

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Honorable William H. Seals, Circuit Court Judge

RECEIVED

AUG 24 2018

S.C. SUPREME COURT

NEHEMIAH J. EVANS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000517

APPENDIX

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ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

GUILTY PLEA TRANSCRIPT (Dated February 25, 2015).....1

SENTENCING TRANSCRIPT (Dated March 16, 2015)13

APPLICATION FOR POST-CONVICTION RELIEF24

RETURN.....31

POST-CONVICTION RELIEF HEARING TRANSCRIPT (Dated November 29, 2017)36

ORDER OF DISMISSAL.....89

INDICTMENTS100

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2013-GS-26-00305,00307

STATE OF SOUTH CAROLINA,)

Plaintiff,) Transcript of Record

vs.)

February 25, 2015

NEHEMIAH EVANS,)

Defendant.)

B E F O R E:

Honorable Larry B. Hyman, Jr.
Horry County Courthouse
Conway, South Carolina

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

Brad C. Richardson, Esquire
Attorney for Plaintiff

Kenneth B. Massey, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

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I N D E X

FEBRUARY 25, 2015

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By the Court	3
Certificate of Court Reporter	12

E X H I B I T S

No.

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(No exhibits were marked or admitted.)

State v. Nehemiah James Evans - 2013-GS-26-305,307
PLEA HEARING

3

1 (FEBRUARY 25, 2015)

2 NEHEMIAH EVANS, HAVING BEEN DULY

3 SWORN, TESTIFIES AS FOLLOWS:

4 MR. RICHARDSON: Before the Court at this time is 2013-
5 GS-26-305, State of South Carolina, County of Horry versus
6 Nehemiah James Evans, true-billed indictment for murder.
7 Also, 2013-GS-26-307, State of South Carolina, County of Horry
8 versus Nehemiah James Evans, a true-billed indictment for
9 murder. The Defendant comes before the Court pleading guilty
10 to those charges. The State is recommending a thirty-year
11 sentence, Your Honor. Sentencing will be carried out on the
12 16th of March before Your Honor. The State will be dismissing
13 2013-GS-26-306, burglary first warrant, Your Honor. The
14 Defendant is represented by Mr. Kenneth Massey; Brad
15 Richardson on behalf of the State. The victims have been
16 notified, Your Honor. They will be present at the time of
17 sentencing on the 16th ---

18 THE COURT: So, we're gonna just qualify the plea; is
19 that correct?

20 MR. RICHARDSON: That is correct, Your Honor.

21 MR. MASSEY: That's correct, Your Honor.

22 THE COURT: All right. Mr. Evans, you are represented by
23 Mr. Massey?

24 MR. EVANS: Yes, sir.

25 THE COURT: And Mr. Evans, have you had an opportunity to

1 discuss this case with him, these two murder indictments?

2 MR. EVANS: Yes, sir.

3 THE COURT: I note that these murder indictments have
4 both been true billed. Mr. Evans, did Mr. Massey discuss with
5 you the possible penalty in this matter?

6 MR. EVANS: Yes, sir.

7 THE COURT: And what did he tell you the penalty was?

8 MR. EVANS: Thirty years.

9 THE COURT: Thirty years. And Mr. Evans, did Mr. Massey
10 review the evidence or discovery materials with you in this
11 matter?

12 MR. EVANS: Yes, sir.

13 THE COURT: And did he explain to you how those matters
14 might be used against you if you were to have a jury trial?

15 MR. EVANS: Yes, sir.

16 THE COURT: So, there is no question that Mr. Massey has
17 discussed with you your right to have a jury trial?

18 MR. EVANS: Yes, sir.

19 THE COURT: And do you understand that you do not have to
20 plead guilty, that is just an option available to you just
21 like a jury trial is an option available to you? Do you
22 understand that?

23 MR. EVANS: Yes, sir.

24 THE COURT: Do you realize, sir, that if you plead
25 guilty, you are waiving, you are giving up forever your right

State v. Nehemiah James Evans - 2013-GS-26-305,307
PLEA HEARING

5

1 to a jury trial on these cases?

2 MR. EVANS: Yes, sir.

3 THE COURT: And do you understand that your right to a
4 jury trial is separate and distinct on each trial, that you
5 could be tried on one, have a jury trial on one or a jury
6 trial on both of them. You understand that?

7 MR. EVANS: Yes, sir.

8 THE COURT: Okay. If you waive your right to a jury
9 trial, Mr. Evans, you give up many, many other rights that are
10 go along with it. They are very important rights. Some of
11 them I'll just point out to you by way of illustration, things
12 like your right to remain silent. If you have a jury trial,
13 you won't have to testify unless you want to. You can but you
14 don't have to and I'd even tell the Jury, they couldn't use
15 that against you. That's different from a plea because on a
16 plea, you have to admit your guilt. In a jury trial, the
17 State has to put up enough evidence to convince every juror of
18 your guilt beyond a reasonable doubt. In a plea, that's not
19 required. The State is only required to recite to me the
20 basis of the charge, the basis -- the factual basis of why
21 you're being charged with this. That's all they have to do.
22 You see the difference?

23 MR. EVANS: Yes, sir.

24 THE COURT: All right. So, obviously, you give up many
25 rights when you waive your general right to a jury trial. Is

1 that what you want to do?

2 MR. EVANS: Yes, sir.

3 THE COURT: All right. Tell me about Mr. Massey. Are
4 you satisfied with Mr. Massey?

5 MR. EVANS: Yes, sir.

6 THE COURT: Has he done everything that you think he
7 could to help you?

8 MR. EVANS: Yes, sir.

9 THE COURT: Fully satisfied with him?

10 MR. EVANS: Yes, sir.

11 THE COURT: Okay. Mr. Evans, I see you're thirty-years-
12 old; is that right?

13 MR. EVANS: Yes, sir.

14 THE COURT: Are you married?

15 MR. EVANS: Common law but not ---

16 THE COURT: Do you have children?

17 MR. EVANS: Two but not biological.

18 THE COURT: They're not your biological children?

19 MR. EVANS: No, sir. I've been with them since they were
20 born.

21 THE COURT: All right. Mr. Evans, how far did you go in
22 school?

23 MR. EVANS: Completed.

24 THE COURT: You completed high school?

25 MR. EVANS: Yes, sir.

State v. Nehemiah James Evans - 2013-GS-26-305,307
PLEA HEARING

7

1 THE COURT: Have you been working anywhere?

2 MR. EVANS: Yes, sir, I have my own landscaping business.

3 THE COURT: You have your own business. Well, that's
4 good, Mr. Evans.

5 Mr. Evans, have you ever had any mental health issues or
6 addiction issues, anything like that that would interfere with
7 your ability to understand what we're doing here today?

8 MR. EVANS: There was issues in the past but I don't know
9 if they would ---

10 THE COURT: Do you feel like anything is interfering --
11 do you understand what we're doing here today?

12 MR. EVANS: No, sir.

13 THE COURT: Well, let me just say this, Mr. Evans. If at
14 any point you don't understand what we're doing, I want you to
15 ask me to explain it to you. Okay?

16 MR. EVANS: Okay.

17 THE COURT: I can't give you legal advice but I'll be
18 happy to explain anything to you that you need explained. All
19 right?

20 MR. EVANS: All right.

21 THE COURT: Have you taken any drugs or alcohol in the
22 last twenty-four hours?

23 MR. EVANS: No, sir.

24 THE COURT: Now, I want you to listen carefully. Mr.
25 Richardson is gonna tell me why you're charged with these two

1 offenses.

2 MR. RICHARDSON: Your Honor, I'll attempt to go through a
3 as-brief-as-I-can recitation of the facts. On the morning of
4 August 19th, 2012, Horry County police officers were called to
5 an address on Red Bluff Road here in Horry County, Your Honor.
6 Upon their arrival -- it was at [REDACTED], was the
7 home of Todd and Amos Hatfield, father and son, the father
8 being Amos Hatfield. The complainant at that point was a
9 women by the name of Sandy Locklear who had married Amos
10 Hatfield. She was not living with them but had -- well, she
11 reported that night she had gone there to see him the night
12 before, Saturday night, this was a Sunday morning. And she
13 stated that two men had broken into the house and killed her
14 husband and stepson and had raped her repeatedly. There were
15 some telltale signs that the allegations of rape may be false,
16 she may be more involved. An investigation ensued, Your
17 Honor, in which Sandy Locklear that day admitted that -- when
18 she first misidentified, said it was a white guy and a black
19 -- a light-skin black male that had come in, she didn't know
20 them. Eventually, she did indicate that it was Nehemiah James
21 Evans who cut her grass and a guy she knew as Poo Poo.
22 Subsequently, the investigation turned over into Tabor City
23 where Ms. Locklear lived, where Nehemiah James Evans and Odom
24 Bryant were living at that point. Mr. Evans with his
25 girlfriend. They were able to locate and identify Poo Poo

State v. Nehemiah James Evans - 2013-GS-26-305,307
PLEA HEARING

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1 being Odom Bryant. And whenever they interviewed the
2 Defendant, he admitted Ms. Amy Locklear had approached him
3 sometime shortly before the murder and asked if he wanted to
4 make some big money. There was a -- what she thought a
5 million-dollar life insurance policy but the value of the
6 policy due to the manner of death ended up being worth 200,000
7 but she thought it was a million-dollar policy. She indicated
8 that she was ready to pay \$50,000 to have her husband
9 executed. This Defendant said he couldn't pull the trigger
10 but agreed to go get Odom Bryant. He then -- he then rode
11 with Odom Bryant and Sandy Locklear back over to the
12 residence. Sandy Locklear went in first, left the door open
13 or unlocked the door so that they could come in. It's the
14 State's belief that Odom Bryant just went in and pulled the
15 trigger based on the fact that he had a gun that was similar
16 to the one used in the incident the next morning about eight
17 hours after the murder was committed. The reason for the
18 murder was a murder for insurance proceeds, murder for profit.
19 The only thing that Sandy Locklear and Odom Bryant agreed on
20 was this Defendant didn't have a gun. But those two pointed
21 the finger at one another, Your Honor. He was present during
22 the commission of the crime, had driven there with them,
23 helped dispose of a rental vehicle Ms. Locklear had had
24 afterwards, was seen in the company of Odom Bryant at the gas
25 station convenience store in Tabor City shortly after the

1 crime where Odom Bryant still had the gun that was probably
2 used in this crime, Your Honor.

3 There were text messages to and from Sandy Locklear and
4 Odom Bryant indicating that Sandy Locklear would open the door
5 for him about 3 o'clock in the morning. This call came in at
6 4 o'clock in the morning. Ms. Locklear and Odom Bryant have
7 both been tried. Ms. Locklear was tried in June of this past
8 year. She was found guilty of both murders. She was
9 sentenced to double life. Odom Bryant was tried just this
10 past January and he was found guilty of both murders and
11 sentenced to life. He got a life on both of those, Your
12 Honor.

13 That would be the State's showing.

14 THE COURT: All right. Mr. Evans, is that what you did?

15 MR. EVANS: Yes, sir. And is that why you're pleading
16 guilty to these murder charges?

17 MR. EVANS: Yes, sir.

18 THE COURT: And Mr. Evans, has anyone done anything
19 inappropriate? Have you been promised anything, threatened in
20 any way, harmed, has anything occurred that you believe is
21 improper that may have put you in a position where you felt
22 like you had to enter this plea?

