

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

ELVIRA LYNN SEAY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000408

APPENDIX

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STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA, )  
 )  
 PLAINTIFF, )  
 )  
 )  
 -VS- )  
 )  
 ELVIRA R. SEAY, )  
 )  
 DEFENDANT. )  
 \_\_\_\_\_ )

2012-GS-23-02898

TRANSCRIPT OF RECORD

MAY 15, 2013  
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE LETITIA H. VERDIN

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

LEIGH PAOLETTI, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

JAKE ERWIN, ESQUIRE

SUSAN W. HUDGINS  
CIRCUIT COURT REPORTER

**INDEX****WITNESS****PAGE NO.**

CERTIFICATE OF REPORTER

19

**COURT REPORTER'S NOTE:** (The guilty pleas of Charles Johnson, Daniel Sullivan and Jesus Giron-Moreno were taken along with this plea)

**EXHIBITS****NO****DESCRIPTION****ID EVIDENCE**

(No exhibits were produced during this hearing)

1           **MADAME CLERK:** Did you say you have an interpreter?

2           **MR. QUINN:** Yes, ma'am. This is Ms. Hernandez.

3           **MADAME CLERK:** Do you solemnly swear or affirm that you  
4 will accurately interpret the language requested in this  
5 courtroom of the Defendant without any additions thereto or  
6 detractions therefrom or any other amendments of your own  
7 interpretation so help you God?

8           **MS. HERNANDEZ:** I do.

9           **MADAME CLERK:** Thank you.

10           Your Honor, this is indictment 2012-GS-23-1303, Charles  
11 Allen Johnson, indicted for domestic violence of a high and  
12 aggravated nature, pleading to criminal domestic violence,  
13 first. And it's a true bill.

14           2012-GS-23-9821, Daniel Edward Sullivan, indicted for  
15 burglary, first degree, pleading to burglary, second degree,  
16 violent. It's a true bill. And there's an order of  
17 restitution.

18           2012-GS-23-8601, indicted for burglary, first degree,  
19 pleading to burglary, second degree, violent. And it's a  
20 true bill.

21           2013-GS-23-1882, Jesus Moreno, indicted for domestic  
22 violence of a high and aggravated nature, pleading to public  
23 disorderly conduct. And it's a waiver.

24           2012-GS-23-2898, Elvira Seay, indicted for murder and  
25 possession of a weapon during the commission of a violent

1 crime, pleading to voluntary manslaughter. And it's a true  
2 bill.

3 Raise your right hand. Do you swear or affirm to tell  
4 the truth, the whole truth and nothing but the truth so help  
5 you God? Please answer one at a time.

6 MR. JOHNSON: Yes, ma'am.

7 MR. SULLIVAN: Yes, ma'am.

8 MS. HERNANDEZ: Yes, ma'am.

9 MS. SEAY: Yes, ma'am.

10 MADAME CLERK: Thank you.

11 THE COURT: All right. Mr. Johnson, you're here today  
12 to plead to criminal domestic violence, first offense. That  
13 carries up to thirty days. Is that your understanding?

14 (Whereupon Mr. Johnson was speaking with his attorney)

15 MR. JOHNSON: Yes.

16 THE COURT: What are y'all recommending on him?

17 MS. PAOLETTI: Your Honor, he did twenty-eight days.

18 THE COURT: Okay. Mr. Pringle, with your permission,  
19 I'll just ask him, you pleading guilty because you are  
20 guilty?

21 MR. JOHNSON: Yes.

22 THE COURT: All right. Time served. Good luck to you.

23 MR. PRINGLE: Thank you, Judge.

24 MR. JOHNSON: Thank you.

25 THE COURT: Thank you.

1           Mr. Sullivan, you're here today to plead to burglary,  
2           second degree, violent. That carries up to fifteen years.  
3           Is that your understanding?

4           **MR. SULLIVAN:** Yes, ma'am.

5           **THE COURT:** Okay. And you're pleading to two counts of  
6           that.

7           Mr. Moreno, you're here today pleading to public  
8           disorderly conduct that carries up to thirty days. Is that  
9           your understanding?

10          **MR. QUINN:** It is. And the recommendation is a thirty  
11          day sentence.

12          **THE COURT:** Has he served thirty days?

13          **MR. QUINN:** He's done a hundred and some days. I don't  
14          even know how many. He's done way more than thirty.

15          **THE COURT:** Are you pleading guilty because you are  
16          guilty?

17          **MR. GIRON-MORENO:** Yes.

18          **THE COURT:** Okay. Time served.

19          **MR. QUINN:** Thank you, Judge.

20          **THE COURT:** Thank you.

21          And, Mrs. Seay, or Ms. Seay, you're here today to plead  
22          to voluntary manslaughter. That carries up to thirty years.  
23          Is that your understanding?

24          **MS. SEAY:** (Affirmative nod).

25          **THE COURT:** And I need you to say yes or no, please.

1           **MS. SEAY:** Yes, ma'am.

2           **THE COURT:** Okay. That is a violent offense, meaning  
3 that if you were to receive active jail time, you're likely  
4 to serve more time -- a greater percentage of your sentence  
5 than if it were a non-violent offense. You know that?

6           **MS. SEAY:** Yes, ma'am.

7           **THE COURT:** It's also a most serious offense, meaning  
8 if you were to get one other most serious offense or two  
9 other serious offenses, the State could seek life without  
10 the possibility of parole against you. You know that?

11          **MS. SEAY:** Yes, ma'am.

12          **THE COURT:** Okay. Have you discussed these charges  
13 with your attorney, sir?

14          **MR. SULLIVAN:** Yes, ma'am.

15          **THE COURT:** Ma'am? Have you discussed ---

16          **MS. SEAY:** Yes, ma'am.

17          **THE COURT:** Okay. You happy with what your attorney's  
18 done for you, sir?

19          **MR. SULLIVAN:** Yes, ma'am.

20          **THE COURT:** Ma'am?

21          **MS. SEAY:** Yes, ma'am.

22          **THE COURT:** Are you under the influence of drugs or  
23 alcohol here today, sir?

24          **MR. SULLIVAN:** No, ma'am.

25          **THE COURT:** Ma'am?

1           **MS. SEAY:** No, ma'am.

2           **THE COURT:** Has anybody forced you to plead guilty or  
3 promised you anything to get you to plead guilty, sir?

4           **MR. SULLIVAN:** No, ma'am.

5           **THE COURT:** Ma'am?

6           **MS. SEAY:** No, ma'am.

7           **THE COURT:** When you plead guilty you give up certain  
8 constitutional rights. One is your right to remain silent  
9 about these charges. Do you know that, sir?

10          **MR. SULLIVAN:** Yes, ma'am.

11          **THE COURT:** Ma'am?

12          **MS. SEAY:** Yes, ma'am.

13          **THE COURT:** You also give up your right to a jury  
14 trial. At that trial your attorney could call witnesses for  
15 you, cross examine witnesses against you and the State would  
16 have to prove your guilt beyond a reasonable doubt. But  
17 when you plead guilty, you give up your right to a jury  
18 trial. Do you know that, sir?

19          **MR. SULLIVAN:** Yes, ma'am.

20          **THE COURT:** Ma'am?

21          **MS. SEAY:** Yes, ma'am.

22          **THE COURT:** Ma'am, how old are you?

23          **MS. SEAY:** Forty-eight.

24          **THE COURT:** How far did you go in school?

25          **MS. SEAY:** Twelfth.

1           **THE COURT:** All right.

2           **MS. SEAY:** I graduated.

3           **THE COURT:** And have you ever been treated for any type  
4 of mental illness, anything like that?

5           **MS. SEAY:** Yes, ma'am.

6           **THE COURT:** All right. Tell me about that.

7           **MS. SEAY:** Just been treated with Risperdal for voices,  
8 but other than that, I've got it under control.

9           **THE COURT:** Okay. Let's talk about that. Are you  
10 taking the Risperdal?

11          **MS. SEAY:** Yes, ma'am.

12          **THE COURT:** And does it leave you feeling clear headed  
13 here today?

14          **MS. SEAY:** Yes, ma'am.

15          **THE COURT:** Do you -- and I'm not trying to be flip  
16 about this, I really want to know. Do you hear voices here  
17 today?

18          **MS. SEAY:** No, ma'am. Not today, no.

19          **THE COURT:** Who is this man right here?

20          **MS. SEAY:** My lawyer.

21          **THE COURT:** And who am I? You don't ---

22          **MS. SEAY:** The Judge.

23          **THE COURT:** --- have to know my name. Okay. Do you  
24 know what I do?

25          **MS. SEAY:** Yes, ma'am.

1           **THE COURT:** What do I do?

2           **MS. SEAY:** You make sure everybody gets a fair trial.

3           **THE COURT:** Okay. Well, I try. Okay. All right. And  
4 who will be the person to sentence you?

5           **MS. SEAY:** You.

6           **THE COURT:** Okay. All right. You don't have any  
7 concerns about her?

8           **MR. ERWIN:** No, not at all, Your Honor.

9           **THE COURT:** All right, then. Okay, good. All right.  
10 Well, you have ten days -- oh, I'm sorry. How do you plead  
11 to these charges, Mr. Sullivan, ---

12          **MR. SULLIVAN:** Guilty.

13          **THE COURT:** --- guilty or not guilty? Okay. And, Ms.  
14 Seay?

15          **MS. SEAY:** Guilty.

16          **THE COURT:** All right. You have ten days from today's  
17 date to appeal this plea if you so choose, but you must do  
18 so in writing to this Court. Yes, ma'am.

19          **MS. PAOLETTI:** Thank you, Judge. May it please the  
20 Court. On July 23rd, 2012 between the hours of midnight and  
21 eight am the Defendant unlawfully and without consent  
22 entered the detached garage of the residence, Mandy and  
23 Joshua Blankenship, located at [REDACTED] Pendleton Street in  
24 Greenville County while the victims were at home and  
25 sleeping.

1       The Defendant gained entry by cutting and removing a  
2       lock on the garage door. Once inside he stole two bicycles  
3       and a DeWalt sander. The Defendant later pawned these items  
4       on the same date. He gave a statement to law enforcement  
5       admitting to committing this burglary.

6       Then on August 29th, 2012 during the nighttime hours  
7       the Defendant unlawfully and without consent entered the  
8       home of Willie Mae Jones at ■ South Textile Avenue while  
9       the victim was not home.

10       She returned home to find her front door ajar and that  
11       her alarm had been activated. The Defendant gained entry by  
12       throwing a brick through the diningroom window. He was  
13       found in close proximity to the location within two and a  
14       half hours and was found to be in possession of several  
15       pieces of jewelry that had been stolen from her home.

16       Your Honor, the recommendation is for a cap of seven  
17       years. And there is some restitution that's being  
18       requested.

19       **THE COURT:** Okay.

20       **MS. PAOLETTI:** And he does have a prior record.

21       **THE COURT:** What's his prior record?

22       **MS. PAOLETTI:** '76, grand larceny, and attempted auto  
23       breaking; '78, grand larceny; '81, malicious injury and  
24       public disorderly conduct; '82, house breaking; '83,  
25       unlawful carrying of a pistol; '84, possession of cocaine

1 and unlawful carrying; '85, two counts of house breaking and  
2 grand larceny; '88, possession of cocaine; '89, DUS,  
3 burglary, second, grand larceny; '94, CDV; '99, failure to  
4 stop, reckless driving, DUS; and then from 2008 a petty  
5 larceny in North Carolina.

6 **THE COURT:** All right. Petty larceny in 1998?

7 **MS. PAOLETTI:** '08.

8 **THE COURT:** Oh, in '08.

9 **MS. PAOLETTI:** '99 was the last South Carolina  
10 conviction.

11 **THE COURT:** Okay.

12 **MS. PAOLETTI:** And the next one was in '08.

13 **THE COURT:** Okay. Thank you. Yes, sir.

14 **MR. ERWIN:** Your Honor, I understand the recommendation  
15 is for a cap of seven years. I'd ask you to consider time  
16 less than that. He understands he is looking at active time  
17 just based on the charges that he's -- fully admits that he  
18 did this stuff. We're just looking for the mercy of the  
19 Court.

20 Mr. Sullivan is fifty-five years old, but he is in poor  
21 health. He has the health of a man much older than that.  
22 After his arrest on these charges he suffered two strokes  
23 while incarcerated.

24 Your Honor, what happened -- most of his criminal  
25 record is older than I am. And just -- we're just looking

1 for the mercy of the Court, Your Honor.

2 THE COURT: All right. How long has he served in jail  
3 already?

4 MS. PAOLETTI: Three hundred and twenty-eight days.

5 THE COURT: In light of his poor health I'm going to  
6 sentence him to five years, credit for the three hundred and  
7 twenty-eight days time served and restitution.

