

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lancaster County

Honorable R. Knox McMahon, Circuit Court Judge

JOSEPH D. HILTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000492

APPENDIX

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S.C. SUPREME COURT

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1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF LANCASTER
4 2013-GS-29-00665
5

6 State of South Carolina

7 vs.

8 Joseph D. Hilton
9
10

11 Lancaster, South Carolina

12 April 18, 2013

13 Before the Honorable Ernest Kinard, Jr.
14

15 APPEARANCES

16 For the State: Doug Barfield

17 For the Defendants: Mike Lifsey
18

19 Reported by: Michael C. Watkins

20 Official Court Reporter
21
22
23
24
25

1 Guilty Plea:

3

2 Certificate Page:

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NO EXHIBITS

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1 MR. BARFIELD: Your Honor, this is Joseph D. Hilton, I
2 believe he goes by Danny, he's represented by Mike Lifsey.
3 The case number is 2013-GS-29-665, the indicted charge, or
4 the warrant charge is murder. He is waiving presentment of
5 his case to the grand jury and pleading guilty to voluntary
6 manslaughter. It is a negotiated plea for a 25 year
7 sentence. He has signed the sentence sheet, he's signed on
8 the sentencing sheet indicating his waiver of presentment to
9 the grand jury. There are a good number of family members
10 here, I will get into that later on.

11 THE COURT: Okay. Okay. Mr. Hilton, the victim in
12 this case was [REDACTED]

13 THE DEFENDANT: Yes, sir.

14 THE COURT: What relationship, if any, did you have
15 with her?

16 THE DEFENDANT: My wife.

17 THE COURT: You were charged with murder in this
18 indictment, voluntary manslaughter is a lesser-included
19 charge of murder. The sentence of murder is like 30 years
20 to life and you have to serve day for day, sentence for
21 voluntary manslaughter is up to 30 years.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You have to serve 85 percent of at least
24 that particular sentence. Do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Now, the indictment has not been presented
2 to the grand jury. Have you talked this over with Mr.
3 Lifsey and you're going to waive presentment to the grand
4 jury; is that right?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You understand, I don't know anything about
7 the facts, the Solicitor is going to tell me in a little
8 bit, but I can tell you while I stated the penalty for
9 voluntary manslaughter is up to 30 years, if it is a
10 negotiated sentence and the attorney and the State have
11 negotiated 25 years I can accept it or reject it but I can't
12 deviate from it. In other words, I can't give you 30 years
13 even if I wanted to if you plead guilty, nor can I give you
14 less than 25. 25 is what you get if you plead guilty to
15 this charge, do you understand?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: If I accept the plea, again, I don't know
18 anything about it at this point. Now, you have been
19 incarcerated for a couple of months?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Since the incident which allegedly was on
22 February 11th?

23 THE DEFENDANT: That's right.

24 THE COURT: And you're not a young person, it says here
25 you're 62; is that right?

1 THE DEFENDANT: That's right.

2 THE COURT: And you lived in Kershaw?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: A lot of Hiltons around there.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You went over this affidavit for a guilty
7 plea with Mr. Lifsey?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Are all of your answers true and correct?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And do you understand everything?

12 THE DEFENDANT: I do.

13 THE COURT: Bottom line, if you plead not guilty you
14 get a trial. In a trial you are presumed innocent, you
15 don't have any burden to prove you're not guilty, do you
16 understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: In order to obtain a conviction it's
19 incumbent on the State to convince 12 jurors unanimously
20 beyond a reasonable doubt that you committed a crime, do you
21 understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: During a trial -- and, of course, you get
24 to assist your attorney in selecting jurors, you have so
25 many strikes, so does the State, you get to be present in

1 the courtroom while anything impacting your case transpires,
2 do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And, of course, you get to look at the
5 State's witnesses, through your attorney you could question
6 any witnesses that testify in detail, do you understand
7 that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You can object to the admissibility of
10 evidence, it doesn't have to be testimony, you can object to
11 the admissibility of the testimony saying it's hearsay. You
12 might not to succeed but you do do those in a trial. And,
13 of course, you would have the right to testify if you want
14 to but they can't make you testify, you have a right to
15 testify, do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: If during a trial you elected not to
18 testify and you wanted the trial Judge to tell the jury they
19 couldn't consider the fact that you didn't take the stand I
20 would be happy to do that, do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: But if you testify and if you previously
23 made statements to law enforcement they can introduce those..
24 If you elect not to testify and you made some statement to
25 law enforcement either admission or semi-admission -- of

1 course, I don't know of anything about what has
2 transpired -- you would be entitled to a hearing on whether
3 or not the statements may come in. So have you confessed or
4 something? I'm asking if you have confessed to law
5 enforcement.

6 MR. LIFSEY: He's a little hard of hearing, Judge.

7 THE COURT: All right.

8 MR. LIFSEY: He's asking you if you made -- you did
9 give a statement.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Well, before they could put that statement
12 in a trial you would be entitled to a hearing where the
13 Judge would have to find that the statement you made was
14 freely and voluntary given after you've been given your
15 Miranda rights and Miranda warnings and are not promising
16 anything or threatening anybody, even if the statement then
17 came in the jury would have to make that determination also
18 before they could consider it. But if you plead guilty the
19 Solicitor can just read to me whatever you said, do you
20 understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Again, I don't know anything about the
23 facts but you have a right to put up a defense and often
24 times in confrontational situations there's evidence of
25 self-defense. Like, she was coming go at me with a knife, I

1 did whatever, they're going to tell me about that. But even
2 if there's evidence of self-defense you waive that by
3 pleading guilty, do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Were there evidence of self-defense that
6 came out during a trial the State would have to convince the
7 jurors beyond a reasonable doubt that you did not act in
8 self-defense, you don't have to prove that you did, do you
9 understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Now, do you have any questions about any of
12 the rights that I went over?

13 THE DEFENDANT: No, sir.

14 THE COURT: Your other answers are correct on this
15 advisement of rights form?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Apparently you put on there that you were
18 taking some blood pressure medication and so forth, but none
19 of the two drugs that you say you've taken impact your
20 ability to understand what has transpired; is that right?

21 THE DEFENDANT: That's right.

22 THE COURT: Do you have any questions about anything?

23 THE DEFENDANT: No, sir.

24 THE COURT: Are you satisfied with your attorney?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Okay, Solicitor.

2 MR. BARFIELD: Your Honor, this case occurred on
3 February 11th of 2013, which was a Monday night shortly
4 before midnight. Mr. Hilton and his wife, [REDACTED]
5 [REDACTED] -- first of all he's 62, she was 59. They lived
6 together on 265, which is a road outside of Kershaw, between
7 Kershaw and Jefferson in Lancaster County. They were not
8 first time spouses for each other, I don't think. Ms.
9 Hilton has two children, I'll tell you more about that after
10 awhile. Mr. Hilton has a daughter, sort of a blended
11 family, the two of them lived there together. Some time
12 shortly before midnight the 911 center in Lancaster County
13 got a call, the call was made by Mr. Hilton. Mr. Hilton
14 basically in a fairly calm voice said, "I just shot my wife"
15 and he thought she was dead. He stayed on the line for a
16 good while until the deputies got there, explained several
17 things. His explanation was, "She just kept on and on, I
18 could not talk to her." He indicated it was a domestic
19 argument, "It couldn't come to no conclusion." He said it
20 had been adding up and had been coming up and indicated that
21 it just kept escalating, as he was on the line, he related
22 those things. Of course, they dispatched an ambulance and
23 they dispatched sheriff's deputies who arrived within a few
24 minutes. He also, while he was on the phone with 911,
25 apparently used a second phone to call his son, told his son

1 that he just shot his mother and that the son needed to come
2 over there. Deputies got there -- this was a doublewide
3 mobile home that they had lived for about a year close to
4 where they had previously lived. When they got there 911
5 was still on the phone with Mr. Hilton, deputies -- two
6 deputies, I think, pulled up, tried to get him to the door.
7 He came to the door, looked, turned around and went back in.
8 He did not give them any problems but he hesitated for some
9 reason before he came out. They eventually got him to come
10 out, got him to turn around, back out toward them, get on
11 his knees, they took him into custody without incident. He
12 did tell them that the gun that he had shot [REDACTED]
13 was inside the house. Crime scene and other investigators
14 arrived on the scene and they did, in fact, find inside the
15 house Ms. Hilton in the main room inside the front door I
16 believe it is, I guess it will be called the living room or
17 the den, she was three feet or so away from the door, had
18 obviously suffered a gunshot wound and was dead there on the
19 scene. Autopsy revealed that she died from a gunshot wound
20 to her chest which lacerated her heart and both lungs. They
21 found a weapon in the house -- they found several weapons in
22 the house, but the weapon related to this case was a
23 Springfield 1911 .45 caliber semiautomatic pistol, it was
24 recovered on the table inside the house. They also found
25 inside the house a fired cartridge case. And after

1 examining the scene they determined that the bullet that
2 killed [REDACTED] passed through her body, entered into the
3 west wall of the living room and came out on the other side
4 of that wall which was the east wall of the living room and
5 ended up going into a plastic tote sitting somewhere in that
6 room and it was recovered. SLED firearms department had the
7 pistol, had the fired cartridge case and had the fired
8 bullet and determined that all three matched up. That's a
9 summary of the facts of the case. Mr. Hilton before this
10 had apparently never been arrested for anything. I will
11 tell you about the family now or whenever you want to hear
12 about that.

13 THE COURT: Well, might as well listen to them now. I
14 need to tell him one other thing, though. See, I don't know
15 about what happened. In a trial just from listening to it
16 there's a good chance that the 911 calls could come in,
17 whatever you said on there, but you could make a motion to
18 suppress them saying you were excited or whatever. But you
19 waive your right -- you can tell me anything you said on
20 911 -- on the guilty plea, do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay.

23 MR. BARFIELD: And I neglected to -- I've kind of left
24 off a piece. He was obviously taken into custody that night
25 or very early the next morning, I think midnight had come

1 and gone by then, he was taken to the sheriff's office and
2 some time later on that day gave a statement, again,
3 admitting that he'd shot his wife. He said they got into an
4 argument, it kept getting worse. "She was going to leave,
5 she was going to leave tomorrow, she was going to take
6 everything I had, going to take half of it, just got out of
7 hand. We were just two bull-headed people going at it."
8 Basically said they argued and he just could not resolve
9 whatever they were arguing about. He did not indicate in
10 any manner, and I think affirmed, that she did not do
11 anything physical or pose any kind of a threat to him. Your
12 Honor, the Hiltons -- again, essentially two sides of the
13 family -- but [REDACTED] excuse me, has a daughter, [REDACTED]
14 [REDACTED] who is present with her husband today. She also has
15 a younger son, [REDACTED] [REDACTED] who I think is not here today.
16 And then she has two brothers and three sisters; [REDACTED] [REDACTED],
17 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED].
18 And, of course, there are other extended family members
19 here. I have explained to them that whomever among them
20 would like to speak simply step up to the microphone, state
21 your name and relationship to [REDACTED] [REDACTED] and say what you
22 need to say in whatever order y'all deem it appropriate to
23 do.

24 SPEAKER: I'm [REDACTED] [REDACTED] [REDACTED] [REDACTED] was my
25 mother. The reason we agree to this plea is to keep our

1 family from going through a trial because not to suffer
2 anymore. My mama was a true woman of God. My mama had the
3 heart of a Saint and if she was here today she would tell us
4 that just forgive and just let it go because that's the kind
5 of woman that my mama was. She was everything to me, my
6 best friend, my confidant, she was always there for me and
7 she never let me down. She was the best mother and
8 grandmother and great-grandmother that we could have ever
9 asked for. She was so selfless and she would rather give
10 than ever to receive. She was a constant in my life and he
11 took her away from me. And there's no way that Danny Hilton
12 can ever get on this earth for what he deserves for killing
13 my mama. My grandchildren still ask for their Maw Maw. And
14 how do I tell four and a five year old that their Paw Paw
15 killed their Maw Maw? How do I explain that to them? They
16 still want to know when their Maw Maw is coming to see them.
17 I can spend hours telling you how he emotionally and
18 mentally abused my mama but I can't emotionally stand here
19 and go through all of that because now it don't matter
20 because she's gone and he stole her away from our family
21 forever. I want him to never have nothing to look forward
22 to for the rest of his life. I want him to walk around on
23 pins and needles in fear for the rest of his life in prison
24 because my mama don't have nothing else to look forward to
25 because he took it away from her. It was so selfish. The

1 ultimate judge, that is in God's hands and he will get what
2 he deserves, I pray for it. He wrote me a letter and he
3 told me that he was sorry for killing my mama and that he
4 loved me and my kids and my grandkids, but that's a lie.
5 There's no way that he loved us and could kill our mama, but
6 there's just no way. You will never know what you have done
7 to us. You will never know how you have crushed my soul by
8 taking my mama and killing her. I don't see how you could
9 look into the woman's eyes that took care of you and loved
10 you and kill her, I just don't understand that. When I
11 leave this courtroom today, me and my kids and my family
12 will never speak of Danny Hilton again, we will consider you
13 dead. The only thing that you have to look forward to is an
14 all mighty judgment. And I ask this Court to please make it
15 to where he can't have no communication with me or my family
16 ever again as long as he lives, because now we have to move
17 on and consider him dead so that we can heal. And my mama
18 would say just forgive, but I will never forgive you for
19 doing this to me and my kids and my grandkids and my family.
20 You will never know what you've done, Danny Hilton. You'll
21 never know what you have done to us. You left your daughter
22 with so much on her shoulders to try to take care of because
23 of your selfish and cowardliness.

24 THE COURT: Okay, Solicitor. I think she's --

25 SPEAKER: Thank you. I'm done.

1 MR. BARFIELD: Anybody else? State your name and
2 relationship, please?

3 SPEAKER: My name a [REDACTED] [REDACTED] [REDACTED] was my
4 grandmother.

5 THE COURT: I'm sorry but I couldn't hear your name and
6 relationship.

7 SPEAKER: I'm [REDACTED] [REDACTED] [REDACTED] was my grandmother.

8 THE COURT: Okay.

9 SPEAKER: My grandmother raised me from the time that I
10 was little, and she was my very best friend. And she was so
11 perfect in every way. She would give anything to anybody
12 that needed it even if she didn't even know their names, and
13 now because she loved someone so much and believed in them
14 so much that she didn't want to give up on them she's dead.
15 And we will never be able to have another birthday, she'll
16 never see me graduate, see my kids, nothing because of one
17 person. And no judgment is good enough for our family. I
18 just want everybody to know and remember the very best of
19 our family which is now gone because of my grandfather. And
20 today -- I loved them both so much and I cannot wrap my
21 brain around my Paw Paw killed the very best part of me.
22 You'll think about it every day and I will never, ever see
23 you again. Thank you.

24 SPEAKER: My name is [REDACTED] [REDACTED] [REDACTED] was
25 my grandmother. I just want to reiterate everything that my

1 sister and my mother have said today, that my grandmother
2 was a Saint and she loved everyone and she never gave up on
3 anybody, especially him, and for years of emotional torture,
4 it was up and down all of the time. There would be good
5 just to make us attached it seemed and also her attached to
6 him to seem like there was hope that he was going to change
7 and get better just for it all to get knocked over again and
8 get worse every time. And he would always say, "I'm going
9 to show you something. I'm going to show you something."
10 Well, he finally showed her something. He always seemed to
11 me to have a God complex. And I loved him because he was my
12 grandfather and at times our other family wouldn't want
13 anything to do him, I would still go over there, "Paw Paw, I
14 love you," still trying to hope and hold on to that love
15 that she taught me to forgive. And still it wasn't enough
16 because there was no love in his heart when he grabbed that
17 gun and shot my grandmother. You cannot love your children
18 and your grandchildren if you can consciously first pick up
19 the gun, secondly cock it and thirdly shoot a human being.
20 That's three conscious choices that he had to make to take
21 my grandmother's life. And that to me is unforgivable
22 because, for one, he put himself in the position that is not
23 his. He took her life because of his God complex and that
24 in itself is blasphemy which is the only unforgivable sin,
25 and God does not expect me or my family to forgive him for

1 that because that is unforgivable to God and we will not
2 place ourselves in the position to forgive him at all, ever,
3 and that is not wrong for us. And I don't feel that any
4 sentence is good enough. He will -- and it gives me comfort
5 in knowing that he is going to rot in hell for this. I love
6 my grandmother very much and I love him also but I don't
7 ever want him out of prison, ever. The reason that she went
8 back was to protect us because -- she left him in November
9 and he called her and tortured her saying that he was going
10 to hurt us, that he was going to set our house on fire with
11 myself, my sister and my parents and my three year old
12 daughter in the house if she didn't come back. Out of fear
13 for us she went back to protect us. And no other person
14 that has any love or goodness in them can do that,
15 especially to their own family that loves them. That's all.
16 Thank you.