23 MR. EVANS: No, sir.

24 THE COURT: Are you pleading freely and voluntarily?

25 MR. EVANS: Yes, sir.

State v. Nehemiah James Evans - 2013-GS-26-305,307
PLEA HEARING

11

1 THE COURT: Are you pleading because you are guilty?

2 MR. EVANS: Yes, sir.

3 THE COURT: Have you had all the time you need to think
4 about this?

5 MR. EVANS: Yes, sir.

6 THE COURT: Do you need any more time with Mr. Massey?

7 MR. EVANS: No, sir.

8 THE COURT: All right, sir. I find that there is a
9 substantial factual basis for this plea. It is made freely,
10 voluntarily, knowingly and intelligently after the advice of a
11 very competent attorney with whom he says he's satisfied and I
12 will accept his plea.

13 Now, it's my understanding, Mr. Richardson, that I am to
14 defer sentencing ---

15 MR. RICHARDSON: March 16th, Your Honor.

16 THE COURT: --- until March the 16th.

17 Is that right, Mr. Massey?

18 MR. MASSEY: That's our understanding.

19 THE COURT: Very well. I am accepting his plea and I
20 will defer sentencing.

21 Thank you.

22 MR. RICHARDSON: Thank you, Your Honor.

23 MR. MASSEY: Thank you, Your Honor.

24 (ADJOURNED - 2:00 P.M.)

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus Nehemiah James Evans, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on February 25, 2015.

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



Kay H. Richardson
Official Court Reporter

February 1, 2017.

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E X H I B I T S

NO.	DESCRIPTION	ID	EV
4	No exhibits submitted.		

1 (The hearing commenced at approximately
2 11:42 a.m.)

3 THE COURT: Thank you very much, please be seated.
4 NEHEMIAH JAMES EVANS, after being duly sworn,
5 testified as follows:

6 MR. RICHARDSON: Your Honor, we're back on the
7 record on 2013-GS-26-00305 and 2013-GS-26-00307. Both
8 indictments are true billed charging the Defendant,
9 Nehemiah James Evans, with murder. He pled on these
10 charges on February 25th, 2015, sentencing was held in
11 abeyance until today. The plea was qualified on that
12 day, he pled guilty. We do have present in the
13 courtroom today Amber and Sylvia Adkins, the daughter
14 and sister of the victims in this case and
15 granddaughter and niece of the victims in the case.

16 Speaking with them, I don't believe they wish to
17 address the Court today. They are familiar with the
18 terms that we recommended 30 years on the murder, Your
19 Honor.

20 THE COURT: Was this a recommendation or a
21 negotiation?

22 MR. RICHARDSON: We can do it either or.

23 THE COURT: I thought was a negotiation. Was it a
24 negotiation?

25 MR. MASSEY: It was negotiated.

1 THE COURT: Negotiated, I thought so.

2 MR. RICHARDSON: Negotiated 30 years.

3 THE COURT: I thought that's what I remember.

4 MR. MASSEY: That's what it was.

5 THE COURT: Okay.

6 MR. RICHARDSON: And I apologize if I misspoke.

7 But they are present, Your Honor, for the purpose of
8 sentencing.

9 THE COURT: All right. I have qualified this
10 plea, and Mr. Massey?

11 MR. MASSEY: Yes, sir.

12 THE COURT: I will hear from you.

13 MR. MASSEY: Your Honor, my client is 30 years
14 old, born and raised here in Horry County. He was
15 living over in Tabor City at the time. He's got two
16 children, not biological, but he takes care of two
17 children, he's got a wife that he takes care of -- or a
18 girlfriend, I'm sorry, girlfriend. And he's had a
19 landscaping business all himself, and he's never had
20 anything on his record like this, Your Honor.

21 Your Honor, we're asking for as -- for mercy in
22 this case. This is a case that for him should have
23 never gone this far, but it did. And we're there now.
24 And he's asking for the Court to grant him some mercy
25 in this issue of these two warrants for murder.

1 I have Mr. Hurt here who is a client of his, who
2 would like to speak, Your Honor. At a time, Your
3 Honor, and I have his mother and his brother here, Your
4 Honor.

5 THE COURT: All right. I'll hear from them.

6 MR. MASSEY: Mr. Hurt.

7 MR. HURT: Your Honor, my name is Bob Hurt. I
8 live in Sienna Park in Myrtle Beach. And for just over
9 five years Nehemiah James Evans maintained my lawn for
10 me. He worked for a gentleman by the name of Phillip
11 Fallwell who had the corporation, and he did a first
12 class job.

13 I could always depend on Nehemiah for first class
14 work, whatever it took, whatever timeframe it took.
15 And, believe me, having lived there for ten years, I
16 haven't had any kind of quality work since then, since
17 Nehemiah got in this situation.

18 When this crime took place, my wife and I were up
19 in Beach Mountain, North Carolina. And my fellow
20 neighbors called me and said, hey, your yard is growing
21 out of proportion, what's going on, are you having it
22 cut. And basically I responded, I don't know. So I
23 called his mother's home and various other places and
24 finally got his girlfriend to call me back and
25 described the situation he was in.

1 When I returned to Myrtle Beach, I went to the J.
2 Reuben Long Detention Center. I met with Nehemiah, and
3 we had a fairly lively discussion as to what took
4 place, etcetera. And he denied that he was involved in
5 the actual murders at all, period. He would not
6 elaborate past that point.

7 Since then he has written letters over a two-year
8 period of time of which he was incarcerated here, and
9 he continues to say the same thing. Long story short,
10 I believe him. I think basically he's a hard working
11 young man that got off track, got with the wrong
12 people. I think they committed the murders. I believe
13 they have been convicted. And I think that if there's
14 any way to help him out, he needs a little bit of help.
15 And I think he'll get through and be a good man.

16 THE COURT: Thank you, sir.

17 MR. MASSEY: The mother is here, but she doesn't
18 want to speak.

19 THE COURT: Okay.

20 MR. MASSEY: And he has been incarcerated for two
21 and a half years.

22 THE COURT: All right.

23 MR. MASSEY: At J. Reuben.

24 THE COURT: Solicitor, it's negotiated, but would
25 you give me the facts again. I want to make sure that

1 I made a finding that there was a substantial factual
2 basis for the plea.

3 MR. RICHARDSON: Yes, sir, Your Honor. On the
4 morning of August 19th, 2012, officers of the Horry
5 County Police Department were dispatched to Red
6 Bluff Road in the Loris section of Horry County. They
7 got the 911 call about four in the morning, 4:01, I
8 think, is when the call went out.

9 And that was Sandy Laidlocklehr (phonetic),
10 sometimes she went by Hatfield. She had gotten married
11 to the victim Amos Hatfield about a year before, Your
12 Honor. Amos and his son, Tommy, lived at that
13 residence while Sandy lived over in Tabor City. She
14 stated that two masked men, she said a light-skinned
15 black male, possibly Hispanic, and a white boy broke
16 into the home, killed Amos and Tommy and then raped her
17 and tied her to the bed.

18 The story began to fall apart. Police were able
19 to obtain her cell records. They confronted her with
20 them including text messages between her and Odom
21 Bryant. The investigation turned up she said, well,
22 the guys that actually came in were fellows named
23 James, Nehemiah James Evans, that cut her grass, and
24 Odom Bryant.

25 Subsequent to that, she was arrested, charged with

1 murder. She's been tried and convicted, she's got
2 double life on that. The Defendant turned himself in
3 the following Friday, I believe it was, Your Honor.
4 And he indicated -- he first said he wasn't there,
5 didn't know anything about it. Then he got hit with
6 the evidence that they had, Your Honor, and he stated
7 that Sandy approached him, I think, the Friday before
8 the murders and asked if he wanted to make some big
9 money, \$50,000. She had a life insurance policy she
10 believed was worth a million dollars; \$50,000.

11 He said he couldn't pull the trigger, but she
12 could set him up with Odom Bryant. He then stated that
13 he didn't go to the address with them. First, he said
14 he wasn't in that house when the shots were fired, then
15 he said he was. But he did say he ran in with Odom
16 Bryant, and he thought they were there to scare them,
17 but they were there to talk about the big money.

18 Subsequently, we got letters in from the jail
19 stating that they have made statements out at the jail.
20 I probably would have called the person who sent me the
21 letters in, Your Honor, but saying they were bragging
22 about how the murders were done. They were both
23 execution style, Your Honor. The victims were held
24 approximately 20 to 30 feet apart. So somebody was
25 there to help Odom Bryant.

1 We do believe Odom Bryant was the trigger man. He
2 got a double life sentence just this past January, Your
3 Honor. But for the fact that I don't believe this
4 Defendant actually held a gun, the State would have
5 gone forward with the trial.

6 THE COURT: All right. Anything that your client
7 wants to tell me, Mr. Massey?

8 THE DEFENDANT: I wanted to say that I'm sorry
9 whatever happened to the victims, the victim's family.
10 I did not commit these crimes. But, you know, I will
11 take responsibility for my part of being there, even
12 though I did not see the crime happen.

13 THE COURT: All right. You understand, sir, that
14 in South Carolina, the hand of one is the hand of all?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. All right. I will accept the
17 negotiation. Sentences for each indictment for murder
18 is that he be confined in the State Department of
19 Corrections for a period of 30 years, these are
20 concurrent. We give him credit for the time he served.
21 Thank you very much.

22 MR. RICHARDSON: Thank you, Your Honor.

23 MR. MASSEY: Thank you, Your Honor.

24 (The hearing concluded at approximately
25 11:51 a.m.)

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(End of Transcript of Record.)

1 CERTIFICATE OF REPORTER

2

3 STATE OF SOUTH CAROLINA)
4 COUNTY OF HORRY)

5

6 I, TERESA J.F. BAUTZ, Official Court
7 Reporter for the Fifteenth Judicial Circuit of the
8 State of South Carolina, do hereby certify that the
9 foregoing is a true, accurate and complete Transcript
10 of Record of the proceedings had and evidence
11 introduced in the trial of the captioned case, relative
12 to appeal, in the Court of General Sessions for Horry
13 County, South Carolina, on the 17th day of January,
14 2016.

15

16 I FURTHER CERTIFY that I am neither of
17 kin, counsel nor interest to any party hereto.

18

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21

s/Teresa J. F. Bautz
TERESA J.F. BAUTZ, RPR
Official Court Reporter

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FORM 5

STATE OF SOUTH CAROLINA)
)
COUNTY OF Horry)
)
Full name and prison number (if any) of Applicant.)
Nehemiah James Evans 295171)
v.)
)
State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

15

7825

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 Perry Correctional Institution
2. Name and location of Court which imposed sentence The Court of General Sessions Conway, SC 29928
3. Name(s) of co-defendant(s) (if any) Sandy Lee Louklear and Odom Bryan Bryant
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013G92600305
 - (b) 2013G92600307
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 3/16/15 - 30 years
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) I wasn't aware at the time that I could appeal.
- (b) I wasn't aware that I would be doing more time than I was told by my attorney.
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Ineffective Assistance of Counsel

(a) Ineffective Assistance of Counsel

(b) _____

(c) _____

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

(a) Counsel gave erroneous advice which led to involuntary guilty plea.

(b) Counsel failed to request psychiatric examination after being made aware of defendant's mental history.

(c) Counsel failed to investigate and question co-defendants after being aware of multiple statements.

