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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County

Honorable William H. Seals, Circuit Court Judge

EDWARD L. MORRIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000520

APPENDIX

VICTOR R. SEEGER
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

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Rembert Dennis Building
1000 Assembly Street
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 2 COUNTY OF HORRY) No. 2016 GS 26 0956

3

4 STATE OF SOUTH CAROLINA)

5)

6 Versus) TRANSCRIPT OF RECORD

7)

8 EDWARD LEON MORRIS)

9 Defendant)

10

11 April 4, 2016
 12 Taken in Georgetown,
 South Carolina

13 B E F O R E :

14 HONORABLE KRISTI L. HARRINGTON, Judge

15

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

17 For the State: L. RICHARDSON, Esq.
 18 Assistant Solicitor

19 For the Defendant: J. M. LONG, III, Esq.

20

21 Reporter Present: MIA PERRON

22

23 HARRIET P. BENNETT
 Reporter, S. C. Court Administration
 46 Regency Oaks Drive
 24 Summerville, S. C. 29485

25

1 (The within matter came before the Court for hearing
2 on April 4, 2016)

3 (Defendant Edward Leon Morris sworn by the Clerk for
4 purposes of this hearing)

5 SOLICITOR: Your Honor, this is the State of South
6 Carolina versus Edward Leon Morris. It is a true-billed
7 Indictment, 2016 GS 26 956, charging him with the offense
8 of murder.

9 It comes before the Court, Your Honor, as a negoti-
10 ated plea to thirty years.

11 Your Honor, this is an Horry County plea that we are
12 taking in Georgetown.

13 THE COURT: You represent Mr. Morris, Mr. Long?

14 MR. LONG: I do, Your Honor.

15 THE COURT: Have you explained to your client the
16 charge he is facing and the possible punishment, as well
17 as the consequences of the plea?

18 MR. LONG: I have, Your Honor.

19 THE COURT: Did you also explain to your client he
20 is not in Horry County?

21 MR. LONG: That's correct, Your Honor. I explained
22 the reason for the Georgetown plea, and I believe he is
23 willing to waive jurisdiction for the plea.

24 THE COURT: Have the family members been notified?

25 SOLICITOR: They have, Your Honor, and they are here

1 present in the Courtroom. They will be introduced at
2 the appropriate time.

3 THE COURT: Thank you.

4 Mr. Morris, you are here to plead guilty on Indict-
5 ment Number 2016 GS 26 956. Do you understand you are in
6 Georgetown County this morning?

7 DEFENDANT: Yes, maam.

8 THE COURT: You have a right to have this case heard
9 in Horry County. Do you understand that?

10 DEFENDANT: Yes, maam.

11 THE COURT: Do you wish to proceed with this plea
12 here in Georgetown County?

13 DEFENDANT: Yes, maam.

14 THE COURT: Sir, you have negotiated a sentence for
15 thirty years. Do you understand that?

16 DEFENDANT: Yes, maam.

17 THE COURT: This is a violent and a most serious of-
18 fense. Do you understand what those two classifications
19 mean to you?

20 DEFENDANT: Yes, maam.

21 THE COURT: Can you explain to me what violent means
22 to you?

23 DEFENDANT: Violent means it has eighty-five percent.

24 THE COURT: And what does most serious mean to you?

25 DEFENDANT: Most serious means if I get another

1 charge . .

2 THE COURT: What is that consequence to you in your
3 future?

4 DEFENDANT: . .

5 THE COURT: Maybe it was explained to you by your
6 attorney in terms of strikes. Does that sound familiar
7 to you?

8 DEFENDANT: Yes, maam.

9 THE COURT: This is now a most serious strike, and
10 in the future if you commit another serious or most ser-
11 ious offense the Solicitor can seek for you and serve you
12 with the possibility of life without parole.

13 Do you understand that?

14 DEFENDANT: Yes, maam.

15 THE COURT: You still wish to go forward here today?

16 DEFENDANT: Yes, maam.

17 THE COURT: If after hearing the facts and your prior
18 record I cannot accept this, I will allow you to withdraw
19 your plea. Do you understand that?

20 DEFENDANT: Yes, maam.

21 THE COURT: I cannot give you any more time than
22 that and I also cannot give you any less time. Do you
23 understand?

24 DEFENDANT: Yes, maam.

25 THE COURT: Tell me about yourself. How old are you?

1 DEFENDANT: Thirty-three -- thirty-three years old.

2 THE COURT: How far did you go in school?

3 DEFENDANT: GED.

4 THE COURT: How far did you go in school? What was
5 your last grade?

6 DEFENDANT: Last grade was tenth.

7 THE COURT: What type of work do you do?

8 DEFENDANT: Cook and paint.

9 THE COURT: I hear you have been in custody approxi-
10 mately three hundred and ninety-seven days. Is that cor-
11 rect?

12 DEFENDANT: Yes.

13 THE COURT: Are you married? Do you have children?

14 DEFENDANT: No, I'm not married, and I have kids.

15 THE COURT: How old are your children?

16 DEFENDANT: (Inaudible)

17 THE COURT: Have you ever been treated for the abuse
18 of drugs or alcohol?

19 DEFENDANT: No, maam.

20 THE COURT: Have you ever been treated for mental
21 illness?

22 DEFENDANT: No, maam.

23 THE COURT: Are you under the influence of any drugs
24 or alcohol here today?

25 DEFENDANT: No, maam.

1 THE COURT: Sir, you do not have to plead guilty.
2 By pleading guilty you are giving up certain rights, your
3 right to a jury trial, your right to have a jury deter-
4 mine your guilt beyond a reasonable doubt in your case
5 from evidence presented to them, and your right to present
6 to the jury any evidence you wish to produce.

7 You have explained all of that to him?

8 MR. LONG: That is correct, Your Honor.

9 THE COURT: Do you give up your right to a jury
10 trial?

11 DEFENDANT: Yes, maam.

12 THE COURT: You are also giving up your right against
13 self-incrimination, which is your right to say nothing
14 at all.

15 I am going to ask you a few questions about the facts
16 and you give up that right.

17 You are also giving up your right to confront and to
18 be confronted by the witnesses against you, as well as
19 the right to call witnesses in your own behalf.

20 Do you understand that?

21 DEFENDANT: Yes, maam.

22 THE COURT: And you are giving up any defense that
23 you may have to this charge. Do you understand that?

24 DEFENDANT: Yes, maam.

25 THE COURT: Understanding the charges, understanding

1 the possible punishment you are facing when you enter this
2 plea, how do you plead to murder?

3 DEFENDANT: Guilty.

4 THE COURT: Are you pleading guilty because you in
5 fact are guilty?

6 DEFENDANT: Yes, maam.

7 THE COURT: Has anybody promised you anything, or
8 threatened or forced you to plead guilty here today?

9 DEFENDANT: No, maam.

10 THE COURT: Whose decision was it for you to plead
11 guilty?

12 DEFENDANT: It was my decision to plead.

13 THE COURT: Have you been satisfied with the services
14 of your attorney?

15 DEFENDANT: Yes, maam.

16 THE COURT: Any complaints about the way he has hand-
17 led your case?

18 DEFENDANT: No, maam.

19 THE COURT: You have the right to appeal the plea or
20 any sentence I impose, but you or your attorney must do
21 so within ten days. Do you understand?

22 DEFENDANT: Yes, maam.

23 THE COURT: Please listen to the facts.

24 Madam Solicitor?

25 SOLICITOR: Thank you, Your Honor.

1 On February the 25th of 2015 in the Myrtle Beach sec-
2 tion of Horry County, this Defendant approached the vic-
3 tim. Your Honor, they did know each other for a brief
4 amount of time, but they did know each other.

5 They had been hanging out together that night; had
6 been out a little bit drinking. At some point they were
7 in an altercation and in the Denny's parking lot the vic-
8 tim was shot and killed by this Defendant.

9 THE COURT: Does he have a record?

10 SOLICITOR: Yes, maam, Your Honor. He has a 2000
11 shoplifting; a 2001 breaking and entering an auto; posses-
12 sion of a stolen vehicle in 2003; burglary second, violent
13 in 2010 and burglary second, non-violent.

14 Also present in the Courtroom, Your Honor, are Ser-
15 geants Tony Allen and Jeremiah Heath with the Myrtle Beach
16 Police Department..

17 THE COURT: Sir, you've heard the facts. Is that
18 what you did?

19 DEFENDANT: Yes, maam.

20 THE COURT: I find a substantial factual basis for
21 your plea and that your decision to plead guilty is freely,
22 voluntarily, knowingly and intelligently made.

23 You have indicated to the Court that you've had the
24 advice and counsel of a competent attorney, with whom you
25 have told the Court you are satisfied.