17 MR. BARFIELD: Anybody else?

18 THE COURT: My name is [REDACTED]. She was my sister.
19 She was precious. Please, can you step back and let me look
20 at him? And I want him to look at me. I want him to see
21 the hurt that he has caused to our family. Oh my God.
22 Nobody will ever know, Danny, how you hurt us. I never
23 thought -- I told her, I begged her, "Deb, please leave
24 before he kills you." And the last thing she said is, "He's
25 not going to kill me, he loves me and I love him." She

1 loved you, Danny, she loved you with everything in her and
2 you took it from us. You took part of our life from us. Oh
3 my God. You have literally killed her daughter, too. I
4 feel so sorry for her. And I just pray that you never see
5 sunshine again because she can't. I used to think I loved
6 you. When you were laying there with your heart attack, I
7 was there beside you, Danny, and I told you I loved you
8 before you went in the operating room and I did, and I did
9 love you. But now I hate you and I'm so sorry for that.
10 You can't bring my sister back but y'all can make him pay
11 for what he done to my family. I'm so glad my mama and
12 daddy is not here because they would be -- oh God, they
13 would be so sad and I can't stand that. I'm sorry. That's
14 all.

15 SPEAKER: My name is [REDACTED] [REDACTED]. I was Danny's other
16 daughter-in-law until his son passed away. My two boys are
17 his grandchildren, they're ten and 13 now and they were
18 extremely close to their grandparents. Danny, while I can't
19 begin to imagine the devastation and heart break that Daniel
20 and Craig have shown and had to endure over the last three
21 months, today I'm speaking to you about your two grandsons
22 and the pain and devastation and heart break that you have
23 caused them. Before [REDACTED] death in 2009 you were
24 controlling then. I was trying so hard to make a fresh
25 start and you made it hard. We were trying to pick up the

1 pieces of our lives and move beyond the heart break of them
2 losing their father, my husband, your interest then was for
3 yourself, not for those around you. Do you remember what
4 you told Chase when he was coping with the loss of his
5 daddy? You told him that if it wasn't for him that you
6 would take your dog and a gun and go in the woods and not
7 come out, and so [REDACTED] didn't carry a big enough burden for
8 a nine year old, you added to his heart break. It's because
9 of this that you are only allowed to see the boys on
10 supervised visitation. A year and a half later Deb came to
11 my office crying and begging and pleading on your behalf to
12 let the boys start visiting you again and spend the weekends
13 with you, she promised she would always make sure that the
14 boys were safe. That was the hardest decision that I ever
15 had to make. I had to forgive you for the past because of
16 my boys. The boys needed you and [REDACTED] in their lives. You
17 were the link to [REDACTED], their father. They missed him so
18 much. The time that they could spend with you and [REDACTED]
19 helped them to heal after the loss of their dad so suddenly
20 and so young. To spend time with you tinkling with cars and
21 doing stuff with them did them good and I hoped it would
22 help you heal. When you moved on the property where we
23 lived where [REDACTED] passed away I thought that it would be
24 hard for the boys, however, they loved it. They got to
25 spend weekends in the woods riding four-wheelers hunting and

1 fishing, things that they remembered doing with their dad,
2 your son. During this time [REDACTED] idolized you as most
3 grandsons do their grandfather. He placed you on a pedestal
4 where you could do no your wrong in his eyes. Your word was
5 the gospel. In the past when you hurt others [REDACTED] was the
6 first one to defend you. He has a good heart and he's
7 always looked for the good in you. [REDACTED] was true to her word
8 as well. She looked at after my boys and she loved them as
9 her own. She was truly a loving grandmother. All of this
10 was done out of love for you. God gave you another chance
11 to heal from the hurt you had just as the boys were healing
12 from the hurt they had. February 12th is the day that will
13 forever be etched in [REDACTED] [REDACTED] [REDACTED] minds, just as
14 June the 15th changed their lives with the loss of their dad
15 you stole they're innocence and love shattering the world
16 once again. Once more their family has been ripped apart,
17 only this time it was the selfish act of you. It's a day
18 that plays over and over in [REDACTED] mind. [REDACTED] loving you
19 as he did tries real hard to find reason for what you did.
20 Once he heard that 911 call playing on TV and heard how cold
21 you were, in that instant my little boy lost his innocence,
22 he lost them and he lost you. In the end he lost his daddy
23 all over again. The last two months have been heart
24 breaking. Both of the boys have been in counseling dealing
25 with the pain and the loss and griefs that you have caused.

1 [REDACTED] continues to have the same nightmare over and over,
2 one where you murder [REDACTED] Once more [REDACTED] suffers from
3 sleep anxiety issues. He has the same nightmare constantly.
4 He needs medication to help him sleep at times. [REDACTED] has
5 overcome so much after losing his dad only to have go
6 through this again four years later. [REDACTED] is (inaudible)
7 at school and kids say that they should be afraid of him.
8 Why? Because he has murderous blood running through his
9 veins. It was the very kids that he used to laugh and play
10 with and were so proud to talk about the things he did with
11 you. [REDACTED] was the sole reason that you had the boys in your
12 life once more after [REDACTED] death. [REDACTED] was a loving
13 grandmother who loved you enough for the chance to have the
14 boys to visit. The boys miss her hugs, her kisses, her
15 laughter and her cooking, but most of all her love. She did
16 protect the boys until the bitter end. After the fact I was
17 told of the troubles that you were causing in the months
18 leading up to that fateful night, the hurt you caused
19 (inaudible) and much more. All of this was kept from me for
20 the sake of keeping Chase and Hunter in your life. Every
21 one said that you were happiest when the boys were there,
22 everyone believed they were the glue -- that they were the
23 glue that would hold you together. It didn't. It scares me
24 to think that the boys were there with you just the day
25 before [REDACTED] died. The thought crosses my mind now on

1 occasion just as [REDACTED] nightmares do, would you have
2 killed my boys? I told Chase one day even after the
3 horrible act that you still loved him, [REDACTED] responded
4 looking at me straight in the eyes, "Mom, he loved Maw Maw
5 Deb and he killed her." I don't know how to answer that to
6 a 13 year old. They're struggling in school. They can no
7 longer go down to where he used to live. They won't visit
8 [REDACTED] grave anymore up the street from your house. In
9 closing I pray that you will eventually win the battles with
10 the demons of your past. I pray that you will see that
11 [REDACTED] [REDACTED] [REDACTED] along with many others have been hurt by
12 your actions. There's nothing that you can say or have on
13 yourself -- or have someone say on their behalf that will
14 ever bring a moments peace in the heart of my boys about
15 this situation. You are taking the first step in accepting
16 a plea and facing the consequences of your actions. When
17 Deb died that night a piece of my boys died. They have to
18 let you go and you should do the same, let them go, let them
19 hold on to the good memories that they have. God will heal
20 their hearts and teach them to live, love and trust again.
21 God did that for them. He will help them forgive you for
22 what you have done but they will never forget. They will
23 heal. I ask that you have no contact with the boys, not
24 through phone, not through mail and not through another
25 person. God forgives, yet God even in forgiveness teaches

1 us that we must live with the consequences of our actions,
2 we all have now and you must face yours. In time the boys
3 and I will find forgiveness in our hearts for what you have
4 done. We pray that you will see God's forgiveness and one
5 day you will find peace. Your Honor, I ask if it is in your
6 power that the Court also grant my wish and consider a
7 no-contact order as a part of this sentencing. I ask this
8 for the emotional wellbeing and growth of my children. They
9 have lost enough in their short lives and need the chance to
10 heal in peace without the constant reminder of a tragic
11 loss.

12 THE DEFENDANT: My name is [REDACTED] [REDACTED] [REDACTED] was my
13 sister. I just would like -- the reason I'm up here, I just
14 want to let Danny know how much my sister loved him. And, I
15 mean, he killed somebody that loved him, and he ain't had
16 too many people that loved him. Danny was mean, didn't have
17 that many people that loved him and cared about him, but my
18 sister did. She wouldn't leave him for that reason. We all
19 tried to get her to leave, she said, "No, I love him, I'm
20 going to stay with him and he will be good to me. And he
21 was, he just shot her in the chest and killed her. And
22 Danny, I hope you don't have any peace over it. I want you
23 to live a long life, I don't want you to die, I want you to
24 live a long time. I want you to remember everyday what you
25 did to my sister and these kids' mother. That's all.

1 MR. BARFIELD: Your Honor, I believe that's it.

2 THE COURT: Okay.

3 SPEAKER: Wait a minute, I've got something to say.

4 I'm [REDACTED] [REDACTED] [REDACTED]' brother. Danny, you took her life
5 from us, I can't judge you but God will. One day you're
6 going to open your eyes and he's going to judge you, buddy.
7 That's all I've got to say.

8 THE COURT: Okay.

9 MR. LIFSEY: May it please the Court, Your Honor? Your
10 Honor, I represent Mr. Hilton. I met with him probably
11 right after this happened within four or five days after his
12 arrest and have talked to him. He's 62 years old, he's got
13 a number of very serious health problems. He had been
14 retired with disability since 2006, and he's had heart
15 problems, he has had asbestosis, he had a tumor in his lung
16 in 2010. He draws a social security check for physical
17 disability. I tell you all of that to tell you I think it's
18 very unlikely that he will survive any lengthy prison
19 sentence. So, you know, when I first met him, Your Honor, I
20 just assumed -- and I guess as his defense lawyer -- I
21 assumed being a defense lawyer, Your Honor, that when I have
22 a client charged with a very serious offense and can't serve
23 a lengthy prison sentence I assume we would be trying this
24 case, because, you know, what's the alternative? Basically
25 agree that the client has what is in effect a life sentence.

1 But from the first minute I met Mr. Hilton that's not what
2 he wanted to do. He told me from the very beginning that he
3 wanted to plead guilty, that he didn't want to put his
4 family through anymore trauma. You know, I can't offer any
5 real explanation for why he did what he did that night. I
6 think some combination of the health problems he suffered
7 and the pain he was under, I can offer no real explanation
8 for this terrible act he did. But I will tell you that I
9 think he does -- he can never make up for what he did. But
10 I think by deciding to forgo any trial -- you've seen the
11 emotions in this courtroom today, I can only imagine if we
12 would have set up here two or three days and argued about
13 mental statuses and argued about what exactly happened, how
14 painful that would be for all involved. But Mr. Hilton from
15 the very beginning has said that's not what he wanted to do.
16 And, you know, from the lawyer in me I kind of tried to talk
17 him out of it. But ultimately my job is to do what my
18 client wants me to do and this is what he wanted me to do.
19 I've been practicing law 21 years, I have never had a client
20 waive presentment on a murder case before until this one.
21 Your Honor, he has people here, family, I want to introduce
22 them to you and I think two or three might want to say a
23 word or two to you briefly. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

1 is his brother. [REDACTED] [REDACTED] is a cousin and a pastor and
2 [REDACTED] [REDACTED] is his cousin. You know, this is a tough
3 case for them because many of them were close to both victim
4 and defendant, but I think they wanted to be here to try to
5 begin as much can be begun in something tragic like this
6 some sort of healing and some sort of moving forward for the
7 family. I would ask them, if any of them wish to say
8 anything I would ask you to approach the microphone briefly
9 and say your name and tell the Judge anything you want to
10 say.

11 SPEAKER: I am [REDACTED] [REDACTED], cousin of Danny. And I
12 just wanted to say that we love Danny very much. We are
13 sorry for what has happened to the family and we know that
14 he loves us and we will always love him and keep in touch
15 with him and he knows that. And we just wish him well and
16 ask that you give him mercy in Jesus name. Amen.

17 SPEAKER: This is really hard after having to listen to
18 all of that. I lost my daddy at 22 from natural causes and
19 I know what a broken heart is, I can't even imagine their
20 grief. But my daddy taught me love and he taught me
21 forgiveness and he taught me grace. And Danny was always
22 there for daddy and us, and when him and my sister divorced
23 and daddy was sick Danny was there to see him in the
24 afternoon. And we loved Deb. And I just want Danny to know
25 that he gave us two precious people, [REDACTED] [REDACTED] [REDACTED], my

1 niece and nephew. And that Danny, we will be there for you
2 because all of us are capable of doing horrendous things
3 even though we think we're not. And I just want to say to
4 Deb's family and Danny that I live everyday honoring my
5 father for what he taught me, and I understand your grief
6 and one day the grief will stop and you'll start to heal.
7 And for your own good, for your own wellbeing I pray that
8 you will work to forgive him, too. Thank you.

9 MR. LIFSEY: Anybody else wish to say anything?

10 SPEAKER: My name is [REDACTED] and I'm Danny's
11 first cousin, his adopted sister. I kept him when he was a
12 little boy and I loved Debbie, his wife. She was like a
13 sister to me. And I know that her family is devastated, I
14 am devastated. I wish we could go back. But we love her
15 family. I love her sisters and brothers and her children.
16 I have been close to them. I spent a lot of time with
17 Debbie and Danny at their house. We went places together
18 and we just always had a great time just hanging out. I
19 miss her and I always will but I wish we could change it but
20 we can't. And I just would like to say that God asked us to
21 forgive, he forgave us and he asked us to forgive and that
22 is why we will have eternal life with Jesus. And Danny, we
23 love you. You are like my brother, I remember carrying you
24 when you were a little boy, and we will always be there for
25 you. And I will always miss Debbie. I loved her very much.

1 She was like my first cousin and my sister but we will
2 always be there for you, Danny. I love you, your family
3 loves you. Thank you.

4 MR. LIFSEY: Anybody else want to say anything?

5 SPEAKER: My name is [REDACTED] [REDACTED] [REDACTED] Danny's cousin,
6 I'm also a pastor. Basically all I want to say is that I
7 have been there, I want to tell you I'm very sorry. This is
8 a tough situation for me to be in but I have been -- and
9 I've talked with Danny. Basically I've just listened,
10 that's all I know to do. But I can say this, I saw a man
11 that is very sorry for what he has done and I am praying for
12 Danny and I am praying for you. I think a lot of you. I
13 love this family.

14 MR. LIFSEY: Thank you, Your Honor. I could go on and
15 on, but I think what I would like to do is conclude in
16 concurrence with my client's wishes and ask you to accept
17 this plea and end this case and do the best we can to allow
18 the family to move forward, Your Honor. Thank you.

19 THE COURT: Okay. Mr. Hilton, would you like to say
20 anything before I sentence you? All right. Just being a
21 Judge you've got to dot the I's and cross the T's and
22 there's one little thing I didn't tell him which is not
23 going to matter, but just for record purposes. I mentioned
24 to you, Mr. Hilton, that voluntary manslaughter was a
25 violent crime and so forth, you have to serve 85 percent.