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

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
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 - I was told I could only challenge it through P.C.B.
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

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

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

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

- i. Kenneth B. Massey / Law Group South 200 Elm St. Conway, SC 29526
- ii. _____
- iii. _____

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

- i. Plea
- ii. Sentencing
- iii. _____

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

New Plea or Time Reduction or New Trial

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

No

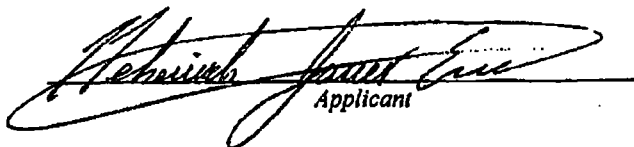
APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

15

7825

I, NJE, 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.


Applicant

SWORN or affirmed to and subscribed before me this
28 day of October, 2015.


Notary Public

My Commission Expires: September 25, 2023

2015 OCT -2 AM 8:59
 ELECTRONIC COURT
 CLERK'S OFFICE

STATE OF SOUTH CAROLINA)

County of Horry)

VERIFICATION

15

7825

I, NJE, 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.

[Handwritten Signature]

SWORN to and subscribed before me this 28
day of 28 October, 2015.

Tamara Conwell (L.S.)
Notary Public

My Commission Expires
September 25, 2023

My Commission Expires: _____

RECORDED
2015 OCT 28 AM 8:50
HARRIS COUNTY

STATE OF SOUTH CAROLINA)
 COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
 OF THE FIFTEENTH JUDICIAL CIRCUIT

Nehemiah J. Evans,
 S.C.D.C. No. 295171,

Case No.: 2015-CP-26-7825

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

FILED
 2016 DEC - 6 AM 8:29
 JAMES HUGGINS-CLARK
 CLERK OF COURT

In response to the Applicant's post-conviction relief application filed November 2, 2015, the Respondent would show this Court:

I.

Applicant is presently incarcerated with the South Carolina Department of Corrections pursuant to the Horry County Clerk of Court's orders of commitment. The Horry County Grand Jury indicted Applicant at the January 2013 term for two counts of murder (2013-GS-26-305; -307). Eric J. Fox, Esquire, represented the Applicant.

On February 25, 2015, Applicant pled guilty to both charges as indicted. On March 16, 2015, the Honorable Larry W. Hyman sentenced Applicant pursuant to a negotiated plea agreement to thirty (30) years imprisonment for both charges. The sentences were to run concurrently. Applicant did not appeal his conviction or his sentence.

II.

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

1. Ineffective Assistance of Counsel

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

Attached to this return and incorporated herein are the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea and sentencing transcripts, and Applicant's application. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation of ineffective assistance of counsel is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

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

[Remainder of page left intentionally blank]

V.

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

Respectfully submitted,


ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

CAITLIN BAZAN HASTINGS
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

November 30, 2016

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

NEHEMIAH J. EVANS, 295171,
Applicant,

2015-CP-26-7825

vs

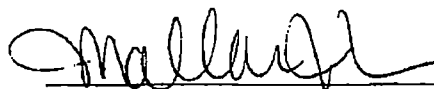
AFFIDAVIT OF SERVICE BY MAIL

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:

Mr. Steven W. Fowler, Esquire
1019 Highway 17 South
North Myrtle Beach, SC 29582

DATED this 30th Day of November, 2016.


Mallory Morris, Legal Assistant
For Respondent

2016 DEC -6 AM 8:29
CLERK OF COURT

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State of South Carolina) Court of Common Pleas
County of Horry) 2015-CP-26-07825

Nehemiah J. Evans)
vs.) Transcript of Record
State of South Carolina)

November 29, 2017
Conway, South Carolina

BEFORE:

Honorable William H. Seals, Jr., Judge.

APPEARANCES:

Steven W. Fowler, Esq.
Attorney for the Applicant

Johnny E. James, Jr., Esq.
Attorney for the State

Teresa J. F. Bautz, RPR
Official Court Reporter

	I N D E X				
	WITNESS	DIR	CROSS	RED	REC
1					
2					
3	Nehemiah J. Evans				
4	Mr. Fowler	11	--	33	--
5	Mr. James	--	28	--	36
6	Kenneth B. Massey				
7	Mr. James	38	--	--	--
8	Mr. Fowler	--	48	--	--

9

10

11

12

E X H I B I T S

13

	NO.	DESCRIPTION	ID	EV
14				
15		No exhibits submitted.		

16

17

18

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23 Exhibits retained by Clerk of Court.

24

25

1 (The hearing commenced at approximately
2 12:32 p.m.)

3 MR. JAMES: If it may please the Court, this is
4 the case of Nehemiah J. Evans versus State of South
5 Carolina, Docket No. 2015-CP-26-7825. Mr. Evans is
6 present in the courtroom here today and is represented
7 by Mr. Steven Fowler, Esquire.

8 Mr. Evans was indicted for two counts of murder
9 and one count of burglary in the first degree at the
10 January 2013 term of the Horry County Grand Jury. On
11 March 16th, 2015, Mr. Evans pled to two counts of
12 murder, and the charge of burglary first degree was
13 dismissed nolle prosequi. Mr. Evans was sentenced to
14 30 years on each charge of murder. And Mr. Evans did
15 not appeal from that plea.

16 Your Honor, this matter has been -- well, that's
17 the extent of the procedural history. At this time,
18 Your Honor, my understanding is that opposing counsel
19 wishes to seek a continuance.

20 THE COURT: All right, yes, sir.

21 MR. FOWLER: Your Honor, I've spoken with my
22 client, and we have been in communication with
23 Mr. Evans previously. And he and I spoke at length
24 this morning about this matter. Mr. Evans at the last
25 hearing, I believe, around September 11th or actually

1 September 11th of this year, we sent Mr. Evans all the
2 information that we had in his file pursuant to his
3 request.

4 He's always been very open with me in discussion
5 and very knowledgeable. But in discussing with
6 Mr. Evans some information that he might need, and he
7 thinks his -- well, not might but is required to have
8 is the transcript of the sentencing phase. The
9 information that we provided to him that was provided
10 to us by the State does not have that information in
11 it. So that's something that we would like to -- my
12 client has requested that he would like to have.

13 And also, he has requested that a certain person,
14 a Mr. Odom Bryant of Broad River, be subpoenaed to this
15 next -- to a future hearing, Your Honor. My client has
16 indicated to me that he suffers under a disability, a
17 mental disability, and that also, I think, factors into
18 this in some capacity, Your Honor.

19 So with that information not being provided by the
20 State and us in our due diligence trying to provide
21 whatever we had to my client, we would like to ask for
22 a continuation. And we would also like to have the
23 State provide to us the transcript of the sentencing
24 hearing in this underlying matter.

25 THE COURT: All right. Let me hear from you,

1 Mr. James.

2 MR. JAMES: Your Honor, my understanding is that
3 the State has provided all records in its possession to
4 Mr. Fowler on a number of occasions. Unfortunately at
5 this time I'm flipping through our file, and I cannot
6 find -- typically it's provided by e-mail through a
7 digital document transfer services known as Kiteworks.
8 And I do not have that e-mail in my file, and
9 unfortunately I've not been able to adequately connect
10 to our systems back with the Columbia office to provide
11 a copy of that e-mail.

12 Your Honor, this matter has been continued on
13 numerous occasions. It was on the docket in February
14 of this year as well as May, September and now. So
15 this is the fourth time this matter had been on the
16 docket. Furthermore, Your Honor, I believe it was
17 previously subject to an order for date certain on the
18 previous docket, and it was continued from that date
19 due to a scheduling conflict between opposing counsel
20 and the witnesses who are present here today in the
21 courtroom.

22 Your Honor, the witnesses in this case have been
23 extremely patient with the State and with the repeated
24 continuances in this matter. And we haven't been made
25 aware of any deficiency in the documents that we have

1 provided, nor of the need for this individual, Odom
2 Bryant I believe his name was, until today. And so,
3 Your Honor, we would respectfully oppose that request
4 for a continuance.

5 THE COURT: What are the allegations in the
6 application?

7 MR. FOWLER: In the application that he's
8 provided, Your Honor, number 10 and 11, ineffective
9 assistance of counsel, erroneous advice, request
10 psychiatric examination, Your Honor, that apparently,
11 or it's alleged counsel failed to do that. And number
12 C, counsel failed to investigate the multiple
13 statements by other persons, Your Honor.

14 THE COURT: All right. So what does the
15 transcript of the sentencing phase have to do with any
16 of those matters?

17 MR. FOWLER: May I have a moment, Your Honor.

18 THE COURT: You may.

19 (Discussion off the record.)

20 MR. FOWLER: Your Honor, may my client address the
21 Court briefly?

22 THE COURT: Let him do it through you.

23 MR. FOWLER: Okay, thank you. Your Honor, my
24 client's indicated to me that the sentencing transcript
25 would reveal that there is no factual basis for the

1 plea, and that would be shown throughout the sentencing
2 transcript. And I believe there is a discrepancy
3 between the -- there was a different day for the
4 sentencing as opposed to the other actions in this
5 case.

6 THE COURT: Why wasn't the transcript in the
7 sentencing phase provided to him, Mr. James?

8 MR. JAMES: I don't know if it was or wasn't
9 provided to him, Your Honor. That's ultimately the
10 position that I have to take because I have no records
11 to show that we provided it to him, and I have no
12 records in front of me to show right now that we didn't
13 provide it to him.

14 Typically we normally do provide everything that
15 we receive to the opposing party. We provide it as
16 soon as we get it, or we send it with the return,
17 whatever the case may be. In this case, unfortunately,
18 it is on two separate days, and that always causes a
19 little bit of complication, much to my chagrin and to
20 the chagrin of the Court.

21 Originally he pled guilty on February 25th, 2015,
22 and he was sentenced the March 16th, 2015. I have a
23 copy of the sentencing transcript in my hand. A copy
24 of that sentencing transcript should be in the judge's
25 packet that was handed up in conjunction with this

1 case.

2 THE COURT: Let me take a look at what you have.

3 MR. JAMES: At what I have?

4 THE COURT: Um-hum.

5 MR. FOWLER: May I see it for a moment, Your
6 Honor.

7 MR. JAMES: And as a matter of full disclosure,
8 Your Honor, as I've reestablished a little bit of a
9 wireless connection here in the courtroom, I am
10 requesting back in Columbia of my legal assistant,
11 Ms. Mallory Morris, to confirm if we did or didn't
12 provide the sentencing transcript to Mr. Fowler on a
13 previous date.

14 MR. FOWLER: Your Honor, I believe we have sent
15 Mr. Evans what we have had, and he's got multiple items
16 here from our office. But he's indicating that he did
17 not have this sentencing transcript. Did the judge
18 want to see it?

19 MR. JAMES: Yes. If I may approach, Your Honor.

20 THE COURT: Yes. What is this?

21 MR. JAMES: That's the sentencing transcript that
22 you requested. The plea and sentencing transcript took
23 place on different days.

24 THE COURT: Sentenced on a different date from the
25 plea?

1 MR. JAMES: Um-hum.

2 THE COURT: Well, the plea is where the factual
3 basis would be established, not at the sentencing
4 phase. Give me just a second, and I'll probably find
5 it.

6 MR. JAMES: Your Honor, if I may direct your
7 attention, the factual basis for the plea is set forth
8 from pages eight through pages ten of the guilty plea
9 transcript dated February 25th, 2015.