1 I hereby accept your plea to murder.

2 I'll be happy to hear from the victim's family.

3 SOLICITOR: Thank you, Your Honor.

4 THE COURT: Maam, I need you to state your full name
5 for the record, and please spell your last name.

6 MS. SUMTER: Lola Sumter, S U M T E R.

7 THE COURT: All right.

8 MS. SUMTER: I was married to Gary Sumter for almost
9 -- for thirty years, and he was a very loving husband and
10 father to our children.

11 And there is a vacant spot in our hearts. I mean,
12 my home isn't like a home any more because there is no one
13 -- there is no husband there.

14 I feel sorry for my kids and for myself. I feel so
15 empty without him. He was my strength and he was there
16 for me when he was needed, and now I am so alone. I need
17 my husband and a father for our children, but he's not
18 there any more.

19 THE COURT: Thank you, Ms. Sumter. I'm sorry for
20 your loss.

21 MS. SUMTER: Thank you.

22 THE COURT: Good luck to you.

23 Good morning, and will you please state your full
24 name and spell your last name.

25 MR. SUMTER: My name is Nathaniel Sumter. Sumter --

1 S U M T E R.

2 THE COURT: Yes, Mr. Sumter.

3 MR. SUMTER: This is difficult. He was a wonderful
4 young man and he would never hurt anyone.

5 This has destroyed the whole family. This young man
6 was wonderful. He would not have done anything wrong, so
7 the question I have is why.

8 Because it happened -- the thing happened, but, you
9 know what, God is good. Mr. Morris, I will forgive you.
10 I will forgive you but I want justice for him.

11 THE COURT: Thank you, Mr. Sumter. I'm sorry for
12 your loss.

13 Anything else on behalf of the State, Ms. Richardson?

14 SOLICITOR: No, Your Honor.

15 THE COURT: Thank you.

16 Mr. LONG: happy to hear from you regarding Mr.
17 Morris.

18 MR. LONG: Thank you, Your Honor. Very briefly,
19 Edward from the start when I was first appointed to repre-
20 sent him, has been nothing but remorseful.

21 We have discussed about his right to go to trial and
22 challenge the evidence and things of that nature, and he
23 has pretty much admitted that he shot him. He has admit-
24 ted that he wishes he could go back to that evening and
25 change the facts as they occurred and he really would.

1 It is no relief to the victim's family, but he can't,
2 and now he's going to have to serve thirty years of his
3 life without parole in order to pay for that.

4 It is in no way payment to the family, but he wants
5 them to know how sorry he is for what happened. If he
6 could take it back, he certainly would.

7 They were out drinking, had been partying for three
8 or four hours. They parked at Denny's parking lot and he
9 had passed out.

10 He awoke and a struggle ensued or disagreement, an
11 argument. He had a firearm and pulled it out and shot
12 him.

13 It was just that quick and that simple. It happened
14 that way, and he has to give up thirty years of his life.
15 His kids now will have to grow up without a dad for some
16 period of time.

17 We are asking that you accept the recommendation for
18 the negotiated sentence. It is what the State feels and
19 we feel is appropriate under these circumstances.

20 THE COURT: Mr. Morris, anything you wish to tell me
21 before I impose sentence?

22 DEFENDANT: No, ma'am.

23 THE COURT: It is the Order of the Court that on
24 2016 GS 26 956 that you be committed to the State De-
25 partment of Corrections for a term of thirty years.

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I will give you credit for three hundred and ninety-seven days.

Good luck to you, sir.

SOLICITOR: Thank you, Your Honor.

-----END OF REQUESTED TRANSCRIPT OF RECORD-----

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CERTIFICATE

I, HARRIET P. BENNETT, Court Reporter for South Carolina Court Administration, hereby certify that the foregoing Transcript was prepared from the records of Mia Perron to the best of my ability, having been heard in the Court of General Sessions for Horry County but present in Georgetown County, South Carolina, on April 4, 2016.

FURTHER, I certify that I am neither of kin nor of counsel to any party to this matter, and that I have no interest in the same.

November 12, 2016

Harriet P. Bennett

14
Galt

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
Edward L. Morris 00280698)
 Full name and prison number (if any) of Applicant.)
)
 v.)
)
 State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

16

6530

APPLICATION FOR
POST-CONVICTION RELIEF

FILED
COURT 12
FEB 10 49

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention J. Reuben Long Detention Center, Horry County
2. Name and location of Court which imposed sentence Georgetown County General Sessions Court
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016 GS 2600956 (murder)
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 4/4/16 / 30 years violent, most serious, negotiated sentence
 - (b) _____

- (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty ✓
 - (b) after a plea of not guilty N/A
 - (c) after a plea of nolo contendere N/A

7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO

8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. N/A
 - ii. _____
 - 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. _____

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

- (a) My lawyer advised me not to after I asked him to.
- (b) _____
- (c) _____

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

- (a) Ineffective Counseling
- (b) Involuntary Plea
- (c) _____

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

- (a) See Attached
- (b) Same as above
- (c) _____

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

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

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

- (a) the specific nature thereof:
 - i. N/A
 - ii. _____
 - 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. _____

11. (a) My allegations that I received constitutionally ineffective assistance of counsel by virtue of counsel's erroneous advice that I had a better chance of pleading because I had a slim chance of winning trial because the evidence in my case was in the prosecutors favor instead of the evidence helping me which was not true. Counselor never drew up arguments for my case, never asked for a lesser included offense when I requested him to, and never requested or set a motion for me to have a bond hearing while I set in the county jail for a year and two months. Through out my stay in the county jail, I only seen my lawyer 4 times and no more than 15 minutes each to prepare for my case. If my counselor would've presented facts of the evidence in my case in my court hearing or through trial, the results would've been different. The finger prints on the murder weapon was not my finger prints to put me at the crime scene. You couldn't tell if it was me on surveillance cameras. No witness wrote a statement or confess and said I did the shooting. After my court hearing, I asked my counselor to do an appeal and he stated that there's no reason to appeal because the judge made no mistakes. No appeal was drawn up. During the court hearing when my counselor and prosecutor described how the incident occurred to the judge and victims family was false and inaccurate from the confession and evidence in the case.

11. (B) My confession should've been viewed as

involuntary manslaughter because I showed no intent to murder. The time my then lived in girlfriend told detectives I was home around 3 a.m. which didn't put me at the scene of the crime that showed on surveillance cameras and was predicated that the victim was shot. There for, my plea was involuntary and I only pleaded because my lawyer convinced me to plead when I told him I didn't wanted to plead. The alleged error of counsel is a failure to advise me of a potential affirmative defense to the crime charged and the resolution of the prejudice inquiry will depend largely on whether the affirmative defense likely would have succeeded at trial. There is a potential affirmative defense that can be used with all the evidence in my case that would have succeeded at trial. Even the phone conversation they would've used would've been viewed as involuntary manslaughter instead of murder. Phone conversation showed no intent to murder. If not for counselors erroneous advice I would not have plead guilty.

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. _____

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

no, first PCR Filing

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

(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. _____

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

(a) NO, first PCR Filing

(b) _____

(c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. J.M. Long III, 203 Laurel Street, Conway, S.C. 29526
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Plea and Sentencing
 - ii. _____
 - iii. _____

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

Vacate & remand for a new trial

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

no

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

16

6560

I, Edward Morris, 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.

Edward Leon Morris

SWORN to and subscribed before me this 9th day of September, 2016.

Nancy C. Moulton (L.S.)
Notary Public

My Commission Expires: 1-23-2022

2016 OCT 12 AM 10:49

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

16

6560

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

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

Edward S. Morris
Applicant

SWORN or affirmed to and subscribed before me this
7th day of September, 2016.

Nancy C. Merchant
Notary Public

My Commission Expires: 1-23-2023

2016 SEP 12 AM 10:49

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	
Edward L. Morris,)	Case No.: 2016-CP-26-06560
S.C.D.C. No. 280698,)	
)	
Applicant,)	
)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
)	

In response to the application for post-conviction relief filed by Edward L. Morris (Applicant) on October 12, 2016, Respondent would show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the January 2016¹ term of the Horry County Grand Jury for murder (2016-GS-26-00956).² J.M. “Buddy” Long, III, Esq. represented Applicant, and Lauree Richardson Ortiz, of the Fifteenth Circuit Solicitor’s Office, prosecuted the case.

The facts of the case are straightforward: on February 25, 2015, after an evening of drinking together, Applicant shot and killed Gary Sumter in a Denny’s parking lot after an altercation. Tr. 8, ll. 5-8; p. 11, ll. 7-16. On April 4, 2016, Applicant pled guilty as indicted. The Honorable Kristi L. Harrington accepted negotiated terms and sentenced Applicant to imprisonment for a term of 30 years. Applicant did not appeal his plea or sentence.