1 Well, you heard that one strike you're out, two strikes
2 you're out and so forth, if you get out -- you're 62 now
3 and, you know, it 25 years, if you make it out after
4 85 percent you would be on something called supervised
5 release which is a little more strenuous than just normal
6 probation or something, and they would put you back in and
7 you would have to serve the whole 25 years if you violate
8 any of their terms. And in addition, if in the future you
9 committed a most serious crime or a violent crime you would
10 be looking at life without parole, which is basically what
11 you're looking at now, but if you did get out and committed
12 another violent crime, and the legislature classifies
13 various things as violent crimes. Well, I've been doing it
14 a long time. Victim and victim's family and the defendant's
15 family, there will be some closure when y'all leave today.
16 Y'all understand, nothing I can deviate from, it's 25 years,
17 that's what the sentence will be irrespective of what any of
18 y'all said. The Failes, Hiltons are -- I'm from Camden, you
19 know. I have been a Judge 25 years, I've had many contacts
20 with Hiltons and Failes from Kershaw and so forth, y'all are
21 20 miles from Camden. The family of the defendant loves the
22 defendant, the family of the victim loves the victim, yet
23 y'all try not -- not that y'all would -- hold anything
24 against the other families as you see each other passing on
25 the streets and so forth, you know, they didn't do it and

1 what have you. It's unbelievable how many homicides I've
2 sentenced. I've been doing it for 25 years, and one year in
3 Columbia I just kept a record and I sentenced 82 homicides.
4 Now, that's not all shootings, that's hunting accidents,
5 driving where somebody gets killed, on and on and on. If
6 somebody dies through actions or inactions of somebody else
7 we call it a homicide. And you say, "Well, that's a lot for
8 a year." Well, you've got court about every week in
9 Columbia, more people are there. We've done -- this is the
10 second one this week right here, one of them was a driving
11 situation, but anytime somebody meets an untimely death
12 there's really nothing I can do. I can just mention two
13 things, if I sentence somebody and suspend it, put them on
14 probation often times I order no contact with the victims or
15 victim's family. When I sentence somebody to prison I
16 can't -- it's not something I can do. If you see a letter
17 from him you can throw it in the trash or something, but
18 they monitor what he can and can't send out but that's not
19 something I can order that he not do, all I can do is
20 sentence, that's all I can do. And on remorse, as far as I
21 know I have never seen him before, I just can say in
22 90 percent of the homicide cases that I have done some
23 victim said, "He showed no remorse at all," or others, "He
24 showed remorse and he didn't mean it." How do you know
25 that? You suffered a terrible loss and all I can say is

1 there will be closure after today. He's got health
2 problems, he probably won't make it out. I sentence him to
3 25 years. Not that anything will happen, but as y'all leave
4 the courtroom I would just like for one family and then the
5 then the other family, the other family stay in here five
6 minutes. Not that y'all would do anything, it's just
7 that -- if somebody just says something and then we've got
8 to deal with that. None of y'all need to get in trouble
9 over this. It's over. He'll never see the light -- and
10 believe me, it's not like you see in TV, prison is not a
11 good place. They don't have the amenities that you see on
12 CSI and all of that, they don't rehabilitate, they just
13 house people, and then a murder case he gets housed in even
14 stricter conditions for a long period of time. So 25 years.
15 That's it.

16 (End of the hearing.)

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25 I, the undersigned, Michael C. Watkins, Official Court

1

2 I, the undersigned, Michael C. Watkins, Official Court
3 Reporter for the Sixth Judicial Circuit of the State of South
4 Carolina, do hereby certify that the foregoing is a true,
5 accurate and complete transcript of the proceedings had and
6 evidence introduced in the trial of the captioned case
7 relative to appeal, in the Court of General Sessions for
8 Lancaster County, South Carolina, on the 18th day of April,
9 2013.

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

12

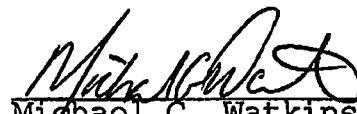
13

May 7, 2014

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Michael C. Watkins
Court Reporter

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WITNESSES

Crump LCSO 13-5668

ARREST WARRANT NUMBER/DOA

2013A2910100154 (DOA-2/11/13)

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-29- 665

The State of South Carolina
County of Lancaster

COURT OF GENERAL SESSIONS

MAY TERM 2013

THE STATE
vs.

Joseph D. Hilton

Indictment for

Murder

SC Code: §16-3-10
CDR Code: 0116
Class: Felony, EXM

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

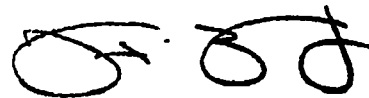
INDICTMENT

At a Court of General Sessions, convened on May 9, 2013, the Grand Jurors of Lancaster County present upon their oath:

MURDER

That Joseph D. Hilton did at [REDACTED] Old Jefferson Highway, Kershaw, in Lancaster County on or about February 11, 2013, feloniously, willfully, and of his malice aforethought kill and murder [REDACTED] by shooting her with a handgun and the victim did die as the proximate cause thereof then and there, in violation of Section 16-3-10 of the *Code of Laws of South Carolina*.

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



Douglas A. Barfield, Jr., SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

LANCASTER

STATE

VS.

Joseph D. Hilton

AKA:

Race: W Sex: M Age: 62

DOB: SS#:

Address:

City, State, Zip: Kershaw, SC 29067

DL# SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

INDICTMENT/CASE#: 2013-GS- 29 - 665

A/W#: 2013A2910100154

Date of Offense: 2/11/13

S.C. Code §: 16-3-10

CDR Code #: 0116

SENTENCE SHEET

TO: Voluntary Manslaughter

☐ CONVICTED OF or ☒ PLEADS

In violation of § 16-3-50 of the S.C. Code of Laws, bearing CDR Code # 0217

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☒ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury, ☒ (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, 25, ☐ Recommendation by the State.

ATTEST:

514

Solicitor

SC Bar #

Defendant

Attorney for Defendant

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 _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; 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 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 PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

§14-1-206 (Assessments 107.5%)	\$	_____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ _____
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§56-1-286 (DUI Breath Test)	\$25	\$ _____
Proviso 47.9 (Public Def/Prob)	\$500	\$ _____
§14-1-212 (Law Enforce. Funding)	\$25	\$ _____
§14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ _____
3% to County (if paid in installments)	\$	\$ _____
TOTAL	\$	\$ _____

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk
Court Reporter: _____

Presiding Judge

Judge Code: _____

Sentence Date

2013
4.18.13

STATE OF SOUTH CAROLINA

County of Lancaster

In the Court of Common Pleas

Joseph D. Hilton # 355069
 Full name and prison number (if any) of Applicant,

vs.

 Name of Respondent.

2014 CP 99 00250

APPLICATION FOR
 POST-CONVICTION RELIEF

2014 MAR -3 AM 9:14
 LANCASTER, SC

INSTRUCTIONS — READ CAREFULLY

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

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

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

1. Place of detention South Carolina Dept. of Corrections -
Lee Correctional Inst. 990 Wisacky Hwy, Bishopville, S.C.
2. Name and location of Court which imposed sentence General Sessions Court -
Lancaster County, S.C.
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) Docket No. 2013-GS-29-665 - Murder
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 9, 2013 - 25 years for manslaughter
 - (b) _____
 - (c) _____

5. Check whether a finding of guilty was made

- (a) after a plea of guilty pled guilty
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

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

no

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

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

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

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

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

(c) the date of each such result:

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

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

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

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

- (a) I never seen my lawyer after the plea.
- (b) _____
- (c) _____

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

- (a) Ineffective Assistance of Counsel -
- * (b) No mental evaluation - No sentence reduction
- (c) Did not investigate my case thoroughly

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

- (a) In SCOC with 25 year sentence -
- (b) Did not seek reduction of excessive sentence -
- (c) Did not file a motion to reconsider sentence

(9) * BLAIR vs State
CASE # 2012 - C P - 02 - 373
pursuant code 17-27-150

d. Solicitor Barfield prejudiced himself in this case when he added 5 yrs. to the sentence just for himself, according to a conversation with my son.

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? no
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? no
- (d) any other petitions, motions or applications in this or any other Court?
no

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

no

(a) which grounds have been presented:

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

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

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

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) Because I wasn't sure how to file PCR.
- (b) _____
- (c) _____

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

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

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

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

- i. Mike Lifsey 107 N. Main St. P.O. Box 1809
LANCASTER S.C. 29721
- ii. _____
- iii. _____

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

- i. guilty plea and sentencing on May 9, 2013
- ii. _____
- iii. _____

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

Another chance in court

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

no

STATE OF SOUTH CAROLINA

VERIFICATION

County of Lancaster

I, Joseph D. Hilton, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

X Joseph D. Hilton

SWORN to and subscribed before me this 24th

day of February, 2014

Muscha Michel (L.S.)
Notary Public

My Commission Expires: 9/3/2014

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

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

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

X Joseph D. Hilton
Applicant

SWORN or affirmed to and subscribed before me this

24th day of February, 2014

Muscha Michel
Notary Public

My Commission Expires 9/3/2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	C.A. No. 2014-CP-29-0250
	)	
Joseph D. Hilton,	)	
S.C.D.C. No. 355069,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	APPOINTMENT OF COUNSEL REQUESTED
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed March 3, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Lancaster County Clerk of Court's orders of commitment. The Applicant waived presentment to the May 2013 term of the Lancaster County Grand Jury for murder (2013-GS-29-0665). Mike Lifsey, Esquire represented the Applicant.

On April 18, 2013, Applicant pled guilty to the lesser included offense of voluntary manslaughter. Pursuant to negotiations, the Honorable J. Ernest Kinard, Jr., sentenced the Applicant to twenty-five (25) years imprisonment. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Lancaster County Clerk of Court regarding the subject conviction and the transcript. The Applicant's records from the South Carolina Department of Corrections will be forwarded upon receipt.

II.

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

custody unlawfully for the following reason:

1. Ineffective assistance of counsel.
 - a. No mental evaluation pursuant to Blair v. State.
 - b. Did not seek a sentence reduction.
 - c. Did not thoroughly investigate the case.
2. "Solicitor Barfield prejudiced himself in this case when he added 5 yrs. to the sentence just for himself, according to a conversation with my son."

III.

The Respondent asserts the Applicant's allegations that his attorney was ineffective are without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal 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 interprets Applicant’s second allegation as an allegation of prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issues that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant’s burden to prove actual

prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). The Respondent submits the Applicant has not carried his burden of proving actual prosecutorial misconduct, therefore, this allegation should be summarily dismissed.

V.

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

VI.

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

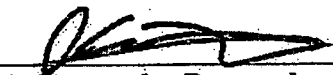
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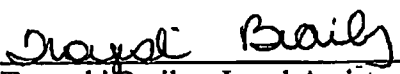
June 18, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE SIXTH CIRCUIT
COUNTY OF LANCASTER	)	
	)	2014-CP-29-250
	)	
JOSEPH D. HILTON	)	
	)	
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 (Request for Appointment of Counsel)** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Joseph D. Hilton, # 355069
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010**

DATED this 18th day of June, 2014


Troyeshi Brailey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS

JOSEPH D. HILTON,
APPLICANT,
-VS-
STATE OF SOUTH CAROLINA,
RESPONDENT.

2014-CP-29-00250

TRANSCRIPT OF RECORD

JULY 18, 2017
LANCASTER, SOUTH CAROLINA

BEFORE:

THE HONORABLE R. KNOX McMAHON

APPEARANCES:

ATTORNEY FOR APPLICANT:

NATHAN J. SHELDON, ESQ.

ATTORNEY FOR RESPONDENT:

DeSHAWN MITCHELL
ASSISTANT ATTORNEY GENERAL

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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1 (Whereupon Applicant's exhibit 1 was marked for
2 identification)

3 **THE COURT:** All right. Mr. Mitchell.

4 **MR. MITCHELL:** Yes, sir. May it please the Court?

5 This is 2014-CP-29-0250, Joseph D. Hilton. The Applicant is
6 incarcerated at the South Carolina Department of Corrections
7 pursuant to the Lancaster County Clerk of Court's order of
8 commitment.

9 The Applicant waived presentment to the May 2013 term
10 of the grand jury. Mr. Lifsey represented the Applicant.
11 On April 18, 2013 the Applicant pled guilty to the lesser
12 included offense of voluntary manslaughter. Pursuant to
13 negotiations the Honorable J. Ernest Kinard sentenced the
14 Applicant to twenty-five years imprisonment. He is present
15 today and represented by Mr. Sheldon.

16 **THE COURT:** Thank you. Thank you, Mr. Mitchell. Mr.
17 Sheldon.

18 **MR. SHELDON:** Thank you, Your Honor. May it please the
19 Court? Before we get started, just a few things to put on
20 the record. One is that the State of South Carolina is
21 consenting to Dr. Donna Schwartz Maddox being qualified as
22 an expert in forensic psychiatry.

23 In addition to that, she did prepare a report in this
24 case, which has been marked as Applicant's exhibit 1. It's
25 my understanding that that report -- the State has

MICHAEL LIFSEY - DIRECT EXAMINATION BY MR. SHELDON

5

1 stipulated to its foundation, authenticity without
2 objection.

3 **THE COURT:** Is that correct, Mr. Mitchell?

4 **MR. MITCHELL:** That is correct, Your Honor.

5 **THE COURT:** All right.

6 (Whereupon Applicant's exhibit 1 was admitted into
7 evidence)

8 **MR. SHELDON:** And we are ready to proceed, Your Honor.

9 **THE COURT:** Yes, sir. You may call your first witness.

10 **MR. SHELDON:** We'd call Mike Lifsey to the stand.

11 **THE COURT:** All right. Mr. Lifsey.

12 **MR. SHELDON:** And, Judge, my client is hard of hearing.
13 So the only thing I would ask is that if he can't -- if you
14 can't hear us, make sure you let us know, okay?

15 **Michael Lifsey, being**
16 duly sworn testified as follows;

17 **THE COURT:** All right. Mr. Sheldon.

18 **MR. SHELDON:** May it please the Court?

19 **Direct Examination by Mr. Sheldon:**

20 Q. Mr. Lifsey, please state your name for the record.

21 A. My name is Michael Lifsey.

22 Q. And you represented Mr. Hilton on this case, is that
23 correct?

24 A. Yes, sir, I did.

25 Q. And Mr. Hilton was originally charged with murder, is

MICHAEL LIFSEY - DIRECT EXAMINATION BY MR. SHELDON

6

1 that right?

2 A. That is correct.

3 Q. Just briefly give the Court a synopsis of the facts in
4 this case.

5 **THE COURT:** I have read the record. If you want to put
6 it in the record, that's ---

7 **MR. SHELDON:** I don't think it's necessary.

8 Q. Is it fair to say that this had to do with a domestic
9 altercation? Mr. Hilton shot his wife, called 911, told
10 them that he shot his wife and was arrested for murder at
11 the scene of the crime?

12 A. That is correct.

13 Q. Okay. So describe how you first got involved in this
14 case.

15 A. Well, our office was appointed shortly after his
16 arrest. My notes indicate, I mean, I -- I took the case
17 myself. We -- at that time I think we had two or maybe
18 three lawyers that generally handled the homicides and we
19 kind of rotate them around. And I took Mr. Hilton's case.

20 I first went to the jail to see him on February 20th,
21 which was a week or a week and a half after. He would have
22 had some contact with my office prior to that, but I was the
23 first lawyer to talk to him February 20th of 2013 per my
24 notes. And I began my representation at that point.

25 Q. And how many times total did you -- when -- and he ends

MICHAEL LIFSEY - DIRECT EXAMINATION BY MR. SHELDON

7

1 up pleading April 18th, is that ---

2 A. Correct.

3 Q. --- right?

4 A. Yes.

5 Q. So approximately two months later, is that right?

6 A. Yes. It was probably the fastest I've ever had a
7 murder case plea.

8 Q. How many times did you meet with Mr. Hilton in the
9 intervening ---

10 A. Right.

11 Q. --- two months?

12 A. My notes indicate, obviously, the February 20th meeting
13 with him. There is -- there is a meetings of a note or
14 notes, excuse me, notes of a meeting in March that I don't
15 have dated, but I know it was a separate meeting because I
16 discussed -- I can tell from my notes being in different
17 ink.

18 Then I met with him March 27th. I met again with him
19 April the 2nd. I met again with him April the 9th, April
20 -- and April the 15th.

21 Q. Okay.

22 A. So however many that ends up.

23 Q. Several times over the course of two months?

24 A. Yes, sir.

25 Q. In those meetings did you -- did you and Mr. Hilton

MICHAEL LIFSEY - DIRECT EXAMINATION BY MR. SHELDON

8

1 discuss medical illnesses and things like that?

2 A. Yes, sir. I interviewed -- part of my initial
3 interview process was asking about his medical conditions.

4 Q. And what did -- at any point in time did you feel the
5 need to have him evaluated or anything like that?

6 A. You mean psychiatric evaluation?

7 Q. Yes.

8 A. I did not.

9 Q. And why not?

10 A. Well, he seemed, I mean, he had numerous medical
11 problems he told me about, but they were physical health
12 problems, not -- they did not appear to be mental health in
13 nature, at least what he revealed to me.