10 THE COURT: All right. I have it right here if
11 you need to see it, Mr. Fowler.

12 MR. FOWLER: Yes, sir, Your Honor.

13 THE COURT: It's right here.

14 MR. FOWLER: May I approach?

15 THE COURT: You may. All right. With that being
16 said, what does Mr. Odom Bryant have to do with his
17 application?

18 MR. FOWLER: May I have a moment, Your Honor.

19 (Discussion off the record.)

20 MR. FOWLER: Your Honor --

21 MR. JAMES: Your Honor, if I may actually request
22 just a moment more, I may be able to shed some greater
23 light on this one way or the other in a definitive way.

24 THE COURT: In what regard?

25 MR. JAMES: In regards to whether or not we

1 provided the sentencing transcript.

2 THE COURT: I don't see where he needs it, he
3 doesn't need it. If he needs a factual basis for the
4 plea, he has it. All right, I want to know about
5 Mr. Odom Bryant.

6 MR. FOWLER: Your Honor, my client has indicated
7 to me that it goes to the heart of his statements in
8 terms of lack of investigation by his legal counsel,
9 and in terms of and also Mr. Odom Bryant could shed
10 some light on alleged false statements. He was a
11 codefendant of my client, and he could add weight to
12 these allegations that my client has provided here in
13 his application.

14 THE COURT: Why haven't you gotten him here if he
15 wanted him?

16 MR. FOWLER: This is the first that he's indicated
17 to me personally about it.

18 THE COURT: All right, it's time to roll. Your
19 motion for continuance is denied. Call your first
20 witness.

21 MR. FOWLER: All right. Your Honor, just may I
22 have a moment, please.

23 (Discussion off the record.)

24 MR. FOWLER: Your Honor, I'd like to call -- did
25 we call the case yet?

1 MR. JAMES: Yes.

2 MR. FOWLER: Your Honor, I'd like to call
3 Mr. Evans to the stand, please.

4 THE COURT: All right.

5 NEHEMIAH J. EVANS, after being duly sworn,
6 testified as follows:

7 THE CLERK: You may have a seat. State your name
8 for the Court, please.

9 THE COURT: Go ahead.

10 THE APPLICANT: Nehemiah Evans.

11 DIRECT EXAMINATION

12 BY MR. FOWLER:

13 Q Mr. Evans, we've already discussed about the
14 sentencing phase of this matter; is that -- you were in
15 the courtroom when we discussed that; correct?

16 A Right.

17 Q And we have provided you information on at least
18 two occasions about this case, right, what's been
19 provided to us; correct?

20 A Right.

21 Q You stated that perhaps at the sentencing phase
22 that there would be some additional information or
23 something that you personally observed?

24 A Yes, sir.

25 Q What would that be?

1 A Well, the judge specifically asked Mr. Richardson
2 to give a synopsis of my case. After he gave them a
3 rundown of the case, he asked them if I was the
4 shooter. Mr. Richardson told him that I wasn't. He
5 asked him was he sure of that, he told him yes, the
6 shooter was locked up or incarcerated at Broad Water
7 Correctional with two life sentences.

8 He asked then, he did ask then what was my
9 participation in the crime. He specifically told him
10 that he wasn't sure, if any.

11 Q And so you're saying that that was at the
12 sentencing phase?

13 A Right.

14 Q Okay. And that sentencing phase was on a
15 different day --

16 A Right.

17 Q -- than the plea; correct?

18 A Right.

19 Q Okay. And also you had mentioned that Odom Bryant
20 is someone --

21 A Right.

22 Q -- you felt might be relevant to this case?

23 A Right.

24 Q How so?

25 A Well, he had statements originally that was

1 supposed to have been picked up that was showing that I
2 never had any participation or knowledge of the crime
3 itself, which my original attorney did not go and pick
4 up. But he was willing to come and testify to the same
5 thing.

6 Q Okay.

7 A So from between what my past prosecutor was
8 stating and between what my codefendant was saying, it
9 automatically shows that --

10 THE COURT: You may want to slow down just a
11 little bit.

12 THE APPLICANT: I'm sorry.

13 THE COURT: So I can catch you, and the court
14 reporter has to write down everything that you say.

15 THE APPLICANT: Oh.

16 THE COURT: Take your time.

17 THE APPLICANT: Okay. Well...

18 Q With the Court's indulgence, if you could just
19 restate a little bit about Mr. Odom slowly, please.

20 A Okay. Well, like I said, he's incarcerated at
21 Broad River Correctional Institution with two life
22 sentences. He had initial statements exonerating me,
23 letting them know that I had no knowledge or
24 participation in the crime.

25 Q And you feel that that would go to the ineffective

1 assistance of counsel claim that you have today?

2 A Right. Because using that, if I was to go -- if I
3 had went to trial and knowing that and being able to
4 use that, it's kind of -- well, I feel like it would be
5 kind of hard for a jury to convict me of a charge when
6 the people who actually committed it admitted to
7 committing the crime and still letting them know that I
8 never had any participation or knowledge in this crime.

9 Q Okay. In your application in questions 10 and 11,
10 in 10 you state that there was ineffective assistance
11 of counsel. What is your basis on stating that in your
12 application?

13 A Well, it's a lot. I feel like, well, one, he
14 never -- he never prepared --

15 Q And, once again, please speak slowly so that court
16 may report it.

17 A Well, I feel that he never adequately prepared for
18 my case, whether it was investigation or anything else.
19 Because there's no one in my case that he's questioned.
20 There is nothing in my case that he's provided to me.
21 Knowing that my codefendants, as they call them, had
22 these statements that was exonerating me from the
23 get-go, he never went to get them to use them to
24 exonerate me.

25 It's a lot of different things, like I have a past

1 mental health history.

2 Q Right.

3 A There is a lot of disorders that I have. But even
4 upon finding out that I have a mental health history, I
5 was never evaluated, nor was it ever logged into any
6 computer right along with the medications that I was
7 on.

8 Q Let me kind of since you've touched on that, let's
9 go through some of your specific statements in this
10 application. In question 11, you state that counsel
11 gave erroneous advice which led to an involuntary
12 guilty plea. So I didn't mean to cut you off, but
13 let's walk through this one point at a time. You said
14 he gave erroneous advice which led to an involuntary
15 guilty plea.

16 A Right.

17 Q What advice or multiple advice did he give to you
18 that you say created an involuntary guilty plea?

19 A Well, seeing as how they already have who they had
20 for the murders itself far as the trigger man or
21 whatever they want to say, he specifically told me that
22 that's not what I was going to be getting charged with.
23 I mean, they already knew I didn't commit the crime,
24 which is what the solicitor was supposedly telling him
25 the whole time they were meeting up.

1 So if you already know I'm not the person who
2 commit this crime, and if you trying to give me a plea,
3 then it's not going to be for the murder. I mean, so
4 what he told me was that I was going to be taking a
5 nonviolent sentence. And I have the paperwork over
6 there for the understanding sentences and parole sheets
7 that he gave me to try to get me to understand that I
8 wouldn't be doing a specific amount of time for the
9 State, I would be doing a nonviolent sentence.

10 But upon me getting to department of corrections,
11 they told me that I got two mandatory 30-year
12 sentences, which is not what we discussed, which is not
13 what I was told I was signing.

14 Q So are you saying that what you were told that you
15 were going to be pleading to is different than what you
16 were --

17 A Than what I have, right.

18 Q Okay. Well --

19 A Well, knowing that, I wouldn't have took that
20 plea.

21 Q Okay.

22 A For what?

23 Q Go ahead. Were you going to say something else?

24 A Yeah.

25 Q Okay.

1 A I was going to say, knowing that, why would I have
2 taken that plea.

3 Q All right.

4 A You already have no evidence against me, you know
5 I didn't commit the crime; why would I take 30 years
6 for a crime that I didn't commit.

7 Q So how long did you think that you were going to
8 be pleading to what he initially told you you were
9 going to be pleading to?

10 A After sitting in the county jail for three years,
11 anything that was nonviolent, that wasn't a murder
12 charge really didn't sound too bad to get up out of
13 there.

14 Q So you felt it would be a nonviolent charge?

15 A I was told specifically it was going to be
16 nonviolent.

17 Q And who told you that?

18 A Mr. Kenneth Blaine Massey.

19 Q And a nonviolent sentence carries a different
20 sentencing than a violent; correct?

21 A Right.

22 Q Okay, all right. In terms of your second question
23 or second statement here, counsel failed to request a
24 psychiatric examination after being made aware of
25 Defendant's mental history.

1 So did you tell Mr. Massey about your -- your
2 attorney about your mental history?

3 A On multiple occasions and I also have copies of
4 the letters to him in his office that he made copies
5 and sent back to me.

6 Q Okay. So why did you not get evaluated?

7 A Because he didn't do his job.

8 Q Okay.

9 A He didn't request it.

10 Q All right. So with the charges that you were up
11 on, you really felt like -- did you feel like you
12 needed a mental health evaluation?

13 A Well, I mean, I really can't answer that, do you
14 know what I mean. I mean, being a mental health
15 patient, I can't tell you what it is -- what it's
16 supposed to feel like.

17 Q Okay. All right. And finally, in this you said,
18 counsel failed to investigate Defendant after being
19 aware of multiple statements. Okay, now, you said, to
20 question Defendants after being aware of multiple
21 statements. What multiple statements are you referring
22 to?

23 A Well, one I was referring to is all of the many
24 different statements that my other codefendant Sandy
25 Locklear has.

1 Q Okay.

2 A There's a lot of statements in there. None of the
3 statements that she has did she ever say I did
4 anything. As a matter of fact, she said the opposite.
5 But there were times where she was trying to put me at
6 different places like gas stations and stuff like that.
7 And I had them go and review the cameras that shows
8 that I was never in those areas.

9 Q Okay. Now, was that in the discovery you
10 received?

11 A That's inside my motion of discovery.

12 Q Okay. So did your attorney go over your discovery
13 with you?

14 A Of course not.

15 Q Okay.

16 A He tried to breach it on certain issues that he
17 thought might have been irrelevant.

18 Q Okay. So did you bring those discrepancies in
19 your --

20 A Yes, I did. And they are also part of the letters
21 that I sent to him requesting, which he never responded
22 back to.

23 Q Okay.

24 A At no time.

25 Q All right. Okay, other than in letters, did you

1 orally --

2 A Oh, in person, yes, during every meeting.

3 Q What did he indicate to you that he did not -- why
4 did he indicate to you that he did not follow up on
5 that?

6 A Well, he told me specifically that he didn't want
7 to use Ms. Locklear because she was already charged
8 with filing false and fictitious reports, so they was
9 going to find her not credible. I specifically told
10 him that if they was going to find her not credible,
11 then I didn't find her credible enough to incarcerate
12 me. So if it was good for them, then she had to been
13 good enough for me.

14 Q Okay. Ineffective assistance of counsel which you
15 state here is fairly broad and you state three
16 specifics. Is there any other things that come to mind
17 that you feel like --

18 A Well, it's like a lot of other things that I had
19 wanted to amend to the PCR. But being that I was
20 waiting on certain things, I didn't do that. Because I
21 felt I that needed that because it was -- it was part
22 of my argument.

23 Q Well, what --

24 A But it's all right there on the table.

25 Q Well, what -- in your own words, what is something

1 in effect under the ineffective assistance of counsel
2 umbrella, what do you think needs to be brought to the
3 Court's attention on his ineffective assistance of
4 counsel?