¹ Due to a scrivener’s error, the face of the indictment indicates the January 2015 term. All other elements of the indictment point to 2016.
² Applicant was additionally indicted for possession of a weapon during the commission of a violent crime (2016-GS-26-00957) and, during the March 2016 term, armed robbery (2016-GS-26-01506). These indictments were dismissed *nolle prosequi* as part of Applicant’s plea.

II.

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

1. Ineffective Assistance of Counsel

- a. Applicant "received constitutionally ineffective assistance of counsel by virtue of counsel's erroneous advice that [Applicant] had a better chance of pleading because [Applicant] had a slim chance of winning at trial because the evidence in the case was in the prosecutor's favor instead of the evidence helping [Applicant], which was not true."
- b. "Counselor never drew up arguments for the case, never asked for a lesser included offense when [Applicant] requested him to, and never requested or set a motion for [Applicant] to have a bond hearing while [Applicant] set in the county jail for a year and two months."
- c. "Throughout [Applicant's] stay in the county jail, [Applicant] only seen (sic) [his] lawyer 4 times and no more than 15 minutes each to prepare for the case."
- d. "If counselor would've presented facts of the evidence in the case in a court hearing or through trial, the results would have been different."
- e. "After the court hearing, [Applicant] asked counselor to do an appeal and he stated that there's no reason to appeal because the judge made no mistakes. No appeal was drawn up."
- f. "During the court hearing when counselor and prosecutor described how the incident occurred to the judge and victims family was false and inaccurate from the confession and evidence in the case." (sic)

2. Involuntary Guilty Plea

- a. Applicant's "confession should've been viewed as involuntary manslaughter because [Applicant] showed no intent to murder. [At] the time, [Applicant's] then live in girlfriend told detectives [Applicant] was home around 3 A.M., which didn't put [Applicant] at the scene of the crime that showed on surveillance cameras and was predicted that that the victim was shot. Therefore, [Applicant's] plea was involuntary."
- b. Applicant "only pleaded because [his] lawyer convinced [him] to plead when [Applicant] told him [Applicant] didn't want to plead."
- c. "If not for counselor's erroneous advice, [Applicant] would not have plead guilty."

Attached to and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

III.

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced 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).

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

IV.

Applicant further claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)). Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

V.

Applicant's allegation that counsel was ineffective for failing to file a direct appeal is without merit. Following a trial, counsel is required to make certain the defendant is made fully aware of the right to appeal. Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (internal citations omitted). In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in Anders v. California, 386 U.S. 738 (1967). Id. However, the standard for a guilty plea differs. Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Id.

This allegation regarding a direct appeal may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. See Sharper, 279 S.C. 264, 305 S.E.2d 247.

VI.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP; Mangal v. State, Op. No. 27726 (S.C.Sup.Ct. filed July 19, 2017) (Shearouse Adv.Sh. No. 27 at 47). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VII.

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

VIII.

WHEREFORE, Respondent respectfully requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel and involuntary guilty plea.

Respectfully submitted,

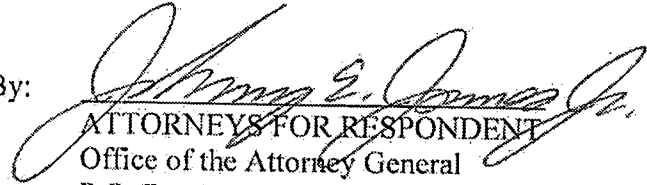
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By:



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3 Aug., 2017

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 EDWARD L. MORRIS, #280698,)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

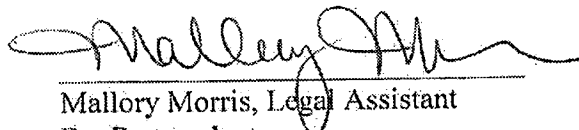
2016-CP-26-6560

AFFIDAVIT OF SERVICE BY MAIL

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

Steven W. Fowler, Esquire
1018 Highway 17 South
North Myrtle Beach, SC 29582

DATED this 3rd day of August, 2017.



 Mallory Morris, Legal Assistant
 For Respondent

1 State of South Carolina)
 2 County of Horry) Court of Common Pleas
) 2016-CP-26-06560

3
 4 Edward L. Morris)
 5 vs.)
 6 State of South Carolina) Transcript of Record
 7)

8
 9 November 30th, 2017
 10 Conway, South Carolina

11 BEFORE:
 12 Honorable William H. Seals, Judge.

13 APPEARANCES:
 14 Steven W. Fowler, Esq.
 15 Attorney for the Applicant
 16
 17 Johnny E. James, Jr., Esq.
 18 Attorney for the State
 19
 20

21 Teresa J. F. Bautz, RPR
 22 Official Court Reporter
 23
 24
 25

1 (The hearing commenced at approximately
2 10:21 a.m.)

3 THE COURT: I'm ready when you are.

4 MR. JAMES: If it may please the Court.

5 THE COURT: Yes, sir.

6 MR. JAMES: This is the matter of Edward L. Morris
7 versus State of South Carolina, Docket No.
8 2016-CP-26-6560. Mr. Morris is present in the
9 courtroom here today and is represented by Mr. Steve
10 Fowler, Esquire. Mr. Morris was indicted at the
11 January 2016 term of the Horry County Grand Jury for
12 murder. Mr. Morris was represented by Mr. Buddy Long,
13 III, Esquire on that charge.

14 Mr. Morris pled guilty on April 4th, 2016, to
15 murder. The Honorable Christy L. Harrington accepted
16 negotiated terms and sentenced Mr. Morris to
17 imprisonment for a term of 30 years, and he did not
18 appeal that plea or that sentence. And, Your Honor,
19 with that procedural history set forth, I give up the
20 floor to opposing counsel.

21 THE COURT: All right. I'm ready when you are,
22 Mr. Fowler.

23 MR. FOWLER: Your Honor, first I'd like to make a
24 motion.

25 THE COURT: Okay.

1 MR. FOWLER: I've spoken with my client and at
2 length, and he and I -- I think he has a very good
3 application, it's very thorough and it's -- in my
4 opinion. But after speaking with him here, he has
5 indicated to me that he has taken the information that
6 our office has provided, and he would like to amend his
7 PCR application, Your Honor.

8 There are several items that I've spoken with the
9 Attorney General about this morning that are relevant.
10 And Mr. Morris has indicated to me that he has been on
11 lockdown here recently. And he has been unable to go
12 to the law library or have the necessary books and
13 information provided to him that he would --

14 THE COURT: Let me ask you this. What amendments
15 does he want to make? Yeah, just go ahead and tell me
16 orally.

17 MR. FOWLER: Your Honor, he has indicated to me
18 that he is -- there was no advice regarding the trial
19 with a lesser included offense of murder with malice,
20 right. He's indicated that there's no investigation,
21 he's indicated that there was a lack of statements that
22 were provided that could have been investigated by his
23 attorney or members of the victim's sister and family.

24 There was various other assessments that were able
25 to be done, and there were no suppression motions at

1 the trial or at the court hearing that day that he
2 feels like should have been done, so -- and he can
3 certainly articulate anything, and he's very familiar
4 with it.

5 THE COURT: All right. Let me ask Mr. James, you
6 okay if he makes that amendment orally and we go
7 forward today?

8 MR. JAMES: Your Honor, the State is prepared to
9 go forward one way or the other. I would respectfully
10 oppose the amendment simply because of the fact that it
11 is last minute, and I haven't had any chance to speak
12 with Mr. Buddy Long about them. But however Your Honor
13 rules, the State is ready to proceed forward.

14 THE COURT: Let's let him make the amendment.
15 It's just a negotiated guilty plea anyway. Let's let
16 him go ahead and make those amendments on the record,
17 which he has done. And you can go forward on those
18 today.

19 MR. JAMES: Thank you, Your Honor.

20 THE COURT: All right. Call your first witness.

21 MR. FOWLER: Let me speak with my client just a
22 moment, Your Honor.

23 THE COURT: Okay.

24 (Discussion off the record.)

25 MR. FOWLER: Your Honor, I would like to call

1 Mr. Morris to the stand. And I would like to ask law
2 enforcement not undo but loosen his shackles if at all
3 possible so that he can take a look at his notes when
4 he's up there, if possible.

5 EDWARD L. MORRIS, after being duly sworn,
6 testified as follows:

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

9 THE WITNESS: Edward Morris.

10 DIRECT EXAMINATION

11 BY MR. FOWLER:

12 Q Mr. Morris, you've filed an application with the
13 Court for post conviction relief; is that correct?

14 A Yes.

15 Q All right. And you and I've spoken about this
16 before; is that correct?

17 A Yes.

18 Q Okay. And you had indicated to me today that
19 there were some amendments that you would like to add
20 to your PCR application; is that correct?

