified the details of what happened the when the victim died are hazy, but he recalled strangling her and inserting wine bottles into her during sexual intercourse, then both of them being alert afterwards. Applicant testified he went to lie down and when he woke up, the victim was motionless on the floor. He testified he again went to sleep and when he woke up, she was still motionless on the floor and was cold to the touch. Applicant testified he has previous convictions for domestic violence with the same victim and other victims. He also testified he has long stretches of memory loss.

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 hearings. 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).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "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 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption 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. 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, 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, he would

not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action in regards to his allegations that counsel was ineffective for failing to thoroughly research and discuss a defense of erotic asphyxiation with him and for failing to discuss a defense of consent to the criminal sexual conduct charge.

Initially, this Court finds there is no reasonable probability Applicant would have proceeded to trial but for counsel's alleged deficiencies, as the uncontroverted evidence before this Court established Applicant never wanted to proceed to trial. See Hill, 474 U.S. 52 (finding an 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). Moreover, this Court notes Applicant cannot establish any deficiency of counsel in his representation of Applicant. Applicant readily admitted to strangling the victim and conceded Counsel did everything he possibly could have to assist Applicant. This Court agrees with Applicant and finds that Counsel did an excellent job representing Applicant. Counsel thoroughly investigated every possible defense, including erotic asphyxiation to the murder charge and the defense of consent to the criminal sexual conduct charge that was ultimately dismissed. Counsel retained and consulted with a forensic pathologist who ultimately confirmed the victim died as a result of strangulation. Counsel also had Applicant evaluated by a forensic psychiatrist. Counsel was able to negotiate a favorable plea deal with the State to a lesser-included offense and the dismissal of numerous charges, a significant benefit to Applicant. This Court finds Applicant has failed to

meet his requisite burden of establishing any deficiency of counsel. Therefore, this application must be denied and dismissed with prejudice.

CONCLUSION

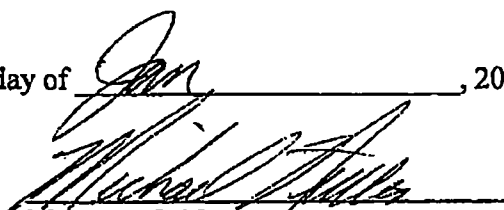
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for is denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record 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 if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief must be denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 23 day of Jan, 2018.


MICHAEL G. NETTLES
Presiding Judge
Ninth Judicial Circuit

Florence, South Carolina

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DBD20130806384

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1313451

ARREST WARRANT NUMBER

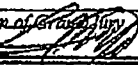
2013A1010204656

DATE OF ARREST

August 24, 2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 

APR 07 2014

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS1002316

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April 2014 Term

THE STATE

vs.

DAVID MARK REAGAN

DOB: 

W/M

Indictment for

MURDER

FILED

4/17/2014 4:14:50 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

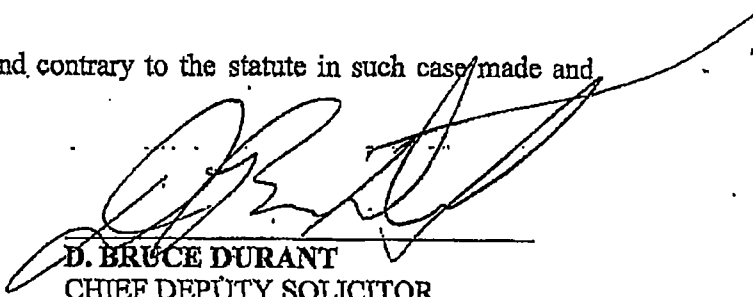
INDICTMENT

At a Court of General Sessions, convened on April 7, 2014, the Grand Jurors of Charleston County present upon their oath:

MURDER

That in Charleston County on or about August 20, 2013, with malice aforethought, DAVID MARK REAGAN did kill and murder Kathy Hawkins by means of strangulation, and that Kathy Hawkins did die in Charleston County as a proximate result thereof on or about August 20, 2013; in violation of Section 16-3-10 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,


D. BRUCE DURANT
CHIEF DEPUTY SOLICITOR