5 A Repeat that one more time.

6 Q Okay. You said you were interested in maybe
7 amending your PCR application. What are some of the
8 things that you perhaps would add to that application?

9 A There was a lot. I have prosecutorial misconduct
10 in there I have. I have violation of all my
11 constitutional rights, it's a lot of different things
12 in there. I can't really recall them, I have to see
13 them. Because I have a lot of help doing the work, but
14 I really don't know the law.

15 Q But in regards to your relationship with your
16 attorney, is there anything else that you feel like
17 might need to be gone over, on a personal level?

18 A I don't know.

19 Q How often did he visit you? Can you articulate
20 that for the Court, please.

21 A As far as him visiting me concerning the case
22 itself?

23 Q Yeah.

24 A Probably about four times.

25 Q Okay. And how long was your -- how long did he

1 represent you, like months?

2 A For a few months. Yeah, I sat in the county jail
3 with a public defender for like two and a half years.

4 Q Okay. So he was not your first attorney; was he?

5 A No, sir. Actually Eric Fox was, which is
6 something else that I had wanted to -- I was going to
7 amend, the ineffective assistance of the public
8 defender also. Because by me sitting in the county
9 jail with him for two and a half years, and for him to
10 constantly keep telling me that the solicitor is
11 telling him that he knows I didn't commit the crime,
12 but he wouldn't drop my charges because I refused to
13 testify for the State about something I have no
14 knowledge of.

15 THE COURT: Sir, if you want a record of this PCR,
16 you're going to have to slow down so this little lady
17 right here can write down everything you have to say.
18 She's here for your benefit, not mine or anybody
19 else's.

20 THE APPLICANT: I'm sorry, I'm sorry.

21 THE COURT: So just slow it on down.

22 THE APPLICANT: I don't know why I keep speaking
23 so fast.

24 THE COURT: I'm going to let you talk. Take your
25 time. Go ahead.

1 Q All right, let me get this clear. Mr. Massey was
2 not your attorney until just a few months before you
3 pled?

4 A Just a few months.

5 Q Okay.

6 A But...

7 Q Hold on. And do you feel like that was enough
8 time for him to adequately get to the issues in your
9 case?

10 A No. Because he didn't investigate anything.

11 Q Anything else about this that you want to bring to
12 the Court's attention?

13 A I mean, I'm not really sure. I mean, I would
14 personally like to go and get my information because
15 there is a lot of stuff in there that I would bring to
16 the Court's attention.

17 THE COURT: It's all right. I'm not going to cut
18 you off.

19 THE APPLICANT: Too fast again?

20 THE COURT: Too fast.

21 THE APPLICANT: There's a lot of things in there
22 that I actually want to be amended to my PCR that I
23 could read off of, that I would like to discuss if the
24 judge would allow me to do that.

25 MR. FOWLER: Your Honor, may we approach for a

1 moment?

2 THE COURT: Yes.

3 (Discussion off the record.)

4 Q Mr. Evans, just a moment ago you indicated that
5 you had some notes over here that might be helpful?

6 A Yes, sir. The big white envelope.

7 Q Okay.

8 A Just the white one.

9 Q I'm going to provide to you all the notes that you
10 brought out, including the two documents that our
11 office sent to you that you brought today.

12 A Okay.

13 Q And with respect to the Court, if you could just
14 briefly take a look at that and respond to my question
15 in terms of additional items or things that you might
16 feel relevant under the ineffective assistance of
17 counsel that you're alleging here today.

18 MR. JAMES: And, Your Honor, if I may make a
19 remark about this matter on the record just to insure
20 that the record is complete. We walked up to the bench
21 and at the bench discussed whether or not the State
22 would object to handing up the notes to Mr. Evans in
23 response to the question of whether there was anything
24 else that he wanted to amend to his application today.

25 The State is specifically refraining from any

1 objection in light of fact that I can neither confirm
2 nor deny at this time that we provided the sentencing
3 transcript to Mr. Fowler. So that is the reason for
4 our non-objection to his review of his notes on the
5 stand at this time.

6 THE COURT: All right.

7 MR. JAMES: As well as to the amendments that he
8 may or may not promulgate in a moment.

9 THE APPLICANT: All right.

10 Q Yes, sir. And, once again, just to repeat the
11 question, you stated that you may wish to -- you would
12 ideally like to amend your PCR application, but under
13 the ineffective assistance of counsel you might have
14 some other information that might be helpful in the
15 Court's decision. Can you indicate what those other
16 items are at this time.

17 A I do. At this time I have a couple other issues
18 that I would, such as failure to move to withdraw
19 guilty plea.

20 Q Okay. Now, let me stop you there, if you don't
21 mind.

22 A All right.

23 Q Did you specifically ask for your attorney to
24 withdraw the guilty plea or file any kind of appeal or
25 any documentation with the Court?

1 A I did, as soon as I hit the Department of
2 Corrections and found out that the sentence that he
3 told me, specifically told me that I was going to be
4 serving was not what it was.

5 Q Okay. So are you saying that when you did plea
6 and when you were sentenced that you did not -- did you
7 have an adequate -- did you have an adequate
8 understanding of what you were pleading to when you
9 pled?

10 A No, sir. I was not told that I was given a
11 30-year sentence or 30-year mandatory minimum, none of
12 that.

13 Q Okay. And did you --

14 A I was specifically told when I signed that
15 paperwork, I was going to have a nonviolent sentence.

16 Q Okay. So you were under the belief that you were
17 doing a nonviolent sentence?

18 A Right.

19 Q All right. Continue, please.

20 A I got a failure to quash indictments and challenge
21 my arrest warrants.

22 Q Okay. Now, are you saying that there was a
23 problem with your indictments and arrest warrants?

24 A Actually, I'm saying there was a problem with all
25 of it.

1 Q How so?

2 A Well, first off, on my arrest warrants it
3 specifically states that not only did we force entry
4 into the house to commit the crime, it states that they
5 have telephone data showing that we conspired. But
6 during the detective -- the investigative officer's
7 reports, he specifically states that not only was there
8 no forced entry, they have no telephone data connecting
9 me or showing that I was involved in anything at all
10 specifically.

11 So what I'm trying to figure out is if all of this
12 information and evidence that's inside the arrest
13 warrants, this is what you used to arrest me or detain
14 me, and I have the report that show that none of that
15 is what you actually had, then how did you use that.

16 Q So did you discuss that with your attorney?

17 A I tried to discuss a lot of things with him on
18 multiple occasions.

19 Q Okay.

20 A I mean, there is only so much I can discuss with
21 him. Because even though I was requesting --

22 THE COURT: Slow down, slow down.

23 THE APPLICANT: I'm sorry. Even though I had been
24 requesting a bunch of information at times, not one
25 time have I ever been actually given any legal

1 information to actually prepare on my own until I dig
2 into the Department of Corrections and be able to look
3 up and find what I really needed.

4 Q So you didn't find out about these matters until
5 you got to SCDC?

6 A Right. End up going to the law library and after
7 taking my time and try to find them or ask them for
8 help to help me, show me, what I need to do.

9 Q All right. Are there any other issues that you
10 feel need to be brought up?

11 A No, sir, at this time that will be it.

12 Q Okay.

13 MR. FOWLER: No further questions, Your Honor.

14 THE COURT: All right. State?

15 CROSS-EXAMINATION

16 BY MR. JAMES:

17 Q Mr. Evans, it's possible that you've answered some
18 of these questions on direct examination. But as we've
19 noted, you speak very quickly so I may not have heard
20 them.

21 A Right.

22 Q And I wanted to make sure that the record is
23 abundantly clear as to it. Now, about how many times
24 did you meet with your attorney prior to your plea?

25 A I said I'm not sure, but I think it was about four

1 or five times.

2 Q Okay. Do you recall reviewing discovery with your
3 attorney?

4 A Bits and pieces.

5 Q Okay. Do you recall telling the Court at your
6 guilty plea, not your sentencing but at the original
7 guilty plea, do you recall telling the Court that you
8 had discussed this matter with your attorney?

9 A Yes, sir, I do.

10 Q And that you had reviewed the evidence and
11 discovery materials?

12 A Yes, sir.

13 Q Okay. Do you deny that you told the Court that
14 you had reviewed it all with your attorney?

15 A I don't deny telling them that I reviewed all of
16 anything. I don't remember using the word "all" at
17 all.

18 Q Do you recall discussing any possible defenses
19 with your attorney?

20 A No, actually I don't. Because he was specifically
21 told that he wasn't going to take my case to trial.

22 Q Okay.

23 A Even after I requested multiple times.

24 Q Do you recall discussing how the matters provided
25 in discovery could be used against you at trial?

1 A What do you mean?

2 Q Did he tell you how the State's evidence could be
3 used against you?

4 A Somewhat but not in full. Like, for example, he
5 told me that some of the things that the State may be
6 able to try. But what I was trying to figure out was
7 how can the State use those things against me if they
8 never had none of that evidence against me. The
9 evidence that's presented against me supposedly, like
10 in my warrant, it's proven that none of that evidence
11 is what they have against me. So how can the State use
12 that against me if you don't actually have it against
13 me?

14 Q Did you give your counsel any leads or witnesses
15 to investigate?

16 A There are no witnesses in my case. The only
17 people he could have spoken to are Mr. Bryant and
18 Ms. Locklear. And, yes, I have sent him to them. Did
19 he go, no. And what he told me specifically was they
20 was going to use them against me. I mean, they were
21 not credible witnesses.

22 But like I said, if the State could use them, then
23 I would had to be able too. If they were good enough
24 for the State to believe, they had to be good enough to
25 believe on my behalf.

1 Q Do you recall waiving your constitutional rights,
2 that is your right to a jury trial?

3 A Yes, I do.

4 Q And your right to remain silent?

5 A Um-hum.

6 THE COURT: Is that a yes or a no?

7 THE APPLICANT: Yes, sir.

8 Q And your right to make the State meet its burden
9 of proof?

10 A Right.

11 Q And do you recall hearing the State present the
12 facts of your case at your guilty plea proceeding?

13 A No, I don't. I recalled him giving a synopsis.

14 Q That's to what I'm referring.

15 A Yes.

16 Q Okay. Do you recall agreeing with that synopsis?

17 A No, I don't recall agreeing to it.

18 MR. JAMES: Beg the Court's indulgence.

19 THE APPLICANT: Whether I did or didn't at the
20 time, I can't say I didn't. But I don't recall it.

21 MR. JAMES: If I may approach the witness, Your
22 Honor?

23 THE COURT: You may.

24 MR. JAMES: Your Honor, I am approaching the
25 witness with a copy of his guilty plea transcript at

1 page 10. High lit on this page are lines 15 through
2 17. This is immediately following the State's
3 summation of facts.

4 Q Mr. Evans, if you would like to review the high
5 lit portion there.

6 A Okay.

7 Q And do you recall agreeing that the facts
8 presented by the State was why you were pleading
9 guilty?

10 A No, I still don't recall that. I'm not saying it
11 didn't happen, I said I don't recall it. I've read it,
12 but I don't recall it actually happening.