21 A Yes.

22 Q Okay. And I believe the judge is allowing you to
23 do that today. In your statement, in your application,
24 PCR application, number 11, you indicate that there was
25 -- well, first of all, in ten you say, ineffective

1 counsel in the involuntary plea. And then you have an
2 attachment to this on number 11. You state you
3 received erroneous advice from your attorney. Can you
4 tell the Court about that. What do you mean by that?

5 A What I mean by wrong advice was that when before
6 the plea hearing and when I talked to my lawyer, he was
7 telling me that with the 30 years that I had a
8 possibility, it could be a chance that I would get out
9 early. And he said if we were to go to trial, that
10 there wasn't -- they had evidence that will tie me to
11 the murder case or whatever. And he said we was --
12 like I was going to lose trial, and they would have
13 given me life.

14 So with that information when he tell me they
15 would have given me life, if we were to go to trial and
16 we were to lose, like I didn't want to plead to the 30
17 years. But I felt like I didn't have no choice but to
18 plead to the 30 years with the advice that he telling
19 me like the chances I would have had of getting out
20 early in case the law were to change, whatever, later
21 on down the line.

22 Q So why specifically do you think that was
23 erroneous advice?

24 A Because even though with the 30 years, like it
25 would -- there is no chance -- there is no chance that

1 they will change the law for me to get out early. And
2 with me thinking about going to trial and losing trial
3 to get life, you know, like I was scared. You know, I
4 wasn't going to go to trial and just say -- and when he
5 say we wouldn't have won trial, that we had a
6 possibility, a good possibility, we would lose, so...

7 Q And your claim in your statement, was that -- so
8 that advice was not true in your opinion; is that
9 correct?

10 A Correct.

11 Q Okay.

12 THE COURT: You need to ask direct questions now.

13 MR. FOWLER: I'm working on it, Your Honor.

14 THE COURT: That's clearly an illegal question.

15 Mr. James is being way too nice.

16 MR. FOWLER: I appreciate it.

17 Q Did your attorney ask for any kind of lesser
18 included offense on this?

19 A Well, before -- again, before I went into the
20 Court hearing, I had mentioned to him, I asked him if
21 he could ask for the lesser included offense, when
22 talking with the solicitors, to ask them for it.

23 Because depending on my interviews with the
24 detectives, why the victim was murdered, you know, it
25 wasn't -- it wasn't a thought -- a forethought of

1 malice, malice. Like, I didn't thought about killing
2 this person when it happened, I didn't think about it.
3 Like something had happened, it was something occurred
4 in that event that I had to shoot this person.

5 So I didn't -- so with that I told him I would
6 take manslaughter and whatever they would offer me for
7 the manslaughter. So when -- he said he would have
8 done that. But when he went in and done it -- but when
9 he came back, and I wasn't really paying attention, but
10 he didn't even mention to me that, oh, they would
11 accept or they would not accept that or whatever.

12 Q And going through your application, did he ask for
13 any kind of lesser included offense at all?

14 A Not that I know of, no.

15 Q Okay. Were you aware at the time to ask for a
16 lesser included offense?

17 A When I went into the Court hearing?

18 Q Right. Well, what was your knowledge of the law
19 and the possibility of a lesser included offense at the
20 time? Were you familiar with what a lesser included
21 offense would be or could be?

22 A Yeah. A little, I did a little.

23 Q Okay.

24 A We did actually talk about it. Like this is
25 between the charges. I had a little bit of

1 understanding, not fully. I didn't have a full
2 understanding, but I had a little.

3 Q Why didn't you have a full understanding of it?

4 A Because I didn't know much about the law then.

5 Q Okay.

6 A At that point in time.

7 Q Did you ask your attorney about clarifying your
8 knowledge about that, or not?

9 A He was explaining it. And I understand the way he
10 explained it but still not fully. I didn't understand,
11 you know, like what a lesser included offense, you
12 know, like the definition behind. Like with murder,
13 with malice is a thought of killing somebody like
14 this -- it was a thought you already had in your mind
15 that you was going to do something to this person.

16 Q Okay. So in terms of a bond hearing, changing
17 gears a little bit here, pursuant to your application,
18 was there any kind of bond hearing held for you while
19 he was representing you?

20 A No. And I asked him about that like twice --

21 Q Okay.

22 A -- about a bond hearing.

23 Q How -- when did you ask him for a bond hearing,
24 roughly? You said twice.

25 A Yeah. It was the second time that he came to see

1 me, and I mentioned it to him about the bond hearing.

2 And then last time he had came to see me when we had a

3 meeting or whatever, and I mentioned it to him then.

4 And I asked him if he could approach the solicitors

5 about this, about me going up for a bond hearing.

6 Because at the time, if I would have got a bond

7 hearing, and then if they would have provided me with a

8 bond, there was more things I could have done if they

9 would have got me a bond, to help me in my case.

10 Q Okay. Were you in the county jail while he was
11 representing you, or were you at SCDC or where were you
12 located?

13 A County jail. I was in the county jail.

14 Q All right. How often did your attorney meet with
15 you?

16 A It was only three times, I seen him about three
17 times.

18 Q Okay. Did you --

19 A And...

20 Q Go ahead.

21 A The fourth time I think it was like a person that
22 worked in his office was like an investigator, he had
23 brought down videos for me to see the videos or
24 whatever.

25 Q Okay. Do you feel like that was enough time?

1 A No. I was asking for more time at the time when
2 he said I was going up for court. And I was asking him
3 if he could talk to the solicitors, see if we could get
4 more time or a continuance.

5 Q Okay.

6 A And he's saying they were denying the time. And
7 like the times we would meet, I don't think it was
8 enough time for us to talk about my case and go over
9 almost exactly everything in my motion, which I didn't
10 even get my motion until about two months before I went
11 to court at the time.

12 And come to find out they had my motion way ahead
13 of time before that. So just for me like to properly
14 help him with my case, like I don't think it was enough
15 time for me to go through my motion for myself to give
16 him a couple of defenses or whatever to help him with.
17 He had it, he had my motion longer than I had it.

18 Q Well, so when did he receive -- when do you
19 believe he received the motion of discovery?

20 A It was that summertime of 2015, like July.

21 Q And when did you receive the discovery?

22 A I receive it in 2016, like January or February.

23 Q All right. And -- okay. And you said earlier
24 that was not enough time to go over it?

25 A No, it was not.

1 Q Why did -- and why not?

2 A Well, for myself, you know, being that with him
3 being my lawyer, if I would have had enough time to go
4 over it myself, it would have probably been something
5 in there that he didn't see and I would have seen, and
6 I could have mentioned it to him. And he could have
7 looked over, which it could be used as a defense when I
8 go to court or whatever. He could have tell me like
9 how we could go about a way of handling that problem.

10 Q Okay. Tell me about in the discovery or through
11 your own knowledge the fingerprints on the murder
12 weapon, tell me a little bit about that. Did you find
13 out anything about that?

14 A I had mentioned it to him --

15 MR. JAMES: Objection. Can we have a more
16 specific question than that.

17 THE COURT: Sustained.

18 Q What did you find in discovery that was
19 problematic for you? When you saw your discovery
20 packet, were there any pieces of evidence that you felt
21 was inappropriate or problematic or would help you in
22 your case? Let me strike that.

23 In your discovery, did you see anything that might
24 be able to help you in your case, any kind of evidence
25 that was favorable to you?

1 A Yes, there was.

2 Q And what was that?

3 A There was the interviews of the witnesses. You
4 know, they were -- and the things they were saying
5 about the victim and the knowledge that they have of
6 me -- which they didn't have very knowledge of me, they
7 didn't have no knowledge of me at that point in time --
8 and with the interviews and the statements with the
9 detectives, it could have been used to help me in the
10 trial.

11 And with the evidence that they find, evidence in
12 the car, you know, in the passenger side of the seat,
13 and they had took my boots when I was at the county to
14 use as evidence. And the solicitor sent a letter to me
15 and sent a letter to him saying that they was going to
16 go to the Myrtle Beach Police Department to look over
17 some evidence and that he was welcome to go along with
18 them to look at the evidence, which he never told me
19 about it.

20 And I don't think he did went because he never
21 mentioned it to me about what evidence that they went
22 to look at to use. And that could have helped me,
23 whatever evidence they had, it could at the time.

24 It was they had -- in my motion they had like sand
25 that was off of somebody's boots or whatever, shoes,

1 and they had like posted like tests about that to see
2 if it tied me -- that it was my boots are not used,
3 that they could have used at the time to say I was
4 there, okay, and that I shot this person.