14 He seemed to understand what was going on. He seemed
15 to answer questions about his case, the questions that I
16 asked him, you know, my interview questions. And he seemed
17 to ask me questions about his case that seemed to make
18 sense. I'm certainly no psychiatrist or psychologist, but
19 there was no overt indication of him being delusional or
20 suffering any psychosis that I could see from my
21 perspective.

22 Q. Okay. And so you end up pleading him on April 18th to
23 a negotiated sentence of twenty-five years for manslaughter,
24 is that right?

25 A. That's correct.

MICHAEL LIFSEY - DIRECT EXAMINATION BY MR. SHELDON

9

1 Q. How did that sentence come to be?

2 A. Well, it started out the first -- the State's initial
3 plea offer, excuse me one second, was for murder for thirty
4 years. That was the first plea offer the State made.

5 I talked to him about it. In fact, that's, it looks
6 like, I can't remember, one of the March, maybe the March
7 meeting that I don't have a date for is when we discussed
8 that. You know, he didn't want to take the thirty year,
9 negotiated murder for thirty.

10 I went back to the solicitor. My notes indicate we
11 were seeking a twenty year manslaughter plea. I went back
12 to the solicitor with that. My understanding is Solicitor
13 Barfield or my memory is that Solicitor Barfield would not
14 agree to the twenty, but came to the twenty-five. And
15 that's what he said he wanted to do.

16 Q. Was there any talk about pleading straight-up to
17 manslaughter?

18 A. I don't believe so. I mean, I have notes indicating I
19 discussed the range with him, but I think that was -- that
20 was from me just discussing the general nature of the
21 charge.

22 My memory is the -- the solicitor's initial offer was
23 murder for a negotiated thirty. And then they did not
24 accept our counter-offer for twenty and came back with a
25 negotiated twenty-five.

MICHAEL LIFSEY - DIRECT EXAMINATION BY MR. SHELDON

10

1 Q. When negotiating the offers or counter-offers what
2 mitigating circumstances did you take to the solicitor?

3 A. Well, mainly it was his age and his physical condition.
4 I mean, you know, he was older. So, obviously, a twenty-
5 five year sentence for a man of his age, especially a man in
6 fairly ill health, is certainly, or any kind of sentence, is
7 longer or more significant than if it was for a nineteen or
8 twenty year old person in good health. So mainly his age
9 and his -- and his physical condition were the main
10 arguments that I made to the solicitor to try to get him to
11 lower the offer.

12 Q. And the solicitor considered those arguments and, in
13 fact, did lower it from murder to manslaughter, is that
14 right?

15 A. Yes, sir, and from -- and, obviously, to twenty-five
16 rather than thirty being the maximum on manslaughter.

17 Q. Okay. So it's fair to say that there was negotiation
18 used and essentially mitigating factors used on behalf of
19 Mr. Hilton to get the solicitor down to twenty-five, eighty-
20 five percent, as opposed to thirty, day for day?

21 A. Correct. Though certainly, you know, it didn't go down
22 very far because that's still a significant sentence for a
23 defendant his age.

24 Q. And then -- so -- and then you waived presentment to
25 the grand jury and pled him -- essentially waived

MICHAEL LIFSEY - DIRECT EXAMINATION BY MR. SHELDON

11

1 presentment on the murder charge, pled him to the lesser
2 included offense ---

3 A. It's very unusual. I mean, like I said, I've never
4 done this and mainly it was at his request. I mean, not the
5 waiver, but the hurry-up-and-resolve-it element of it.

6 Q. And what do you mean by at his request?

7 A. Well, you know, I mean, he and I talked about it. I
8 mean, obviously, I thought the State had a pretty good
9 murder case, I mean, based on his statements to law
10 enforcement and his -- the 911 call, which he basically
11 confesses to murder on the 911 call. And I discussed it.

12 Mr. Hilton was always very remorseful about this thing.
13 every time I talked to him. And he was sorry not only that
14 he'd committed the act of killing his wife, I think he was
15 sorry he's put his family through this.

16 His -- I'd have to look at my notes, but my memory is
17 -- my memory is this was a second marriage for both victim
18 and defendant, but I think they had at least one child in
19 common. I know he had children -- a child involved. He
20 really told me he didn't want to put his family through
21 this. I mean, he, I mean, he felt bad about what he did
22 and, I mean, you know, I didn't -- it's a strange case.

23 Q. Was the -- was the offer twenty-five to manslaughter,
24 was that in any way conditioned on the -- expediting the
25 process?

MICHAEL LIFSEY - DIRECT EXAMINATION BY MR. SHELDON

12

1 A. I don't really remember it -- I don't remember it that
2 way, Mr. Sheldon. I mean, I just remember -- from the very
3 beginning I remember him saying to me that he really didn't
4 want to go to trial, that he -- and I'd met with -- I met
5 with family members of his.

6 I didn't discuss that when you asked about meetings
7 because you asked about him, but I met with family members
8 of his. He was very concerned about their reaction to this
9 event, which was traumatic for them. And so it really was a
10 what-kind-of-plea-could-we-work-out-from-the-beginning case.

11 Q. And so essentially the mitigation aspect of the plea
12 was done up-front in getting the negotiated offer itself?

13 A. Yes, sir. Yes. I mean, it was a negotiated twenty-
14 five, it wasn't arranged. The judge had to either take that
15 or reject the plea.

16 Q. Okay. And so there -- based on -- and you've tried and
17 handled several murder cases, ---

18 A. Yes, sir.

19 Q. --- is that right?

20 A. Yes, sir.

21 Q. And you would admit that it's a little bizarre to have
22 a defendant waive presentment to the grand jury to go
23 forward that quickly, is that right?

24 A. I've certainly never had it happen. I've also never
25 had, to be honest with you, I've never had a defendant

MICHAEL LIFSEY - DIRECT EXAMINATION BY MR. SHELDON

13

1 client really, almost for lack of a better word, volunteer
2 to take a sentence that, you know, there's a significant
3 likelihood or would serve the rest of his life. But it was
4 kind of an unusual perspective he had on the case. I mean,
5 didn't -- but, I mean, I understood it, seemed logical to
6 me.

7 Q. And the -- and the expediting of it was not a condition
8 of the plea itself, of the offer?

9 A. Not that I know -- let me -- let me -- if you'll give
10 me just a -- let me look at Solicitor Barfield's -- initial
11 plea offer was made February the 27th. It really doesn't
12 have a deadline on it.

13 I don't remember -- I remember it being more like the
14 solicitor offers me murder for thirty, I talk to my client,
15 we counter-offer voluntary for twenty, the solicitor comes
16 back with voluntary for twenty-five, I go talk to him and he
17 says he'll do it. I don't -- I don't think hurrying up was
18 really the -- was part of the bargaining process.

19 Q. Do you believe if you had waited longer that it could
20 have gotten better?

21 A. I don't think so. I mean, I -- you never know. You
22 know, you've done this a long time too. But, I mean, you
23 never know with a solicitor. Sometimes you wait and the
24 offer gets better. Sometimes you wait and the offer gets
25 worse. I don't know.

MICHAEL LIFSEY - DIRECT EXAMINATION BY MR. SHELDON

14

1 Q. Do you think it would have behooved you to wait to try
2 to get more mitigating information on behalf of Mr. Hilton?

3 A. I -- I honestly don't think so. And the reason I don't
4 think so is, first of all, the State had a really good case.
5 The -- my understanding, I didn't deal with the victim's
6 family, but judging by my conversations with the solicitor
7 and what transpired at the bond hearing, the victim's family
8 was pretty hot about the thing.

9 And he got a decent amount -- I don't mean this in any
10 -- I'm not suggesting anything improper, but it got a decent
11 amount of public attention because of the 911 call that was
12 released for the public. It just doesn't strike me as a,
13 you never know, but it doesn't strike me as a case the
14 solicitor was ever really going to back off much beyond what
15 he did. I don't think time would have benefitted.
16 Obviously, I don't know that with a hundred percent
17 certainty.

18 Q. So the negotiation aspect, it's your opinion that it
19 was never going to be changed to a recommended offer or
20 anything like that?

21 A. I don't think so. Now, you know, you'd have to talk to
22 Solicitor Barfield about what his position was, but I don't
23 think so.

24 MR. SHELDON: Thank you, Your Honor. No more
25 questions.

MICHAEL LIFSEY - CROSS EXAMINATION BY MR. MITCHELL

15

1 **THE COURT:** Thank you, Mr. Sheldon. Mr. Mitchell.

2 **MR. MITCHELL:** Thank you so much, Judge.

3 **Cross Examination by Mr. Mitchell:**

4 Q. Good afternoon, Mr. Lifsey. How are you?

5 A. Fine.

6 Q. How long have you been practicing criminal law?

7 A. Well, I've been practicing law since 1991. I became a
8 public defender in Chester in 1994 and have been either a
9 public defender or an assistant solicitor ever since that
10 time. So however long that is, twenty-three, I'm getting
11 old, twenty-three years, I guess.

12 Q. Is it safe to say you're pretty experienced in criminal
13 law, correct?

14 A. Well, I've done it a long time, yes, sir.

15 Q. Okay. I want to go to the -- to the heart of the issue
16 here. During the course of your representation did you ever
17 get the sense that the defendant was suffering from any type
18 of mental illness at all?

19 A. I never did. I mean, I -- I never -- if you -- let me
20 -- give me one moment and let me review ---

21 Q. Sure.

22 A. --- my initial notes. I want to make sure I'm
23 answering in what he told me or didn't tell me.

24 (Pause)

25 A. I never got any indication that he was suffering -- I

MICHAEL LIFSEY - CROSS EXAMINATION BY MR. MITCHELL

16

1 didn't see any evidence of psychosis. I didn't see any
2 evidence of delusional thinking. I didn't see any evidence
3 of schizophrenia.

4 And I'm not doctor and I'm not an expert, but I have
5 represented a number of mentally ill people. And I didn't
6 see anything that cried out to me that he was suffering a
7 significant mental illness. I'm -- once again, I'm not a
8 doctor. So I defer to the doctor's opinion on these issues,
9 but I didn't see anything that raised any red flags with me.

10 Q. Is it fair to say that he seemed to understand the
11 charges that he was facing in this case?

12 A. Oh, Yes, sir.

13 Q. Okay. And did he understand the evidence that the
14 State had against him?

15 A. Yes, sir.

16 Q. Okay. I just want to backtrack just for a few minutes.
17 When you first met with him during the course of your
18 representation did you go over the charges with him and his
19 constitutional rights?

20 A. I did. My initial interview -- my notes reflect my
21 initial interview, which would have been February the 20th,
22 looks like mainly what I got from him was background
23 information about him. That was kind of the initial
24 interview.

25 But my notes -- my notes from our March, early March

MICHAEL LIFSEY - CROSS EXAMINATION BY MR. MITCHELL

17

1 meeting, and once again, I apologize for that not being
2 dated, I do -- I have written out the range for murder and
3 written out the range for voluntary manslaughter, which
4 certainly indicates we discussed that matter with him.

5 And then there's subsequent notes from subsequent
6 meetings where we discussed -- my notes are -- like for
7 example, March 27th we met and discussed the offer again.
8 We agreed to counter-offer voluntary manslaughter for
9 twenty. Those were my notes from the March 27th meeting.
10 So, yes.

11 And then the April 2nd meeting my notes indicate we
12 meet to discuss new offer of twenty-five. So ...

13 Q. And during the course of these conversations did
14 anything from the defendant ever strike you as he didn't
15 understand anything that you were saying to him at all or
16 ---

17 A. No. Now he was hard of hearing. I mean, I will say
18 that. I mean, periodically he would ask me to repeat
19 things. So, I mean, I would, you know, look at him and
20 speak louder. But other than -- but, of course, that's not
21 really a mental illness, that's a physical impairment.

22 But beyond that, I mean, he didn't -- I didn't see any
23 indication of mental illness or, like I say, you know, it
24 didn't strike me as -- I didn't see any evidence of
25 delusional thinking, or disordered thoughts, or disordered

MICHAEL LIFSEY - CROSS EXAMINATION BY MR. MITCHELL

18

1 speech, or any of the -- over the years when I have
2 represented people who are severely mentally ill, I didn't
3 see any of those things.

4 Q. Did he ever say to you that he had a mental illness or
5 had been diagnosed with one?

6 A. Not -- not according to my notes. I will tell you
7 this, I became aware at some point, and I don't -- and I
8 don't remember when, that he was taking antidepressants. I
9 don't remember when in that process. I just remember the
10 subject of depression being involved. I don't remember when
11 exactly I became aware of that.

12 Q. Any ---

13 A. But -- but, you know, to me I did not see any
14 indication that if he was suffering from depression that it
15 affected his competency to stand trial, his ability to
16 assist me in his own defense or provide any -- I didn't see
17 any indication that, you know, he didn't acknowledge the
18 wrongfulness of his conduct in this case.

19 Q. And, I guess, ending on that note in reference to
20 mental illness, did any family members ever express anything
21 to you about mental illness?

22 A. I don't have -- I don't have -- let me back -- can I
23 back up and -- my handwriting is hard for me to read
24 sometimes. But I do say at my initial meeting that he was
25 -- he was indicating he was taking pain medicines. And I've

MICHAEL LIFSEY - CROSS EXAMINATION BY MR. MITCHELL

19

1 written Xanax and Fentanyl. Now, obviously, Xanax is not a
2 pain medicine, but it's anti-anxiety medicine.

3 But, I mean, but that's -- to answer your question,
4 that's the only indication of his -- in his initial meeting
5 with me. He has a bunch of other -- a bunch of other
6 physical problems he describes. That's the only thing that
7 could be mental illness. And I'm sorry, I -- now I've
8 forgotten what your original question was. I'm sorry, I ---

9 Q. You answered it.

10 A. I'm sorry.

11 Q. You answered the question. You answered it.

12 A. Okay.

13 **MR. MITCHELL:** Judge, that's all the questions I have
14 for this witness.

15 **THE COURT:** What was that second drug ---

16 A. Fentanyl, which I think is a ---

17 **THE COURT:** Fentanyl?

18 A. Yes, sir.

19 **THE COURT:** How do you spell it?

20 A. Well, I think I phonetically spelled it P-h-e -- but
21 that's not -- I think it's an F. I think it's F-e-n-t-a-n-
22 y-l, I think, but I may be -- I think that may ---

23 **THE COURT:** Oh, Fentanyl?

24 A. Yes, sir. I think that's a pain medication, as I
25 understand it.

DONNA MADDOX, M.D. - DIRECT EXAMINATION BY MR. SHELDON

20

1 **THE COURT:** I thought you said Sentinel.

2 A. Oh, I'm sorry. I'm sorry.

3 **THE COURT:** And I think that's used for a different
4 purpose.

5 **MR. MITCHELL:** Thank you, Judge.

6 **THE COURT:** All right. Redirect, Mr. Sheldon?

7 **MR. SHELDON:** No, Your Honor.

8 **THE COURT:** Thank you. Thank you, Mr. Lifsey.

9 A. Thank you.

10 **THE COURT:** You may step down. All right. Mr.
11 Sheldon, you may call your next witness.

12 **MR. SHELDON:** Thank you, Your Honor. We would call Dr.
13 Donna Schwartz Maddox to the stand.

14 **THE COURT:** All right. Doctor, if you'd come around
15 and join us, please. And, Mr. Sheldon, can I have a copy of
16 her report ---

17 **MR. SHELDON:** Yes, Your Honor.

18 **THE COURT:** --- during her testimony, please.

19 **Donna Maddox, M.D., being**
20 duly sworn testified as follows;

21 **THE COURT:** Good afternoon, doctor.

22 **DR. MADDOX:** Good to see you, Your Honor.

23 **THE COURT:** Yes, ma'am. You too.

24 **MR. SHELDON:** May it please the Court, Your Honor?

25 **THE COURT:** Yes, sir.

DONNA MADDOX, M.D. - DIRECT EXAMINATION BY MR. SHELDON

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1 **Direct Examination by Mr. Sheldon:**

2 Q. Dr. Maddox, please state your name for the record.

3 A. Sure. Donna, middle name is Schwartz, S-c-h-w-a-r-t-z,
4 last name Maddox, M-a-d-d-o-x.

5 Q. Thank you. And just briefly, just so -- I don't even
6 think you were here, but the State has consented to you as
7 an expert in forensic -- in psychiatry. So we don't even
8 have to go through all the qualifications. But briefly just
9 state -- where do you -- where are you employed at?