13 Q All right. Do you deny that the transcript
14 indicates that you said it?

15 A No, I don't deny that. That's what it says.

16 Q Okay. Do you recall telling the plea judge that
17 you were satisfied with your attorney's services?

18 A At that time, yes.

19 Q Do you recall offering any complaints to the plea
20 judge about his performance?

21 A At that time, no.

22 Q Okay. Do you recall telling the judge that no one
23 was promising or threatening you in any way?

24 A Right, yes, sir.

25 Q Okay. And you recall telling the plea judge that

1 you wish to plead guilty?

2 A Yes, sir.

3 Q Do you recall the plea judge asking you if you had
4 any mental health issues?

5 A Yes. And I recall stating that. And they are on
6 the record.

7 Q Right. Do you also recall telling the judge that
8 you did not feel there was anything interfering in your
9 understanding on the day of the plea?

10 A No, sir, I don't recall that. But I do recall
11 that while he was asking me about my mental health
12 history, I do recall him cutting me off and not letting
13 me explain my mental health issue.

14 MR. JAMES: Beg the Court's indulgence, Your
15 Honor. I have no further questions, Your Honor.

16 THE COURT: All right. Any follow up?

17 MR. FOWLER: Yes.

18 REDIRECT EXAMINATION

19 BY MR. FOWLER:

20 Q You stated on cross-examination that he went over
21 the discovery with you in bits and pieces; what do you
22 mean by that?

23 A I mean that as far as my whole motion of
24 discovery, we never had -- we've never met up or had
25 enough time to possibly go through my whole motion of

1 discovery, so that wasn't possible.

2 Q So what was --

3 A There was only certain parts of most
4 discovery went through. Mostly what we went through
5 when we discussed was me and the detectives speaking.
6 That's mostly what we went through. As far as the
7 motion of discovery and the evidence that was found, we
8 didn't go through any of that except for what I
9 presented to him. And we really didn't go through that
10 because he didn't want to use it.

11 Q Okay. The State mentioned that you said certain
12 things to the Court, and you said that you meant them
13 or --

14 A At that time?

15 Q -- saw at the time.

16 A Right.

17 Q What did you mean by that?

18 A Well, I mean, I feel that my attorney was a good
19 attorney. I feel there's a lot of things that he
20 didn't do that he could have done, that he knew he
21 could have done, you know what I mean. But he didn't,
22 you know what I mean, even when it was requested upon
23 him to do. That's how I feel.

24 And a lot of the things that he could have done, I
25 found that should have been done once I -- once I got

1 down to the Department of Corrections and was able to
2 study for myself, which is the reason why I have these
3 things on paper.

4 Q All right. And, once again, you said that the
5 amount of time that he represented you was not enough
6 time to adequately --

7 THE COURT: You don't need to repeat what he said.

8 MR. FOWLER: I apologize.

9 THE COURT: Ask your question, let him answer it.

10 Q The mental health issues, on cross-examination you
11 said you were cut off --

12 A Right.

13 Q -- in mentioning that. Tell me a little bit about
14 that.

15 A Well, the judge asked me, did I have any type of
16 mental health history or anything like that. And as
17 soon as I started, I told him, yes, I have mental
18 health history. As soon as I started after that, he
19 cut me off and jumped to another sentence. And he
20 never allowed me to go back to it, nor did they follow
21 it up. And they still have me down as no mental health
22 history, even though I have been in and out of mental
23 health facilities.

24 Q All right. And briefly on that, what mental
25 health issues can you share with the Court today?

1 A I've be diagnosed with, besides ADHD and ADD,
2 bipolar, schizophrenic, I have seizures at times and I
3 have blackouts.

4 Q And do you feel that it's all related to your
5 attorney's representation with you that he needed to
6 take extra care?

7 A Well, I mean, being that this -- we already know
8 that I'm on a major case. And it's not a game to me, I
9 don't know if it is to anyone else. But by me going
10 through all of this back here, there's a lot of stuff
11 that he could have done. And there's a lot of these
12 things that involve me that he should have researched
13 because it involved me. Because without you doing
14 that, then you don't know exactly how much of it you
15 are able to use.

16 MR. FOWLER: No further questions, Your Honor.

17 THE COURT: All right. State?

18 MR. JAMES: One last matter, Your Honor.

19 RE CROSS-EXAMINATION

20 BY MR. JAMES:

21 Q Do you recall signing your sentencing sheets?

22 A Yes, sir, I do.

23 Q Okay. Do you recall those sentencing sheets
24 indicating that you were pleading to two counts of
25 murder?

1 A No, sir. Actually, I never even read them.

2 Q You never read the sentencing sheets?

3 A Never read them.

4 Q Even though you signed them?

5 A I read off what he told me I was going off of at
6 the time. I was frustrated. The time that he brought
7 me those sentencing sheets was probably about 30
8 seconds before he tried to take me into the courtroom
9 after we sat there and argued about it. And I told him
10 I did not want to take a plea.

11 Q So it's your testimony here today that you signed
12 the sentencing sheet without looking at it?

13 A Really I did.

14 Q Would it surprise you to hear that the sentencing
15 sheets put you down for 30 years?

16 A No. I read them now, but I don't see on there
17 where it says that I have a mandatory sentence, still.

18 Q Do you see on the sentencing sheet where it
19 indicates that the sentence to which you are pleading
20 is violent?

21 A Of course. That's not mandatory, though.

22 Q And most serious?

23 A Right. But that doesn't state mandatory, sir.

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

25 THE COURT: All right. You may step down.

1 THE APPLICANT: Thank you, sir.

2 (Witness excused.)

3 THE COURT: Call your next witness.

4 MR. FOWLER: I would like to have a moment to
5 speak with my client, Your Honor, briefly.

6 (Discussion off the record.)

7 MR. FOWLER: No further witnesses, Your Honor.

8 THE COURT: Thank you. The State's recognized.

9 MR. JAMES: The State would call Mr. Massey. As a
10 matter of clarification, is he still sworn in from the
11 previous hearing?

12 THE COURT: He is. Don't have to swear him again.

13 KENNETH B. MASSEY, after previously duly sworn,
14 testified as follows:

15 THE WITNESS: Kenneth Massey, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. JAMES:

18 Q Mr. Massey, how long have you been practicing law?

19 A Since October of '94.

20 Q And how much of that is criminal?

21 A About 90 percent.

22 Q Were you appointed or retained to represent Mr.
23 Evans?

24 A Retained.

25 Q About how many times did you meet with him during

1 the course of your representation?

2 A Several times at length. I got this case probably
3 in October of 2015 -- '14, I'm sorry, '14. And he pled
4 out in early spring of 2015. And when I meet with my
5 clients, they have my card. On my card it has my cell
6 number. I get dozens of calls everyday from the jail.
7 I'm very easy to get ahold of. I saw him at least once
8 every other week or at least twice a month or more.

9 Q Did you file a request for discovery pursuant to
10 Rule 5 and Brady?

11 A Absolutely. He handed me his discovery that he
12 had gotten prior to my representation. And that was
13 from Mr. Eric Fox, which I don't accept because there
14 may be something missing from there.

15 Q So as a precaution, you filed additional motions?

16 A Absolutely.

17 Q Did the State provide any materials in response to
18 your request?

19 A They did, about 30 days later. And within 24
20 hours of receiving said discovery I take it over to the
21 client in jail.

22 Q When you took it to him, did you just drop it on
23 his lap, or did you explain it all to him?

24 A No. Here's what I did. And I do this every time.
25 I said, this is your homework, I want you to go through

1 it. I've read through it, and I need you to read
2 through it. I will see you in at least two weeks to go
3 over this. This is homework. I need you to point out
4 to me what's good, what's bad.

5 And I said, what I've seen in here is the
6 detective statements. And that's an issue for us.
7 Because he made a statement and went on and on and on
8 with the detective. He placed himself there prior to,
9 during and --

10 Q Well, we'll get to that in just one moment, sir.
11 Did you come back two weeks later, as promised?

12 A Yes.

13 Q Did you conduct any additional investigation into
14 the facts, either personally or through an
15 investigator?

16 A No, I didn't.

17 Q Why not?

18 A This was a case you didn't want to take to trial.
19 And that was always his right to take it if he wanted
20 to. But my advice was not to take it to trial. Brad
21 Richardson had -- there was three codefendants. Prior
22 to this plea, Brad Richardson had gotten two life
23 sentences without parole for the other two
24 codefendants. That's why. I was trying to save him.

25 Q Did Mr. Evans ever indicate that he wanted to take

1 this to trial and fight it out?

2 A He did. But he also realized that the statements
3 he gave to detectives were not -- were not helpful.
4 That's the best way I can put it. And I asked if he
5 wanted to do a polygraph, and he said, sure. And I
6 filed my motion. And then he didn't want to do that,
7 so I withdrew my motion.

8 Q Did he ultimately decide that he wanted to plead
9 guilty to this?

10 A Yes.

11 Q Okay.

12 A And we went back on two occasions. So he had a
13 chance to say he didn't want to do it, and he didn't do
14 that. And this, I believe, was a morning plea. And my
15 routine is if court's at 9 o'clock, I'm there at 8:30.
16 I'm there a half an hour early because I want to be the
17 first guy that sees my clients and go in there and
18 discuss when the solicitor comes in with the sentencing
19 sheets. So he didn't have them handed to him in like
20 30 seconds.

21 Q Did you investigate Mr. Evans' mental health
22 history?

23 A This is the first I've heard is when he filed this
24 PCR. I never saw any evidence of a mental issue.

25 Q Did you have any reason to believe that Mr. Evans'

1 purported mental health history was a matter of
2 relevant concern?

3 A Not at all, no.

4 Q Did Mr. Evans appear to be of sound mind in your
5 dealings with him?

6 A Every time I saw him, even the day of the plea,
7 both days.

8 Q Did you ever attempt to contact the attorneys
9 representing the other perpetrators in this murder?

10 A I didn't have to call them, I saw them in court.

11 Q Okay.

12 A Dean Mureddu, I can't remember who the other one
13 was. But I can tell you a little story about Dean
14 Mureddu. After this plea, was about 30 days later, I
15 was going to a roll call, and Brad Richardson was at
16 the table facing out to the audience. And Dean Mureddu
17 went on over there and said --

18 MR. FOWLER: Objection, Your Honor. Hearsay.

19 MR. JAMES: Mr. Massey, that --

20 THE COURT: Sustained.

21 THE WITNESS: I got you.

22 Q Can you give us a brief -- you touched on it a
23 moment ago, but can you give us a brief overview of
24 what the State's evidence was against Mr. Massey [sic].

25 A This lady had come to my client and asked to, I

1 think it was \$15,000, to kill her husband and her
2 stepson. And he says, no, I can't do it, but I know
3 somebody. So he puts him in touch with this other
4 person.

5 And he also said that he went to the trailer that
6 day, and just out of the clear blue this person that he
7 recommended and this lady that asked him to do this,
8 was in this single wide trailer. And he didn't think
9 anything about it, but he goes to the restroom in the
10 single wide trailer, doesn't hear any gunfire, comes
11 out and he says, people are going, ooh, and goes
12 outside and vomits.

13 Well, subsequently after that he says that the guy
14 is pulling down the road, the guy he referred, is
15 pulling down the road and says, hop in. And my client
16 asked, where are you going, he says, we're going to
17 burn the car. He gets in the vehicle and goes. Those
18 were the facts.

19 Q Now, were those the facts that the State had
20 against your client, or were those the facts that your
21 client communicated to you?