8 MR. ERWIN: Thank you, Your Honor.

9 THE COURT: Good luck to you.

10 MR. SULLIVAN: Thank you, Your Honor.

11 MS. PAOLETTI: Your Honor, this is the second time I've  
12 been in front of you asking that you indulge me a little ---

13 THE COURT: That's fine.

14 MS. PAOLETTI: --- bit on the facts, but I apologize  
15 for doing that twice in one day.

16 THE COURT: I understand.

17 MR. ERWIN: And just before you start, Your Honor,  
18 we're -- you're aware we were requesting deferred sentencing  
19 on this.

20 MS. PAOLETTI: Yes, Your Honor.

21 THE COURT: Okay.

22 MR. ERWIN: We're just looking to have the plea  
23 accepted today.

24 THE COURT: Okay.

25 MS. PAOLETTI: Your Honor, on May 3rd of 2011 a couple

1 was walking in a field in Spartanburg County and found the  
2 partially decomposed body of Juan Luis Tafoya-Gonzalez. He  
3 had been shot three times, twice in the chest and once in  
4 the back.

5 The insect activity in and on the body helped  
6 investigators estimate how long he had been decomposing in  
7 the field. And once they were able to identify the victim,  
8 officers learned -- in Spartanburg learned that the  
9 Defendant [sic] had been reported missing a few days prior  
10 to his discovery by this Defendant. They learned that she'd  
11 given a story about being at a bar on Pelham road with the  
12 victim and the victim leaving with two unknown black males,  
13 and that she told police she had not seen him since he left  
14 with the two unknown black males from that bar.

15 Officers went to question her about the missing  
16 person's report and to inform her that the victim had been  
17 located and was dead. And she initially maintained her  
18 story about him disappearing from the bar on Pelham Road.

19 In the meantime, Investigator Wayne Campbell, who's  
20 present today, Your Honor, he was assigned the case and was  
21 contacted by the mother of the woman who was -- officers  
22 were -- investigators were told had information about the  
23 death of the victim and had helped the Defendant dispose of  
24 his body in Spartanburg. Her name is Stephanie Romero. And  
25 the police talked to her.

1           Ms. Romero told police that this Defendant called her  
2   on Saturday, April 30th and told her that she and the victim  
3   had gotten into a fight, that he had hit her and shot at her  
4   and that she was able to get the gun away from him and that  
5   she shot him and killed him. She told this witness that she  
6   needed help dumping the victim's body.

7           The witness told police that the Defendant drove her to  
8   the home where the Defendant and the victim lived together.  
9   And when there Ms. Romero told police that when she saw what  
10   had happened inside that house that she freaked out and  
11   tried to leave and the Defendant threatened her and said  
12   that she would kill her if she didn't help dispose of the  
13   body.

14           They wrapped him in a sheet and dragged him to the  
15   Defendant's truck and drove to the field in Spartanburg  
16   County and dumped his body. The Defendant then dropped Ms.  
17   Romero off and told her she was going to burn the mattress  
18   that the victim had been bleeding on. The Defendant came  
19   back to her the next day and apologized for getting her  
20   involved in the murder and asked her not to say anything.

21           Officers searched the home where the victim and  
22   Defendant lived and found evidence that -- that there had  
23   been large amounts of blood in the house that had been  
24   cleaned to the naked eye, but UV light revealed drag marks  
25   or a dragging pattern from the bedroom to the front door of

1 blood and also found blood on a swiffer mop in the house.

2 The Defendant's truck that she was driving at the time  
3 was equipped with a GPS device that was used by the  
4 lienholder who, I believe, the Defendant actually worked for  
5 repossessing cars, had a GPS device. They put GPS devices  
6 on all their cars in the event it needs to be repossessed.

7 The GPS records were obtained. And the movements of  
8 the Defendant's truck during the relevant time period  
9 corroborated the statement given by the witness who went  
10 with the Defendant to dump the victim's body.

11 While the investigation was ongoing, but before the  
12 warrants for murder and possession of a weapon during the  
13 commission of a violent crime could be served, the Defendant  
14 left town. She was arrested in New Orleans in January of  
15 2002 [sic] and was returned to Greenville on January 27th, I  
16 mean, 2012, sorry.

17 She gave a statement to the police -- a second  
18 statement to the police at that time indicating that she and  
19 the victim had gotten into a fight and that Ms. Romero, the  
20 witness referenced above, was at the home at the time and  
21 saw the fight.

22 She told police that the victim had a gun and shot at  
23 her, that she was able to get the gun away and turned it on  
24 the victim, and she shot him once. And then her story was  
25 that the witness, Ms. Romero, got the gun and shot the

1 victim twice or more, which killed him.

2 She has since recanted that story and said that she  
3 killed the victim in self-defense. There is some evidence,  
4 Your Honor, that the victim was abusive towards the  
5 Defendant in the past and, perhaps, even that night, but the  
6 evidence in this case is that he was shot twice in the chest  
7 and once in the back and was on his bed when he was shot and  
8 killed.

9 Your Honor, those are the facts that form the basis for  
10 the plea today. We've got some additional presentation at  
11 the time of sentencing that we'll save for that time.

12 **THE COURT:** All right. Ms. Seay, is that what  
13 happened?

14 **MS. SEAY:** Yes, ma'am.

15 **THE COURT:** All right. Well, I'll find that the plea  
16 was freely and voluntarily made with the advice of extremely  
17 competent counsel with whom the Defendant is well satisfied  
18 and the plea has a substantial factual basis. I'll accept  
19 it and defer sentencing unless there's anything else we need  
20 to address.

21 **MR. ERWIN:** That's it, Your Honor.

22 **THE COURT:** All right.

23 **MS. PAOLETTI:** Thank you, Judge.

24 **MR. ERWIN:** Thank you.

25 **THE COURT:** Good luck to you, ma'am.

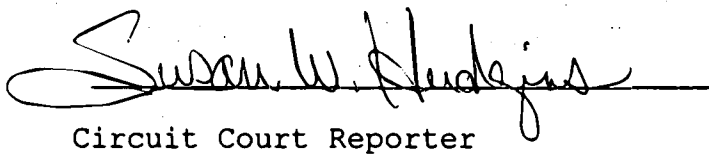
- 1 (Hearing Ended at 3:01 pm)
- 2 (End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 15th day of May 2013.

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

March 11, 2015

A handwritten signature in cursive script, reading "Susan W. Hudgins", written over a horizontal line.

Circuit Court Reporter

## Sentencing

STATE OF SOUTH CAROLINA )  
 ) COURT OF GENERAL SESSIONS  
 COUNTY OF GREENVILLE ) 2012-GS-23-2898  
 )

ORIGINAL

STATE OF SOUTH CAROLINA )  
 ) PLAINTIFF)

vs.

) TRANSCRIPT OF RECORD  
 )

ELVIRA ROBINSON SEAY )

) DEFENDANT)  
 \_\_\_\_\_

March 4, 2014  
 Greenville, South Carolina

## B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

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

LEIGH PAOLETTI, ESQ.  
 Attorney for the State

JAKE ERWIN, ESQ.  
 Attorney for the Defendant

APRIL HERRON  
 Official Court Reporter

There were no witnesses.

» &gt; o &lt; «

|                                   |    |
|-----------------------------------|----|
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**COURT EXHIBITS**

| <u>NO</u> | <u>DESCRIPTION</u>   | <u>ID</u> | <u>EV</u> |
|-----------|----------------------|-----------|-----------|
| 1         | Dr. Veronen's Report | 12        | 12        |

1           THE CLERK: Your Honor, this is case number  
2           2012-GS-23-2898, Elvira Robinson Seay, indictment for  
3           murder in possession of a weapon during the  
4           commission of a violent crime. She pled guilty in  
5           front of Judge Verdin May 15th, 2013 for involuntary  
6           manslaughter. And she is here for sentencing.

7           THE COURT: All right. Mr. Erwin, Ms. Seay has  
8           already entered her plea in this case, sir?

9           MR. ERWIN: Yes, sir.

10          THE COURT: Okay, you can go straight to the  
11          facts.

12          MS. PAOLETTI: Yes, sir. And Your Honor, if  
13          you'll bear with me they're a little bit long and I  
14          know it's late in the day but I think it's important.

15          THE COURT: Okay, yes, ma'am.

16          MS. PAOLETTI: On May 3rd, 2011, a couple was  
17          walking in a field in Spartanburg County and found a  
18          partially decomposed body of Juan Luis  
19          Tafoya-Gonzales. He had been shot three times.  
20          Twice in the chest and once in the back. The insect  
21          activity in and on the body helped investigators  
22          estimate how long the victim had been decomposing in  
23          the field. Once the victim was identified officers  
24          in Spartanburg learned that this Defendant [verbatim]  
25          had been reported missing a few days prior to his

1 discovery and that this Defendant was the one who  
2 reported him missing. And had given a story about  
3 being at a bar on Pelham Road in Greenville County  
4 and the victim leaving with two black males that she  
5 didn't know.

6 She told the police that she hadn't seen him  
7 since he left with those two men. Officers went to  
8 question her about the missing persons report and to  
9 inform her that the victim was found deceased. And  
10 she maintained her story about him disappearing from  
11 the bar on Pelham Road. In the meantime,  
12 Investigator Wayne Campbell, who is present in the  
13 courtroom today, Your Honor. I forgot to mention  
14 that. He was assigned the case and was contacted by  
15 the mother of a woman who told him that she had  
16 helped the Defendant dispose of the body in  
17 Spartanburg County.

18 Stephanie Romero told police that this Defendant  
19 called her on April 30th of that year and told her  
20 that she and the victim had gotten into a fight, that  
21 he had hit her and shot at her and that she got the  
22 gun from the victim and that she had shot and killed  
23 him. She told Ms. Romero that she needed help  
24 dumping the victim's body. Ms. Romero told police  
25 that the Defendant drove to her home where the victim

1        was and threatened to kill her too if she didn't help  
2        her dispose of the victim's body. They wrapped him  
3        in a sheet and dragged him to the Defendant's truck  
4        and drove him to a field in Spartanburg and dumped  
5        his body. The Defendant then dropped the witness off  
6        and told her that she was going to burn the mattress  
7        that the bled on from their home. The Defendant came  
8        back to her the next day, this Ms. Romero, and  
9        apologized for getting her involved.

10       Officers then searched the Defendant's home  
11       where she lived with the victim and found evidence of  
12       blood that she had attempted to clean up. A dragging  
13       pattern from the bedroom to the front door. And also  
14       found blood on a swifter type mop in the home.

15       The Defendant's truck was equipped with a GPS  
16       device that been used by the lienholder, in the event  
17       the car needed to be repossessed. GPS records were  
18       obtained and the movements of the Defendant's truck  
19       corroborated the statement given by the witness who  
20       have been with the Defendant to dump the victim's  
21       body in Spartanburg. While the investigation was  
22       ongoing, but before warrants for murder and  
23       possession of a weapon during the commission of a  
24       violent crime could be served, the Defendant left  
25       town and went to New Orleans. She was arrested there

1 in June of 2012 and returned the end of January to  
2 Greenville.

3 She gave a statement to the police indicating  
4 that she and the victim got into a fight. And that  
5 the witness referenced above was at the home and saw  
6 the fight. She said that the victim had a gun and  
7 shot at her and that she was able to get the gun and  
8 turn it on the victim and shoot him once. Her story  
9 was that the witness, Ms. Romero, got that gun and  
10 shot the victim twice more, killing him. She has  
11 sense recanted that story and said that she killed  
12 the victim in self-defense. There is evidence, Your  
13 Honor, that the victim was abusive toward the  
14 Defendant in their relationship. But the evidence in  
15 this case is that he was shot twice in the chest and  
16 once in the back and was on his bed when he was shot  
17 and killed.

18 Ms. Seay lied to the police about the victim's  
19 disappearance, about Ms. Romero's involvement in the  
20 case. And she disposed of evidence in the case  
21 including the victim's body. She fled during the  
22 investigations and has threatened witnesses in  
23 letters since she's been incarcerated. She has also  
24 attempted to extort money from one witness by  
25 threatening to tell Investigator Campbell that he was

1 involved in the murder unless he gave her money to  
2 have her teeth fixed while she was in jail.

3 The victim in this case does have drug  
4 convictions for drug offenses and was known by  
5 Spartanburg officers to sell cocaine along with this  
6 Defendant. They had been jointly charged and  
7 convicted in the past. And he also has violent  
8 convictions as well. Based on what the defense is  
9 expected to be at trial and the likelihood that the  
10 jury would be given the option to convict the  
11 Defendant of voluntary manslaughter, the State agreed  
12 to allow her to plea to that charge and to dismiss  
13 the weapons charge.