10 A. Well, right now I'm self-employed. I retired from the
11 South Carolina State Department of Mental Health after
12 twenty-eight years last August.

13 And so I still -- I'm on contract work. I still work
14 for the Department of Mental Health. I work at Patrick
15 Harris Hospital. I take care of patients every day. And I
16 also perform forensic evaluations for the Department of
17 Mental Health as a contract psychiatrist. But I have my own
18 limited liability corporation, and I'm here today self-
19 employed.

20 Q. And what -- what are your degrees in?

21 A. I'm a -- I'm a physician. I'm licensed to practice
22 medicine in South Carolina and Georgia. And I'm a general
23 psychiatrist and forensic psychiatrist.

24 Q. Perfect. Thank you. How did you get involved in this
25 case with Mr. Hilton?

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1 A. Your office retained me.

2 Q. And did you perform an evaluation of Mr. Hilton?

3 A. I did.

4 Q. And do you happen to have your report in front of you?

5 A. I do.

6 Q. When was that evaluation done?

7 A. I examined him on January 12th of this year at Lee
8 County Institution.

9 Q. Okay. And what -- what type of examination did you
10 conduct?

11 A. I spent two hours with him. And I conducted a
12 psychiatric examination, which included checking his
13 cognitive function. And I also gave him a neurological
14 screening evaluation.

15 Q. And what -- just explain to the Court kind of -- kind
16 of what you did, what that means.

17 A. Sure. Your Honor, Mr. Hilton has a very long and
18 complicated medical history as one would expect. He's
19 sixty-six. Not that that's old, but that he certainly ---

20 **THE COURT:** Thank you, doctor.

21 A. --- certainly -- certainly some of the life experiences
22 he's had. So one of the -- one of the things that was very
23 important in this evaluation was to determine the extent of
24 his medical history.

25 As I did that I also performed a psychiatric history

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23

1 because he has had a treatment of -- a history of treatment
2 for depression. And that was significant. So I assessed
3 that.

4 As the interview progressed I realized that because of
5 many of his medical conditions and also some of the drugs he
6 was abusing and taking as prescribed as well, Your Honor, at
7 the time of the offense that I had some concerns that he had
8 cognitive impairment. When I say the word cognitive, it
9 kind -- it covers six domains; your ability to pay
10 attention, your ability to concentrate, your ability to
11 understand language, your ability to remember things. It's
12 basically a sense of your judgment based on brain function.

13 In interviewing him it was clear that he had some
14 deficits that he was reporting. Because of that I performed
15 a very thorough mental status examination that looked at
16 some of those cognitive domains. He had impairments there.
17 And I also performed a neurological exam because of those
18 things. And I was able to render some diagnoses on him.

19 Q. And we'll get to the diagnoses in a minute, but I just
20 -- I want to talk a little bit more about the process with
21 you. How is it that you are able to evaluate somebody in
22 January of 2017 and give an opinion as to an incident that
23 occurred almost four years prior?

24 A. And that's a great question. Well, first of all,
25 you've asked me to look at his competency. And the way I

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1 was able to render an opinion on that based on my evaluation
2 is I actually had the transcript from his hearing. So I was
3 able to look at his actual words and follow his interactions
4 in the court.

5 The other thing that I'm able to do is by learning the
6 dates of some of his illnesses. For example, he had a
7 number of strokes. He's had a heart attack in the past. He
8 has a chronic condition, Your Honor, asbestosis from some
9 lung -- from some work exposure and was on chronic
10 disability. So some of that knowledge is a position when
11 you have chronic medical illnesses you also can date back
12 and know when someone may be having symptoms from them.

13 And in terms of looking at his behavior at the time of
14 the offense, that's -- we always do that in forensic
15 psychiatry. We're never there at the time of the offense.
16 So we're able to -- our methodology is to review the
17 discovery, which I did in that case to learn about what he
18 may have been thinking around that time.

19 Q. So ultimately you come up -- there's essentially, I
20 guess, four things that can happen in one of these cases, is
21 that right? Basically, and I'm not a doctor, certainly, but
22 one is that there's nothing wrong with the person, is that,
23 I mean, that's always a possibility, right?

24 A. Sure.

25 Q. And then there is -- we look at competency, don't we?

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25

1 A. Correct.

2 Q. We look at whether not guilty by reason of insanity
3 would be something that would apply, correct?

4 A. Correct.

5 Q. And that's different than competency, isn't it?

6 A. Yes. Competency to stand trial is a present capacity
7 and it's the ability to understand the proceedings.

8 Criminal responsibility looks at your behavior at the time
9 of the offense to determine what you were thinking and
10 whether your mental state had something to do with your
11 crime.

12 Q. And then, I guess, the fourth, actually, would be
13 something along the lines of guilty, but mentally ill, is
14 that right?

15 A. Correct.

16 Q. And what does that mean?

17 A. That meant that at the time of the offense that he was
18 suffering from an illness that impaired his capacity to
19 conform his conduct, meaning that he was unable to stop
20 himself from doing it.

21 Q. And so -- and you did render a diagnosis in this case.
22 How were you able to rule out competence -- exception to
23 that, he was incompetent to stand trial?

24 A. Well, let me go through it first because I think some
25 of his medical history is worth noting just for the record

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1 ---

2 Q. Sure.

3 A. --- to understand how I got to those opinions. When I
4 saw him he had been incarcerated for four years and he had
5 not had any visits from the family. And that's important
6 because you need to know if someone's depressed, perhaps,
7 because of the situation versus an ongoing illness.

8 He had a couple of strokes he reported since his
9 confinement, not before his confinement, but since the four
10 years that he has spent in the prison. And he reported that
11 he'd had one in June 2016. And he noted that he had
12 difficulty talking then, which would be consistent with a
13 stroke. And I noticed that as well during the evaluation
14 with him.

15 He also reported that he had difficulty swallowing.
16 And he had recently had some studies done in the Department
17 of Corrections' records that would indicate that that would
18 be consistent with a stroke.

19 He has a long-term history of problems breathing. And
20 that's because he had had a history of exposure to asbestos
21 and has lung disease that results from that. He actually
22 was on a form of disability. He had -- he tells me that he
23 was followed by a doctor at Duke Power. They're to see him
24 every year because they're to pay his expenses, his medical
25 expenses for his lung disease for the remainder of his life.

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1 I was concerned when I saw him. He was not receiving
2 oxygen. And he reported that he had been on oxygen in the
3 past. So I did not have a way to measure his saturation.
4 The amount of oxygen your body gets certainly affects how
5 you think, how you pay attention, how you concentrate, how
6 well you're able to remember things. So that was one piece
7 of history that I thought was important in looking at
8 competency and those sorts of things.

9 In 2009, which would have been before his crime, his
10 son died. And that was a very significant event that needed
11 to be taken into account. His son was thirty-nine years
12 old. He died from a heart attack.

13 He reported there was some family conflict since he had
14 been confined, that some of the children were fighting over
15 the estate. And so there was some discord.

16 So, again, just to know the present stressors, where he
17 is now at this point in time to be able to go back and look
18 -- where he was at that ---

19 Q. And was that -- they were fighting over the estate of
20 his son or over his estate because he was incarcerated?

21 A. It would be over his estate.

22 Q. Okay.

23 A. Yes. And he -- I looked at his medications that he was
24 on presently. And he's on medicine for cholesterol, high
25 cholesterol. He's on the aspirin to prevent further

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1 strokes. He was on medication for pain. So he continues to
2 have chronic pain.

3 The medication he was taking for chronic pain is called
4 Tramadol. And while it's a controlled substance, it is not
5 an opiate. So it's different than the Fentanyl patches and
6 the other meds that he was receiving prior to ---

7 Q. And not to interrupt you, maybe we'll come back to
8 this. What is a Fentanyl patch?

9 A. It's a -- it's an opiate patch for long-term pain
10 control.

11 Q. So that is essentially a prescription narcotic, is that
12 ---

13 A. Oh, absolutely.

14 Q. --- right?

15 A. Yes.

16 Q. And is that -- is that a strong opiate patch or is it
17 ...

18 A. Yes.

19 Q. Okay. Okay. Go ahead and continue.

20 A. He also was on -- he had some reflux, which would be
21 consistent with the problems that he said that he had
22 difficulty swallowing. So he was on two medications for
23 that.

24 He was on two inhalers for his breathing. And he was
25 also on a CPAP machine. And CPAP means that he has sleep

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1 apnea. And that's important. Persons that have sleep
2 apnea, sometimes their oxygen levels can go very low, and
3 that can affect their ability to function. So those things
4 were all important.

5 He was followed by a Dr. Faulkenberry here in
6 Lancaster. And he said that the doctor that followed him
7 for his lung disease was Dr. Shaners in Charlotte.

8 The things that were -- the other history that was
9 important was that in 2005 he reports he had his first heart
10 attack. He also had chronic back disease. He had five
11 herniated discs from a car wreck, which was why he was on
12 the pain medications at the time of the offense. So, again,
13 those were -- the medical history in this case was very
14 significant.

15 The other information that I considered very
16 significant is he was prescribed antidepressants prior to
17 his incarceration. And he had stopped these medications,
18 Your Honor, prior to his offense. And that's very
19 significant. He's had a longstanding depression. He
20 stopped his medications.

21 What was important there is I just heard his attorney
22 testify that he had noticed he was not very protective. He
23 was willing to take a plea to spare his family further
24 trauma, which would certainly be consistent with depression,
25 that he -- he doesn't have the energy, he doesn't want to

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1 embarrass people, he may not have been as self-protective

2 ---

3 Q. Would that be consistent with someone who was suffering
4 from depression, but not taking antidepressants?

5 A. Sure. And it could be consistent with somebody who's

6 ---

7 Q. Who is ---

8 A. --- severely depressed.

9 Q. Okay.

10 A. Yes. Yes. Yes. But I think what's important is that
11 he was also at the time I evaluated him in January, Dr.

12 Wood, Beverly Wood at the Department of Corrections has been
13 treating him. And she had him on the same antidepressant,
14 Duloxetine, which is known as Cymbalta, which is what he was
15 taking before.

16 But she actually has him on two antidepressants. He
17 was also taking Remeron. So he was -- his depression was
18 severe enough that he was on two different antidepressant
19 medications.

20 Q. And that would be consistent with the medication that
21 he was on prior to committing the offense. So the offense
22 isn't causing the depression, so to speak. That exists
23 prior to the death of his -- the murder of his wife?

24 A. Absolutely.

25 Q. Okay.

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1 A. Yes. And not only that he -- it was consistent, but it
2 was worse because he's on an extra medication now.

3 Q. Okay.

4 A. The other thing that's important is his substance abuse
5 history. Your Honor, a lot of drugs and my ultimate
6 diagnosis is going to be that he has a little bit of brain
7 impairments and cognitive impairment and the very
8 longstanding depression. So as I outline you can see a lot
9 of the medical illnesses that certainly could contribute to
10 his ability to pay attention, his memory and those sorts of
11 things.

12 Well, he also had a pertinent substance abuse history,
13 which predated his offense. And those things need to be
14 considered.

15 He reported after his son died he was drinking a six
16 pack of beer per day. And he reported that he had
17 previously quit drinking. He had drank before, and from
18 1989 until 2009, so for almost thirty years he did not
19 drink, but after his son died he began drinking again.

20 He reported on the day of the offense he drank two
21 beers. And, of course, he was prescribed the Fentanyl
22 patches. And he reported -- he had been taking them
23 consistently and that when he was incarcerated he did go
24 through opiate withdrawal. He describes symptoms consistent
25 with that.

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1 Q. Would a Fentanyl patch -- is an opiate, would be
2 prescribed for chronic pain? Is that something that you'd
3 be wearing that for?

4 A. Yes.

5 Q. Okay.

6 A. Yes. And then finally the other part that's important
7 in looking at his history is his family history. His father
8 committed suicide. So when you have a first degree relative
9 commit suicide and you have a history of depression, that's
10 certainly a poor prognostic factor. That's a very high risk
11 factor to look at when there's a suicide within the family.
12 And so that was the history I had prior to examining him.
13 Those are the kinds of things you look for.

14 So then I performed my mental status examination ---

15 Q. And let me -- let me stop you just about the history.
16 So when you're looking at these things, though, you have the
17 entire copy of the case file, is that right?

18 A. Yes.

19 Q. You interview the defendant, in this case Mr. Hilton,
20 and you also, obviously, have consulted with or looked at
21 the Department -- the South Carolina Department of
22 Corrections' health records and things like that, is that
23 right?

24 A. No. I've requested those, but I don't -- I don't think
25 they -- I received them.

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1 Q. But you -- then how do you know what -- the
2 antidepressants he's being described from or prescribed from
3 the Department -- from SCDC?

4 A. Because he's -- I consider him a reliable historian in
5 terms of his medical history. All the things that he
6 described to me medically certainly were consistent with his
7 presentation.

8 Q. Okay. And so -- so you're -- you're looking at the
9 information that you have along with the information that
10 he's telling you and all of that seems to be consistent, ---

11 A. Yes.

12 Q. --- is that correct? Okay.

13 A. Yes.

14 Q. So ultimately then you come up with -- you're able to
15 rule out competency as -- as him being incompetent, is that
16 right?

17 A. It was my opinion -- I looked through his discovery,
18 I've read through the plea, and there was no evidence in my
19 mind that he -- he had -- he was incompetent. He clearly
20 knew what he was doing, Your Honor.

21 And even though I certainly see some impairments in his
22 cognitive function, it was clear in looking at his plea he
23 was paying attention, he was answering questions
24 appropriately. So it was my opinion just based on the
25 present history I had, looking back at his transcript that

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1 he was competent to stand trial.

2 Q. Okay. So we were able to rule out that he's not
3 incompetent, is that right?

4 A. Right.

5 Q. So he could have gone forward with a trial if he'd had
6 a trial?

7 A. That would have been my opinion, yes.

8 Q. And then you were also able to rule out that he was --
9 that not guilty by reason of insanity didn't apply in this
10 case either, right?

11 A. That's correct.

12 Q. And that's basically knowing the difference between
13 right and wrong? Is that a fair way to describe it?

14 A. That's correct.

15 Q. Why would you rule out not guilty by reason of
16 insanity?

17 A. Well, he -- we had the telephone, the 911 call, and he
18 was able to say that he had shot his wife. He called his
19 step-son and told his step-son that he had shot his mother.
20 And also in his statement he said that he recognized that
21 she was shot under the arm. He reported the offense was
22 something like on TV or something like a dream, but it's
23 clear that he understood what he had done. And at the time,
24 very shortly after he was able to call 911 and relate a
25 general history of what had occurred.

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1 Q. What would you expect to see from someone who wasn't,
2 in fact, not guilty by reason of insanity?

3 A. Well, it depends on the diagnosis. But certainly if
4 someone were demented, they may be confused on the
5 telephone. They may not be able to relate the history and
6 have the evidence match the crime scene, those sorts of
7 things. They may be very confused.

8 If someone were psychotic they may say, you know, the
9 person was trying to kill me, I was defending myself. There
10 may be some -- their statements may be contrary to some of
11 the evidence, but have a psychotic tone to them.

12 Q. And you didn't find any of that in looking back at the
13 discovery in this case?

14 A. No.

15 Q. So you're able to rule out those two things. But you
16 do -- you do make a diagnosis as to being able to conform
17 his conduct to the requirements of the law, is that correct?

18 A. Yes.

19 Q. And would that be, I guess, to shorten that, guilty,
20 but mentally ill?

21 A. Yes.

22 Q. And what does that mean?

23 A. What that meant -- and on his history specifically to
24 him, he'd had a history of a longstanding depression. He
25 had many chronic illnesses. All of those things contribute.

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1 When you have a depression and you're dealing with
2 chronic illnesses, those certainly make you worse. Chronic
3 pain alone can cause a depression. And then also he had the
4 recent losses, the death of his son. And then finally he
5 was drinking alcohol. And alcohol is a depressant.