22 A Those are the statements that he gave.

23 Q Okay. Did Cindy Lee Locklear or Odom Bryant give
24 any statements regarding the murders?

25 A I'm sure they did. But nothing to exculpate him

1 of any murder charges. They placed him in the murder
2 scene.

3 Q And based on your statements, I take it that you
4 had an opportunity to review their statements?

5 A Yes. Along with Mr. -- with my client.

6 Q Okay. And did you explain the strengths and
7 weaknesses of the case against him?

8 A Absolutely. From the time that he was talking to
9 the detective to all the way up to the statements and
10 the -- all through the discovery.

11 Q All right. What if anything did Mr. Evans tell
12 you about what happened?

13 A He told me that story that I just told you.

14 Q Okay.

15 A That he was asked -- he just happened to be in
16 that trailer that day and walking outside, he vomits.
17 And the guy that he recommends is going down the road
18 and says, where are you going, he says, I'm walking
19 down here to my car. He says, well, hop in, let's go
20 burn the car. And he hops in.

21 Q In light of the State's evidence and Mr. Evans'
22 remarks to you and the statements that were made by
23 both Mr. Evans and the codefendants, did you conceive
24 of any defenses available to your client?

25 A I didn't have any. Like I said, what I needed to

1 do was save him and get the best plea I could.

2 Otherwise, we were looking at a third sentence of two
3 life sentences without parole.

4 Q Do you feel you had adequate time to prepare that
5 case?

6 A Absolutely.

7 Q And you said he came around to a plea deal. Was
8 he ever insistent on a trial or...

9 A He asked what his chances were. I don't think I
10 would say or classify it that he was insistent.

11 Q Okay. What did you say his chances were?

12 A 95 percent to 99 percent conviction. Those are
13 not odds you want to go to Vegas on.

14 Q So I take it you agreed with his decision to plead
15 guilty?

16 A Absolutely, and I said so that day. I think it's
17 in that transcript about the statement saying that
18 he -- Brad Richardson is making the statement saying
19 that he was holding down. That's the only way it would
20 have worked. And my client didn't -- Nehemiah never
21 say anything different to that.

22 Q You almost circled around to this through the
23 story that you were about to tell earlier before we cut
24 you off for hearsay. But if you could, Mr. Massey,
25 could you give us a brief overview of the course of

1 plea negotiations with the State, how did you reach the
2 30-year murder minimum?

3 A It was that or trial. I mean, that's basically
4 how you dealt with Mr. Richardson. I don't know if
5 you've had any cases with him, but he's --

6 Q Well, what sort of conversations did you have with
7 Mr. Richardson in negotiating a plea?

8 A About -- I mean, we had him on the statements to
9 the detectives. So, I mean, I didn't have anything
10 exculpatory to get him out of it except going through
11 the time in trial, of a trial.

12 Q Well, did you ask him, we need a plea deal, or did
13 he come do you and say --

14 A No, I asked him for a plea deal.

15 Q Okay.

16 A Yeah. And he wasn't too forthcoming.

17 Q Did you do anything particular in order to draw a
18 plea deal out of the State?

19 A Time. I just waited.

20 Q Did you explain the terms of the plea to your
21 client?

22 A Absolutely. And I was there early that morning,
23 as I always am, and went over it with him.

24 Q And you explained to him that it would be for 30
25 years?

1 A Um-hum.

2 Q And did you explain to him that it was violent?

3 A Yes. It was murder, yes.

4 Q And most serious?

5 A Yes.

6 Q Did you explain to him that he would have to serve
7 85 or day for day?

8 A Yes, we did.

9 Q Did you explain to him the nature of a recommended
10 sentence and that the judge could deviate from any
11 recommendation?

12 A Absolutely.

13 Q All right. Whose decision was it to plead guilty?

14 A My client's, as always.

15 Q Did you explain to him all of his constitutional
16 rights?

17 A I did.

18 Q What he was giving up by pleading guilty?

19 A I did. Not just back in the holding cell but over
20 at J. Reuben. I wanted to make sure that he knew that
21 before he walked in here.

22 Q If Mr. Evans had asked you to take this case for
23 trial notwithstanding your judgment that it was a
24 99 percent chance of conviction, could you have been
25 prepared to take it to trial?

1 A Absolutely.

2 Q Did Mr. Evans ever ask you to withdraw his plea?

3 A Never.

4 Q Did he ever ask you to file a notice of appeal?

5 A Nope. I would have filed one.

6 Q Did you ever see any reason to try and quash the
7 indictments or the warrants against him?

8 A No.

9 MR. JAMES: Beg a moment's indulgence, Your Honor.
10 No further questions.

11 THE COURT: All right. Mr. Fowler?

12 CROSS-EXAMINATION

13 BY MR. FOWLER:

14 Q How long was it from when you were first retained
15 or first put on the case to the plea?

16 A I think it was like mid October, I think.

17 Q Okay. And so how long a timeframe was that?

18 A Oh, gosh. You're talking about four, five months.

19 Q Okay. It was only a --

20 A Or longer.

21 Q So it was only four or five-month window between
22 you coming on the case and the plea; correct?

23 A (Nodding.)

24 Q Okay. And you said you went out there how many
25 times roughly?

- 1 A A good eight to nine, ten times.
- 2 Q Okay. Do you have any documentation showing that,
3 like a log or anything like that?
- 4 A No, I don't have a log. But I also went with my
5 law partner every time I went out there.
- 6 Q Okay.
- 7 A And I'm out at J. Reuben Long in the mornings and
8 afternoons.
- 9 Q Okay.
- 10 A Everyday, weekends too.
- 11 Q Yeah. In terms of, you said earlier my client
12 stated that the discovery went over in bits and pieces.
13 In terms of the discovery, how thoroughly do you go
14 over it with --
- 15 A Page by page.
- 16 Q -- in this case?
- 17 A Page by page.
- 18 Q So you went over each page of it?
- 19 A In fact, we went over it when he tried to give me
20 the stuff that Eric Fox gave him. He had it in a
21 tattered envelope like one of these (indicating).
- 22 Q Okay. In terms of the mental health issues, you
23 were in court when he indicated that he had potentially
24 several mental health issues; correct?
- 25 A Um-hum.

1 Q Did you bring that to the Court's attention in any
2 form, issues?

3 A No.

4 Q Okay. Did my client ever ask you to bring that to
5 his attention?

6 A No, sir.

7 Q Okay. Well, now, at the sentencing, my
8 understanding is that there was -- when the Court asked
9 him about mental health issues, that, well, you heard
10 on testimony earlier that you stopped my client from
11 indicating what? Or that the judge stopped the client
12 in terms of saying what mental health issues he had; is
13 that correct, do you remember that?

14 A I don't recall that, no.

15 Q Okay.

16 A If it's in the transcript, it's in the transcript,
17 but I don't recall it.

18 Q Okay. Do you remember that -- are you familiar
19 with the name Sandy Lee Locklear? Do you remember
20 Sandy Lee Locklear, the name Sandy Lee --

21 A I know the names, yes.

22 Q All right. Did you ever receive any statements
23 from them?

24 A None that I recall, no.

25 Q Okay. Do you know if that would be in the

1 motion -- in the discovery or not?

2 A If I got them, they would be from the discovery
3 that I got from the packet from the State.

4 Q Okay. Did you ever interview any -- who did you
5 interview in terms of this case, any codefendants or
6 any other persons that might be relevant here?

7 A I talked to the attorneys who represented the
8 codefendants.

9 Q Okay.

10 A To get a feel, several times.

11 Q Okay. And did you coordinate anything with them
12 in terms of pleas or anything like that, or did you
13 have your own separate strategy?

14 A I think by the time that I got Nehemiah, there had
15 already been one conviction. And then during my
16 representation there had been the second conviction.
17 And then, that's when I got a plea offer.

18 MR. FOWLER: Just a moment, Your Honor, please.

19 (Discussion off the record.)

20 Q In terms of the statements that were in discovery,
21 did you go over those with -- you said page by page
22 earlier, but do you recall going over the statements by
23 Mr. and Mrs. Locklear, or the Locklears, in regards to
24 this case?

25 A Yes.

1 Q Okay. And did that have any -- did those
2 statements have any opportunity to prove my client's
3 innocence in this case?

4 A No. Again, I take you back to what he said to the
5 detectives. He basically hung himself with the
6 detectives, that was the problem. And he was -- he
7 never asked for an attorney at that time.

8 MR. FOWLER: No further questions, Your Honor.

9 THE COURT: All right.

10 MR. JAMES: Nothing further.

11 THE COURT: You may step down.

12 (Witness excused.)

13 THE COURT: Call your next witness.

14 MR. JAMES: No further witnesses.

15 THE COURT: I'll take it under advisement, and I
16 will rule by week's end.

17 MR. FOWLER: Thank you, Your Honor.

18 (The hearing concluded at approximately 1:29 p.m.)

19 (End of Transcript of Record)

20

21

22

23

24

25

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	
Nehemiah J. Evans,)	Case No.: 2015-CP-26-07825
S.C.D.C. No. 295717,)	
)	
Applicant,)	
)	ORDER OF DISMISSAL
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	

Horry County
 2018 FEB 28 PM 12:45
 RECEIVED
 CLERK OF COURT
 HORRY COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed by Nehemiah J. Evans ("Applicant") on November 2, 2015. Respondent made its return on or about November 30, 2016. The Court convened an evidentiary hearing into the matter on Wednesday, November 29, 2017, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by Steven W. Fowler, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Kenneth B. Massey, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea and sentencing transcripts, the records of the Horry County Clerk of Court regarding the subject convictions, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the January 2013 term of the Horry County Grand Jury for two counts of murder (2013-GS-26-00305, -00307).

Kenneth B. Massey, Esq. represented Applicant, and Brad C. Richardson, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On February 25, 2015, Applicant pled guilty as indicted before the Honorable Larry B. Hyman. On March 16, 2015, Judge Hyman accepted terms negotiated between Applicant and the State and sentenced Applicant to imprisonment for concurrent terms of 30 years. Applicant did not appeal his plea or sentence.

Present Application

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

1. Ineffective assistance of counsel, in that:
 - a. "Counsel gave erroneous advice which led to involuntary guilty plea."
 - b. "Counsel failed to request psychiatric examination after being made aware of defendant's mental history."
 - c. "Counsel failed to investigate and question co-defendants after being aware of multiple statements."

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; 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." Butler at 442, 334

S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

“[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). “Judicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

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 at 117, 386 S.E.2d at 625 (citing Strickland at 688). 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 at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). 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, 59 (1985).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

1. Misadvice of Counsel

Applicant alleges Counsel was deficient in advising him that if he pled guilty, he would receive a non-violent sentence. The imposition of a sentence may have a number of collateral consequences, and a plea of guilty is not rendered involuntary in a constitutional sense if the defendant is not informed of the collateral consequences." Williams v. State, 378 S.C. 511, 514-15, 662 S.E.2d 615, 617 (Ct. App. 2008); see also Brown v. State, 306 S.C. 381, 382-83, 412 S.E.2d 399, 400 (1991). Thus, a defendant need not be advised of all collateral consequences of his or her plea in order for the plea to withstand constitutional scrutiny. Id.