14 Your Honor, it's the State's position, however,  
15 that the evidence presented at the trial of this case  
16 would support a conviction for murder if we went to  
17 trial. And that we would go forward on murder if the  
18 case had been tried. Your Honor, it's my  
19 understanding that the defense in this case for  
20 reasons that I've alluded to, intendeds to ask for  
21 sentence that is substantially less than what the  
22 State is recommending, which is the maximum sentence  
23 of 30 years.

24 Your Honor, the State believes that the  
25 consideration given the Defendant in the reduction of

1 the charge, which if you presume that she was to get  
2 the minimum on murder and the maximum, which is what  
3 we're recommending on voluntarily, that saves her  
4 about eight years on the calculation of the sentence.  
5 And our position is that that is the appropriate  
6 consideration to be given for some of the facts  
7 involving her history and the type of relationship  
8 that she had with the victim in this case. But our  
9 position is that the maximum will be appropriate in  
10 light of all the circumstances surrounding, not only  
11 the crime, but what the Defendant engaged in after  
12 the shooting of this victim.

13 THE COURT: Okay.

14 MS. PAOLETTI: Your Honor, the victim's -- and  
15 she does have a prior record to which I'll tell you  
16 at the appropriate time. The victim has a brother  
17 who lives in Texas and was not able to come, has  
18 never indicated that he would be able to come to  
19 South Carolina for the plea in this case. My victim  
20 advocate was able to speak to him, he doesn't speak  
21 English. And with me present and -- his brother  
22 understands that his brother, the victim in this  
23 case, was less than perfect. But he relayed to us  
24 that he didn't believe that his brother deserved to  
25 die and he certainly didn't deserve to be dumped in a

1 field. He understood the plea offer but disagreed  
2 with it, Your Honor. He disagreed with the reduction  
3 to voluntary.

4 THE COURT: I understand. Okay.

5 MS. PAOLETTI: Her prior record Your Honor, if  
6 you want to hear?

7 THE COURT: Yes, ma'am.

8 MS. PAOLETTI: 1995, fraud checks, and grand  
9 larceny. '98, burglary second, '04, burglary second.  
10 '05 she had a failure to appear. '06, a lottery  
11 fraud charge. And that's the last of her  
12 convictions. She was charged in 2010 in Spartanburg  
13 for drug charges. But those were dismissed based on  
14 her cooperation with investigator in Spartanburg,  
15 Your Honor.

16 THE COURT: Okay. Why did y'all come before the  
17 Court on a deferred sentence in May of 2013?

18 MR. ERWIN: Judge, I plan to address that when  
19 it's my turn to speak.

20 THE COURT: Sure. Yeah.

21 MR. ERWIN: If you want me to go ahead I will.

22 THE COURT: Are you done, Ms. Paoletti?

23 MS. PAOLETTI: Yes, sir, Your Honor, I am.

24 THE COURT: Okay.

25 All right, Mr. Erwin.

1           MR. ERWIN: Okay, Judge. Our original posture  
2 towards this case was that this was going to be a  
3 trial. And that we would be pursuing a battered;  
4 women's syndrome type defense. Sort of a modified  
5 self-defense idea. Once the State offered  
6 manslaughter, Elvira wanted to take that. And so,  
7 she entered the guilty plea. We then basically  
8 changed the research and effort that we had been  
9 putting into the defense -- and when applied to the  
10 facts, this really make a whole lot more sense. It's  
11 really more of a mitigation idea than it is a true  
12 defense to guilt.

13           So what we've done in the meantime, after  
14 entering the plea and before sentencing, we had  
15 her -- we had a doctor out of -- a clinical  
16 psychologist out of Rockhill, Dr. Veronen. Speak to  
17 the Defendant on a couple of occasions. And put  
18 together a little bit of information about how her  
19 background and her tendency towards victimization and  
20 things like. And the things that has happened in her  
21 childhood and in this particular relationship, have  
22 contributed to her behavior in this instance. Not to  
23 as a defense, not as to say that she's not at fault  
24 for it. But perhaps to give the Court a little bit  
25 of context with which to make -- to consider when

1 making sentencing decision. So that took some time  
2 to get all that done. And frankly, once the plea was  
3 entered, we wanted to take our time. And the State  
4 was thankfully was -- allowed us to do that.

5 MS. PAOLETTI: I was occupied, too.

6 MR. ERWIN: I think we've each have tried a  
7 couple of murder cases in between, so.

8 Judge, I have a very short report from  
9 Dr. Veronen.

10 THE COURT: Okay.

11 MR. ERWIN: It's only about three pages. I'd  
12 like to pass it up and have the Court read it rather  
13 than reading it into the record. Perhaps just give  
14 it to you.

15 THE COURT: Sure. All right, thank you.

16 All right, I had the opportunity to read them,  
17 what I'll do is I'll pass it to the Court Reporter.  
18 Have it marked as Court's Exhibit one.

19 (WHEREUPON, Court's Exhibit No. 1 was marked for  
20 identification and received into evidence.)

21 THE COURT: April, you tell me when you're  
22 ready.

23 THE COURT REPORTER: Yes, sir.

24 THE COURT: Okay, Mr. Erwin.

25 MR. ERWIN: Thank you, Your Honor. Your Honor,

1 I don't have much to add to that other than to say  
2 that Ms. Seay has been a victim many times in her  
3 life. Including in this relationship. He put her in  
4 the hospital a couple of times. With cases that  
5 never became domestic violence cases because she was  
6 afraid to report. Not that that excuses or any way  
7 is a defense to what she did. I just think that it  
8 perhaps mitigating. And perhaps -- I'd ask the Court  
9 to just to think from her side a little bit, what she  
10 was dealing with when consider the sentence.

11 Judge, what we're going to be asking for is a  
12 sentence considerably lower than what the State has  
13 recommended. Talk to both the doctor and Elvira  
14 several times about it and I think what we're going  
15 to be asking for is something between 10 and 15  
16 years. And judge, other than that I will leave the  
17 rest of it up to you but that's what we're asking  
18 for.

19 MS. PAOLETTI: And, Your Honor, just in response  
20 and Mr. Erwin provided me with the report that was  
21 generated as a result of conversations that this  
22 doctor had with the Defendant. And what I would just  
23 point out, Your Honor, is that the opinion that's  
24 offered in this is based solely on conversations with  
25 the Defendant. And our position is that that's not

1 reliable for the basis of her opinion.

2 THE COURT: I had deduced that based on the  
3 facts of this case.

4 MS. SEAY: Yes, sir.

5 THE COURT: Okay.

6 All right, Ms. Seay, anything you'd like to tell  
7 me, ma'am?

8 MS. SEAY: No, sir.

9 SENTENCING

10 THE COURT: All right. I've read that with  
11 interest. And, of course, I've had occasion in my  
12 career to see cases which involve battered spouse  
13 syndrome. And I think that does provide some  
14 mitigation. But just as you said, Mr. Erwin, no  
15 excuse. The -- what's problematic from where I sit  
16 and from looking at these cases is, it's very  
17 difficult to ascertain exactly why a victim in that  
18 situation doesn't leave. There's always that option  
19 available to that person. No withstanding the fact  
20 that the abuse is very real. And not withstanding  
21 the fact that there is a certain victimization,  
22 there -- it still it's confounding why the person  
23 doesn't just leave. Even in traditional emotions of  
24 self-defense, there's a duty to retreat. In this  
25 instance you have not only have the ability to

1 retreat, but you've got years and years of  
2 relationship in which someone can't get away if they  
3 need to.

4 In this instance, the factual scenario that has  
5 been recited into the record doesn't demonstrate that  
6 there was any immediate harm or threat to which the  
7 Defendant was responding. Which would amount to  
8 self-defense. And the question also arises, if  
9 there's no immediate threat, then what -- how could  
10 it have risen to the point where she had to actually  
11 kill the person to get away from them. There are any  
12 number of things that a person could have done to get  
13 away from an abusive spouse, an abuse boyfriend and  
14 or girlfriend. And it seems to me that in this case  
15 it has been dropped from a murder to a voluntary  
16 manslaughter. Which I think is an appreciation for  
17 the fact that this wasn't just a cold blooded killing  
18 that emanated from malice. But there was a reason  
19 for it. And that is mitigation for it.

20 So -- and as I was reading that, what  
21 Ms. Paoletti said was exactly what occurred to me.  
22 Which is it was based on her side of the story. And,  
23 you know, I'm conditioned to recognize that there's  
24 always more than one side of the story.

25 Sentence of the Court is that Ms. Seay be

1 committed to the Department of Corrections for a  
2 period of 25 years. Concurrent, credit for any time  
3 that you may have served. Good luck to you, ma'am.

4 MR. ERWIN: Thank you, Your Honor.

5 MS. PAOLETTI: Thank you, Judge.

6 (WHEREUPON, the proceedings were concluded.)  
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WITNESSES

W.T. Campbell

Greenville County Sheriffs Office

1/27/2012

ARREST WARRANT NUMBER

1433383 and 1433384

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-23-

LBP

002003

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2012

THE STATE

vs.

ELVIRA ROBINSON SEAY

*(Handwritten signature)*

0217

0116 and 0549

Indictment for

MURDER and POSSESSION OF A WEAPON  
DURING THE COMMISSION OF A VIOLENT  
CRIME

VIOLATION § 16-03-0010 and §16-23-0490

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )

INDICTMENT FOR  
 MURDER and POSSESSION OF A WEAPON DURING THE  
 COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on APR 24 2012 the Grand Jurors of Greenville  
 County present upon their oath:

COUNT I

That ELVIRA ROBINSON SEAY did in Greenville County, on or about the 29th day of April 2011, unlawfully  
 and with malice aforethought kill JUAN TAFOYA-GONZALEZ by means of shooting him with a firearm, and  
 that JUAN TAFOYA-GONZALEZ died as a proximate result thereof. This is in violation of §16-3-10 of the  
 South Carolina Code of Laws (1976) as amended.

COUNT II

That ELVIRA ROBINSON SEAY did in Greenville County, on or about the 29th day of April 2011, possess or  
 visibly display a firearm during the commission or attempted commission of a violent crime, to wit: MURDER.  
 This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

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

Lucy B. Paulk  
 SOLICITOR

## STATE OF SOUTH CAROLINA

COUNTY OF Greenville  
STATE VS.Elvira Robinson Seay

AKA:

Race: WHITE Sex: F Age: 48DOB: 1965 SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Greer, SC 29651DL#: [REDACTED] SID#: [REDACTED]\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was  
TO: Voluntary Manslaughter

## IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS2302898A/W#: 1453383Date of Offense: 4/29/2011S.C. Code §: 16-03-0010, 0020CDR Code #: 0116

## SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Paul B. Padletti  
Padletti, Leigh B.69114  
SC Bar#Elvira Robinson Seay  
Defendant[Signature]  
Attorney for Defendant70941  
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed        yearsand/or to pay a fine of \$       ; provided that upon the service of        days/months/years and/or paymentof \$       ; plus costs and assessments as applicable\*; the balance is suspended with probation for       

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services' standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$        plus 20% fee: \$        days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

\*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

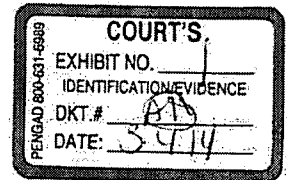
Paul B. Wislenski

Presiding Judge

Judge Code:

Sentence Date:

5/15/132158  
9 MARCH 2014



Lois J Veronen, Ph. D.  
 Licensed Clinical Psychologist #259  
 229 Johnston Street  
 Rock Hill, South Carolina 29730  
 (803) 327-9449

January 29, 2014

Jake Erwin, Attorney at Law  
 Assistant Public Defender  
 13<sup>th</sup> Judicial Circuit  
 Greenville County Court House  
 305 East North Street (Room 123)  
 Greenville, South Carolina 29601

Re: Elvira Seay

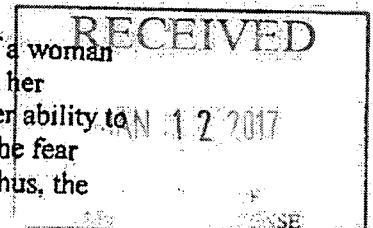
Dear Mr. Erwin:

At your request I have conducted an interview and victimization screening with your client, Elvira Lynn Robinson Seay, who is known to her friends and family as "Lynn Robinson". Elvira will be the name used for this report.