5 Q Do you recall anything about fingerprints in the
6 discovery?

7 A Yeah. The fingerprints that was in there, he was
8 saying that it wouldn't have been good -- they wouldn't
9 have used that at trial, like there was no need. The
10 fingerprints on the gun wasn't my fingerprints. And
11 the test that they had in my motion showed that it was
12 somebody else's fingerprints.

13 Q As far as an appeal, did you discuss having an
14 appeal from your case with your attorney?

15 A Yeah. I did after the plea hearing, I had
16 mentioned to him and I asked him, I tell him -- asked
17 him if he could put the appeal letter.

18 Q Did he?

19 A No, he did not.

20 Q All right. In B on number 11, you state something
21 about involuntary manslaughter. What's your thoughts
22 on involuntary manslaughter versus...

23 MR. JAMES: Objection. Can we get a more specific
24 question, Your Honor.

25 THE COURT: Sustained.

1 MR. FOWLER: We're getting there, Your Honor.

2 Q Do you feel like your confession was correct on
3 the right charge?

4 A As being that, yes, to the point where I told
5 them. In the closing arguments he said that me and the
6 victim had an argument and that I shot him. It didn't
7 happen like that, no, that wasn't the truth. I was
8 attacked and I was asleep in the victim car.

9 And then when I was attacked, I woke up with the
10 victim over me. And that's why I explained to my
11 lawyer that it wasn't a thought for me to kill this
12 person, so -- and when I reacted, I was attacked that
13 led to me shooting this person.

14 So with that I was saying that that is not murder
15 with malice. Like it's manslaughter.

16 Q Did your attorney go over potential affirmative
17 defenses with you?

18 A Very few.

19 Q Which ones did he go over with you, if you
20 remember?

21 A Defenses that he went over with me is like we
22 could bring up the victim's character like using that
23 as a defense, what type of person he was that led to
24 what happened and like how he do with different other
25 people.

1 Because in my motion I have a witness saying that
2 when he hang out with other people, when he drink he
3 act totally different. That could have been used to
4 help me as a defense.

5 And another defense he could have brought about
6 was that with us drinking and not being in right mind
7 state when we drinking or whatever and the amount that
8 we was drinking, that it could have been used as
9 defense to show that it was manslaughter.

10 Q You stated to the Court earlier that you would be
11 interested in amending your application; is that
12 correct?

13 A Yes.

14 Q Okay. What are the --

15 MR. JAMES: Objection. There needs to be an oral
16 answer.

17 THE APPLICANT: Yes.

18 THE COURT: I agree, and a nonleading question.

19 Q How would you like to amend your application, if
20 at all?

21 A Well, basically that -- you got to explain it to
22 me.

23 Q You said that you would be interested in amending
24 your application; is that correct?

25 A Yeah.

1 Q Okay. Is there anything in your application now
2 that you would like to add onto your application?

3 A Yes, yes, there is.

4 Q Okay. And what would that be?

5 A I have more arguments that I would add to
6 ineffective assistance of counselling, which is that my
7 lawyer, when I had -- before I had went up for a plea,
8 when I asked him to put in for a lesser --

9 MR. JAMES: Objection. The witness is just
10 reading.

11 THE COURT: Sustained. Go ahead and just answer
12 your question in your own words. You don't have to
13 read.

14 THE APPLICANT: All right, yes, sir. Well, that I
15 was saying that my lawyer, he could have investigate
16 the crime scene and investigate the witnesses'
17 statements and interviews that he could have used in my
18 defense. If he would have done that and then like told
19 me what could have been done about it, that I wouldn't
20 have had to plead, I would have taken it to trial.

21 And that he didn't suppress motions for my two
22 interviews or my statements that I had with the
23 detectives, like what could have been done about that.
24 And saying how my interviews, how they are different or
25 what -- like what happened and why I said what I said

1 in the interviews that we could have used, I would have
2 took it to trial instead of pleading.

3 And with involuntary -- with the plea, that I
4 didn't want the plea, it wasn't a voluntary plea or
5 whatever. Like the things that he said that I couldn't
6 do at trial, if he would have told me like we could
7 bring up a lesser included offense or a charge to the
8 jury, instruction on a charge of a lesser offense, if
9 you would told me like how they're working that way, I
10 would have took it to trial. I wouldn't have plead.
11 And that he was saying that we would lose at trial, we
12 didn't have no chances at winning, that they would give
13 me life.

14 No, I felt like at the time like it was a threat
15 like I didn't have no choice but to plead. And I told
16 him I did not want to plead before that plea hearing or
17 whatever. He was telling me my chances of going to
18 trial, and it would have been best if I didn't go to
19 trial. So I felt like that forced me into a plea --
20 into pleading when I didn't want to. Like I didn't
21 have no choice to plead.

22 Q Anything else on that?

23 MR. JAMES: Objection. Not a -- it's not a
24 specific question.

25 MR. FOWLER: I'll withdraw the question, Your

1 Honor. No further questions. Your Honor.

2 THE COURT: All right. Cross?

3 MR. JAMES: Very briefly.

4 CROSS-EXAMINATION

5 BY MR. JAMES:

6 Q Mr. Morris?

7 A Yes.

8 Q Isn't it true that at the guilty plea proceeding
9 that you told the Court that you were satisfied with
10 the services of your attorney?

11 A Yes, I told him that. But when I told him that --
12 no, I didn't want to say something else, and they would
13 be like, okay, what are all -- and took it back. And I
14 would have had to go to trial.

15 And at the time I was thinking that they would
16 have took my plea back, and I would have went to trial.
17 And I wouldn't have won trial and get life. So that's
18 why I said that.

19 Q Are you telling this Court now that at that time
20 you weren't satisfied with the services of your
21 counsel?

22 A Exactly.

23 Q Isn't it true that you agreed with the facts that
24 the solicitor set forth at your guilty plea?

25 A At the time --

1 Q Well, I'll rephrase it this way, Mr. Morris. Do
2 you remember the State explaining in summary what
3 happened?

4 A Yes, I remember.

5 Q And do you remember agreeing with that?

6 A Yes, I remember.

7 Q Okay. And you went ahead and you pled guilty?

8 A Yes.

9 Q All right. Was it your decision to plead guilty?

10 A No. At the time, no. But I told them yes.

11 Q Okay.

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

13 THE COURT: All right.

14 MR. FOWLER: No questions, Your Honor.

15 THE COURT: All right, you can step down. Thank
16 you.

17 (Witness excused.)

18 THE COURT: Call your next witness.

19 MR. FOWLER: If I may speak with my client for a
20 minute.

21 (Discussion off the record.)

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

23 THE COURT: The State is recognized.

24 MR. JAMES: The State calls Buddy Long.

25 J.M. LONG, III, after being duly sworn, testified

1 as follows:

2 THE CLERK: Be seated. State your name for the
3 Court, please.

4 THE WITNESS: J.M. Long, III, Buddy Long.

5 DIRECT EXAMINATION

6 BY MR. JAMES:

7 Q Good morning, Mr. Long.

8 A Good morning.

9 Q How are you doing today?

10 A Pretty good.

11 Q How long have you been a licensed attorney in the
12 State of South Carolina?

13 A Approaching 30 years.

14 Q How much of that is criminal?

15 A 28 of it, maybe.

16 Q About how many times did you meet with
17 Mr. Morris -- or did you represent Mr. Morris on these
18 charges?

19 A Yes, I did.

20 Q All right. And how did you come to represent him,
21 were you appointed or retained?

22 A Appointed.

23 Q About how many times did you meet with Mr. Morris
24 in the course of your representation?

25 A Approximately six. There may have been other

1 short meetings, arraignments or things of that nature
2 where he was brought over for plea or things of that
3 nature, but I didn't take note of those.

4 Q So the six meetings don't count incidental --

5 A Correct.

6 Q -- courtroom appearances and contact?

7 A Correct.

8 Q Do you recall about how long those meetings would
9 have lasted?

10 A Some of them were shorter than others. Usually
11 the shortest meetings would be 15 minutes or so. Some
12 of the them would have been longer where we're going
13 over discovery materials or discussing trial defenses,
14 tactics, things of that nature. So anywhere from 15
15 minutes to 45 minutes.

16 Q Your answer to this one was already somewhat
17 implied by your answer to the previous question, but
18 did you file motions pursuant to Rule 5 and Brady?

19 A Yes.

20 Q And did you receive discovery materials from the
21 State in response to those motions?

22 A Yes. They sent discovery on a hard disc, which we
23 objected to. But ultimately we had to end up printing
24 everything off of the hard disc after getting it to
25 work. And it was probably four to 500 pages of

1 discovery material.