A consequence that the defendant must be informed of is one which impacts the sentence imposed on the defendant, and as such, is a direct consequence. See State v. Armstrong, 263 S.C. 594, 598, 211 S.E.2d 889, 891 (1975) (stating the defendant must be apprised of the direct consequences, which are the direct and immediate results, of his guilty plea). "The distinction between 'direct' and 'collateral' consequences of a plea, while sometimes shaded in the relevant decisions, turns on whether the result represents a definite, immediate, and largely automatic

effect on the range of the defendant's punishment." Cuthrell v. Dir., Patuxent Inst., 475 F.2d 1364, 1365-66 (4th Cir. 1973).

The violent/non-violent classification is a collateral consequence of sentencing of which a defendant need not be specifically advised before entering a guilty plea, but if the Defendant's attorney undertakes to advise the defendant about parole eligibility and gives erroneous advice, then the plea may be collaterally attacked. Smith v. State, 329 S.C. 280, 283-85, 494 S.E.2d 626, 628-30 (1997).

At the February 2015 plea proceeding, Judge Hyman asked Applicant if Counsel discussed the possible penalty with him, to which Applicant replied that Counsel did. (Feb. 2015 Tr. 4, ll. 3-7.) Upon further questioning by Judge Hyman, Applicant indicated Counsel told him the penalty would be 30 years. Id. The "violent" classification of murder was not raised by the Court. The sentencing sheets, signed by Applicant, indicate classifications of "VIOLENT" and "MOST SERIOUS."

At the evidentiary hearing, Applicant testified Counsel told him he would receive a non-violent sentence. When asked about his signature on the sentencing sheets, Applicant claimed that he signed the sheets without looking. Counsel denied as much, and testified he fully explained the contours of the plea agreement with Applicant and that Applicant knew he would be serving 30 years.

The Court finds no deficiency on the part of counsel, nor prejudice therefrom. The Court finds Applicant's testimony not credible and finds Counsel's testimony entirely credible. The basic nature of the allegation, that this or any attorney would tell a client that *murder* is a non-violent offense, strains credulity from the outset. Applicant's testimony was wholly self-serving and at odds with his statements of satisfaction with counsel and remorse during his plea and

sentencing. Applicant's demeanor on the stand and throughout the hearing only further leads this Court to give his testimony no weight. To the contrary, Counsel's testimony on this allegation and all other aspects of his representation was clear, concise, precise, and credible. As such, the Court finds Counsel never told Applicant that a sentence for *murder* was classified as non-violent; accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

2. Failure to Order Mental Evaluation

Applicant alleges Counsel was ineffective for failing to request a professional evaluation of Applicant's mental health. Due process prohibits the conviction of a person who is mentally incompetent, and that right cannot be waived by a guilty plea. Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992) (citing Bishop v. U.S., 350 U.S. 961 (1956); Pate v. Robinson, 383 U.S. 375 (1966)). The test of competency to enter a plea is the same as required to stand trial: the accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him. Id., 417 S.E.2d at 596 (citing State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976); Carnes v. State, 275 S.C. 353, 271 S.E.2d 121 (1980)). An applicant alleging incompetence in fact must show by a preponderance of the evidence he was incompetent at the time of his plea. Id.

An applicant alleging ineffective assistance of counsel for failure to seek a mental health evaluation, however, must still satisfy the two prongs of Strickland: applicant must demonstrate (1) a 'reasonable probability' that he was not competent at the time of the crime or at the time of the plea, and (2) that counsel's failure to seek an evaluation was unreasonable. Id. at 233, 417 S.E.2d at 596. Counsel may reasonably rely on his own perceptions in deciding if a client is competent to stand trial. Id.

At the plea proceeding, the Court inquired as to Applicant's mental health:

[THE COURT:] Mr. Evans, have you ever had any mental health issues or addition issues, anything like that that would interfere with your ability to understand what we're doing here today?

MR. EVANS: There was issues in the past but I don't know if they would ---

THE COURT: Do you feel like anything is interfering -- do you understand what we're doing here today?

MR. EVANS: No, sir.

THE COURT: Well, let me just say this, Mr. Evans. If at any point you don't understand what we're doing, I want you to explain it to you. Okay?

MR. EVANS: Okay.

THE COURT: I can't give you legal advice but I'll be happy to explain anything to you that you need explained. All right?

MR. EVANS: All right.

(Feb. 2015 Tr. 7, ll. 5-20.)

At the evidentiary hearing, Applicant complained Counsel never bothered to have his mental health evaluated. However, Applicant couldn't say if he needed an evaluation. Counsel testified he never heard of Applicant having any prior mental health treatment. Counsel noted Applicant appeared to be of sound mind in the course of his representation, and that he had no reason to believe Applicant's mental health was an issue to be explored. No expert testimony was offered at the hearing.

The Court finds no deficiency on the part of Counsel, nor prejudice therefrom. Applicant offers no compelling evidence to believe he was not competent at the time of his plea, or that it would have otherwise been a matter of relevant concern. Counsel was entitled to rely upon his own perception of Applicant's mental health and detected no mental deficiencies that merited

further investigation. Accordingly, Applicant's request for relief by way of this allegation is **DENIED.**

3. Failure to Investigate and Question Co-Defendants

Applicant alleges Counsel was ineffective by failing to investigate and question his co-conspirators, Sandy Lee Locklear and Odom Bryant. In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

During the plea proceeding, the State's recitation of facts incorporated elements of Applicant's statements to law enforcement, as well as those of his co-conspirators:

[W]henver they interviewed the [Applicant], he admitted Ms. Amy Locklear had approached him sometime shortly before the murder and asked if he wanted to make some big money. There was a – what she thought a million-dollar life insurance policy but the value of the policy due to the manner of death ended up being worth \$200,000 but she thought it was a million-dollar policy. She indicated she was ready to pay \$50,000 to have her husband executed. *This [Applicant] said he couldn't pull the trigger* but agreed to go get Odom Bryant. He then – he then rode with Odom Bryant and Sandy Locklear back over to the residence. Sandy Locklear went in first, left the door open or unlocked the door so that they could come in.

It's the State's belief that *Odom Bryant just went in and pulled the trigger* based on the fact that he had a gun that was similar to the one used in the incident the next morning about eight hours after the murder was committed. The reason for the murder was a murder for insurance proceeds, murder for profit. *The only thing that Sandy Locklear and Odom Bryant agreed on was this [Applicant] didn't have a gun. But those two pointed the finger at one another, Your Honor.* He was present during the commission of the crime, had driven there with them, helped dispose of a rental vehicle Ms. Locklear had had afterwards, was seen in the company of Odom Bryant at the gas station convenience store in Tabor City shortly after the crime where Odom Bryant still had the gun that was probably used in this crime, Your Honor.

(Feb. 2015 Tr. 9-10)(emphasis and paragraph breaks added). Applicant confirmed the State's recitation of facts. (Feb. 2015 Tr. 10, ll. 14-15.)

At the evidentiary hearing, Applicant stated Counsel failed to adequately prepare his case by failing to get statements from his co-conspirators. Applicant asserted he was not the "trigger man." Applicant noted that Locklear gave multiple statements. Applicant recalled Counsel did not wish to attempt to use Locklear as witness because she was "not credible." On cross-examination, Applicant again confirmed the facts presented at his plea.

Counsel testified that he spoke with the attorneys for the co-conspirators in court, but did not indicate anything came of the conversations. Counsel recalled finding nothing exculpatory in the statements provided by Locklear and Bryant. Counsel bluntly testified Applicant had no defenses available to him, that his statements to law enforcement doomed him, that the case was not one that could reasonably be taken to trial, and that the goal throughout was to "save" Applicant with the best plea deal he could get.

The Court finds no deficiency on the part of Counsel, nor prejudice therefrom. No evidence was introduced at the hearing to show what, if anything, Counsel was supposed to find in the statements of Applicant's co-conspirators that would help Applicant—the Court is left with mere speculation. That Applicant was not the "trigger man" was conceded by the State in

the plea proceeding, a fact that appears to reflect his sentence of 30 years, as compared to the life sentences his co-conspirators received. Furthermore, Counsel did attempt to speak with the attorneys for Locklear and Bryant; Counsel would have committed a professional violation had he attempted to speak to either co-conspirator directly. Counsel was aware of and reviewed their statements. For all these reasons, Applicant's request for relief by way of this allegation is **DENIED.**

B. All Other Allegations

Applicant, throughout his testimony, attempted to raise new allegations against Counsel, against the State, and against prior defense counsel.¹ The Court respectfully declines to consider the allegations. See, generally Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017). Applicant enjoyed ample opportunity to amend his application to reflect additional allegations, but failed to do so through appointed counsel—as such, the allegations offered in his testimony are procedurally defaulted. The limited testimony offered by Applicant at the evidentiary hearing regarding the additional allegations, as well as the limited testimony elicited from Counsel, gives this Court no reason to believe the interests of justice demand extraordinary relief from the pleading requirements, or that further proceedings are necessary. The complete record before this Court shows without question that Applicant's guilty plea was entered knowingly, intelligently, and voluntarily.

¹ J. Eric Fox, Esq., was incidentally present in the courtroom that day for a different PCR evidentiary hearing.

III. CONCLUSION


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

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 18 day of February, 2018.


 WILLIAM H. SEALS, JR.
 Presiding Judge
 Fifteenth Judicial Circuit

, South Carolina

WITNESSES

Neal Frebowitz Horry County Police Department

**The State of South Carolina
County of Horry**

Bradley C. Richardson
12H03966

COURT OF GENERAL SESSIONS

January, 2013 TERM

ARREST WARRANT NUMBER

M974201

CDR: 0116 16-03-0010, 0020

DOA: 8/25/2012

THE STATE

vs.

Nehemiah James Evans

B/ M



ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

JAN 31 2013

ATTORNEY: Fox, J. Eric

VERDICT

Indictment for

MURDER

Jimmy A. Richardson, II, Solicitor

ORIGINAL

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT
MURDER


At a Court of General Sessions, convened on January 31, 2013, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Nehemiah James Evans and/or his Co-Defendant(s) did in Horry County, on or about August 19, 2012, willfully, feloniously, and intentionally kill the victim, Thomas Hatfield, with malice aforethought, either express or implied, by means of a gunshot wound, and the victim did die as a proximate result thereof on or about August 19, 2012 in Horry County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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


JIMMY A. RICHARDSON, II
FIFTEENTH-CIRCUIT SOLICITOR

2015 MAR 16 AM 11:51
CLERK OF COURT
COURT DATE
PLED GUILTY/TRIAL

WITNESSES

Neal Frebowitz Horry County Police Department

CX

The State of South Carolina

County of Horry

Bradley C. Richardson
12H03966

COURT OF GENERAL SESSIONS

January, 2013 TERM

ARREST WARRANT NUMBER

M974190

CDR: 0116 16-03-0010, 0020

DOA: 8/25/2012

THE STATE

vs.

Nehemiah James Evans

B/ M



ACTION OF GRAND JURY

ATTORNEY: Fox, J. Eric

Foreperson of Grand Jury
Date:

JAN 31 2013

VERDICT

Indictment for

MURDER

Jimmy A. Richardson, II, Solicitor

ORIGINAL

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT
MURDER


At a Court of General Sessions, convened on January 31, 2013, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Nehemiah James Evans and/or his Co-Defendant(s) did in Horry County, on or about August 19, 2012, willfully, feloniously, and intentionally kill the victim, Amos Hatfield, with malice aforethought, either express or implied, by means of a gunshot wound, and the victim did die as a proximate result thereof on or about August 19, 2012 in Horry County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

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