6 So he had about five different factors occurring that
7 caused his depression. And with depressions, one gets very
8 irritable. You'll have behaviors that may not be normal.
9 And aggression can occur with a major depressive disorder.

10 And I'll give an example. You might have a mom that
11 never spans her children, but if she gets a depression she
12 gets irritated easily and she might spank her child. So
13 there's aggression associated with depression when it's
14 secondary to being irritable.

15 Also, because of the cognitive impairments that I
16 examined, I also thought that he would have a degree of
17 impulsivity that someone without his cognitive impairment
18 would have. So, again, so in my opinion he had irritability
19 that was attributable to a depression that contributed to
20 this crime and he certainly was impulsive.

21 And exactly what he told me, he said that he and his
22 wife were both bull-headed people and they had been arguing
23 for over an hour. He stated it had been building up and it
24 escalated to the point that before I had a chance to think,
25 I shot her. And in his 911 call, I looked at the

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1 transcript, and he stated, she kept going on and on, and I
2 couldn't take it anymore.

3 And so, again, just based on his history, prior
4 treatment for -- of depression, present treatment of
5 depression, continued symptoms of depression, and then his
6 reports of being irritable and certainly the 911 transcript,
7 it would have been my opinion that because of his depression
8 and the cognitive impairment that he lacked the capacity to
9 conform his conduct.

10 Q. And so where does that -- obviously not guilty by
11 reason of insanity and not competent to stand trial
12 essentially can sort of change things, but guilty, but
13 mentally ill based on -- based on your experience, I mean,
14 did -- how does that change the outcome in this case? I
15 mean, why is that important whether somebody's guilty, but
16 mentally ill or just did it, but not mentally ill, just flat
17 out guilty? I mean, what's the distinction there?

18 A. I think that's probably -- that would probably be more
19 up to a judge. Different judges -- some people consider
20 mental illness mitigating in terms of looking at that kind
21 of offense versus someone that doesn't have mental illness,
22 just shooting a wife over an argument. I think that would
23 certainly be taken into consideration.

24 What it does legally is that a person that's found
25 guilty, but mentally ill when they enter the Department of

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1 Corrections they are admitted directly into the Gilliam
2 Psychiatric Hospital instead of going into regular reception
3 and evaluation. And they're followed by mental health.

4 In this case I don't think there's much -- he's been
5 seen by probably the best psychiatrist at the Department of
6 Corrections. And she has treated him. So he certainly is
7 getting the mental health care that that statute would have
8 given him.

9 Q. And in terms of his statements to you regarding his
10 impulsivity and things like that and what led to the
11 eventual shooting of his wife and the statements that were
12 made on the 911 call and to law enforcement, I mean, are
13 those relatively consistent statements that what we're
14 seeing actually happened the day of the crime?

15 A. In my opinion, yes.

16 Q. And then would -- the fact that there's consistency
17 there, I mean, does that tend to lead toward -- how does the
18 depression play into those statements and things like that?

19 A. Again, it -- he says on the phone, I couldn't take it
20 anymore. That would be consistent with the irritability you
21 can see in depression. And then he told me before he
22 thought about it, he shot her. That's very impulsive. This
23 is a man that, keep in mind before these illnesses, had a
24 longstanding history of working, he was a high functioning
25 individual until he became ill.

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1 **MR. SHELDON:** Thank you, Your Honor. I don't have
2 anymore questions.

3 **THE COURT:** Thank you, Mr. Sheldon. Mr. Mitchell.

4 **MR. MITCHELL:** Thank you, Your Honor.

5 **Cross Examination by Mr. Mitchell:**

6 Q. How are you, doctor?

7 A. Fine. Good to see you.

8 Q. Good to see you. I just have a few questions for you.
9 I've read your report. And the ultimate conclusion was that
10 Mr. Hilton was competent to stand trial, correct?

11 A. Correct.

12 Q. Is it fair to say that he knew what he was doing when
13 he committed this act?

14 A. Yes.

15 Q. Okay. And, I guess, let me ask you about his time
16 spent in jail. Does that play into your diagnosis at all?

17 A. Yes and no. And it certainly is important. I was
18 trying to limit things to the information that you would
19 have had before his hearing. But certainly, absolutely, his
20 behaviors in the jail would be important.

21 Q. Okay. And let me ask you this. In interviewing him
22 did you find that he had below average IQ, or any type of
23 mental retardation or anything like that?

24 A. No, not at all. He's above average in his intellect.

25 Q. Did you have an opportunity to talk to any previous

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1 treating physicians or anything like that in relation to ---

2 A. No, I did not. Dr. Faulkenberry -- I believe we sent a
3 request, but I did not receive those records.

4 Q. Okay. And it's fair to say that competent to stand
5 trial, no issues at all?

6 A. That's correct.

7 Q. Okay.

8 MR. MITCHELL: Okay. Thank you, Judge.

9 THE COURT: Thank you, Mr. Mitchell. Redirect?

10 MR. SHELDON: No, sir, Your Honor. I just appreciate
11 Dr. Maddox making the drive. I'd ask that she be allowed to
12 be excused.

13 THE COURT: All right. Thank you. As always, doctor,
14 thank you -- thank you for being with us.

15 DR. MADDOX: Good to see you.

16 THE COURT: Yes, ma'am.

17 DR. MADDOX: I'm going to Charleston now.

18 THE COURT: Headed to Charleston? Well, at least you
19 don't have to stop through to Lexington on the way.

20 DR. MADDOX: That's correct. This will be five
21 testimonies in two and a half days.

22 THE COURT: Rough schedule. Thank you for all you do,
23 doctor.

24 DR. MADDOX: You're welcome.

25 THE COURT: And please give my regards to the other

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1 one.

2 DR. MADDOX: I will.

3 THE COURT: All right. Mr. Sheldon, you may call your
4 next witness.

5 MR. SHELDON: Just one second, Your Honor.

6 (Pause)

7 MR. SHELDON: Sorry, Your Honor. Your Honor, we would
8 call Joseph Hilton.

9 THE COURT: All right. Mr. Hilton, if you'd come
10 around and be sworn for us, please. Thank you. And if it's
11 all right, I guess he could stay out there by that
12 microphone. He doesn't have to get up on the stand, if that
13 suits y'all.

14 Joseph Hilton, being duly
15 sworn testified as follows;

16 THE COURT: Is that all right, Mr. Mitchell?

17 MR. MITCHELL: That's fine, Your Honor.

18 THE COURT: And you could move around if you'd like.

19 **Direct Examination by Mr. Sheldon:**

20 Q. Can you hear me over here, Mr. Hilton?

21 A. Yes, sir. Yeah, I can hear you.

22 Q. Please state your name for the record.

23 A. Joseph D. Hilton.

24 Q. And, Mr. Hilton, are you currently serving a twenty-
25 five year sentence for manslaughter for the murder of your

JOSEPH HILTON - DIRECT EXAMINATION BY MR. SHELDON

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1 wife?

2 A. Yes, sir.

3 Q. And are you incarcerated at Lee Correctional facility?

4 A. That's right.

5 Q. When did you first -- did Mike Lifsey represent you?

6 A. Right.

7 Q. When did you first -- when did you first meet with Mr.
8 Lifsey?

9 A. Just a few days after I got in the County.

10 Q. So pretty quickly after you were arrested you met with
11 Mr. Lifsey, is that right?

12 A. Pretty quick, yeah.

13 Q. And you met with him several times over the course of
14 two months, didn't you?

15 A. Yeah.

16 Q. Did you hear Mr. Lifsey's testimony this morning?

17 A. I did.

18 Q. Do you, I mean, is that relatively accurate, the amount
19 of -- what you guys talked about and things like that?

20 A. That's right.

21 Q. When it came time to plead guilty how did that come
22 about?

23 A. We talked about it. And like you say, as well as I can
24 remember, like he said, that was about as good as we was
25 going to get because thirty years was the max. So we took

JOSEPH HILTON - DIRECT EXAMINATION BY MR. SHELDON

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1 the twenty-five.

2 Q. And did you understand what you were doing by waiving
3 presentment to the grand jury and going forward and getting
4 the case over with?

5 A. Well, I've learned a lot since that time.

6 **THE COURT:** That wasn't the question. Answer the
7 question, Mr. Hilton. Re-ask the question, Mr. Sheldon.

8 Q. When you waived presentment to the grand jury did you
9 understand what you were -- did you understand that you were
10 waiving -- that the grand jury was not going to act ---

11 A. Right.

12 Q. --- on that indictment?

13 A. Right.

14 **THE COURT:** Thank you.

15 A. I understand.

16 Q. And was that for the sake of expediting the process?

17 A. Right.

18 Q. Discuss the conversations you had with Mr. Lifsey
19 regarding your previous history -- health history.

20 A. Yeah. It's -- like he said, it's pretty -- pretty long
21 history of it. And it's hard sometimes to get the records,
22 but we tried to get all we could on it to where he would
23 know how I was.

24 Q. So -- and in your -- in his plea colloquy, I guess, or
25 his mitigation at the plea he references a long history of

JOSEPH HILTON - DIRECT EXAMINATION BY MR. SHELDON

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1 health problems that you've had, is that right?

2 A. Right. Right.

3 Q. What about -- when were you first diagnosed with
4 depression?

5 A. That part really started after I had my heart surgery.
6 I just never did get over it. And then they started putting
7 me on medications for my nerves and all.

8 Q. When did you become completely disabled?

9 A. In 2006.

10 Q. So that was after your first heart attack?

11 A. Yeah.

12 Q. And then when did your son die?

13 A. In 2009.

14 Q. And how did he die?

15 A. He had a massive heart attack.

16 Q. Okay. And how old was he at the time?

17 A. He'd been thirty-nine.

18 Q. And how long were you and your wife married?

19 A. Close to twenty-five years, I think.

20 Q. Did you and Mr. Lifsey discuss your history of
21 depression and things like that?

22 A. As well as I can remember.

23 Q. Okay. But -- and so this case is resolved from start
24 to finish in less than two months, is that right?

25 A. Right.

JOSEPH HILTON - CROSS EXAMINATION BY MR. MITCHELL

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1 Q. Did you feel that was an appropriate amount of time?

2 A. Well, what we wanted to do was, like I say, was just
3 try to get on through it so it wouldn't have as much problem
4 on the family.

5 Q. And that was -- so that was essentially -- you were at
6 least on board with that plan, ---

7 A. Right.

8 Q. --- is that right?

9 A. That's right.

10 Q. Okay.

11 MR. SHELDON: Your Honor, I don't have anymore
12 questions.

13 THE COURT: Thank you, Mr. Sheldon. Mr. Mitchell.

14 MR. MITCHELL: Thank you, Your Honor. Just very
15 briefly.

16 **Cross Examination by Mr. Mitchell:**

17 Q. Mr. Hilton, I just have a few questions for you.

18 A. Okay.

19 Q. Do you recall the day that you pled guilty in court?

20 A. Yes, sir.

21 Q. Do you remember the judge asking you about your
22 constitutional rights?

23 A. Well, I didn't understand all that happened in court.
24 That's why I tried to get my transcript. And I just got it
25 when Mr. Sheldon there brought a copy of it. I tried four

JOSEPH HILTON - CROSS EXAMINATION BY MR. MITCHELL

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1 years to get it, and I couldn't get it.

2 Q. So you said that you don't remember much that happened?

3 A. Right.

4 Q. Okay.

5 A. And then when -- I got it when he brought it to me at
6 Lee.

7 Q. Okay. What about before the actual hearing, plea sheet
8 that you signed about your constitutional rights, do you
9 remember that?

10 A. Oh, yeah.

11 Q. Okay. So you remember that form and you being asked
12 about waiving your constitutional rights? You remember
13 signing that?

14 A. Constitutional rights?

15 Q. Yes, sir.

16 A. What about the constitutional rights?

17 **MR. MITCHELL:** May I approach, Judge?

18 **THE COURT:** Yes, sir.

19 Q. Do you remember this document?

20 (Pause)

21 Q. Is that your handwriting?

22 A. That's the first time I've seen it. No, it ain't my
23 handwriting.

24 Q. That's not your handwriting?

25 A. No. That's the first time I've seen that.

JOSEPH HILTON - CROSS EXAMINATION BY MR. MITCHELL

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1 Q. Okay.

2 MR. MITCHELL: Your Honor, this affidavit of the
3 defendant's guilty plea is part of the Court's record
4 already.

5 THE COURT: I did not see it. I -- in my ---

6 MR. MITCHELL: In your packet ---

7 THE COURT: --- the document was given to me -- I saw a
8 reference to it in Judge Kinard's questions, but I didn't
9 see the document itself. Thank you, Mr. Mitchell.

10 MR. MITCHELL: Thank you, Judge.

11 Q. Mr. Hilton, let me ask you this. Do you remember the
12 judge asking you if you were under the influence of any type
13 of narcotic or any type of medication at all?

14 A. The judge?

15 Q. Yes, sir, on that day.

16 A. Yeah. Yeah, I -- see, I was still getting my
17 medication at the County, Fentanyl patches and all.

18 Q. Still getting your medication? Is a great part of your
19 ailments related physically?

20 A. Physically and mentally. I was still getting my mental
21 health meds at the County too ---

22 Q. You heard ---

23 A. --- til I went into DTs, and then they -- they started
24 getting my medicine.

25 Q. Is it true that -- you heard Mr. Lifsey, your attorney,

JOSEPH HILTON - CROSS EXAMINATION BY MR. MITCHELL

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1 testify, that you wanted to get this over with and spare
2 your family ---

3 A. Right.

4 Q. --- the pain, is that -- is that true?

5 A. Right.

6 Q. So is it fair to say that you knew what you were doing
7 when you committed this crime?

8 A. Yeah, which I knew I would.

9 Q. Okay.

10 **MR. MITCHELL:** Judge, no further questions.

11 **MR. SHELDON:** Nothing further, Your Honor.

12 **THE COURT:** All right. I didn't understand one thing,
13 Mr. Mitchell. Is this -- I apologize. I was trying to
14 track. This is not his signature? Is that what he said, on
15 the last page of the ---

16 **MR. MITCHELL:** I think he said ---

17 **THE COURT:** --- of the affidavit ---

18 **MR. MITCHELL:** --- he does not recall.

19 **THE COURT:** --- of defendant ---

20 A. I don't have it in any of my paperwork, and I hadn't
21 seen it.

22 **THE COURT:** I just -- I just didn't understand what his
23 response was.

24 **MR. MITCHELL:** I think he said that he did not
25 recognize it. I asked him if it was his handwriting. And I

JOSEPH HILTON - CROSS EXAMINATION BY MR. MITCHELL

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1 think he said he does not -- did not recall or didn't
2 recognize it.

3 **THE COURT:** All right. Thank you. Thank you, Mr.
4 Hilton. No other -- no questions, you say, Mr. Sheldon?

5 **MR. SHELDON:** No, Your Honor. But if I -- if I may
6 have a minute. What -- I don't -- I don't see his signature
7 anywhere anyways unless I'm missing something.

8 **THE COURT:** Oh, I see. That's the attorney.

9 **MR. SHELDON:** That would be Mike ---

10 **THE COURT:** That's Mr. Lifsey.

11 **MR. SHELDON:** --- Lifsey's signature.

12 **THE COURT:** All right. Thank you. Thank you very much
13 for pointing that out to me, Mr. Sheldon.

14 **MR. SHELDON:** It looks like that would have been
15 something, Your Honor, just so everybody knows what we're
16 talking about, I think we're looking at basically a plea
17 waiver form. Looks like something the attorney would have
18 gone over with him. But it looks like everything on there
19 was maybe checked by Mr. Lifsey. So ...

20 **THE COURT:** I know it used to be Judge Kinard's custom
21 to use those affidavits. And I thought there was some
22 reference in the record to it.

23 **MR. SHELDON:** Yeah, I think there was. I just don't
24 think that this -- Mr. Hilton, very well -- that very well
25 may not be his handwriting.

CLOSING STATEMENTS - MR. SHELDON

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1 **THE COURT:** Right.

2 **MR. SHELDON:** He very well may have not seen that
3 document, but had it read to him. And all of those things
4 can be true ---

5 **THE COURT:** Thank you. Thank y'all for clarifying that
6 for me. All right. Your next witness.

7 **MR. SHELDON:** That's our case, Your Honor.