2 Q Did you provide a physical copy of this material
3 to Mr. Morris?

4 A Yes.

5 Q Did you review these materials yourself?

6 A Yes.

7 Q And did you go over these materials with
8 Mr. Morris?

9 A Not complete, we didn't go through all 500 pages
10 or so. But I pointed out and we discussed some of the
11 most significant items of evidence that the State could
12 use.

13 Q What were some of those more significant items?

14 A Ballistics came up as a match, the weapon found at
15 his home pursuant to a search warrant or upon arrest
16 and the slug recovered from the victim's head. There
17 was two statements by Mr. Morris, one of which, first
18 statement had an alibi defense.

19 The second statement to police, I'm thinking it
20 was within a day or two of the arrest, was basically a
21 confession of being at the scene having killed him but
22 asserting other defenses, self-defense being one.

23 Q Was there any other State's evidence that --
24 scratch that. What if anything did Mr. Morris tell you
25 about what happened?

1 A First meeting at the jail, he told me alibi,
2 didn't do it, wasn't there, things of that nature. Of
3 course, I didn't have discovery at that time to have
4 any idea that it was, you know, not correct. But his
5 girlfriend, Mae West -- and I had to get the spelling,
6 her name is M-A-E West -- was to have provided an
7 alibi. And we sent an investigator to speak with her,
8 and then I believe she called the office to confirm
9 that she would not be a good alibi witness.

10 Q Did you inform Mr. Morris that his alibi didn't
11 check out?

12 A Yes.

13 Q And what was his response?

14 A He kept insisting that his first statement to
15 police was the correct statement, and that was the one
16 concerning the alibi. This was before discovery had
17 been provided, so I didn't know about the existence of
18 a second statement at that time.

19 But once we got discovery and then confronted him
20 about that, he said that self-defense and manslaughter
21 would be the appropriate charges or the appropriate
22 tactics to take to trial.

23 Q Since he suggested voluntary manslaughter, did you
24 discuss the possibility of voluntary manslaughter?

25 A Yes. We tried to work a plea through the

1 solicitor's office on that, and they were steadfast it
2 would be a plea to murder or go to trial.

3 Q What was your gauge of the strength of the State's
4 case against your client?

5 A With ten being the strongest and one being the
6 weakest, I felt it was probably -- well, it was
7 probably nine on a conviction for manslaughter. It was
8 probably seven on a conviction for murder.

9 Q Did you explain the elements of murder and
10 voluntary manslaughter to your client?

11 A Yes.

12 Q All right. What if any defenses did you see
13 available to Mr. Morris?

14 A Self-defense. He and the victim knew each other,
15 had either been out drinking that night or met up after
16 having been drunk that night. I think they ate at
17 Denny's and then were in the car. He said he fell
18 asleep, and when he woke up the victim was sexually
19 assaulting him. And he, without thinking about it,
20 pulled the gun and shot. And that's possible for
21 self-defense. Didn't think it was probable.

22 Q Did you have any additional evidence or leads to
23 follow up on to try and corroborate Mr. Morris' version
24 of facts?

25 A No. It was pretty plain, pretty self-explanatory,

1 it was either murder, manslaughter, self-defense or
2 not.

3 Q And we've already touched on this a little bit out
4 of your previous answers, but what if any investigation
5 did you do in this case either personally or through a
6 hired investigator?

7 A Checked out the alibi issue. Other than that, we
8 were in a holding pattern waiting for trial. There was
9 not a whole lot of investigation needed at that point.

10 Q How did you go about negotiating the plea with the
11 State?

12 A Normally they send a written plea offer to respond
13 within a certain date. Normally we will mark those up
14 and strike out the charge and put a counteroffer on and
15 send those back. Then through a series of either
16 face-to-face meetings or telephone calls, then we work
17 on final negotiations.

18 Q And what were the terms that you finally arrived
19 at?

20 A Murder, negotiated, 30.

21 Q And you communicated this offer to your client?

22 A Yes.

23 Q And did you explain to him the concept of a
24 negotiated sentence?

25 A Yes.

1 Q What was his reaction when you presented the offer
2 to him?

3 A He was reluctant. He, again, wanted the
4 possibility of a manslaughter plea, and I explained to
5 him that the solicitor had just refused that from the
6 start.

7 Q Did you explain to Mr. Morris all of his
8 constitutional rights?

9 A Yes.

10 Q Right to remain silent, right to a jury trial?

11 A Yes.

12 Q Right to confront the witnesses against him?

13 A Yes.

14 Q The burden on the State to prove the case beyond a
15 reasonable doubt?

16 A Yes.

17 Q All right. Ultimately whose decision was it to
18 plead guilty?

19 A It was his.

20 Q All right. If Mr. Morris had declined that plea
21 offer and insisted on going to trial, would you or
22 could you have been prepared to proceed to trial?

23 A Yes, we were ready.

24 Q Did you explain to Mr. Morris his appellate
25 rights?

1 A Yes, I did.

2 Q Did he ever ask you to file an appeal?

3 A No. I remember right after the plea, I went back
4 into the holding cell with him -- we were in Georgetown
5 for the plea -- and asked him, you know, if he wanted
6 me to, that I would be obligated to file a notice of
7 appeal. And he said, no, he did not. And I thought at
8 that time, he's looking for a PCR for some reason, not
9 an appeal.

10 Q Did you explain to him the concept of post
11 conviction relief?

12 A I don't think so.

13 MR. JAMES: Court's indulgence.

14 Q Did you ever consider making any preliminary
15 motions to suppress any evidence prior to the plea?

16 A No. There certainly would have been motions filed
17 prior to or at trial, but not prior to the plea.

18 MR. JAMES: Thank you. I have no further
19 questions.

20 THE COURT: All right. Mr. Fowler.

21 CROSS-EXAMINATION

22 BY MR. FOWLER:

23 Q Isn't it true that he requested you to try for a
24 lesser included offense in his case? I mean, he was
25 looking for a manslaughter type plea or going to trial;

1 isn't that true?

2 A That's true.

3 Q Okay. So why did you not go to trial on the
4 manslaughter as opposed to a murder plea?

5 A Because we couldn't call the case for trial in the
6 charges for which he's to be tried. We could ask for a
7 lesser included offense during the trial and ask the
8 jury to consider that. But the State insisted and was
9 firm on calling it for trial as a murder or pleading it
10 as a murder. It wasn't our decision.

11 Q Did you discuss with him the option of actually
12 going to trial and bringing that manslaughter option up
13 at trial as opposed to the murder, what you just
14 described?

15 A Yes.

16 Q When did you go over that with him, or how did you
17 go over it with him; when did you go over it with him
18 first?

19 A It wouldn't have been within the first couple of
20 meetings because we didn't have the discovery material
21 at that time. Once we found out and talked and he
22 admitted that he was there and shot him, but then there
23 was self-defense issues, or there was no malice
24 involved, intent, that's when we began discussing those
25 issues, manslaughter.

1 Q Did you look at like going to trial and bringing
2 up the possibility of self-defense?

3 A Oh, absolutely.

4 Q Did you discuss that with him?

5 A Yes. As a matter of fact, that's primarily the
6 only defense that was available to him.

7 Q In terms of your meetings with him what was the
8 substance of those, did you -- were they each
9 substantive, or did you provide the paperwork or the
10 discovery, or how did you and he go over these
11 variances in the law and what options were available to
12 him?

13 A I couldn't tell you. There was a number of
14 meetings and many things discussed at every meeting.

15 Q Okay. Did you meet before the Court date, how far
16 in advance did you meet before the Court date rather?

17 A Probably 30 days prior to. Because it was on the
18 trial roster for April, it was to be first up on the
19 trial roster in April. We negotiated -- I finally let
20 him know that that was the final plea offer by the
21 State, murder for a negotiated 30.

22 And so they scheduled the plea in Georgetown the
23 week prior to or two weeks prior to the trial week. So
24 it would have been at or around that time that I
25 discussed with him final plea negotiations where it was

1 to take place, things like that.

2 Q Okay. In terms of discovery, he mentioned on his
3 direct about fingerprints. Are you familiar with the
4 murder weapon and --

5 A Somewhat, yes.

6 Q Okay. What's your recollection of fingerprints on
7 the murder weapon or lack thereof?

8 A I think there were two or three prints that on the
9 murder weapon that were not his, okay. The murder
10 weapon was found in the home where he was residing, and
11 I think there were others residing in that home. So
12 yes, his fingerprints were not recovered from the
13 weapon. But the weapon was recovered from his home.

14 Q Whose fingerprints were on the weapon?

15 A I don't recall.

16 Q Okay. In terms of an appeal, I think you
17 mentioned this on direct, but did he ever give you any
18 kind of inkling that he wanted to file an appeal in
19 this matter?

20 A No. I think I brought it up after, as I tend to
21 do or hope to do in every case. You know, you have a
22 right to appeal as the judge instructs him. I'm
23 obligated to file one if you wish me to file an appeal.
24 Do you wish me to file an appeal? And his answer was
25 no.