Elvira is a 47 year old, mixed race woman. Her father, Harold Robinson, is a Native American Cherokee Indian and her mother, Dean Robinson, is Caucasian of German decent. Elvira has been married to Robert Seay for 26 years, but only lived with him for the first year of their marriage. Elvira became pregnant and quit school at the age of 16. She has earned her GED. Since 2011 she has been held in the Greenville County Jail in Greenville, SC. She is charged with the murder of Juan Tafoya, age 33, her boyfriend of 7 years. Additionally, she is charged with the use of a weapon in the commission of a violent crime. Juan was an illegal alien from the Yucatan of Mexico. Elvira met Juan through his older brother who was a customer at the convenience store where Elvira had worked. Juan was very attentive and they dated for approximately one year before they moved in together.

The purpose of this examination was to examine Elvira's history of victimization, the impact of this victimization and to determine if this history is consistent with the Battered Woman Syndrome.

The Battered Woman Syndrome is a legal term used to describe the defense of a woman who, having experienced a history of violence and intimate partner violence in her relationships, is traumatized by the victimization to the extent that it impairs her ability to formulate independent intention and actions. For some victims it appears that the fear response of "fight, flight, or freeze" of the primitive brain is highly activated; thus, the



victim is not engaging in thoughtful or intentional behavior, but is instinctively responding in ways to simply stay alive.

In the psychological literature and research the reactions of women to violence at the hands of a intimate or domestic partner are identified as "Victims of Violence," "Victims of Intimate Partner Violence," and/or "Victims of Trauma." In some situations of intimate partner victimization, the victimization has been so severe and prolonged that the reactions of the victim are comparable to individuals who have been prisoners of war and experienced extreme torture.

In conducting this screening and interview of Elvira, documents were provided by Mr. Ervin and reviewed for this report. These documents included four statements taken by Wayne Campbell, Investigator, of 1) Elvira Seay, 2) Stephanie Romero, 3) Joseph P. Gillis, and 4) Carol Ann Lachino. Additionally, a 1996 psychiatric inpatient hospitalization record for Elvira Seay at Patrick Harris Psychiatric Hospital was reviewed. Incident Reports and Supplemental Incident Reports were reviewed. Finally, a psychological instrument that has been found sensitive to the effects of violence was administered as part of the interview.

Elvira Seay was seen for the purpose of screening and interview on May 18, 2013 in a private interview room in the Greenville County Detention Center. The total time spent in this evaluation was for 3.5 hours. Elvira is of medium height and obese. On this day her eyes were clear; her voice was soft and at times difficult to understand. Her eyes were often directed down and her affect was sad. Her voice reflected both sadness and fear when discussing her own victimization and the events she had experienced.

The following measure was administered to Elvira as part of the screening for her victimization history.

1. The Detailed Assessment of Post Traumatic Stress (DAPS) by John Briere. The DAPS is a detailed and comprehensive clinical measure of trauma exposure and post-traumatic stress in individuals who have a history of exposure to one or more potentially traumatic events. The instrument assesses peri and post-traumatic symptoms (e.g. intrusion, avoidance, hyperarousal) and associated features (e.g. dissociative symptoms, substance abuse, suicidality) related to a specific traumatic event. It generates a tentative diagnosis of Post-traumatic Stress Disorder (PTSD) or Acute Stress Disorder (ASD). The DAPS assesses current and lifetime history of DSM-IV-TR trauma exposure, as well as the severity and clinical significance of an individual's post-traumatic symptoms, including dissociative, cognitive and emotional responses.
2. Additional interviewing was conducted to obtain information about educational background, trauma and victimization history, relevant social history, mental health, and drug and alcohol history.

***What was the nature of the relationship between Elvira and Juan Tafoya?***

Initially, the relationship between Elvira and Juan Tafoya was a good one and there was no violence. After the two had been living together for a few months, Elvira discovered cocaine in the kitchen underneath the cabinet. She confronted Juan and said she did not want drugs in her house and told him to leave. At this time she was working regularly at Joe's Fishing Lake from 8:30 – 8 pm and taking care of the bills for their housing. They separated for a few days. He apologized, pleaded to get her back and came to the Lake to talk with her. He said he loved her and would be very careful and would not get her involved in the drug deals. He argued he had no other way to get money--thus he had to deal drugs. She permitted him to come back. The first time he hit her was a few weeks later. He was using cocaine openly. Elvira was upset about this and said something to him. He hit her so hard he broke her back tooth. Eventually, she had to have it extracted, Juan's violence, rage, and control continued. He isolated her from friends. He criticized her; she felt bad about herself. He harassed her at the Fishing Lake and ordered her to quit. After she quit her job, she was dependent on him for money and was forced to also involve herself in the drug trade. Most weekends he required her to either take him or make cocaine deliveries herself.

The worst beating she received from Juan occurred about 2 years before his death. The drug usage had escalated. He became paranoid and extremely violent. On this occasion he was inside a residence using cocaine with one of their friends. She was waiting for him in her vehicle. She honked the horn for him to come. He came out of the residence, pulled her from the vehicle by her hair and struck her repeatedly. Their friend came out and warned Juan to stop before someone called the police. Elvira's eye was blackened, her mouth was bloody, and hair was torn out. They went inside the friend's place and he tried to clean her up. The police may have been called, but no one came to the residence. The next day Juan was remorseful, he cried, apologized, and promised not to do it again. He bought her jewelry and flowers as part of his effort to win her back.

***What is the role of Elvira's victimization history in the charges which she faces?***

The DAPS offers a comprehensive account of Elvira's traumatic history. Elvira endorsed items suggesting many serious victimization events starting in her late teens and early twenties. For example, she experienced an abduction from her work place when her assailants threatened her life, and sexually assaulted her. She also reports being hit, choked, beaten, and forced to have sex during her relationship with Juan Tafoya. Research reports indicate women who suffer victimization of a physical or sexual nature are likely to again be victims.

Elvira's abduction and sexual assault in her early 20's was highly traumatic. She feared for her life and did not know if she would ever see her family again. Subsequently, she experienced other interpersonal victimizations from partners and individuals she knew casually. The battering and beatings she received from Juan were the worst. Victimization at any age may have profound impacts on how a victim views herself, others, and the world. The changes that may occur include beliefs about safety and

vulnerability, expectations about recurring violence, the controllability of violence, who is responsible for violence, and how positively or negatively the victim views herself.

In my opinion, Elvira's past victimizations and her ongoing victimization by Juan Tafoya contributed to increased anxiety and fear, guilt, and feelings of self blame. Although her action in firing the gun at Juan as he was beating her may be considered self-defensive action, Elvira perceived it differently. Psychologically she was responding to her deeply-rooted feelings of self blame, fear and guilt. Initially she did not call the police and identify herself as a victim. Instead she tried to hide what had happened, cleaning up the blood, hiding Juan's body and lying to the police. Eventually she fled to Louisiana. As a result of her previous victimizations Elvira experienced cognitive, affective, and behavioral changes that are characteristics of the "Battered Woman Syndrome".

If additional information is needed, please do not hesitate to contact me.

Sincerely,



Lois J Veronen, Ph. D  
Licensed Clinical Psychologist

## FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Elvira LUNN v. 24

Full name and prison number (if any) of Applicant:

# 199405

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2015-CP-23-00241

APPLICATION FOR

POST-CONVICTION RELIEF

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL W. KEMMER  
2015 JUN 23 PM 11:59INSTRUCTIONS - 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 Columbia G. Graham corr. Inst 4450 Broad River Rd Columbia SC 29210
2. Name and location of Court which imposed sentence Greenville County General Sessions 13 Circuit Court
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: 12-GS-2302898
- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) March 4th 2014 25 years
  - (b) Manslaughter Voluntary

WARRANT # I 433383

- (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) Attorney failed to file appeal.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Counsel  
 (b) Failure to present all evidence.  
 (c) Mitigating circumstances

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

- (a) see attached  
 (b) see attached  
 (c) see attached

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? \_\_\_\_\_  
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? \_\_\_\_\_  
 (d) any other petitions, motions or applications in this or any other Court? \_\_\_\_\_

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

(a) the specific nature thereof:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(c) the disposition thereof:

\_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

46 II-A - failure to file Appeal

II-B - failure to bring up Abuse suffered at hands of victim.

- Illegal in states - deported 3 times
- psychiatric Evaluation
- failure to bring up 16-25-90
- victims arrest history

II-C Mitigating circumstances -

- failure to bring up past Mental Health Problems ( hospitalization for Mental issues  
mental health meds.
- failure to bring up past Rape +  
Molestation.

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) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

- (a) your arraignment and plea? ✓
- (b) your trial, if any?
- (c) your sentencing? ✓
- (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. JAKE EWVIN Greenville County Solicitors
- ii. Office 305 E. North St.
- iii. GREENVILLE SC 29601
- (b) the proceedings at which each such attorney represented you:
- i. Original trial + plea
- ii.
- iii.

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

New trial, sentence reduction and/or parole eligibility

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

No

STATE OF SOUTH CAROLINA )

VERIFICATION

County of )

I, \_\_\_\_\_, 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.

Devin Lynn Seng 999405

SWORN to and subscribed before me this 15<sup>th</sup>  
day of December 2014

Devin W. Gold (L.S.)  
Notary Public

My Commission Expires: May 24, 2016

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

I, \_\_\_\_\_, 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.

Elvina Lynn Say 199405  
Applicant

SWORN or affirmed to and subscribed before me this  
15<sup>th</sup> day of December, 2014.

Dina W. Hall  
Notary Public

My Commission Expires: May 24, 2016

|                          |   |                              |
|--------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS |
|                          | ) | C.A. No. 2015-CP-23-0241     |
| COUNTY OF GREENVILLE     | ) |                              |
|                          | ) |                              |
| Elvira Lynn Seay,        | ) |                              |
| S.C.D.C. No. 299405,     | ) |                              |
|                          | ) |                              |
| Applicant,               | ) |                              |
|                          | ) | <b>RETURN</b>                |
| v.                       | ) |                              |
|                          | ) |                              |
| State of South Carolina, | ) |                              |
|                          | ) |                              |
| Respondent.              | ) |                              |
| _____                    | ) |                              |

In response to the post-conviction relief application filed January 13, 2015, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the April 2012 term of General Sessions for murder (2012-GS-23-2898, count 1) and possession of a weapon during commission of a violent crime (2012-GS-23-2898, count 2). Jake Erwin, Esquire represented the Applicant.

On May 15, 2013, the Applicant pled guilty to voluntary manslaughter before the Honorable Letitia H. Verdin. Sentencing was deferred. On March 4, 2014, the Applicant was sentenced by the Honorable Robin B. Stilwell to 25 years imprisonment. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the guilty plea transcript, and the

sentencing transcript. The Applicant's records from the South Carolina Department of Corrections will be forwarded upon receipt.

## II.

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

1. Ineffective assistance of counsel:
  - a. Failure to file appeal.
  - b. Failure to bring up abuse suffered at hands of victim.
    - i. Illegal in states – deported 3 times.
    - ii. Psychiatric evaluation.
    - iii. Failure to bring up 16-25-90.
    - iv. Victim's arrest history.
  - c. Failure to present mitigating circumstances.
    - i. Failure to bring up past mental health problems.
    - ii. Failure to bring up past rape and molestation.

## III.

The Respondent asserts the Applicant's allegation that her attorney was ineffective 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.

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

#### V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held

and counsel appointed to represent the Applicant.

Respectfully submitted,

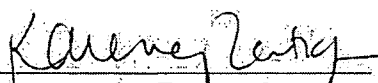
ALAN WILSON  
Attorney General

JOHN W. MCINTOSH  
Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

P.O. Box 11549  
Columbia, S.C. 29211

By:

  
Attorneys for Respondent

June 3, 2015

STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS )

2015-CP-23-0241 )

ELVIRA LYNN SEAY, 299405 )

Applicant, )

vs )

AFFIDAVIT OF SERVICE BY MAIL )

STATE OF SOUTH CAROLINA, )

Respondent. )

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

**Elvira Lynn Seay, 299405**  
**Graham Correctional Institution**  
**4450 Broad River Road**  
**Columbia SC 29210**

DATED this 3rd day of June, 2015.

  
 Judy A. Carey, Legal Assistant  
 For Respondent

|                         |   |                        |
|-------------------------|---|------------------------|
| STATE OF SOUTH CAROLINA | ) |                        |
|                         | ) | COURT OF COMMON PLEAS  |
| COUNTY OF GREENVILLE    | ) |                        |
| Elvira Seay,            | ) |                        |
|                         | ) |                        |
| Applicant,              | ) |                        |
| v.                      | ) | Case No. 15-CP-23-0241 |
|                         | ) |                        |
| State of South Carolina | ) |                        |

## TRANSCRIPT OF HEARING

The within HEARING in the above-captioned matter was held December 15<sup>th</sup>, 2015, before The Honorable Perry H. Gravely in Courtroom 6 of the Greenville County Courthouse, East North Street, Greenville, South Carolina; attended by counsel as follows:

### APPEARANCES:

Caroline Horlbeck, Esq.  
.....Appearing for Applicant

Karen Ratigan, Esq.  
OFFICE OF ATTORNEY GENERAL  
...Appearing for State of South Carolina

Deborah Garrison  
*Circuit Court Reporter – 13th Judicial Circuit*  
P O Box 27145  
Greenville, South Carolina 29616  
[dgarrison@sccourts.org](mailto:dgarrison@sccourts.org)

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## INDEX OF APPLICANT'S EXHIBITS

- None Entered -

Elvira Seay v State of South Carolina  
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Post-conviction Relief Hearing of December 15, 2015  
Before The Honorable Perry H. Gravely

3

1 (APPLICANT PRESENT)

2 THE COURT: Are you ready Ms.  
3 Horlbeck?

4 MS. HORLBECK: Yes, sir.

5 THE COURT: Okay. All right.

6 MS. RATIGAN: May it please the  
7 Court?

8 THE COURT: Yes. I'll be glad to  
9 hear from you.

10 MS. RATIGAN: This is the case of  
11 Elvira Seay versus the State of South  
12 Carolina. The docket number is 2015-CP-23-  
13 0241.

14 Ms. Seay was indicted for murder and  
15 possession of a weapon during the commission  
16 of a violent crime. She was represented by  
17 Mr. Erwin.

18 On May 15<sup>th</sup> of 2013 she pled guilty  
19 to voluntary manslaughter before Judge  
20 Verdin. Sentencing was deferred until March  
21 4<sup>th</sup> of 2014 where Ms. Seay appeared in court  
22 before Judge Stilwell and received a twenty-  
23 five (25) year sentence.

24 She did not file an appeal and the  
25 State's ready to proceed.

Elvira Seay v State of South Carolina  
Case Number 15-CP-23-0241  
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Before The Honorable Perry H. Gravely

4

1

2

THE COURT: All right. Ms. Horlbeck.

3

4

MS. HORLBECK: That's correct,  
Judge. We are ready to proceed today.

5

6

THE COURT: All right. I'll be  
glad to hear from you.

7

8

MS. HORLBECK: All right. We  
call Ms. Seay to the stand.

9

(WITNESS TAKES STAND)

10

11

12

ELVIRA L. SEAY, having been duly sworn to  
tell the truth, and nothing but the truth,  
testified as follows:

13

DIRECT EXAMINATION

14

BY MS. HORLBECK:

15

16

Q. Ms. Seay, where are you currently  
incarcerated?

17

A. At Camille Griffin Graham.

18

19

Q. All right. And what's the length of  
the sentence that you're serving?

20

A. Twenty-five years.

21

22

23

Q. And you're serving a twenty-five  
sentence as a result of a plea to -- was it  
voluntary manslaughter?

24

A. Yes, ma'am.

25

Q. All right. Who represented you on

Elvira Seay v State of South Carolina  
Case Number 15-CP-23-0241  
Post-conviction Relief Hearing of December 15, 2015  
Testimony of Applicant - Direct Examination

5

1       that charge?

2           A.    Mr. Erwin.

3           Q.    And how long did Mr. Erwin represent  
4       you? Do you know? Just a year, two months,  
5       just in general?

6           A.    The time I was incarcerated.

7           Q.    Were you always incarcerated in the  
8       jail while this case was pending?

9           A.    Other than when I was in New  
10      Orleans, yes.

11          Q.    Okay. All right. Now, one of those  
12      allegations that you brought up today is that  
13      Mr. Erwin did not adequately inform the court  
14      of the abuse that you suffered at the hands  
15      of the victim in this case; is that correct?

16          A.    Yes, ma'am.

17          Q.    Okay. All right. So tell the court  
18      a little bit about the abuse that you  
19      suffered from this man.

20          A.    Well, it was mental abuse, physical  
21      abuse. He would even tape cameras to the  
22      truck if I went to my parent's house or  
23      something. That should be in evidence. But  
24      you could actually see him taping the camera  
25      to the truck.

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Testimony of Applicant - Direct Examination

6

1 Q. Uh-huh.

2 A. And when I get in the truck and I go  
3 to my parent's house and everything and then  
4 coming back, he'll un-tape the camera just to  
5 see where I've been.

6 Q. Let me just back up a little bit.  
7 When you say there's a -- because I'm not  
8 sure I understand. There's a tape that this  
9 man -- and tell me the name of the victim.

10 A. Juan.

11 Q. Okay. So Juan would tape a video  
12 camera to your vehicle?

13 A. Uh-huh.

14 COURT REPORTER: Is that a yes?

15 APPLICANT: "Yes."

16 DIRECT EXAMINATION CONTINUED

17 BY MS. HORLBECK:

18 Q. All right. And had you discussed  
19 that with Mr. Erwin?

20 A. I don't, I don't know.

21 Q. All right. Did you produce any of  
22 those video tapes to Mr. Erwin?

23 A. No, none of those were brought up.  
24 But I do know in my motion of discovery, it's  
25 listed on my motion of discovery that they

Elvira Seay v State of South Carolina  
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Testimony of Applicant - Direct Examination

7

1 have it, you know.

2 Q. Okay. Did you and Mr. Erwin ever  
3 review those tapes?

4 A. No.

5 Q. All right. You also mentioned some  
6 mental abuse.. What kind of mental abuse?

7 A. Just the way he would talk to me.  
8 If I didn't do what he said, how he would  
9 treat my family or treat me. And he's cut me  
10 before. He hit me in the ankle with a golf  
11 club and fractured my ankle; I had a cast on  
12 it.

13 Q. All right.. Let me just focus you on  
14 the mental abuse a little bit. Were you  
15 evaluated prior to sentencing?

16 A. Yes.

17 Q. Do you remember the name of the  
18 psychologist, that evaluated you?

19 A. Ms. Veronen.

20 Q. Do you recall what Ms. Veronen's  
21 kind of conclusion was? What was the  
22 conclusion of her evaluation?

23 A. Right off-hand, I really don't know.

24 Q. Do you know if Dr. Veronen drafted a  
25 report?

Elvira Seay v State of South Carolina  
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Testimony of Applicant - Direct Examination

8

1           A.    Yes, ma'am.  She give a paper to  
2           them.

3           Q.    All right.  Do you know if that  
4           report was submitted to the court at your  
5           sentencing?

6           A.    Uh-huh.  Yes, ma'am.

7           Q.    All right.  Did you and Mr. Erwin  
8           review that report?

9           A.    I'm sure we did.

10          Q.    But you just don't remember looking  
11          at it?

12          A.    I don't remember.

13          Q.    Okay.  All right.  Did you discuss  
14          the mental abuse that you suffered at the  
15          hands of Juan, the victim.  Did you discuss  
16          all of that with Dr. Veronen?

17          A.    Yes, ma'am.

18          Q.    All right.  Okay.  And you've also  
19          testified today that you suffered some  
20          physical abuse from the victim?

21          A.    Uh-huh.

22          Q.    All right.  So do you -- just start  
23          with the first time.  Well, how many  
24          occasions of physical abuse, do you know?

25          A.    He's hit me in the head before.  I

Elvira Seay v State of South Carolina  
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9

1 wanted to go to the hospital about him  
2 hitting me in the head. I had a hematoma on  
3 my head here.

4 Q. Did you go to the hospital for that?

5 A. Yes, ma'am.

6 Q. And when did that happen?

7 A. It was -- I'm not sure of the dates.  
8 It was before he cut me on the wrist, before  
9 he cut my arm.

10 Q. Do you know a year for me when you  
11 got hit in the head?

12 A. No, ma'am.

13 Q. What hospital did you go to?

14 A. The Parkway at Pelham. It's a new  
15 -- it's a new ---

16 Q. What county is that in?

17 A. Spartanburg County.

18 Q. Okay. Did you stay overnight?

19 A. No, ma'am.

20 Q. Did you go to the emergency room?

21 A. Yes, ma'am.

22 Q. All right. Were stitches required?

23 A. Yes, on my arm.

24 Q. I mean on your head?

25 A. No, ma'am.

Elvira Seay v State of South Carolina  
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Testimony of Applicant - Direct Examination

10

1 Q. What kind of treatment did you  
2 receive for your head?

3 A. I just -- it was hurting really bad  
4 and they said it was just a mild concussion.

5 Q. Okay. Was the victim in the case  
6 ever arrested for that incident when you were  
7 hit in the head?

8 A. No, ma'am.

9 Q. Did you ever report it to police?

10 A. No.

11 Q. Okay. All right. You said the next  
12 occasion was a -- and correct me if I'm  
13 wrong. The second occasion, is that where  
14 you were cut on the wrist?

15 A. Yes, where he cut me on my arm right  
16 here (indicating).

17 Q. And who did that?

18 A. Juan.

19 Q. Do you know kind of a year and a  
20 month when that may have happened?

21 A. No, ma'am. I don't.

22 Q. Okay. Did you have to go to the  
23 hospital for that?

24 A. Yes, I did and I got stitches.

25 Q. What hospital?

Elvira Seay v State of South Carolina  
Case Number 15-CP-23-0241  
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Testimony of Applicant - Direct Examination

11

1 A. The Parkway at Pelham.

2 Q. All right. You said you got  
3 stitches. Were you admitted overnight?

4 A. No.

5 Q. All right. And you reported to the  
6 emergency room?

7 A. Uh-huh. Yes, ma'am.

8 Q. Did you call the police?

9 A. (No verbal response).

10 Q. Was Juan ever charged for cutting  
11 you on the wrist?

12 A. No, ma'am.

13 Q. All right. And were there any other  
14 occasions that required you to go to the  
15 hospital?

16 A. He hit me with a golf club on my  
17 ankle and fractured my ankle, my right ankle.  
18 I had a boot. I had to wear a cast and a  
19 boot on it for a couple of months.

20 Q. And did you have you have to go to  
21 the hospital?

22 A. Yes, I did.

23 Q. What hospital?

24 A. The Parkway.

25 Q. Do you know when, like what year,

Elvira Seay v State of South Carolina  
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Post-conviction Relief Hearing of December 15, 2015  
Testimony of Applicant - Direct Examination

12

1       what month?

2           A.   No, ma'am.  It was along the time  
3       frame that Spartanburg County had raided the  
4       house but I don't know what time.

5           Q.   Okay.  When you're talking about  
6       raiding the house, is that a whole separate  
7       incident?

8           A.   Yes, ma'am.

9           Q.   And the raid, was that a result of  
10      the events that happened in Spartanburg  
11      County?

12          A.   Uh-huh.

13          Q.   Okay.  All right.  Now, were the  
14      police ever called for your fractured ankle?

15          A.   No, ma'am.

16          Q.   Was the victim ever charged with  
17      criminal domestic violence or another  
18      criminal charge for fracturing your ankle?

19          A.   No.

20          Q.   All right.

21          A.   We were arguing in a motel at the  
22      Extended Stay on Pelham and the officer came  
23      and he ran out the window.  They caught him  
24      and he was arrested.

25          Q.   Okay.  When was that?

Elvira Seay v State of South Carolina  
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Testimony of Applicant - Direct Examination

1 A. I can't remember what year.

2 Q. Okay. Do you know if he was  
3 convicted?

4 A. No. I never did go to the officers.  
5 They just heard us. And he had to pay a big  
6 fine and he got out, but he used a different  
7 name.

8 Q. Do you know what name he used?

9 A. Gabino or something. I'm not really  
10 sure. I do apologize.

11 Q. All right. So -- well, you said he  
12 used a different name from the name that was  
13 used in your charge?

14 A. Uh-huh.

15 Q. Okay. Is there any way to find that  
16 conviction then?

17 A. In the motion of discovery there's  
18 -- the only picture I have of him is a mug  
19 shot. I don't know what name he used but  
20 that's the mug shot. And that's wrong.

21 Q. Okay. Did you talk to Mr. Erwin  
22 about that?

23 A. Yeah. We spoke about that.

24 Q. All right. Do you know what county,  
25 he would have been ---

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1 A. Greenville.

2 Q. Okay. All right. Any other  
3 physical evidence of abuse where you had to  
4 go to the hospital?

5 A. No, ma'am.

6 Q. All right. Okay. Do you recall  
7 telling Mr. Erwin that you'd gone to the  
8 hospital three times at Spartanburg Regional?

9 A. Uh-huh, (affirmative nod).

10 Q. All right. Is that -- I need you to  
11 answer out loud?

12 A. Yes, ma'am.

13 Q. Okay. Did you sign any paperwork  
14 saying that Mr. Erwin could obtain your  
15 medical records?

16 A. I don't remember. I don't know.

17 Q. Okay. All right. Do you recall if  
18 your medical records from Spartanburg  
19 Regional, if those were submitted to the  
20 Court prior to sentencing?

21 A. No. No, ma'am. They weren't.

22 Q. Okay. And do you think the outcome  
23 of your case would have been different or  
24 your sentence would have been different if  
25 that information had been submitted to the

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1 court?

2 A. Yes, ma'am.

3 Q. All right. How do you think it  
4 would have been different?

5 A. It just would have give more  
6 evidence showing what an abusive person that  
7 he was.

8 Q. All right. And are you arguing  
9 today that it may have affected your parole  
10 eligibility?

11 A. Yes, ma'am.

12 Q. All right. And did you ask Mr.  
13 Erwin to file an appeal in this case?

14 A. Yes, ma'am.

15 Q. And was an appeal filed?

16 A. Not to my knowledge. No, ma'am.

17 Q. All right. Do you have any other  
18 issues that you want to present to the Court  
19 today?

20 A. No, ma'am.

21 Q. All right.. Your appealable issue  
22 if an appeal had been filed would have been  
23 the failure to present the mitigating  
24 evidence ---

25 A. Yes.

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1 Q. --- to make you parole eligible?

2 A. Yes, ma'am.

3 Q. All right. All right. Any other  
4 allegations today?

5 A. No, ma'am.

6 Q. All right. That's all I have.  
7 Please answer any questions that Ms. Ratigan  
8 may have for you.

9 CROSS-EXAMINATION

10 BY MS. RATIGAN:

11 Q. Ms. Seay, how long were you with the  
12 victim?

13 A. Seven years.

14 Q. And over that period of time you say  
15 that you were the victim of physical and  
16 mental abuse from him?

17 A. (Affirmative nod).

18 COURT REPORTER: You need to  
19 answer.

20 APPLICANT: Yes, ma'am.

21 COURT REPORTER: Thank you.

22 CROSS EXAMINATION

23 BY MS. RATIGAN:

24 Q. And you told Mr. Erwin about this?

25 A. Yes, ma'am.

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1 Q. Okay. And did you ever call the  
2 police?

3 A. Yes, I did.

4 Q. How many times did you call the  
5 police after an incident of physical abuse?

6 A. I called Greenville County many --  
7 three or four times to the house before.

8 Q. Okay. And it was because that he  
9 had been abusing?

10 A. Yeah. Or either drunk outside  
11 shooting a gun. You know, just something  
12 crazy.

13 Q. Okay. And did you tell Mr. Erwin  
14 about that?

15 A. Yes, ma'am.

16 Q. Okay. And you discussed with him  
17 getting these medical files when you had gone  
18 to the hospital?

19 A. I don't, I don't know.

20 Q. You don't remember?

21 A. I don't remember, no, ma'am. I'm  
22 not going to lie.

23 Q. That's okay. Now, when you went to  
24 the hospital did you tell the medical  
25 personnel there how you had been injured?

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1 Did you say, you know, 'Juan hit me or cut  
2 me'?

3 A. I always said it was an accident.

4 Q. Okay. Now, did you have any  
5 witnesses who ever saw him strike you or hurt  
6 you in some way?

7 A. (Affirmative nod).

8 Q. Okay. And did you tell Mr. Erwin to  
9 contact these people?

10 A. Well, actually they had wrote it,  
11 wrote statements and it was in my motion of  
12 discovery.

13 Q. So they wrote statements to the  
14 police?

15 A. Uh-huh. Yes, ma'am.

16 Q. Did you ever review those with Mr.  
17 Erwin?

18 A. I don't think so, no.

19 Q. Did you ever ask him to contact  
20 these people to maybe help your case?

21 A. No, ma'am.

22 Q. Okay. And after you were evaluated,  
23 did you discuss with Mr. Erwin the idea of  
24 battered woman syndrome?

25 A. No. At that time, I didn't know

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1 about it.

2 Q. Okay.

3 A. I didn't know fully in length about  
4 it.

5 Q. Okay. And when did you find out  
6 about it? Was it once you got to SCDC?

7 A. Well, Ms. Veronen had mentioned it  
8 and I found out about it at SCDC.

9 Q. Okay. And Juan, he was shot while  
10 he was in bed; is that correct.

11 A. No, he was standing up.

12 Q. He was standing up?

13 A. (Affirmative nod).

14 Q. And then you called Stephanie Romero  
15 (phonetic) to help you move the body?

16 A. Yeah. She's one of the ones that  
17 wrote a statement saying that she had seen  
18 the physical and mental abuse.

19 Q. Okay. And you initially reported  
20 Juan was missing; correct?

21 A. Yes, ma'am.

22 Q. And did you and Mr. Erwin discuss  
23 going to trial on these charges?

24 A. I think, if I remember right he said  
25 it wouldn't be in my best interest to follow

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1 through.

2 Q. Okay. So you decided to go ahead  
3 and plead guilty?

4 A. Yes, ma'am.

5 Q. And you stated you wanted an appeal.  
6 Can you explain to me what error was made by  
7 the judges in the case that you would want an  
8 appeal? Or was it just that you wanted Mr.  
9 Erwin to have done more investigation?

10 A. Well, I felt like a lot of stuff  
11 wasn't brought up. You know, the extent of  
12 him's [sic] physical abuse towards me. And  
13 just at that time when everything was going  
14 on, it was such a blur, I just didn't know  
15 really what was going on.

16 Q. Okay. So you mostly would have  
17 wanted an appeal to challenge how Mr. Erwin  
18 handled the case. Would that be fair to say?

19 A. Uh-huh.

20 COURT REPORTER: That was a yes?  
21 Did you say yes?

22 APPLICANT: Yes, ma'am.

23 COURT REPORTER: Okay. Thank you.

24 MS. RATIGAN: That's all I have,  
25 Your Honor.

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1

2

MS. HORLBECK: I don't have anything  
further, Judge.

3

4

THE COURT: Thank you. You may  
step down.

5

6

(WITNESS STEPS DOWN)

7

THE COURT: All right. Anything  
else, Ms. Horlbeck?

8

9

MS. HORLBECK: No, that's all,  
Your Honor.

10

11

THE COURT: All right. Ms.  
Ratigan.

12

13

MS. RATIGAN: the State would call  
Mr. Erwin.

14

15

(WITNESS TAKES STAND)

16

JAKE ERWIN, having been duly sworn to  
tell the truth, and nothing but the truth,  
testified as follows:

17

18

19

DIRECT EXAMINATION

20

BY MS. RATIGAN:

21

Q. Mr. Erwin, do you recall  
representing Ms. Seay on these charges?

22

23

A. I do.

24

Q. And were you appointed, to the  
public defender's office?

25

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1 A. I was.

2 Q. Did you file the usual *Brady* Rule 5  
3 motions?

4 A. I did.

5 Q. To the best of your knowledge, did  
6 you receive full discovery from the State?

7 A. As far as I could tell.

8 Q. And was Ms. Seay, once she was  
9 brought back to New Orleans, was she at the  
10 detention center the whole time?

11 A. Yes, ma'am. She was.

12 Q. And did you go meet with her at the  
13 jail?

14 A. I did.

15 Q. Did you review those discovery  
16 materials with her?

17 A. I did. As far as I can tell over  
18 the course -- let's see. I represented her  
19 for over two years. Over the course of that  
20 time, we would have reviewed the discovery  
21 material we'd been given by the State.

22 You know, it's a lot of stuff, as you can  
23 see. And I can't speak to when we would have  
24 reviewed each individual piece of it. But we  
25 would have at some point gone over all of it.

1 Q. Would you have reviewed with her the  
2 elements of the charges?

3 A. I imagine I would have.

4 Q. The sentencing ranges as well?

5 A. Yes, ma'am.

6 Q. Did she disclose to you what  
7 happened on the night in question?

8 A. We talked about it. Yes, we did.

9 Q. Did she tell you about any prior  
10 abuse she suffered at the hands of the victim  
11 in this case?

12 A. Well, yeah. That was pretty much  
13 what we had to work with as far as a defense  
14 or mitigation in this case was the history of  
15 domestic violence in that relationship.

16 Q. Did she tell you about times that  
17 she had contacted law enforcement and they  
18 had come out to the residence?

19 A. Yeah. If I remember correctly, we  
20 could get to the point that there were times  
21 that that happened. Narrowing it down to  
22 when those specific times were was a little  
23 harder. We weren't able to come up with  
24 specific dates. But that the cops had  
25 responded at least once.

1 Q. And did she tell you that she had  
2 gone to the hospital three times as a result  
3 of some physical abuse?

4 A. Yeah. I imagine that she did tell  
5 me that. I don't have anything in here that  
6 specifically says that, but I know that was  
7 the thrust of our conversations so we would  
8 have talked about that.

9 Q. Did you have her execute a HIPAA  
10 waiver?

11 A. Yeah. I was just reviewing my file  
12 this morning. I do have a HIPAA waiver for  
13 her medical records to be disclosed from  
14 Patrick B. Harris which is, I guess, a  
15 facility that we had figured out that she had  
16 been in at some point.

17 Q. And did you receive any medical  
18 records?

19 A. I did. I've got them here. We've  
20 just got an assortment of medical records.  
21 I guess everything that Patrick B. Harris had  
22 on her.

23 Q. Would you have reviewed them with  
24 Ms. Seay?

25 A. Oh, yeah.

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1 Q. And to your recollection, was there  
2 anything in there that helped to kind of  
3 support the idea of battered woman syndrome?

4 A. Not to my recollection. I don't  
5 remember there being anything specific in  
6 there that was terribly helpful to her  
7 defense.

8 Q. Did you speak to any witnesses in  
9 the case, anyone who would have witnessed any  
10 kind of abuse?

11 A. No. I did not.

12 Q. Were you aware of any witnesses that  
13 would have been helpful for her defense?

14 A. You know, I guess through the  
15 discovery and through talking to Ms. Seay, I  
16 was aware of some witnesses, but for whatever  
17 reason, I ended up not talking to them.

18 Q. Did Ms. Seay ever ask you  
19 specifically to contact them?

20 A. I don't remember if she did.

21 Q. And when did you decide to try and  
22 pursue the idea of battered woman syndrome?

23 A. You know, I can't specifically say  
24 as far as what day and date I would have  
25 decided that. But probably right away from

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1 getting the case appointed to me and looking  
2 at the discovery and talking to Ms. Seay for  
3 the first time. It seems like that was the  
4 obvious defense in this case and something  
5 that definitely needed to be pursued. So if  
6 I remember correctly, that's something that  
7 happened immediately.

8 Q. And did you have Ms. Seay evaluated?

9 A. I did. We hired a private forensic  
10 psychiatrist from Rock Hill, Dr. Lois  
11 Veronen.

12 Q. And what was the purpose of that  
13 evaluation?

14 A. Well, originally, the hopeful  
15 purpose of the evaluation was that we could  
16 have a professional forensic psychiatrist who  
17 could testify at trial as to, you know, what  
18 makes a classic situation and what made this  
19 case fit into a battered women's syndrome  
20 defense. That was originally the goal of  
21 that evaluation. That isn't quite how it  
22 turned out but that was what we were going  
23 for.

24 Q. And did this -- can you give me the  
25 doctor's name again?

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1 A. Dr. Lois Veronen. She's out of Rock  
2 Hill.

3 Q. Okay. And did Dr. Veronen prepare a  
4 report?

5 A. She did.

6 Q. And did you review that report with  
7 Ms. Seay?

8 A. We did. I did.

9 Q. And what was the finding of the  
10 report, do you recall?

11 A. Just basically, in a general sense,  
12 I remember the finding of the report and the  
13 result of her evaluation was that she wasn't  
14 confident that the situation arose to a pure  
15 battered women's syndrome defense. But there  
16 were a lot of pieces of the defense there  
17 that would be helpful in mitigation, which  
18 ultimately is what we ended up doing. You  
19 know, presenting the report and some of the  
20 findings of the evaluation at the plea as  
21 mitigation to hopefully not absolve Ms. Seay  
22 of responsibility, but to encourage the court  
23 to be a little more lenient in her sentence.

24 Q. And did you explain to Ms. Seay that  
25 you were going to have to go down a

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1 mitigation route instead of using that at  
2 trial?

3 A. I'm sure that we did. You know,  
4 that would have been a huge part of our  
5 discussions leading up to the plea.

6 Q. Based on your review and  
7 recollection of the discovery, was there some  
8 question as to the position of the victim  
9 when he was shot or was that pretty clear  
10 cut. Do you remember?

11 A. You know, to be honest, I don't  
12 remember exactly what the issue was with the  
13 positioning of the body. At the time I would  
14 have been able to tell you about it.

15 Q. Would it be fair to say that once  
16 you got Dr. Veronen's report back you  
17 switched to plea mode instead of trial mode?

18 A. Well, I guess -- I mean, before the  
19 report I would have had a conversation with  
20 Dr. Veronen that probably pushed me in that  
21 direction. But as far as plea mode versus  
22 trial mode, honestly, I try to leave that up  
23 to the client as much as possible. I try to  
24 be prepared for either possibility.

25 As a general practice of mine with cases

1       like this, I will make sure she understands  
2       what her options are and make sure she  
3       understands what the consequences of those  
4       options are. But as far as making the choice  
5       of plea mode or trial mode, that's not really  
6       -- I try to leave that up to the client as  
7       much as I can.

8               Q. And did you explain to her the risks  
9       and advantages of a plea versus trial in this  
10      case?

11              A. Oh, sure. That would have been a  
12      big part of our conversation.

13              Q. And do you recall when she, Ms.  
14      Seay, would have decided to enter a plea  
15      rather than going to trial?

16              A. You know, I don't recall the  
17      specific date. We entered a plea in May of  
18      2013. So it would have been a month or two  
19      before that. I mean, you know all of this --  
20      but sentencing was deferred for almost a  
21      whole year as we continued to try to get some  
22      mitigation together for her sentencing.

23              Q. Now, let me circle back around to  
24      this. Did Ms. Seay ever tell you that the  
25      victim had been convicted under a false name?

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1 Do you recall that conversation?

2 A. I don't remember.

3 Q. And do you recall Ms. Seay asking  
4 you to file an appeal?

5 A. I don't.

6 Q. In your normal practice, if your  
7 client asks you to file an appeal, would you  
8 do so?

9 A. Yeah. I mean, if it's a conviction  
10 after a trial, I'll always file an appeal.  
11 If it is a conviction as a result of a plea,  
12 I will file an appeal if the client asks me  
13 to.

14 Q. In your opinion were there any  
15 appealable errors from the plea or the  
16 sentencing?

17 A. I don't remember. And I've looked  
18 over the transcript of the plea and the  
19 sentencing before today. I don't remember  
20 there being any legal errors with the plea or  
21 sentencing that would rise to the level of an  
22 appeal. But that's not really for me to say,  
23 I guess.

24 MS.RATIGAN: That's all I have,  
25 Your Honor.

1

2

THE COURT: Ms. Horlbeck

3

CROSS-EXAMINATION

4

BY MS. HORLBECK:

5

Q. Mr. Erwin, you said that you hired

6

or you testified that you hired a

7

psychologist from Rock Hill, Dr. Veronen?

8

A. Yes, ma'am.

9

Q. All right. And the purpose of

10

hiring her -- it was a woman, right? Is Dr.

11

Veronen a man or a woman?

12

A. Oh, she was a woman, yes.

13

Q. Okay. The purpose of hiring her was

14

hopefully to flesh out a defense that you

15

could present at trial. Is that right?

16

A. Right. And maybe ultimately call

17

her as an expert if we went to trial.

18

Q. All right. But ultimately what her

19

conclusion was is that there were pieces that

20

could be used as mitigation at sentencing?

21

A. Right. And the problem -- yeah, the

22

reason I think ultimately where we came to

23

that -- and then the Judge talks about this

24

in the plea a little bit too -- is that a lot

25

of the information as far as the alleged

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1 domestic abuse and the alleged mental abuse  
2 -- there was not a whole lot of physical  
3 evidence that we could find that would  
4 corroborate that. A lot of the allegations  
5 of abuse were just coming just from Ms. Seay.  
6 And we couldn't get a whole lot of stuff to  
7 corroborate that. That was part of the  
8 problem, part of why it didn't rise all the  
9 way to a defense.

10 Q. Okay. But there were pieces that  
11 you wanted to use as mitigation; is that  
12 right?

13 A. Sure. Yes.

14 Q. And the goal of mitigation, you  
15 testified, was to try to encourage the court  
16 to ---

17 A. Right.

18 Q. --- sentence Ms. Seay more  
19 leniently?

20 A. Right. Well, I mean, first and  
21 foremost we were able to convince the  
22 prosecutor to allow her to plead to a lesser  
23 charge. I mean, she was originally charged  
24 with murder, and she entered a plea to  
25 voluntary manslaughter. So that in itself

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1 was a pretty huge victory that I think had a  
2 lot to do with the work that Dr. Veronen did.  
3 But then the same -- was that once she pled  
4 to the voluntary manslaughter, was to try to  
5 convince the sentencing judge to go easy on  
6 her and lessen her sentence.

7 Q. Okay. And at the time of the plea  
8 were you aware of Section 16-25-90, parole  
9 eligibility?

10 A. You know, I wasn't.

11 Q. Okay.

12 A. And I realize that now, that that  
13 might have been something that I should have  
14 been aware of. And I'm a little embarrassed  
15 to admit I didn't know anything about that  
16 section.

17 Q. All right. I appreciate that. I  
18 mean, I'm not -- I think we've all been there  
19 at some time.

20 A. Okay.

21 Q. All right. So if you'd known about  
22 that section, do you think it would -- is it  
23 fair to say that a goal of yours would have  
24 been to try to help her with parole  
25 eligibility?

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1           A.    If I'd known about that section, we  
2           definitely would have made sure as part of  
3           the plea to hit the necessary points that we  
4           needed to, to convince the judge to make a  
5           finding under that section and give her early  
6           parole eligibility.  If.  I didn't know about  
7           that and so we didn't tailor presentation to  
8           that section.

9           Q.    Now, as part of sentencing you  
10          advised Judge Stilwell that none of the  
11          events resulted or the prior events between  
12          Ms. Seay and the victim resulted in  
13          convictions against the victim; is that  
14          correct?

15          A.    Yeah. I read the transcript.  I did  
16          say that.

17          Q.    But today you're saying that you  
18          think that the police reported to the house  
19          for domestic violence reasons at least once?

20          A.    Well, that I mean -- yeah.  That's  
21          what it sounds like.  I was a little confused  
22          by myself when I read the transcript.  You  
23          know, in my head now and going through the  
24          file, I remember talking to Ms. Seay about  
25          there being at least one time when law

1 enforcement had responded to one of these  
2 incidents. But then again, I read the  
3 transcript of the plea and I told the judge  
4 that there wasn't. So I don't really know  
5 what happened there. I don't know where that  
6 was coming from.

7 Q. All right. In reviewing our file,  
8 do you have any details about that occasion  
9 when the police arrived?

10 A. I don't. I have stuff that Ms. Seay  
11 told me and I remember her telling me about  
12 it. But I don't think that there was any  
13 investigation that yielded actual police  
14 reports or things like that, that would have  
15 corroborated that stuff.

16 Q. Okay. So are you saying that you  
17 did investigate and there was no result or  
18 there was no investigation?

19 A. You know, I don't think there was  
20 much of an investigation.

21 Q. All right. Do you know when the  
22 police may have reported and what county?

23 A. Well, I think that's why there  
24 wasn't much of an investigation. To be  
25 honest, I don't think we were able to ever

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1 nail that down. And it was so broad. It  
2 wasn't anything that I pursued seriously.

3 Q. All right. The information she  
4 provided you was not detailed enough to allow  
5 you to know where to look? What county to  
6 look in and the time period?

7 A. You know, I think that probably was  
8 my thinking at the time. And it's easy to  
9 second guess stuff like that now. I'm  
10 sitting here today listening to her testify  
11 and I'm already thinking of, you know, ways  
12 I could have investigated that better, you  
13 know. But at the time I remember thinking  
14 about it was somewhat of a dead-end.

15 Q. All right. Do you recall any  
16 discussion(s) that you had with Ms. Seay  
17 regarding a false named used by the victim?

18 A. See, today was the first time I'd  
19 ever heard that. I don't remember that being  
20 part of it. But it doesn't mean she didn't  
21 say it. It just was a long time ago.

22 Q. So on reflecting, do you think --

23 A. No, nothing. I don't see anything.

24 Q. Okay. Now, medical records. You  
25 testified that you had a medical release

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1 signed by Ms. Seay; correct?

2 A. Right.

3 Q. All right. You said that medical  
4 record to -- was it Marshall Pickens?

5 A. Patrick B. Harris.

6 Q. Patrick Harris. All right. Do you  
7 recall whether or not your HIPAA release was  
8 forwarded to Parkway at Pelham?

9 A. I can tell you from looking at it  
10 that I'm pretty sure it wasn't.

11 Q. All right. Does anything in your  
12 notes indicate medical places other than  
13 Patrick Harris?

14 A. I was looking for that earlier.  
15 I don't have anything in my notes that  
16 indicates that.

17 Q. Okay. All right.

18 MS. HORLBECK: That's all I have.  
19 Thank you.

20 THE COURT: Any redirect?

21 MS. RATIGAN: Very briefly, Your  
22 Honor.

23 REDIRECT EXAMINATION

24 BY MS. RATIGAN:

25 Q. If Ms. Seay had specifically said

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1       that there were medical records from Parkway  
2       at Pelham, would you have sent a medical  
3       waiver to get those records?

4             A.    I mean, in a perfect world, yes.  
5       Who knows?

6             Q.    At the end of the day did you feel  
7       like you had enough evidence, both from  
8       experts and just actual documentation to  
9       successfully argue battered woman at trial?

10            A.    Well, I was certainly not sure. And  
11       you never know with a jury. So I don't think  
12       I could ever sit here and say that I would  
13       feel confident in arguing that in front of a  
14       jury, but it was a big gray area in this  
15       case. I remember that.

16            MS.RATIGAN:   That's all I have,  
17       Your Honor. And the State would rest at this  
18       time.

19            THE COURT:    All right. Any  
20       rebuttal testimony?

21            MS. HORLBECK:   No, Judge, I'd  
22       just ask to be heard at the appropriate time.

23            THE COURT:    Yes, I'll be glad to  
24       hear from you.

25            MS. HORLBECK:   Judge, I just ask

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1           that ---

2                   THE COURT:     Let Mr. Erwin step  
3           down.

4                               (WITNESS STEPS DOWN)

5                   MS. HORLBECK:     Judge, I'd just  
6           ask at this point -- I was under the  
7           impression that those records had been  
8           requested from the public defender's office.  
9           And I just feel like -- I just ask that the  
10          record be left open thirty days to allow me  
11          to forward a HIPAA request to the Parkway at  
12          Pelham and see what they have.

13                   THE COURT:     Anything else? I  
14          mean, I don't think that that -- I mean, this  
15          was a plea. I mean, I don't think that  
16          that's going to be relevant in any findings  
17          that I have. So I'll be glad to hear from  
18          you on the merits if you'd like.

19                   MS. HORLBECK:     Well, and Judge,  
20          that's why I'm asking. I think it does go  
21          directly to the merits and our position would  
22          be that have those medical records -- there  
23          doesn't seem to be any evidence that the  
24          HIPAA release was forwarded to Parkway at  
25          Pelham or really any emergency room

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1       containing hospital. Patrick Harris, is a --  
2       I'm sure Your Honor knows, but just for the  
3       record, it's a mental hospital. So they  
4       would not be in the business of treating  
5       concussions, treating cuts and treating  
6       fractures to legs. Parkway at Pelham would  
7       and I just think out of an abundance of  
8       caution I would ask the Court to consider  
9       keeping the record open so that I could  
10      forward that HIPAA release to them.

11               The reason we want that information  
12      is because if that information exists and Mr.  
13      Erwin did not request it, we believe that  
14      that information should have been submitted  
15      to the Court so that the Court could consider  
16      that as part of sentencing. It's all very  
17      well to say she's been hospitalized a couple  
18      of times because of this abuse. It has a lot  
19      more impact if medical records showing  
20      fractures, cuts, mild concussions can be  
21      handed to the Court.

22               And I understand that the testimony  
23      has been that Ms. Seay never told the  
24      hospital who had done this. She always said  
25      that this was an accident. I think that fits

1 right into the mitigation that was needed to  
2 and was presented to the Court. It sounds  
3 like she was right on the cusp of battered  
4 woman's syndrome. She didn't necessarily fit  
5 into that. But there were parts of it that  
6 could be presented as mitigation.

7 And I would argue it doesn't matter  
8 what reason she provided the hospital. If  
9 anything that she -- if she said it was an  
10 accident, well, that in itself seems  
11 ridiculous. And if that's the reason she  
12 gave, I think that would be one of those  
13 little pieces that Mr. Erwin would have  
14 needed to present to the sentencing judge in  
15 order to mitigate and have Ms. Seay fall  
16 under 16-25-90.

17 THE COURT: Okay. Anything, Ms.  
18 Ratigan?

19 MS.RATIGAN: Thank you, Your Honor.  
20 This argument will kind of dovetail in with  
21 Ms. Horlbeck's, which is that Ms. Seay hasn't  
22 met her burden of proof today. She would  
23 have to demonstrate today that such a defense  
24 would have been successful. We've heard no  
25 expert testimony. We've heard no testimony

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1 from any kind of lay witness who observed any  
2 kind of abuse. We've seen no medical records  
3 that would have justified further pursuing the  
4 idea of battered woman's syndrome at trial.

5 So the State's position would be  
6 that absent such a showing here today, it's  
7 completely speculative for us to entertain  
8 the idea that if these avenues had been  
9 pursued, that Mr. Erwin would have been able  
10 to successfully argue both battered woman's  
11 syndrome at a potential trial or for the  
12 reduction under 16-25-90.

13 THE COURT: All right.

14 MS. HORLBECK: Just briefly in  
15 response. 16-25-90 just requires the  
16 presentation of credible evidence of a  
17 history of criminal domestic violence  
18 suffered at the hands of the household  
19 member.

20 I would think two things would  
21 follow from that. One would be any  
22 convictions. The second bar or piece of  
23 credible evidence of domestic violence  
24 suffered at this guy's hands would have been  
25 medical records. And I think that would have

1        gone -- that evidence would have been  
2        important.

3                THE COURT:        Well, let me ask you  
4        this, 16-25-90 specifically says it shall not  
5        effect PCRs. Any comments on this? It says  
6        this section shall not affect the provisions  
7        of Section 17-27-45, which is PCRs, which to  
8        me says it's not something to be considered  
9        at a PCR hearing.

10               MS. RATIGAN: Judge, I'm having a  
11        problem holding this case in front of my  
12        brain. But there is a PCR case that  
13        specifically says that if you want to argue  
14        that 16-25-90 should have been pursued at a  
15        trial level, then you basically have to  
16        bring, you have to marshal all of that  
17        evidence before the PCR court. Again, I'm  
18        having a problem pulling that case from the  
19        ether. But there is a case that says that  
20        basically to make that showing, she would  
21        have to present all those evidence and  
22        witnesses and testimony and all of that stuff  
23        here today.

24               MS. HORLBECK:        I thought that  
25        just based on my conversations with her, I

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1 thought that that evidence -- I wasn't going  
2 to pursue that today. But based on Mr.  
3 Erwin's testimony that the releases were  
4 never sent to the hospital, I do want to  
5 present that to the Court.

6 THE COURT: Yeah. Well, I mean,  
7 I think that there is -- you know, I think  
8 that all of the mitigating circumstances were  
9 properly thrashed out.

10 I mean, there's even discussion with  
11 the solicitor when the solicitor was setting  
12 forth their facts and the evidence that the  
13 victim was abusive towards the Defendant and  
14 even that night. I mean, the solicitor  
15 brings that out in her designation of the  
16 facts. And then they stop the plea at that  
17 point and she went and got an evaluation and  
18 it was almost a year later. And in the  
19 record that the judge clearly, you know,  
20 outlined that he's reviewed this record by  
21 the psychiatrist and they kind of indicate on  
22 the record that she didn't fall in the  
23 batterer's syndrome, that it was more of a  
24 mitigating circumstances. So, you know, I  
25 don't find that that -- I mean it sounds like

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Certificate of Court Reporter

1           that there was -- all of the mitigating  
2           circumstances were brought forth at the plea  
3           and considered -- in fact, considered by the  
4           judge. I mean, he stops the plea and  
5           actually reviews the report at that time. So  
6           I'm going to deny it on that basis.

7           Also there is an indication that the  
8           defendant was advised by the judge at the  
9           plea -- I know it wasn't the sentencing  
10          judge, but the one that took the plea,  
11          advised her of her right to appeal. And, you  
12          know, there was no information, I think that  
13          supports the claim that there was a request  
14          for an appeal in this matter. And, again, it  
15          is also a bit unusual in a plea situation.

16          And she indicates she knew what she  
17          was doing at that time.

18          So based on those factors, I'm going  
19          to deny the application.

20                   MS. HORLBECK:       Thank you, Your  
21                   Honor.

22                   THE COURT:        Good luck to you, Ms.  
23                   Seay.

24                                   (COURT IN RECESS)

25

I, the undersigned Deborah Garrison,  
Circuit Court Reporter for the 13<sup>th</sup> Judicial  
Circuit, hereby certify that the foregoing is a  
complete and accurate transcript of the post-  
conviction relief hearing held in the within action  
heard on December 15, 2015, before The Honorable  
Perry H. Gravely;

Wm Lloyd Garrison

Greenville, South Carolina

|                          |   |                              |
|--------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS |
|                          | ) | C.A. No. 2015-CP-23-0241     |
| COUNTY OF GREENVILLE     | ) |                              |
|                          | ) |                              |
| Elvira Lynn Seay,        | ) |                              |
| S.C.D.C. No. 299405,     | ) |                              |
|                          | ) |                              |
| Applicant,               | ) |                              |
|                          | ) | <b>ORDER OF DISMISSAL</b>    |
| v.                       | ) |                              |
|                          | ) |                              |
| State of South Carolina, | ) | ENTERED COMPUTER             |
|                          | ) |                              |
| Respondent.              | ) |                              |

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL H. WICKENSIMER  
2016 FEB 2 PM 1 59

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 13, 2015. The Respondent made its return on June 3, 2015. An evidentiary hearing was held on December 15, 2015 at the Greenville County Courthouse. The Applicant was present and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on her own behalf at the PCR hearing. Also testifying was the Applicant's plea-counsel, John K. Erwin, Jr., Esquire. The Court had before it the guilty plea and sentencing transcripts, the Greenville County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, and the return.

### PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the April 2012 term of the Greenville County Grand Jury for murder (2012-GS-23-2898, count 1) and possession of a weapon during commission of a violent crime (2012-GS-23-2898, count 2). She was represented by John K. Erwin, Jr., Esquire.

*PH*

On May 15, 2013, the Applicant pled guilty to the lesser-included charge of voluntary manslaughter before the Honorable Letitia H. Verdin. Sentencing was deferred. On March 4, 2014, the Applicant was sentenced by the Honorable Robin B. Stilwell to 25 years imprisonment. The Applicant did not appeal.

### **ALLEGATIONS**

In her application, the Applicant alleges she is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
  - a. Failure to file appeal.
  - b. Failure to bring up abuse suffered at hands of victim.
    - i. Illegal in states – deported 3 times.
    - ii. Psychiatric evaluation.
    - iii. Failure to bring up 16-25-90.
    - iv. Victim's arrest history.
  - c. Failure to present mitigating circumstances.
    - i. Failure to bring up past mental health problems.
    - ii. Failure to bring up past rape and molestation.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

#### **Ineffective Assistance of Counsel**

The Applicant alleges she received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

PHT

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted).

The Applicant stated plea counsel did not argue to the plea judge that she was mentally and physically abused by the victim. The Applicant stated she had gone to the hospital several times for injuries she sustained. The Applicant admitted, however, that she told hospital personnel during these visits that her injuries resulted from accidents. The Applicant stated she discussed both the history of abuse and her medical history with plea counsel. The Applicant stated she called police 3-4 times about the victim. The Applicant stated she had witnesses to support her allegations of abuse but she did not tell plea counsel to contact them. The Applicant stated she decided to plead guilty because plea counsel said a trial was not in her best interest. The Applicant stated she asked plea counsel to file an appeal because he failed to present mitigation evidence.

Plea counsel testified he discussed the discovery materials with the Applicant and reviewed the elements and sentencing ranges for the charges, as well as the Applicant's version of events. Plea counsel testified they also discussed the victim's prior abuse of the Applicant.



Plea counsel testified he obtained some of the Applicant's medical records, but that they did not have any information to support a battered woman defense. Plea counsel testified he did not recall whether the Applicant asked him to contact any potential witnesses. Plea counsel testified it was very difficult to get information from the Applicant that he could use to corroborate her story of abuse. Plea counsel testified a battered woman defense was pursued in this case but he was not provided enough details by the Applicant to make a complete defense and that it turned into a dead end. Plea counsel testified he would have explained the risks and advantages of a both a guilty plea and a trial to the Applicant. Plea counsel testified the Applicant was evaluated by a psychiatrist (Dr. Veronen) but that he reviewed the report and was not confident there was a case to be made for a battered woman defense. Plea counsel testified he referenced Dr. Veronen's report during his mitigation argument at the plea hearing. Plea counsel testified he did not recall if the Applicant asked him to file an appeal but stated that would file an appeal if a client asked for him to do so. Plea counsel testified he did not believe there were any appealable issues from the proceedings.

Initially, this Court notes the Applicant told the plea judge she pled guilty to the charge and agreed with the assistant solicitor's recitation of the facts. (Plea transcript, p.10; p.17). The Applicant also told the plea judge that she understood the trial rights she was waiving in pleading guilty, was satisfied with plea counsel, and had not been coerced in any way. (Plea transcript, pp.7-8).

This Court finds the Applicant failed to meet her burden of proving plea counsel did not properly investigate and present a mitigation case. Plea counsel testified the Applicant told him about prior abuse from the victim. Plea counsel testified, however, that it was difficult to find information to corroborate the Applicant's story. Plea counsel testified, for example, that he



received some medical records, but they were not useful in developing a battered woman defense. Plea counsel also testified that he obtained an evaluation for the Applicant but that Dr. Veronen's report was not helpful in advancing a battered woman defense. This Court finds plea counsel's testimony is credible. This Court finds plea counsel conducted a proper investigation in an attempt to formulate a battered woman defense. This Court finds plea counsel was unable to do so based, in part, upon the vague information provided by the Applicant. Regardless, the Applicant failed to present any evidence at the PCR hearing (though documentation, lay or expert witness testimony) that would support her argument that a compelling battered woman defense could have been made at the trial level – thus affecting her parole eligibility. See S.C. Code Ann. § 16-25-90 (2003) (“an inmate who was convicted of, or pled guilty or nolo contendere to, an offense against a household member is eligible for parole after serving one-fourth of his prison term when the inmate . . . in post-conviction proceedings pertaining to the plea or conviction, presented credible evidence of a history of criminal domestic violence . . . suffered at the hands of the household member”); see also Lorenzen v. State, 376 S.C. 521, 530, 657 S.E.2d 771, 777 (2008) (finding that, as the applicant failed to present any expert testimony at the PCR hearing, “it is merely speculative that these allegedly favorable expert witnesses would have aided in his defense”); Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary hearing, “any finding of prejudice is merely speculative”); Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense).

This Court finds the Applicant failed to meet her burden of proving she requested plea

counsel file an appeal in this case. The Applicant was clearly aware that she had the right to file an appeal, as the plea judge advised her of such during the plea colloquy. (Plea transcript, p.10). Plea counsel testified that he did not recall the Applicant asking him to appeal but that he would file an appeal if a client asked him to do so. This Court finds plea counsel's testimony is credible. This Court finds plea counsel would have filed a notice of appeal if the Applicant had made such a request. This Court finds the Applicant was aware of her appellate rights and chose not to exercise them.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that she was prejudiced by plea counsel's performance. This Court concludes the Applicant has not met her burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

#### All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

#### CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during her guilty plea and



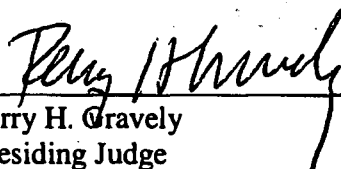
sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that she must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if she wants to secure appropriate appellate review. Her attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**IT IS THEREFORE ORDERED:**

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 25<sup>th</sup> day of January, 2016.

  
\_\_\_\_\_  
Perry H. Gravely  
Presiding Judge  
Thirteenth Judicial Circuit

Coxville, South Carolina.

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF GREENVILLE

CASE NO: 2015CP2300241

IN THE COURT OF COMMON PLEAS

ENTERED COMPUTER

Elvira Lynn Seay vs. South Carolina State Of

**CHECK ONE:**

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: \_\_\_\_\_
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy: ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: \_\_\_\_\_
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court.

Dated at Greenville, South Carolina, this ..

Court Reporter:

PRESIDING JUDGE - Perry H Gravely

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

Caroline M.W. Horlbeck 101 Whitsett Street  
Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Karen Christine Ratigan PO Box 11549 Columbia,  
SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court  
- Clerk of Court