8 **THE COURT:** All right. I'll be glad to hear from you,
9 Mr. Sheldon.

10 **MR. SHELDON:** Your Honor, we would ask that the Court
11 find ineffective assistance of counsel. Essentially the
12 Strickland test is two-pronged. Obviously, you need
13 deficiency of counsel and to show that the outcome would
14 have been different. In this case it's strictly based on
15 essentially what Dr. Maddox has been able to find.

16 This is a tough one, Your Honor, because certainly
17 there's no issue of competency here, there's no -- no
18 question as to not -- not guilty by reason of insanity. We
19 can see that.

20 So then you're left with essentially the theories that
21 this case was all done in two months. And that's fine. And
22 that very well may be Mr. Hilton that sped it along like
23 that, but as Dr. Maddox testified, that's classic signs of
24 somebody that would be suffering from depression.

25 So the guilty, but mentally ill aspect portion of this

CLOSING STATEMENTS - MR. SHELDON

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1 case that she did find, that his behavior couldn't comport,
2 it is a mitigating circumstance. I mean, there's no way to
3 show that it would have been less -- there's no -- that's
4 impossible for anyone to say at this point, but it certainly
5 could have been less.

6 I mean, I think that the ineffective assistance is the
7 inability here of actually investigating any of that to find
8 whether he was guilty, but mentally ill and take that to the
9 prosecutor to offer that as more mitigation in terms of why
10 we should, you know, why this sentence should be less. And
11 so had he done that, the outcome very well may have been
12 different since it is judge dependent essentially from what
13 -- from what Dr. Maddox testified to.

14 There's nothing I could present that would suggest that
15 the outcome would be different because that's certainly --
16 that's just up to a judge. I mean, I can't call judges to
17 testify, what would you do in this one, judge, and what
18 would you do in that situation? Although, I certainly wish
19 I could.

20 But, however, the failure to do that is in itself
21 ineffective. And the outcome could very well have been
22 different had he been able to take all this to the
23 prosecutor because we're left with a negotiated plea. So
24 it's not a failure to mitigate that at the bench, but it is
25 a failure to mitigate that to try to get a better offer for

CLOSING STATEMENTS - MR. MITCHELL

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1 the client.

2 And we see that -- this case should not have been done
3 in two months. Mr. Lifsey should have used better judgment
4 despite what the client wanted to do. Certainly the client
5 has some control, but when you speed a murder case through
6 in two months, Your Honor, there's just -- things are going
7 to go wrong, and in this case they did.

8 **THE COURT:** Thank you, Mr. Sheldon. Mr. Mitchell.

9 **MR. MITCHELL:** Thank you so much, Judge. If you'll
10 indulge me for just a minute, I want to get the law right on
11 this. The South Carolina Supreme Court in January of this
12 year issued an opinion, Ramirez v. State of South Carolina.
13 And in it it speaks directly to the issue at the heart of
14 this actual hearing.

15 And in it the court says that when a PCR applicant
16 raises the issue of competency in the context of a plea
17 proceeding the two-prong Strickland analysis still applies,
18 however, because of the nature of the claim, proof of
19 deficiency of counsel is intertwined with prejudice.
20 Specifically, when establishing Strickland prejudice in the
21 context of plea counsel's failure to request a mental
22 competency evaluation, the applicant need only show a
23 reasonable probability that he was incompetent at the time
24 of the plea.

25 We had Dr. Maddox testify with -- giving her report.

CLOSING STATEMENTS - MR. MITCHELL

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1 Her report says, he was competent to stand trial. Your
2 Honor, I would submit to you that the defendant has not met
3 the burden in this particular case.

4 I would also submit to you that even given Dr. Maddox's
5 opinion that he could have pled guilty, but mentally ill,
6 the State of South Carolina does not treat that any
7 differently than someone who essentially pleads guilty and
8 is of sound mind and does not -- does not plead guilty, but
9 mentally ill.

10 So I would submit to Your Honor, firstly, that the
11 defendant does not meet the first prong of the Strickland
12 test that his attorney was deficient. However, if Your
13 Honor does see fit that the defendant does meet that prong,
14 there simply is no prejudice in the particular case because
15 if the defendant were to plead guilty, but mentally ill, the
16 sentence, again, in the discretion of the court, essentially
17 could have been -- essentially would have been the same
18 thing.

19 The only underlying difference is that the defendant
20 would be housed in a different unit in SCDC. And certainly
21 if Your Honor is so inclined, that's a remedy that could be
22 granted in a PCR order, Your Honor, from ---

23 **THE COURT:** What remedy?

24 **MR. MITCHELL:** The remedy that the -- that the
25 defendant essentially be given mental health treatment.

CLOSING STATEMENTS - MR. SHELDON

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1 **THE COURT:** I can grant that in a PCR hearing ---

2 **MR. MITCHELL:** That's my understanding ---

3 **THE COURT:** --- according to that ---

4 **MR. MITCHELL:** That's my ---

5 **THE COURT:** --- that case?

6 **MR. MITCHELL:** Yes, sir. That's my understanding of
7 the case and also of the statute 17-27-80, the powers of the
8 court. That'd be the State's showing, Your Honor.

9 **THE COURT:** Thank you, Mr. Mitchell. Anything in
10 response, Mr. Sheldon?

11 **MR. SHELDON:** Just very briefly, Your Honor. And only
12 as to touch on the issue of competency. We aren't
13 requesting a competency evaluation. This is not a
14 competency issue.

15 And, therefore, I think we're left essentially with
16 where we're at in Strickland in that nobody's -- we're not
17 asserting that he was incompetent to stand trial. And I
18 think that's just the distinction I would like to make based
19 on the Ramirez case. I don't think that -- since that's not
20 an issue, I don't think that really applies.

21 **THE COURT:** How do you think the fact, though, that
22 it's a negotiated sentence of twenty-five years, you -- you
23 -- not you personally. I don't mean ---

24 **MR. SHELDON:** I think ---

25 **THE COURT:** --- Monday morning quarterback.

CLOSING STATEMENTS - MR. SHELDON

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1 **MR. SHELDON:** Just to get to your question, I think
2 that essentially it's a failure to mitigate on the front-end
3 of the case. Obviously, there's no mitigation need to be
4 done except to get a judge to take or leave a negotiated
5 plea, but there is a duty to have your ducks in a row when
6 you go and you start bargaining with the solicitor, which
7 there is evidence from Mr. Lifsey's testimony that he did do
8 in this case. I did present him with fact X, Y and Z, the
9 problem is he left out fact A, B and C.

10 **THE COURT:** That's why I don't take negotiated pleas.
11 No criticism whatsoever as to Judge Kinard. Many judges do
12 and many judges don't. All right. How long do y'all need
13 to present or submit proposed orders? And I know how busy
14 you are. Just tell me.

15 **MR. SHELDON:** Thirty days.

16 **MR. MITCHELL:** That's sufficient, Your Honor.

17 **THE COURT:** All right. Thirty days. If you'd just
18 present proposed orders simultaneously to each other and to
19 my law clerk. I'll take it under advisement.

20 And can I have a copy -- this is the only one I have is
21 Court's exhibit 1, Dr. Maddox's. All right. Anything
22 further?

23 **MR. MITCHELL:** Nothing further, Your Honor.

24 **THE COURT:** Thank you. Thank you, Mr. Mitchell. Thank
25 you, Mr. Sheldon. Good luck to you, Mr. Hilton. Thank

1 y'all for being here.

2 (Hearing Ended at 3:03 pm)

3 (End of Requested Transcript of Record)

Certificate of Reporter

I, The undersigned, Susan W. Hudgins, Official Court Reporter for the Sixth 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 Lancaster County, South Carolina, on the 18th day of July 2017.

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

January 4, 2018

Susan W. Hudgins

Circuit Court Reporter

Certificate of Reporter

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January 4, 2018

Susan W. Hudgins

Circuit Court Reporter

COURT OF COMMON PLEAS AND GENERAL SESSIONS

EXHIBIT RECORD AND RECEIPT FORM

PLAINTIFF

Joseph Hilton

DEFENDANT

State

CASE NO.

2014-CF-29-0250

DATE _____

7/18/17

DATE ENDED

7/18/17

Applicants PLAIN

PLAINTIFF'S/STATE'S EXHIBITS

ID

EV

[illegible]

ATTORNEY

Nathan Sheldon

ATTORNEY

DeShawn Mitchell

JUDGE

Mc Mahan

COURT REPORTER

Susan Hudgins

DEFENDANT'S EXHIBITS

ID

EV

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OF COURT
CLERK OF COURT
LANCASTER, SC
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Susan W. Hudgins
COURT REPORTER

COURT REPORTER

Jeff Hammel
CLERK OF COURT

CLERK OF COURT

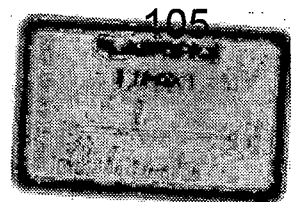
PAGE

1 OF 1

OF

DATE:

7-18-17



Psychiatric Evaluation
Joseph Hilton
Date of Birth: [REDACTED]/50
Date of Evaluation: 1/12/17
Place of Evaluation: Lee Correctional Institution
Date of Report: 3/26/17

Identifying Information: Joseph Hilton is a 66-year-old male evaluated pursuant to request from his attorney Nathan Sheldon. He pleaded guilty to Voluntary Manslaughter of his wife, and received a negotiated 25-year sentence from the Honorable Ernest Kinard in Lancaster County on April 18, 2013.

Reason For Referral: Mr. Hilton is treated for mental illness and has numerous medical issues which impair his capacity. There is no evidence he had a psychiatric evaluation prior to his guilty plea, despite his significant history.

Statement of Nonconfidentiality: Mr. Hilton understood the undersigned is an agent of his attorney and that all communications would be shared with his attorney.

Sources of Information:

Transcript of Proceedings 4/18/13
Lancaster County Sheriff's Office Discovery

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LANCASTER

Pertinent History:

Mr. Hilton reports that he has been incarcerated for four years and has not had any visits since his confinement. He reports that he is in a wheelchair, and spends his days watching television and listening to music. He reports that since his confinement and prior to his confinement, he had "a couple of strokes with the most recent one being in June 2016." He reported that he had difficulty talking since then. He reports that he also has difficulty swallowing. He reports that he recently has a barium swallow. He also reports he has difficulty breathing. He states he recently went to the heart doctor because he had a history of a tumor in his left lung from asbestosis. He reports that he had previously been on oxygen, and he is not receiving his oxygen presently. He also reports difficulty hearing and stated his hearing aid does not have a battery.

He reports that in 2009, he "lost" his son. He reports his son was 39 years old and died from a myocardial infarct. He reports that since his confinement, his stepchildren and daughter fought over his estate. He reported his daughter used to come every week, but now "she lives in a different world."

Medical History:

He reported his present medications include: Atorvastatin (cholesterol), Aspirin (vascular disease) and Tramadol (pain), insulin (diabetes), Omeprazole and

Metoclopramide (GERD), two inhalers (asbestosis) and a CPAP machine for sleep apnea.

He reported that Dr. Faulkenberry in Lancaster cares for him as well as Dr. Shavers in Charlotte. He reported that he supposed to be followed by Duke power because of a lawsuit. He is frightened because if he is not sent to his court designated doctor, he will lose his lifelong care that was ordered in a lawsuit.

He reported his first heart attack in 2005. He also reports that he has five herniated disc in his back which caused some problems. He reports four strokes. He reports he and his first wife were involved in a car wreck, and were "rear ended" by someone driving over 100 mph.

Personal History:

He grew up and resided in Lancaster. He worked at Wells Fargo. He reports that his son died, and his wife had two children. He reported he obtained his GED. He worked for Duke Power for nine years and 10 months. He did pipework for different companies. He worked in Catawba in 1985, and then he became self-employed. He reported his first marriage lasted for 16 years, and in the second marriage, they lived together for four years and were married 25 years. He reports his first marriage ended because he was young, and he and his wife did not get along. He reports they get along well now. He reports his father killed himself. Mr. Hilton reports he had a "very dysfunctional family." "My mom ran around with anyone. She went with the Sheriff Faile for years." He said his parents would fight, and then he caught his mother was someone else.

Psychiatric History:

He reported that he was prescribed antidepressants prior to his incarceration. He reported he had stopped taking his prescribed duloxetine. He described symptoms consistent with depression for the three years after his son died and presently. He reports he is presently treated by Dr. Beverly Wood and is prescribed: Duloxetine (antidepressant), Mirtazapine (antidepressant), Hydroxyzine (anxiolytic/antihistamine) and Topiramate (mood stabilizer, weight loss).

Substance Use History:

He reported he started drinking a 6 pack of beer daily after his son died. He stated he used to drink and had previously quit from 1989 until 2009 because he had been saved. He reported on the day of the offense, he drank two beers. He reported he was prescribed Fentanyl® patches for five herniated discs. He described opiate withdrawal upon his confinement.

Family History:

His father committed suicide. His son died at age 39 from a myocardial infarct.

Mental Status Examination:

He was pleasant and cooperative. He had good eye contact. His speech was normal in rate and tone, although he had to purse his lips to obtain enough oxygen to speak. He

did not have psychomotor agitation nor retardation. He was very circumstantial when talking. He cried when discussing the shooting of his wife. He was not psychotic. He was not suicidal or homicidal. His judgment has been impulsive historically due to his medical problems, depression and substance abuse.

He was alert and oriented because it was his first wife's birthday. He was able to reproduce a visual design, although he did have some problems connecting lines. He drew a clock and correct time. He performed average on a test of verbal fluency. He was able to register three items and recall two correctly after five minutes only with prompting. He confabulated the third item.

Brief Neurological Screening Examination:

He had vertical and horizontal nystagmus. His Romberg sign was negative. He was able to perform rapid motor movements without perseveration. His gait was not examined secondary to his being wheelchair bound.

Diagnoses:

Minor Neurocognitive Impairment, with behavioral disturbance secondary to multiple etiologies (Asbestosis, Hypertension, Opiate use, Alcohol use, vascular disease)

Alcohol use disorder, in a controlled environment

Persistent Depressive Disorder, with persistent major depressive episode, moderate Hypertension

Diabetes

Low back pain secondary to herniated discs

GERD

History of myocardial infarct

History cerebrovascular accident

Asbestosis

Hyperlipidemia

Sleep apnea

Review of Discovery and Plea:

On p. 7, his lawyer reported that he is "a little hard of hearing."

On p. 8, the judge noted he was taking "two blood pressure medications and so forth."

On p. 18, his former sister-in-law, Kay Newsome mentioned his heart attack.

On p. 18, Kim Dennis, his other daughter-in-law referred to his son Joseph's death in 2009. She testified about his relationship with his grandchildren. She asked for a restraining order.

On p. 24, his attorney noted he had been on disability since 2006. He noted he had heart problems, asbestosis and a tumor in his lung in 2010.

Description of Offense:

He said in 2012 he was sleeping in his recliner and his wife was sleeping on the couch. He reported he had a five-bedroom trailer. He had a gun collection, and he collected guitars. He reported he quit taking his Cymbalta, quit going outside and that he had to

pay people to carry him to various appointments. He said he remembered having a gun and he remembered his wife say: "what are you going to do shoot me? Why don't you take me out of my misery?" He reported he called 911 and called his stepson. He reported his offense was like: "something on TV like a dream." She was shot in her left chest. He reports that "the word" was on the street he was taking Fentanyl® patches and had difficulty remembering what was going on due to being on such a strong pain medications. He reported that he "missed two or three days prior to his offense but can remember talking to his son He reported when he was arrested, he remembered being in a cell with "two guys. I couldn't dial the number for my daughter. ...They carried me to the hospital." He described opiate and benzodiazepine withdrawal. He states that he was placed in a padded suicide cell. He said that his ex-wife and daughter came to visit him, and he told them he was going fishing. He reports that his wife was also on high doses of medication, although he did not know the exact medications.

Opinions

1. He was competent to stand trial. He was able to answer all questions posed to him. His attorney reported that Mr. Hilton's intentions were to plead guilty and spare the family from going through a trial. Mr. Hilton reported to the undersigned that he took a guilty plea because his lawyer said he would get more time. He stated he did not have anything to say at his plea, which is consistent with the transcript. Mr. Hilton reported that during his plea, he did not know what was going on because he couldn't hear. He reported until he read the transcript, and he didn't realize the judge was trying to tell him to go to trial, "over and over again." The transcript did note that Mr. Hilton had trouble hearing.
2. He was able to determine legal and moral right from wrong. He called the police and reported he shot his wife. While on the telephone line with 911, he also called his stepson and told him he had shot his mother. In his statement, he also reported he got oxygen for her and saw that she was shot under her arm. He reported the offense was: "like something on tv. Like a dream."
3. He was unable to conform his conduct to the requirements of the law. He described he and his wife as two "bullhead" (sic) people going at it. In his statement, he reported: "It has been building up for about an hour and it just escalated to that point and before I had a chance to think, I shot her." In his 911 call, he reported: "She kept going on and on and I could not take it anymore." He reported a three-year depression. He stated after his son died, he did not go outside anymore and paid people to carry him to appointments. He reported he had stopped taking his Cymbalta. Symptoms of irritability and impulsivity can be exacerbated by depression.

Recommendations:

1. If he is granted a new trial, his medical records from SCDC should be obtained to confirm his diagnoses and treatments.
2. His medical records from the time of the offense should be obtained to determine the amount of Fentanyl he was taking and to determine if it was being abused.
3. His medical records would also be helpful to determine when he was prescribed his antidepressant.

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

Joseph D. Hilton, #355069,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

2014-CP-29-0250

ORDER OF DISMISSAL

FILED
OFFICE OF CLERK
OF COURT
2018 FEB 21 AM 10:15
CLERK OF COURT
LANCASTER, SC

This matter comes before the Court by way of an application for post-conviction relief filed on March 3, 2014, by Joseph D. Hilton (Applicant). Respondent made its Return on or about June 18, 2014. An evidentiary hearing into the matter was convened on July 18, 2017, at the Lancaster County Courthouse in Lancaster, South Carolina. Applicant was present and represented by Nathan J. Sheldon, Esquire. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's plea counsel, Mike Lifsey, Esquire also testified as did Dr. Donna Schwartz Maddox. This Court had before it a copy of the records of the Lancaster County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's guilty plea, the PCR application, Respondent's Return, Applicant's records from the Department of Corrections and a copy of Dr. Maddox's mental health evaluation. After reviewing the record and everything presented, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to the Lancaster County Clerk of Court's orders of commitment. On February 11, 2013, shortly before midnight the 911 center in Lancaster County got a call from Applicant. In this call Applicant said, "I just shot my wife" and I think she is dead. GP Tr. pg. 9. Applicant's explanation was, "She just kept on and on, I could not talk to her." GP Tr. pg. 9. Applicant indicated it was a domestic argument. Applicant waived presentment to the Lancaster County Grand Jury for murder (2013-GS-29-0665). Mike Lifsey, Esquire represented Applicant. On April 18, 2013, Applicant appeared before the Honorable J. Ernest Kinard Jr., where he pled guilty to the lesser included offense of voluntary manslaughter. Pursuant to negotiations, Judge Kinard sentenced Applicant to twenty-five years imprisonment. Applicant did not appeal his plea or sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. No mental evaluation pursuant to Blair v. State.
 - b. Did not seek a sentence reduction.
 - c. Did not thoroughly investigate the case.
2. "Solicitor Barfield prejudiced himself in this case when he added 5 yrs. to the sentence just for himself, according to a conversation with my son."

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

Plea Counsel's Testimony

Plea counsel was called on direct examination to testify by Applicant. Plea counsel testified he represented Applicant in this case and Applicant was charged with murder. He testified Applicant was involved in a domestic altercation in which Applicant shot his wife and was arrested for the murder at the scene of the crime. He testified his office was appointed

shortly after Applicant's arrest and he went to see him on February 20, 2013, about a week or week and a half after he had been arrested. He testified Applicant pled on April 18, 2013, approximately two months after the crime. Prior to the plea proceeding, plea counsel testified he met with Applicant six different times in those two months.

Counsel testified he asked Applicant about any medical or mental health conditions during their initial meeting. He testified he never felt Applicant needed to have a psychiatric evaluation based on their conversations and meetings. He testified that while Applicant had numerous medical conditions, it was his understanding they were physical health problems, not mental health problems. He testified Applicant seemed to understand what was going on and was able to answer questions about his case and also the questions he posed to Applicant. He testified there was no overt indication of Applicant being delusional or suffering any psychosis that he could see from his perspective.

Plea counsel testified Applicant pled guilty to a negotiated sentence of twenty-five years to voluntary manslaughter. He testified the State's initial plea offer was for murder for thirty years. He testified he talked to Applicant about the initial plea offer to murder and Applicant rejected this plea offer. Plea counsel testified he continued negotiating with the solicitor and asked for a plea offer of twenty years for voluntary manslaughter. He testified Solicitor Douglas Barfield would not agree to a twenty year plea offer but they did reach an agreement for twenty-five years. He testified in negotiating the plea offer he used Applicant's age and physical condition as mitigating circumstances. He testified this was still a significant sentence given Applicant's age as he was in his sixties.

Plea counsel testified Applicant waived presentment to the grand jury and pled within two months of being arrested. He testified this was unusual and he had never done that before but

he did at the request of Applicant. He testified he thought the State had a very good murder case based on Applicant's statements to law enforcement and his 911 call in which he basically confessed to the murder. He testified Applicant was always very remorseful and sorry for the impact on his family. Plea counsel testified he remembered from the very beginning of his representation of Applicant that Applicant did not want to go to trial. He testified he met with family members of Applicant. He testified he never had a defendant pled guilty so soon with the likelihood the sentence would probably be a life sentence given Applicant's health issues. He testified the expediting of taking the plea was not a condition of the offer. He testified he did not believe waiting longer would have made the plea offer any better. He testified he did not think it was necessary to wait for the Applicant to plead in order to get more mitigation information because the State had a good case and Applicant's case got a decent amount of public attention. Plea counsel finally testified he did not think the plea offer was ever going to be a recommendation offer or anything like that.

On cross-examination, plea counsel testified he had been practicing law since 1991 and practicing criminal law since 1994. He testified during the course of his representation he never got the sense Applicant was suffering from any type of mental illness. He further testified he did not see any evidence of delusional thinking or schizophrenia. He testified he was not a doctor but he had represented a number of mentally ill people, however he did not see anything that cried out to him that Applicant was suffering from a mental illness. Plea counsel testified Applicant seemed to understand the charges he was facing in his case and also understand the evidence the State had against him. He testified he went over Applicant's charges and constitutional rights with him. He testified during his meeting with Applicant, Applicant understood everything they were talking about. He testified Applicant never told him that he had a mental illness or had been

diagnosed with any mental illness. Plea counsel testified he became aware Applicant was taking antidepressants but he did not see any indication Applicant was suffering from depression or that it affected Applicant's competency to stand trial and ability to assist his own defense.

Dr. Donna Schwartz Maddox's Testimony

Prior to testifying, Dr. Maddox was qualified as an expert in forensic psychiatry with Respondent consenting. Dr. Maddox did however testify that she was a physician licensed to practice medicine in South Carolina and Georgia. Dr. Maddox graduated from the University of South Carolina School of Medicine in 1989 and retired from the South Carolina State Department of Mental Health after twenty-eight years. Additionally, Dr. Maddox's report of Applicant's psychiatric evaluation was admitted into evidence without objection from Respondent. Dr. Maddox testified she was a general and forensic psychiatrist and was retained by Applicant to perform an evaluation of him. She testified she examined him on January 12, 2017, at the Lee County Institution. Dr. Maddox testified she spent two hours with him conducting a psychiatric examination that included checking Applicant's cognitive function. She testified she also gave Applicant a neurological screening evaluation. She testified Applicant had a very long and complicated medical history and it was very important to determine the extent of his medical history. She testified she also performed a psychiatric history of Applicant because he had a history of treatment for depression. She testified as the interview with Applicant progressed, she realized because of his numerous medical conditions and some of the drugs he was abusing and taking at the time of the crime, she had some concerns Applicant had cognitive impairment. She testified based on her interview it was clear he had some deficits that he was reporting. Dr. Maddox testified because of this, she performed a very thorough mental status examination that looked at some of Applicant's cognitive domains in which she found he had

impairments.

After being asked how she could evaluate someone four years after a crime had occurred and rendered an opinion, Dr. Maddox testified she was asked to look at Applicant's competency and render an opinion based on her evaluation of the transcript from Applicant's guilty plea. She testified she was able to look at Applicant's words and follow his interactions in court. Additionally, she testified she was also able to render an opinion by learning the dates of some of his illnesses. Dr. Maddox testified competency to stand trial is a present capacity and it is the ability to understand the proceedings while criminal responsibility looks at your behavior at the time of the offense to determine what you were thinking and whether your mental state had something to do with your crime.

She further testified guilty but mentally ill meant that at the time of the offense one was suffering from an illness that impaired his capacity to conform his conduct. She testified in rendering her opinion she looked at Applicant's medical history and medications he had been taking. She testified Applicant's ultimate diagnosis was that Applicant had a little bit of brain impairment, cognitive impairment and long-standing depression. She testified in her medical opinion, Applicant was competent to stand trial and knew what he was doing when he committed the murder. She further testified she was able to rule out Applicant was not guilty by reason of insanity because Applicant had called 911 to tell them he shot his wife as well as calling other people to tell them.

Dr. Maddox testified she did diagnosis Applicant guilty but mentally ill. She testified she diagnosed Applicant guilty but mentally ill based on his history of longstanding depression and chronic illness. She testified based on Applicant's history, prior treatment for depression, present treatment of depression, continued symptoms of depression, and then his reports of being

irritable and certainly the 911 transcript, it would have been her opinion that because of his depression and the cognitive impairment that he lacked the capacity to conform his conduct. She testified pleading guilty but mentally ill and how it affects the outcome of a case is up to a judge. She testified different judges consider mental illness mitigating in terms of looking at what kind of offense versus someone who does not have a mental illness. She testified what pleading guilty but mentally ill means legally is once that a person enters the Department of Corrections they are admitted directly into Gilliam Psychiatric Hospital instead of going to regular reception and evaluation. Dr. Maddox concluded by testifying in this case Applicant has been treated by the best psychiatrist at the Department of Corrections and is getting the mental health care he would have received if he pled guilty but mentally ill originally.

On cross-examination, Dr. Maddox, testified her ultimate conclusion was she found Applicant competent to stand trial and he knew what he was doing when he committed this crime. She testified Applicant did not have a below average IQ or any type of mental retardation. She further testified he was above average in his intellect.

Applicant's Testimony

Applicant testified plea counsel represented him and they first met within a few days of Applicant's arrest. He testified he met with plea counsel several times over the course of two months. Applicant testified that what plea counsel testified to sounded pretty accurate. He testified the plea offer was as good as he was going to get so he took the twenty-five years. He testified he understood that he waived presentment to the grand jury and he understood what that meant. Applicant testified he waived presentment to expedite the process. He testified he had a pretty long history of health issues and it was hard to sometimes get the records but they tried to get all they could for the guilty plea hearing. He testified when he had heart surgery he felt as

though he never fully got over it so he started taking medications for his nerves and depression. He testified he became disabled in 2006 after his first heart attack and his son died in 2009 of a massive heart attack. He testified he was married to his wife for close to twenty-five years. Applicant testified he discussed his history of depression with plea counsel as best he could. He testified his case was resolved in two months because he wanted to get on through it so it would not have as much problems on the family.

On cross-examination Applicant testified he plead guilty because he wanted to get it over with and spare his family the pain of going through a trial. Applicant testified he knew what he was doing when he committed the crime.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction, relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate

assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Failure to get a mental health evaluation

Applicant alleges Counsel was ineffective for failing to have him evaluated pursuant to State v. Blair, 275 S.C. 529, 273 S.E. 2d 536 (1981). In a PCR action, a petitioner has the burden of proving by a preponderance of the evidence that he was incompetent at the time of his guilty plea. Matthews v. State, 358 S.C. 456, 458, 596 S.E.2d 49, 50 (2004) (quoting Jeter v. State, 308

S.C. 230, 232, 417 S.E.2d 594, 595-596 (1992). Here, plea counsel testified at no time did he feel Applicant needed to have a psychiatric evaluation. Additionally, he testified Applicant had numerous medical problems but they were physical health problems not mental health problems. He further testified Applicant seemed to understand what was going on and was able to answer questions about his case and also the questions he posed to Applicant. Finally, he testified there were no overt indications of Applicant being delusional or suffering any psychosis that he could see from his perspective. Notwithstanding plea counsel's testimony, Dr. Maddox testified Applicant was competent to stand trial. Moreover, Dr. Maddox testified Applicant knew what he was doing when he committed this crime. This Court finds there was ample testimony on why Counsel did not get Applicant tested. This Court finds Applicant has failed to meet his burden of proving Counsel was ineffective for failing to request a mental evaluation. Therefore, this allegation is denied and dismissed with prejudice.

Failure to investigate and present mitigation evidence

Applicant alleges Counsel was ineffective for failing to investigate and present mitigation evidence. Additionally, Applicant alleges had Counsel investigated his long health history he could have used that information as mitigation during his guilty plea. Applicant was ultimately given a mental health evaluation prior to his evidentiary hearing and Dr. Maddox rendered an opinion that Applicant was competent to stand trial but was unable to conform his conduct to the requirements of the law. She opined that Applicant should have pled guilty but mentally ill. Plea counsel testified in negotiating the plea offer he used Applicant's age and physical condition as mitigating circumstances. Additionally, plea counsel testified Applicant did not want to prolong his case and put his family through a trial as he was well aware of what he did.

This Court finds that Counsel was not ineffective for failing to investigate. Moreover, Applicant himself testified he plead guilty because he wanted to get it over with and spare his family the pain of going through a trial and he knew what he was doing when he committed the crime. This Court finds Counsel did investigate and use Applicant's long term health problems as leverage in negotiating a plea deal on behalf on Applicant. Additionally, this Court finds Applicant plead guilty pursuant to a negotiated plea and while Counsel's mitigation was more than sufficient nothing additionally he presented could have affected the duration of the sentence Applicant received given the negotiated offer.

Furthermore, as Dr. Maddox correctly testified to pleading guilty but mentally ill means once that a person enters the Department of Corrections they are admitted directly for treatment instead of going to regular reception and evaluation. Pursuant to S.C. Code Ann. §17-24-70 if a verdict is returned of "guilty but mentally ill" the defendant must be sentenced by the trial judge as provided by law for a defendant found guilty, however: "If the sentence imposed upon the defendant includes the incarceration of the defendant, the defendant must first be taken to a facility designated by the Department of Corrections for treatment and retained there until in the opinion of the staff at that facility the defendant may safely be moved to the general population of the Department of Corrections to serve the remainder of his sentence."

Here, had the Applicant been tested prior to pleading guilty and been found guilty but mentally ill, the plea judge would have still been required to sentence Applicant the same way as a person who simply pleads guilty and is treated no different. As this Court previously noted, Counsel took Applicant's age and physical condition as mitigating circumstances to the solicitor to negotiate knowing the solicitor had a pretty good case. It would be speculative to suggest the solicitor would alter his plea offer because of this information, notwithstanding the fact the plea

judge in this case could only accept or reject the negotiated plea. As equally as important, this Court finds compelling Dr. Maddox's testimony that Applicant has been treated by the best psychiatrist at the Department of Corrections and is getting the mental health care he would have received if he pled guilty but mentally ill originally. Because of all these things, this Court finds Applicant has failed to meet his burden of proving Counsel was ineffective for failing to investigate and present mitigation evidence. Therefore, this allegation is denied and dismissed with prejudice.

Prosecutorial Misconduct

In his Application Applicant alleged Solicitor Barfield prejudiced himself in this case when he added five years to the sentence just for himself, according to a conversation with my son. Applicant did not present any evidence on this allegation at the PCR hearing. Accordingly, this Court finds Applicant failed to prove there was any evidence of prosecutorial misconduct. Accordingly, this Court denies and dismisses this allegation.

CONCLUSION

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

This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice

of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. Reffer to Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 14 day of February, 2018.



R. KNOX MCMAHON
Presiding Judge
Sixth Judicial Circuit


_____, South Carolina