- 1 Q You stated that the Mae West person stated that
2 she wouldn't have been a good witness; is that correct?
- 3 A That's correct.
- 4 Q Did you ever go over that with my client?
- 5 A I believe I did.
- 6 Q Okay. Do you know when?
- 7 A It would have been shortly after discovering that
8 she would not be a good witness, to let him know that
9 there was problems with that. And that was at or
10 around the time when he said he shot him. You know, so
11 an alibi would have been thrown out the window at that
12 point anyway.
- 13 Q Okay. Do you keep any kind of log or records of
14 when you meet with your client -- or in this case did
15 you keep any kind of record or log of the dates and
16 times when you met with my client?
- 17 A Not every time. Sometimes those aren't entered on
18 a log. But generally on our file folders there's note
19 lines where we keep track of some of those things.
- 20 Q And do you have that with you today?
- 21 A Yes, I do.
- 22 Q Okay.
- 23 MR. FOWLER: No further questions, Your Honor.
- 24 THE COURT: All right.
- 25 MR. JAMES: One question, Your Honor.

CROSS-EXAMINATION

1
2 BY MR. JAMES:

3 Q You previously indicated the only strategy
4 available to you at trial would have been self-defense;
5 correct?

6 A Or lesser included manslaughter.

7 Q Okay. Would -- how would have investigating the
8 fingerprint been of any use to that defense?

9 A Well, you'd have to assert you committed the
10 killing, it'll have to be proven and you'd have to
11 admit that, and then have to establish the other
12 defenses for lesser included.

13 Q All right. So if you're arguing self-defense of
14 the lesser included?

15 A You have to admit to the killing.

16 MR. JAMES: All right. No further questions.

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

18 THE WITNESS: Thank you, sir.

19 (Witness excused.)

20 THE COURT: Call your next witness.

21 MR. JAMES: No further witnesses, Your Honor.

22 THE COURT: All right. I'll take it under
23 advisement and let you know something this week.

24 MR. FOWLER: Thank you, Your Honor.

25 MR. JAMES: Thank you.

1 THE COURT: Thank you.
2 (The hearing concluded at approximately
3 11:05 a.m.)
4 (End of Transcript of Record)

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Edward L. Morris,)
S.C.D.C. No. 280698,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
) Case No.: 2016-CP-26-06560
) **ORDER OF DISMISSAL**

2018 MAR 13 PM 1:32
CLERK OF COURT
HORRY COUNTY

This matter comes before the Court by way of an application for post-conviction relief filed by Edward L. Morris ("Applicant") on October 12, 2016. Respondent made its return on or about August 3, 2017. The Court convened an evidentiary hearing into the matter on Thursday, November 30, 2017, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by Stevne W. Fowler, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

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

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the January 2016¹

¹ Due to a scrivener's error, the face of the indictment indicates the January 2015 term. All other elements of the indictment point to 2016.

term of the Horry County Grand Jury for murder (2016-GS-26-00956).² J.M. "Buddy" Long, III, Esq. represented Applicant, and Lauree Richardson Ortiz, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On April 4, 2016, Applicant pled guilty as indicted. The Honorable Kristi L. Harrington accepted negotiated terms and sentenced Applicant to imprisonment for a term of 30 years. Applicant did not appeal his plea or sentence.

Present Application

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

1. Ineffective Assistance of Counsel
 - a. Applicant "received constitutionally ineffective assistance of counsel by virtue of counsel's erroneous advice that [Applicant] had a better chance of pleading because [Applicant] had a slim chance of winning at trial because the evidence in the case was in the prosecutor's favor instead of the evidence helping [Applicant], which was not true."
 - b. "Counselor never drew up arguments for the case, never asked for a lesser included offense when [Applicant] requested him to, and never requested or set a motion for [Applicant] to have a bond hearing while [Applicant] set in the county jail for a year and two months."
 - c. "Throughout [Applicant's] stay in the county jail, [Applicant] only seen (sic) [his] lawyer 4 times and no more than 15 minutes each to prepare for the case."
 - d. "If counselor would've presented facts of the evidence in the case in a court hearing or through trial, the results would have been different."
 - e. "After the court hearing, [Applicant] asked counselor to do an appeal and he stated that there's no reason to appeal because the judge made no mistakes. No appeal was drawn up."
 - f. "During the court hearing when counselor and prosecutor described how the incident occurred to the judge and victims family was false and inaccurate from the confession and evidence in the case." (sic)
2. Involuntary Guilty Plea
 - a. Applicant's "confession should've been viewed as involuntary manslaughter because [Applicant] showed no intent to murder. [At] the time, [Applicant's] then live in girlfriend told detectives [Applicant] was home around 3 A.M., which didn't put [Applicant] at the scene of the crime that showed on surveillance cameras and was predicted that that the

² Applicant was additionally indicted for possession of a weapon during the commission of a violent crime (2016-GS-26-00957) and, during the March 2016 term, armed robbery (2016-GS-26-01506). These indictments were dismissed *nolle prosequi* as part of Applicant's plea.

- victim was shot. Therefore, [Applicant's] plea was involuntary.”
- b. Applicant “only pleaded because [his] lawyer convinced [him] to plead when [Applicant] told him [Applicant] didn’t want to plead.”
 - c. “If not for counselor’s erroneous advice, [Applicant] would not have plead guilty.”

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

A. Ineffective Assistance of Counsel & Involuntary Guilty Plea

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

“[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). “Judicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is

all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

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

Applicant further claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a

full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)).

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

1. Misadvice of Counsel

Applicant's alleges Counsel erred in advising him to plead guilty, and that Applicant only pled guilty because his lawyer told him to do so.

At the plea proceeding, Applicant told the Court that it was his decision to plead. (Tr. 7, ll. 10-12.) Applicant denied that anybody promised him anything or forced him to plead guilty. (Tr. 7, ll. 4-9.) Applicant affirmed the facts as briefly summarized by the State; to wit:

On February the 25th of 2015 in the Myrtle Beach section of Horry County, this Defendant approached the victim. Your Honor, they did know each other for a brief amount of time, but they did know each other.

They had been hanging out together that night; had been out a little bit drinking. At some point they were in an altercation and in the Denny's parking lot the victim was shot and killed by this Defendant.

(Tr. 8, ll. 1-8; affirmed at l. 19.)

At the evidentiary hearing, Applicant testified Counsel told Applicant prior to trial that he might someday get out of prison if he pled in exchange for a 30 year sentence, but that he would probably receive a life sentence if he went to trial and was convicted. When asked to gauge the strength of the State's case against Applicant, Counsel testified on a one-to-ten scale, with ten being the strongest: the State had a "seven" for murder and a "nine" for the lesser-included offense of manslaughter. Counsel recalled Applicant insisted on an alibi defense until confronted with his second statement to law enforcement, and that Counsel's investigation of Applicant's purported alibi witnesses didn't check out. Counsel noted that although fingerprints not belonging to Applicant were found on the murder weapon, the weapon was recovered from Applicant's own home. Counsel confirmed that Applicant was reluctant to plead guilty, but ultimately accepted the negotiated plea.

The Court finds no error in Counsel's advice. Applicant was charged with murder and, if convicted, did in fact face a potential sentence of 30 to life. By pleading guilty, Applicant received a negotiated sentence of 30 years and, as he was aged 33 at the time of his plea, may again walk free upon service of his sentence. Given the facts of the case as they are presented to

this Court, conviction was indeed possible, if not extremely likely. Counsel made Applicant aware of his potential defenses and their weakness, as is further explored in the next section of this order. As such, Counsel's advice was well within the range of competence demanded of attorneys in criminal cases, and the Court finds that Applicant's plea was knowingly, intelligently, and voluntarily entered. Applicant's request for relief by way of this allegation is **DENIED.**

2. Failure to Prepare for Trial

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

At the plea proceeding, Applicant told the Court that he was satisfied with the services of Counsel and that he had no complaints regarding Counsel's handling of his case. In his application, Applicant claimed Counsel met with him four times, with no meeting lasting more than 15 minutes. At the evidentiary hearing, Applicant testified he met with Counsel three times,

and that the fourth meeting was only with Counsel's investigator. Applicant testified he wanted more time with Counsel. Applicant argued Counsel should have investigated the crime scene, witness interviews, and done more to suppress evidence. Applicant pointed out somebody else's fingerprints were found on the murder weapon. Applicant denied he was told of any potential defenses. Applicant asserted Counsel should have argued that Applicant and the victim had been out drinking.

Counsel testified he met with Applicant six times, with each meeting lasting between 15 and 45 minutes. Counsel confirmed receipt of discovery and that he reviewed it. Counsel reviewed the most significant portions with Applicant—in particular the ballistics that matched the slug pulled from the victim to the gun recovered from Applicant's home, and Applicant's two statements to law enforcement, the first of which offered an alibi, and the second of which offered a defense of self-defense. As previously noted, Counsel acknowledged the fingerprints that did not match Applicant. Counsel testified he investigated Applicant's alibi, but that the purported alibi witness Mae West did not check out, and that he told Applicant that the witness was not a good one. In any event, Applicant's deficient alibi could not be reconciled with his second statement to law enforcement. Counsel recalled that the only strategy apparent to him was self-defense, but that in light of the facts of the case, the probability of prevailing on that strategy was low, as he could not find anything to corroborate Applicant's version of events. Counsel explained the strategy and the elements to Applicant. Counsel testified the case did not demand much investigation.

The Court finds no deficiency on the part of Counsel, nor prejudice therefrom. No potential witnesses or their testimony were presented at the evidentiary hearing, so the Court is left with mere speculation as to how they could have assisted in Applicant's defense. Nor has Applicant presented any other compelling defenses that could have been developed given a

greater commitment of time by Counsel. Rather, Applicant offers inadequate support for two mutually exclusive lines of defense which were apparent to Counsel prior to the plea. Counsel's testimony demonstrated familiarity with the facts of the case and reflected substantial review and investigation well within the range of competence expected of attorneys in criminal cases. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

3. Failure to Seek Lesser-Included Offense

Applicant argues Counsel was ineffective for failing to seek a lesser-included offense of voluntary manslaughter. A defendant has no constitutional right to plea bargain, and prosecutors may choose to offer or not offer a plea deal in their broad discretion. Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999).

At the evidentiary hearing, Applicant testified he asked Counsel to seek a plea to voluntary manslaughter. Applicant offered that he did not think about killing the victim and wasn't thinking when he shot the victim. Applicant recalled that Counsel explained lesser-included offenses to him. Applicant denied having any malice aforethought in killing the victim, and argued he should have been permitted to plead to voluntary manslaughter. Counsel testified the State wouldn't budge on murder and would not agree to any offer of a plea to voluntary manslaughter.

The Court finds no deficiency on the part of Counsel, nor prejudice therefrom. Applicant had no right to plead to a lesser-included offense. Counsel endeavored to secure such a plea and was rebuffed. There was nothing more he could have done to pursue Applicant's request. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

4. Failure to seek Bond Hearing

Applicant alleges Counsel was ineffective in failing to seek a hearing on bond. At the evidentiary hearing, Applicant testified that he asked for a bond hearing, but never got one.

Applicant never offered what, if anything, different he or Counsel could have done to prepare or explore defenses had he been out on bond, rather than incarcerated prior to trial. As such, there is no evidence before this Court to show any possible prejudice to Applicant resulting from his pre-trial detention. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

5. Failure to Suppress Evidence

At the evidentiary hearing, Applicant requested to amend his application to allege that Counsel was ineffective for failing to file any motions to suppress evidence at the plea proceeding. Counsel testified at the evidentiary hearing that he would have made such motions prior to trial, and explained the strengths and limited weaknesses in the State's evidence, as explored in prior sections of this order. The Court is satisfied by Counsel's response and finds no deficiency on his part, nor prejudice therefrom. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

6. Failure to File a Notice of Appeal

Applicant alleges Counsel was ineffective for failing to file a notice of appeal after he asked Counsel to do so. Applicant alleges that he was denied the right to a direct appeal of his conviction and sentence. "Following a trial, counsel is required to make certain the defendant is made fully aware of the right to appeal." Turner v. State, 380 S.C. 223, 670 S.E.2d 373 (2008) (citing White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974)). In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in Anders v. California, 386 U.S. 738 (1967). Id. Where an Applicant does not knowingly and voluntarily waive his right to an appeal, and where Counsel fails to either initiate that appeal or comply with Anders procedure, "White permits consideration of the full trial record on [an] issue in conjunction with appellate review of the PCR proceeding under an exception to the

prohibition against appellate courts considering appeals in the absence of notice of direct appeal given and timely served." Smith v. State, 309 S.C. 413, 415, 424 S.E.2d 480, 481 (1992) (citing Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)).

The plea transcript reflects the Court informed Applicant of his appellate rights during the plea proceeding. (Tr. 7, ll. 19-22.) At the evidentiary hearing, Counsel testified Applicant never asked for an appeal. The Court, after listening to the testimony in its entirety and closely observing the witnesses on the stand, finds Counsel's testimony credible. Applicant did not ask Counsel to file an appeal. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

III. CONCLUSION

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

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 6 day of March, 2018.



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

Marion, South Carolina

WITNESSES

W Kitefinger Myrtle Beach Police Department

J. Sutton

ARREST WARRANT NUMBER

2015A2620600417

CDR: 0116 16-03-0010, 0020

DOA: 3/4/2015

ACTION OF GRAND JURY

TRUE BILL

Bob Harris

Foreperson of Grand Jury Date: FEB 18 2016

VERDICT

Foreperson of Petit Jury Date:

DOCKET NO. 2016-GS-26- 00956

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

Lauree Richardson

15H01102

COURT OF GENERAL SESSIONS

JANUARY, 2015 TERM

THE STATE

vs.

Edward Leon Morris
B/M

Georgetown, SC 29440-4525

ATTORNEY: J. M. "Buddy" Long, III

Indictment for

MURDER

Jimmy A. Richardson, II, Solicitor

ORIGINAL

FILED
HORRY COUNTY

2016 FEB 23 AM 9:38

MELANIE ROSS HOWARD
CLERK OF COURT

DATE RECEIVED

GRAND

Melanie Ross Howard
CLERK OF COURT
HORRY COUNTY
2016 FEB 23 PM 2:29
COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF Horry)

INDICTMENT


At a Court of General Sessions, convened on January 21, 2016, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Edward Leon Morris did in Horry County, on or about February 25, 2015, willfully, feloniously, and intentionally kill the victim, Garrey/Deceased Sumter, with malice aforethought, either express or implied, by means of a gun, and the victim did die as a proximate result thereof on or about February 25, 2015 in Horry County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

ORIGINAL

WITNESSES

W Kitelinger Myrtle Beach Police Department

J. Sutton

The State of South Carolina
County of Horry

Lauree Richardson

15H01102

FILED
HORRY COUNTY

2016 FEB 23 AM 9:38

MELANIE HODGSON WARD
CLERK OF COURT

COURT OF GENERAL SESSIONS

DATE RECEIVED FROM
GRAND JURY

JANUARY, 2015 TERM

ARREST WARRANT NUMBER

2015A2620600418

CDR: 0549 16-23-0490

DOA: 3/4/2015

THE STATE

vs.

Edward Leon Morris
B/ M

Georgetown, SC 29440-4525

NP
02/05/16

ACTION OF GRAND JURY

TRUE BILL

Bob Harris

Foreperson of Grand Jury

Date: FEB 18 2016

ATTORNEY: J. M. "Buddy" Long, III

VERDICT

Indictment for

**POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME**

Jimmy A. Richardson, II, Solicitor

Foreperson of Petit Jury

Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on January 21, 2016, the Grand Jurors of Horry County present upon their oath:


POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME

CDR: 0549 16-23-0490

That Edward Leon Morris did in Horry County, on or about February 25, 2015, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

ORIC

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



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

W Kitelinger Myrtle Beach Police Department

Fullwood

ARREST WARRANT NUMBER

2016GS2601506
CDR: 0139 16-11-0330(A)
DOA: 3/4/2015

ACTION OF GRAND JURY

TRUE BILL

Bob Harris

Foreperson of Grand Jury **MAR 24 2016**
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-26- 01506

The State of South Carolina
County of Horry

Lauree Richardson 15H01102

COURT OF GENERAL SESSIONS

March, 2016 TERM

THE STATE

vs.

Edward Leon Morris
B/ M
[REDACTED]
Georgetown, SC 29440-4525
[REDACTED]

ATTORNEY: J. M. "Buddy" Long, III

Indictment for

ARMED ROBBERY

Jimmy A. Richardson, II, Solicitor

ORIGINAL

FILED
HORRY COUNTY
2016 MAR 30 PM 2:22
MELANIE HUGGINS-WARD
CLERK OF COURT
DATE RECEIVED FROM
GRAND JURY

NP
04/05/16

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT


At a Court of General Sessions, convened on March 24, 2016, the Grand Jurors of Horry County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That Edward Leon Morris did in Horry County on or about February 25, 2015, while armed with a deadly weapon, to wit: a handgun, take and carry away personal property of Garrey Sumter from or in the immediate presence of Garrey Sumter with intent to deprive Garrey Sumter of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

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



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR