

Vol. II of II
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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

—————
Certiorari to Sumter County

Honorable George M. McFaddin, Circuit Court Judge

—————
ALEXANDER B. WILSON, JR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000693

—————
APPENDIX
—————

KATHRINE H. HUDGINS
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

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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Believing his mother had been replaced by a clone, a delusion he expressed to the police the day after his arrest, Appellant killed her with a baseball bat. R. 218, line 22 – R. 219, line 5. One of the ways that Appellant’s schizophrenia manifested was through Capgras Syndrome, an irrational belief that a familiar person has been replaced by an exact duplicate. R. 254, line 19 – R. 255, line 2. Due to his schizophrenia, Appellant believed his mother “was a replacement, and was a threatening figure to him.” R. 255, lines 5-8. Additionally, Appellant heard his deceased father instruct him to kill his mother and deliver her to him. R. 258, lines 11-13; R. 310, lines 3-22. Appellant testified that the woman he killed was not his biological mother or his adoptive mother. His adoptive mother was Elizabeth S. Wilson, but the person he killed was Elizabeth Wilson, an imposter. R. 309, line 9 – R. 310, line 3; R. 310, line 23 – R. 311, line 14.

Jerome gave his opinion regarding how the death occurred, including his believe that Appellant first struck her while she was in bed and then struck her again as she was trying to get away. R. 84, line 19 – R. 85, line 14. Jerome repeatedly claimed that Appellant acted purposely on the day he killed his mother. Jerome opined that Appellant knew the difference between right and wrong. He based this opinion on his experience “working in mental health and dealing with a lot of different clients.” R. 88, lines 9-12. Jerome claimed he had “watch[ed] him for years, smooth talk.” R. 100, lines 19-20. Jerome opined that Appellant “know [*sic*] what to do. He know [*sic*].” R. 101, lines 2-3.

In the 1970s, Jerome had started working “with young, borderline juvenile boys in New York.” R. 44, lines 1-2. He then “went into mental retardation.” R. 44, lines 15-16. When he returned to South Carolina, he started working with the “mentally disturbed” at the Midlands Center. R. 45, lines 16-21. He also worked with adult prisoners at the

Central Correctional Institution. R. 46, lines 8-16. In the 1980s, he went to Texas to work at a juvenile detention center. R. 47, lines 23-24. He moved to Seattle in the mid-1980s and stopped doing the “kind of work [he] like[d] to do.” R. 47, lines 4-6. Thereafter, he worked in Houston for eight years with a preacher in a car detailing business the two owned together. However, that was not the kind of work he liked to do. R. 47, lines 18-24. When he returned to South Carolina in 2001, he started working in “home health” until he “retired in 2011.” R. 47, lines 5-9; R. 48, lines 9-10.

Jerome went on a bit of a tangent by theorizing that Appellant was trying to take advantage of “the system”: “When you watch somebody, when you watch somebody for so many years, for so many years, and you see, you know this person can do better, you know this person can do better, and see a person that will take advantage of the system ‘cause right now he looking [*sic*] to take advantage of the system.” R. 99, lines 2-7.³

Discussion

The only issue before the jury was Appellant’s mental state. The jury was presented with four options: (1) guilty; (2) not guilty; (3) not guilty by reason of insanity; and (4) guilty but mentally ill. However, Appellant testified that he had killed the deceased; thus, the verdict of not guilty was likely not a real option for the jurors. See R. 309, line 16.

South Carolina law provides for the verdict of guilty but mentally ill (GBMI). S.C. Code Ann. § 17-24-30. A defendant is GBMI if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong, but

³ Appellant admits that trial counsel did not object to Jerome’s testimony. To the extent this Court is willing to excuse the lack of error preservation, Appellant requests review of the issue presented.

because of mental disease or defect, he lacked sufficient capacity to conform his conduct to the requirement of the law. S.C. Code Ann. § 17-24-20(A); State v. Poindexter, 314 S.C. 490, 493, 431 S.E.2d 254, 255 (1993). The burden of proof is on the defendant to prove by a preponderance of the evidence that at the time of the crime he was mentally ill. S.C. Code Ann. § 17-24-20(B). If a defendant is found to be GBMI, the judge must sentence the defendant as provided by law for a defendant found guilty; however, if the sentence includes incarceration, then the defendant must be taken to a facility designated for treatment and retained there until he may be safely moved to the general population. S.C. Code Ann. § 17-24-70 (A).

South Carolina law also provides for the verdict of not guilty by reason of insanity (NGRI). A defendant is insane if, “at the time of the commission of the act constituting the offense, [he], as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong.” S.C. Code Ann. § 17-24-10(A). “[T]he key to insanity is ‘the power of the defendant to distinguish right from wrong in the act itself – to recognize the act complained of is either morally or legally wrong.’” State v. Lewis, 328 S.C. 273, 278, 494 S.E.2d 115, 117 (1997) (quoting State v. Wilson, 306 S.C. 498, 506, 413 S.E.2d 19, 23 (1992)). A defendant is presumed to be sane. State v. Smith, 298 S.C. 205, 208, 379 S.E.2d 287, 288 (1989); State v. Poindexter, 314 S.C. 490, 431 S.E.2d 254 (1993). The burden is on the defendant to prove the defense of insanity by a preponderance of the evidence. S.C. Code Ann. § 17-24-10(B). “However, when a defendant offers evidence of insanity, the state no longer enjoys the presumption, but must present evidence to the

jury from which the jury could find the defendant sane.” Smith, 298 S.C. at 208, 379 S.E.2d at 288.

Admittedly, expert testimony is not necessary to prove insanity or sanity; lay testimony may be sufficient. Smith, 298 S.C. at 208, 379 S.E.2d at 288; State v. Lewis, 328 S.C. 273, 278, 494 S.E.2d 115, 117 (1997); State v. Curry, 410 S.C. 46, 54, 762 S.E.2d 721, 725 (Ct. App. 2014). In fact, a jury may disregard expert testimony on the issue of a defendant’s sanity. Lewis, 328 S.C. at 278, 494 S.E.2d at 117. At his trial, Poindexter presented lay testimony that he exhibited behavioral changes in the months prior to the murder for which he was charged. Poindexter presented an expert who testified that Poindexter was unable to absorb vitamin B-12 and was insane as a result. The jury rejected Poindexter’s claim that he was insane, but found him GBMI. Poindexter, 314 S.C. at 491-492, 431 S.E.2d at 254. The Supreme Court affirmed the trial court’s refusal to direct a verdict of NGRI where the prosecution presented lay testimony that Poindexter fled after the murder, appeared normal within hours of the murder, and was cooperative during the arrest. Despite the strong evidence of Poindexter’s insanity, the Court found evidence in the record from which the jury could have deduced that Poindexter was sane. “The jury was free to rely on circumstantial evidence to find Poindexter sane even though expert testimony favored a finding that he was insane.” Id. at 493-494, 431 S.E.2d at 256.

South Carolina permits lay witnesses to testify in the form of opinions, but only in very limited circumstances. In order for a lay witness to give an opinion, the testimony must (1) be rationally based on the perception of the witness, (2) be helpful to a clear understanding of the witness’s testimony or the determination of a fact in issue, and (3)

not require special knowledge, skill, experience, or training. Rule 701, SCRE. While a witness may testify regarding his observations of a person, including observations that appear rational or irrational, the witness may not testify as to an opinion on the person's sanity or ability to conform his conduct to the requirements of the law because such an opinion would require special knowledge, skill, experience, or training.

Jerome's testimony far exceeded the bounds for lay opinion. Not only did Jerome opine on how the crime occurred, but he gave his opinion on the ultimate issue before the jury – Appellant's mental condition. Without any training in crime scene reconstruction, Jerome told the jury how he believed Appellant hit the deceased first while she was in bed and then a second time as she tried to get away. Jerome had no authority for arriving at such a conclusion. He had no experience in crime scenes, but was allowed to testify with no restraints regarding his opinion on how the crime occurred.

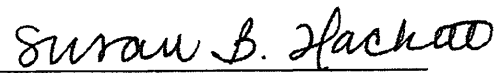
Further, Jerome told the jury repeatedly that Appellant acted purposely, knew what he was doing, and knew right from wrong. At one point, Jerome even claimed that he knew Appellant knew right from wrong based on Jerome's experience working "in mental health." The fact of the matter was that Jerome had not worked "in mental health" since the mid-1980s. For the last three decades, he had worked in the "car detailing" business and "home health." Thus, over half of his working life was spent in a field outside of "mental health." At any rate, Jerome's very limited experience in "mental health" was not the kind that would allow him to give expert testimony on Appellant's mental state at the time of the crime. Although Jerome could testify regarding his observations of Appellant's behavior, he exceeded the scope of permissible testimony from a lay witness when he informed the jury that Appellant "knew right from

wrong.” Jerome should not have been to testify in such a manner and his testimony was not harmless. The jury was faced with competing expert opinions on that very issue – Appellant’s sanity. Jerome’s testimony was the evidence used by the state to tip the scales of justice on the side of Appellant’s sanity. Thus, Appellant’s conviction cannot stand judicial scrutiny.

CONCLUSION

Appellant respectfully requests this Court reverse his conviction and remand for a new trial.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of November, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALEXANDER B. WILSON,

APPELLANT

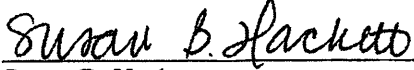
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Alexander B. Wilson states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge William Jeffrey Young, which was held on December 1-4, 2014, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. Pursuant to Anders v. California, 386 U.S. 738 (1967), she has briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Alexander B. Wilson.

Respectfully submitted,


Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of November, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALEXANDER B. WILSON,

APPELLANT

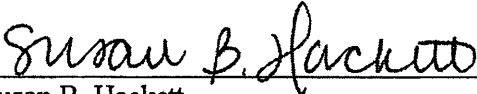
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Entire trial transcript dated December 1, 2014;
- (2) Entire pre-trial hearing transcript dated September 4, 2014;
- (3) Court's Exhibit #1 (Dr. Domino's report);
- (4) Court's Exhibit #5 (Dr. Martin's report);
- (5) True-billed indictment; and
- (6) Sentence Sheet

I certify that this designation contains no matter which is irrelevant to this appeal.

November 3, 2015



Susan B. Hackett
Appellate Defender

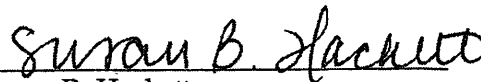
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Amended Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

November 3, 2015



Susan B. Hackett
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 Appeal from Sumter County

 William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

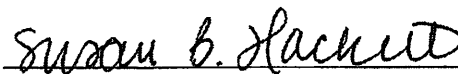
V.

ALEXANDER B. WILSON,

APPELLANT

 CERTIFICATE OF SERVICE

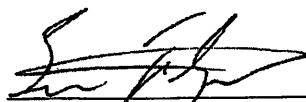
The undersigned attorney hereby certifies that a true copy of the Amended Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Amended Anders Brief of Appellant and Designation of Matter have been served on Alexander B. Wilson, #175318 at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 3rd day of November, 2015.



 Susan B. Hackett
 Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
 this 3rd day of November, 2015.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Alexander Wilson, Jr., Appellant.

Appellate Case No. 2014-002659

Appeal From Sumter County
W. Jeffrey Young, Circuit Court Judge

Unpublished Opinion No. 2016-UP-310
Submitted May 1, 2016 – Filed June 22, 2016

APPEAL DISMISSED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Donald J. Zelenka,
both of Columbia, for Respondent.

PER CURIAM: Dismissed after consideration of Appellant's pro se brief and review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

SHORT and THOMAS, JJ., and CURETON, A.J., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

CERTIFIED TRUE COPY
OF ORIGINAL FILE

STATE OF SOUTH CAROLINA)

COUNTY OF Sumter)

175318)
Full name and prison number (if any) of Applicant.)

Alexander B. Wilson Jr)
v.)

State of South Carolina)

Barbara Shaper
DEPUTY CLERK OF COURT
IN THE COURT OF COMMON PLEAS
SUMTER COUNTY
SOUTH CAROLINA

2016-CP-43-1333

APPLICATION FOR

POST-CONVICTION RELIEF

2016 JUL 15 PM 10:07
CLERK OF COURT
SUMTER COUNTY S.C.

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 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 Kirkland Correctional Inst.
2. Name and location of Court which imposed sentence Third Circuit Sumter Co.
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) 2011-GS-43-0698
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Dec. 4, 2014
 - (b) Next year life without parole

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Referred to PCP / dm
Answered Dei Ode

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

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

yes

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

- (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals
 - ii. 1220 Senate Street
 - iii. Columbia, South Carolina

- (b) the result in each such Court to which you appealed:
 - i. Anders vs California And Pro Se Brief
 - ii. dismissed
 - iii. _____

- (c) the date of each such result:
 - i. June 22, 2016
 - ii. _____
 - iii. _____

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

- i. Dismissed After consideration of Appellant
- ii. PRO SE BRIEF And Review pursuant to
- iii. Anders vs California 386 US 738 (1967)

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

- (a) _____
- (b) _____
- (c) _____

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

- (a) Ineffective Assistance of Counsel
 (b) defendent mental state was determine by lay with
 (c) Compell to be A witness Against my self.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 (a) Three week before TRIAL Advise to testify
 (b) Lay Witness Testomony without experience
 (c) Counsel did Not object to Lay Testomony
12. Prior to this application have you filed with respect to this conviction:
 (a) any petition in a State Court under South Carolina Law? yes
 (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? yes
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. The TRIAL error in Allowing a lay witness
 ii. testify Regarding his opinion concerning
 iii. Appellant Ability to know Right from Wrong
 iv. And Conform his conduct to Requirement Law
 (b) the name and location of the Court in which each was filed:
 i. The South Carolina Court of Appeals
 ii. Post Office Box 11629
 iii. 1220 Senate street
 iv. Columbia, South Carolina 29211
 (c) the disposition thereof:
 i. Dismissed After consideration of Appellant
 ii. PRO SE Brief And Review Pursuant to
 iii. Andres vs California 386 US 738 (1967)

- iv. _____
- (d) the date of each such disposition:
 - i. June 22, 2016
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. Dismissed After Consideration of Appellant
 - ii. pro se Brief and Review of Pursant to
 - iii. Ander's vs California
 - iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
No

15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
 - i. None
 - ii. _____
 - iii. _____
 - (b) the proceedings in which each ground was raised:
 - i. None
 - ii. _____
 - iii. _____

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

- (a) INEffective Assistance of counsel Advised
- (b) the defendant to Testify before TRIAL I did not
- (c) know how to bring it before a Court.

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

- (a) your arraignment and plea? No
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

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. LAUREN B. STEVENS - 141 N. MAIN SUMNER
 - ii. CHARLES T. BROOKS - 309 BROAD ST. SUMNER
 - iii. SUSAN B. HOCKETT 1330 LADY ST. COLUMBIA
- (b) the proceedings at which each such attorney represented you:
- i. LAUREN B. STEVENS - PROBATE COURT
 - ii. CHARLES T. BROOKS - GENERAL SESSION COURT
 - iii. SUSAN B. HOCKETT - COURT OF APPEALS

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

CONFINEMENT AND IMPRISONMENT,

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

No

STATE OF SOUTH CAROLINA)
)
County of)

VERIFICATION

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

Alexander B. Wilson

SWORN to and subscribed before me this 7
day of July, 2016.

Melissa D. Oprea (L.S.)
Notary Public

My Commission Expires: Dec. 1, 2025

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

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

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

Alexander B. Wilson
Applicant

SWORN or affirmed to and subscribed before me this

30th day of June, 2016.

Albert W. Carter
Notary Public

My Commission Expires: Sept. 11, 2021

522

June 30, 2016

Alexander B. Wilson Jr
Kirkland Correctional Inst.
4344 Broad River Road
Columbia, South Carolina 29210

Sumter County Clerk of Court
141 North Main Street
Sumter, South Carolina
29150

Dear Clerk,

Enclose please find A post Conviction Relief
Application I have submitted.

RECORDED
2016 JUL 15 PM 4:07
CLERK OF COURT
SUMTER COUNTY, S.C.

Sign, Alexander B. Wilson Jr.

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

RECORDED
2017 FEB 15 PM 2:06

Alexander B. Wilson, Jr.,

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

2016-CP-43-1333

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on July 15, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Sumter County. Applicant was indicted by the May 2011 term of the Grand Jury for Sumter County for Murder (2011-GS-43-0698). Applicant was represented by Charles T. Brooks, III, Esquire. On December 4, 2014, Applicant was found guilty, but mentally ill, of Murder and sentenced by the Honorable W. Jeffrey Young to imprisonment for the remainder of his natural life.

Applicant filed a timely notice of appeal. An appeal was perfected and an Anders brief was submitted. The South Carolina Court of Appeals dismissed Applicant's appeal in an opinion filed June 22, 2016. State v. Wilson, Op. No. 2016-UP-310 (S.C. Ct. App. 2016). The Remittitur was returned on July 8, 2016.

II.

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

1. Ineffective Assistance of Counsel
 - a. "Three weeks before trial advise[d] to testify."
 - b. "Counsel did not object to lay testimony."
 - c. "Compelled to be a witness against myself."
 - d. "Defendant mental state was determined by lay witness."

Attached herewith and incorporated herein by reference are the records of the Sumter County Clerk of Court regarding the subject convictions, the Record on Appeal, Applicant's appellate records, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

III.

Applicant claims ineffective assistance of counsel in his application. Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced 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 pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VI.

Each and every allegation contained within the application not either expressly admitted, qualified, or explained is hereby denied.

[signature page to follow]

VIII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claims of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

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By 
ATTORNEYS FOR RESPONDENT

February 14, 2017

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

ALEXANDER B. WILSON, JR.,
#175318,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

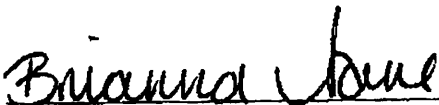
RECORDED
2017 FEB 15 10:20 AM
IN THE COURT OF COMMON PLEAS
JAMES C. CAMPBELL
CLERK OF COURT CP-43-1333
SUMTER COUNTY, S.C.

AFFIDAVIT OF SERVICE BY MAIL

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

Timothy L. Griffith, Esquire
360 W Wesmark Blvd
Second Floor
Sumter, SC 29150

DATED this 14th day of February, 2017.


Brianna Arnone, Legal Assistant
For Respondent

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1 Thereupon, the following proceedings were had,

2 MS. COLEMAN: May it please the Court.

3 THE COURT: Yes, ma'am.

4 MS. COLEMAN: This is Alexander B. Wilson, Junior
5 versus the State of South Carolina. Docket number
6 2016-CP-43-1333. The applicant is present and confined
7 to the South Carolina Department of Corrections pursuant
8 to order of committment of the Clerk of Court for Sumter
9 County. The applicant was indicted by the May 2011 term
10 of the grand jury for Sumter County for murder. The
11 applicant was represented by Charles T. Brooks the Third,
12 Esquire. John P. Meadors, Esquire prosecuted the case.
13 On December 4th, 2014 the applicant was found guilty but
14 mentally ill of murder and sentenced by the Honorable W.
15 Jeffery Young to imprisonment for the remainder of his
16 natural life.

17 Applicant filed a timely notice of appeal. An
18 appeal was perfected and an Anders Brief was submitted.
19 The South Carolina Court of Appeals dismissed applicant's
20 appeal in an opinion filed June 22, 2016. The remittitur
21 was returned on July 8th, 2016.

22 Applicant subsequently filed a timely application
23 for post conviction relief on July 15th, 2016 alleging
24 that he was being held in custody unlawfully based on the
25 following allegations. Ineffective assistance of

1 counsel. He was advised to testify at trial three weeks
2 before. Counsel did not object to lay testimony. He was
3 compelled to be a witness against himself. And the
4 defendant's mental state was determined by a lay witness.

5 The State filed its return on February 14th, 2017.
6 He's present today and is represented by Mr. Timothy
7 Griffith, and at this time the State moves to dismiss his
8 fourth allegation, allegation D, I guess, of ineffective
9 assistance of counsel, defendant's mental state was
10 determined by a lay witness.

11 First, this is a direct appeal issue. It's not
12 proper for PCR. It's not an allegation of ineffective
13 assistance of counsel, and it's also barred by res
14 judicata because this was the issue that was raised in
15 his Anders Brief on appeal. The Court of Appeals has
16 already reviewed it and ruled upon it.

17 THE COURT: That's number D you say?

18 MS. COLEMAN: I said D. I believe that's what's
19 listed in the return. I don't know exactly where it is
20 in his application.

21 THE COURT: Okay. Let me look at your return then.
22 I think it's B on his application.

23 MS. COLEMAN: Okay. Thank you. Sorry about that.

24 THE COURT: That's okay.

25 MS. COLEMAN: We do it differently when we summarize

1 them. The defendant's mental state was determined by a
2 lay witness.

3 THE COURT: On that motion, Mr. Griffith, what do
4 you want to say?

5 MR. GRIFFITH: Your Honor, the Supreme Court - I
6 mean the Court of Appeals heard the Anders Brief from the
7 appellant at that time and made a ruling that his appeal
8 was dismissed as to that issue. The attorney for that
9 appeal also filed in her brief, Your Honor, that she
10 reviewed the record and she saw that it was without
11 merit, that he should be granted the appeal and so we
12 would have to withdraw that as one of the grounds, Your
13 Honor --

14 THE COURT: All right.

15 MR. GRIFFITH: -- from his PCR.

16 THE COURT: All right. I grant that motion, Ms.
17 Coleman.

18 MS. COLEMAN: Thank you, Your Honor. At this time
19 I'll let Mr. Griffith proceed with his case.

20 THE COURT: Mr. Griffith.

21 MR. GRIFFITH: Thank you, Your Honor. Your Honor,
22 at this time we would call Mr. Alexander Wilson to the
23 stand.

24 THE COURT: All right.

25 Thereupon,

- 1 ALEXANDER BERNARD WILSON, JUNIOR
- 2 after having been first duly sworn, testified as follows,
- 3 THE CLERK: Please have a seat. Once you're seated,
- 4 state your full name spelling your last name please.
- 5 THE WITNESS: Alexander Bernard Wilson, Junior.
- 6 W-i-l-s-o-n.
- 7 THE COURT: Mr. Griffith.
- 8 MR. GRIFFITH: May it please the Court, Your Honor.
- 9 DIRECT EXAMINATION
- 10 BY MR. GRIFFITH:
- 11 Q. Mr. Wilson, you are currently incarcerated where
- 12 at?
- 13 A. At the Kirkland Correctional Institution.
- 14 Q. And are you there provided with help for your
- 15 condition physically and mental condition?
- 16 A. I - I'm - I -- Yeah.
- 17 Q. Okay. And are you currently -- I asked you, we
- 18 spoke a bit before the hearing. How are you feeling today?
- 19 A. I'm feeling pretty good.
- 20 Q. And how do you feel your mental state is today? Do
- 21 you feel like you're aware of what's going on?
- 22 A. Oh, I'm aware. I'm more aware of what's going on
- 23 now.
- 24 Q. Have you been taking medication while you're
- 25 incarcerated?

1 A. Yeah. Taking my medication as prescribed.

2 Q. Okay. And do you feel like that has really helped
3 you a lot?

4 A. Yeah. Yeah.

5 Q. So do you recall being on trial here in Sumter
6 County?

7 A. Correct.

8 Q. And you were represented at that trial by an
9 attorney. Who was your attorney?

10 A. Mr. Charles T. Brooks the Third.

11 Q. Mr. Brooks. Okay. And were you also, do you
12 remember being evaluated before that?

13 A. Yeah. I - I've been evaluated since 2011 to, uhm,
14 on the case by the South Carolina Department of Mental Health
15 and I was found incompetent to stand trial for four years.

16 THE COURT: Mr. Griffith, where are we going with
17 this? I don't see where that falls within any of the
18 remaining three.

19 MR. GRIFFITH: Your Honor, it will come out. It's a
20 Fifth Amendment issue basically that he testified against
21 himself and I'm trying to establish --

22 THE COURT: All right. Okay. Proceed. Proceed.

23 MR. GRIFFITH: -- his mental state at the time, Your
24 Honor.

25 THE COURT: Okay.

1 BY MR. GRIFFITH:

2 Q. So you were found not capable four times?

3 A. Not capable to stand trial.

4 Q. And so were you ever found capable of standing
5 trial?

6 A. Uhm, she -- Dr. Cavanaugh found me, finally found me
7 competent to stand trial and my attorney suggested a second
8 opinion from an expert doctor. She found me incompetent yet
9 criminally responsible and after finally found me competent
10 and yet criminally responsible and my attorney wanted a second
11 opinion and Dr. Thomas Martin was called to give a second
12 opinion and he evaluated me April 25th through April 29th,
13 2014 and found that I was not criminally responsible and
14 competent to stand trial.

15 Q. Okay. Did your attorney go over those evaluations
16 with you, talk about them?

17 A. Not - not - not really. Not really. He just send
18 me documents what they stated, what the documents stated and,
19 uhm, he just, uhm -- I only spoke with my attorney three times
20 the whole time I was arrested.

21 Q. Okay. During the time you were preparing for the
22 trial, did your attorney advise you whether or not you had a
23 right to testify against yourself or to remain silent?

24 A. No. He didn't. He didn't. I wrote him a letter
25 and he wrote me a letter back saying that, uhm, on November

ALEXANDER WILSON - DIRECT BY MR. GRIFFITH

9

1 13th, saying that you will get to testify along with
2 Dr. Martin and Dr. Cavanaugh and we will do our best to win
3 the trial for you after being found incompetent for four
4 years. I was - I was under the impression and my attorney
5 advised me of my constitutional right not to testify but after
6 receiving this letter, I already made up my mind to testify.

7 Q. So did you make up your own mind or did your
8 attorney --

9 A. I - I - after he wrote me that letter, I figured the
10 only way I can - I can win this case is to testify.

11 Q. Did he talk to you about what the consequences might
12 be if you testified?

13 A. No. He didn't. He didn't.

14 Q. When you decided yourself that you were going to
15 testify, were you on medication at that time?

16 A. Yeah. Yeah.

17 Q. Had you been taking it regularly?

18 A. Yeah.

19 Q. What was your state of mind do you think, if you can
20 recall, at that time as to your condition?

21 A. Well, I was under the impression that two victims
22 got killed at my address and I was under the impression that
23 if I don't testify, I would never, I couldn't win this case
24 and my attorney, he sent me that letter after I wrote him and
25 told him what to say to the court and he advised me to

1 testify.

2 Q. So he advised you to testify?

3 A. Yes. He advised me to testify.

4 Q. And but did he ever go over --

5 A. But he did not go over my Fifth Amendment Right and
6 at that time the only thing I knew about law was my Miranda
7 Right and, uhm, when the detective asked me in the beginning,
8 I told him I would like to talk to an attorney and I'm aware
9 of my Miranda Rights. But the Fifth Amendment Right I don't -
10 I had - I was - I was advised to testify and I figured if I
11 testify and two people got killed at this address at that time
12 that that's the only way I can prove that I was not - that I
13 didn't kill two victims.

14 Q. And at this period at this point you have been
15 taking medication and being treated for quite a while?

16 A. Yeah. That's correct.

17 Q. And do you still have the same opinion as to what
18 happened during, at your address?

19 A. Yeah. I'll say the same thing. That there were two
20 victims that got killed and - and - and - and the person that
21 I'm alleging of killing was a clone and my adopted mother was
22 killed because I killed the clone.

23 Q. Do you think that if you were to be successful in
24 your PCR, what do you expect to happen?

25 A. Well, I'm expecting for a new trial and I'm hoping,

1 seeking a verdict of not guilty by reason of insanity of not
2 guilty.

3 Q. So you're hoping for a verdict of not guilty by
4 reason of insanity?

5 A. Right.

6 Q. And now you were found guilty but mentally ill; is
7 that correct?

8 A. That's correct.

9 Q. And do you understand the difference between those
10 two?

11 A. Yes. I understand. Uhm, yes. If I was found
12 guilty but mentally ill, I would be placed in the South
13 Carolina Department of Corrections until - until - until -
14 until I'm able to go in general population. If I'm found not
15 guilty by reason of insanity, I would be able to be placed in
16 the South Carolina Department of Mental Health and a doctor
17 will determine how long I'll be there.

18 Q. So your reason for your PCR, your grounds basically
19 are, one of which is that you were compelled to testify
20 against yourself?

21 A. Correct.

22 Q. So can you tell us in what way you were compelled,
23 just to make that clear?

24 A. Well, after - after - after - on the day of the
25 trial on December 1st to the 4th, uhm, my attorney had already

1 wrote me a letter on November 13th advising me to testify and
2 I saw evidence that they were going to enter into the record
3 that I was - I was completely unaware of and they entered two
4 baseball bats in the record and pictures of a woman that they
5 had sealed before the jury. It couldn't be showed her picture
6 because she was beaten beyond recognition. So after my
7 attorney advised me of that, I said I wanted to testify and he
8 wrote me that letter.

9 Q. So you told your attorney that you wanted to testify
10 or he told you?

11 A. He told me you would - you would - he advised me to
12 testify. I didn't tell him. I wanted - I wanted him to - I
13 wrote him a letter stating what I wanted him to tell the jury
14 and he wrote me a letter back advising me to testify.

15 Q. Also, one of the things that you mentioned in your
16 application that you and I have talked about is your brother
17 testified at the trial; is that correct?

18 A. Correct.

19 Q. And do you feel that that testimony was damaging to
20 you?

21 A. Yeah. Yeah. Because he - he alleged that, uhm, I
22 knew what I was doing and that I knew right from wrong and
23 that I could distinguish and, uhm, with that medical opinion
24 he found me, uhm, it was damaging to my --

25 MS. COLEMAN: Your Honor, I object to this

ALEXANDER WILSON - DIRECT BY MR. GRIFFITH

13

1 testimony.

2 MR. GRIFFITH: If it please the Court. Your Honor,
3 I was about to ask him if he understood that the Supreme
4 Court - The Court of Appeals has already found that it
5 was okay for his brother to testify. My point was going
6 to be basically to ask him if he remembered whether or
7 not his attorney objected to that testimony.

8 A. Well --

9 THE COURT: One moment. Ms. Coleman, is that
10 satisfactory what he's telling me?

11 MS. COLEMAN: Well, I think that might lead to an
12 allegation that's not really alleged in the application.

13 THE COURT: Well, if it's not alleged, I'm not going
14 to consider it anyway.

15 MS. COLEMAN: Yeah. If he wants to keep going,
16 that's fine. But I would just like to note that that's
17 not part of -- Okay. I withdraw my objection.

18 THE COURT: All right. Proceed, sir.

19 BY MR. GRIFFITH:

20 Q. Do you recall whether or not your attorney objected
21 to your brother speaking?

22 A. Uhm, he - he --

23 Q. Would you be surprised if I told you that he did not
24 object?

25 A. He - he - he did not object. No. He did not

1 object. He, uhm, he entered a motion for directed verdict.

2 Q. Did you talk to your attorney before your brother
3 spoke about what your brother might say?

4 A. No.

5 Q. Was your attorney provided a list to your knowledge
6 -- I'll ask that of your attorney later. -- but as far as you
7 know was he provided a list of who the witnesses would be
8 before the trial?

9 A. No. No. No.

10 Q. You didn't know about that?

11 A. I hadn't -- I had no idea who was going to
12 testify.

13 MR. GRIFFITH: Okay. I have no further questions at
14 this time, Your Honor.

15 THE COURT: Ms. Coleman.

16 MS. COLEMAN: Thank you, Your Honor.

17 CROSS EXAMINATION

18 BY MS. COLEMAN:

19 Q. Mr. Wilson, the judge, the trial judge, Judge Young,
20 he told you that you had a right to remain silent, right?

21 A. Correct.

22 Q. Do you remember that? Before you testified at trial
23 he advised you that you could testify on your own behalf or
24 you could remain silent. Do you remember that?

25 A. I remember that but then I got that letter before

ALEXANDER WILSON - CROSS BY MS. COLEMAN

15

1 that hearing and I already - my attorney stated that if I
2 testify, we will win this case.

3 MS. COLEMAN: Okay. And, Judge, just for your
4 reference that's on page 237 of the trial transcript.

5 BY MS. COLEMAN:

6 Q. But Judge Young told you on the record that it was
7 your decision and you had to choose whether or not to testify,
8 right?

9 A. Yeah. But he didn't tell me I could ask my
10 attorney.

11 Q. Okay. But you did speak to your attorney about it
12 before you testified, right?

13 A. No.

14 Q. What about the letter?

15 A. Well, he wrote me that letter but I didn't speak to
16 him before I testified --

17 Q. Okay.

18 A. -- in that hearing.

19 Q. Do you remember at the trial when everyone went over
20 your criminal history on the record? They said if you
21 testify, they can impeach you with your prior record and you
22 have got this charge and this charge and this charge. Do you
23 remember that?

24 A. I remember that.

25 Q. Did you discuss that with your attorney after

1 that?

2 A. No. My attorney didn't bring it to my attention.

3 Q. Okay. But you still chose - you thought that you
4 would win your case if you testified at trial, right?

5 A. After receiving that letter. Yeah.

6 MS. COLEMAN: Okay. Thank you. Nothing further.

7 THE COURT: All right.

8 MR. GRIFFITH: I have no further questions, Your
9 Honor, from this witness.

10 THE COURT: All right, sir. You may step down.

11 MR. GRIFFITH: I have no further witnesses, Your
12 Honor. THE COURT: Ms. Coleman.

13 MS. COLEMAN: Yes, Your Honor. The State calls
14 Charles Brooks the Third.

15 Thereupon,

16 CHARLES T. BROOKS, III

17 after having been first duly sworn, testified as follows,

18 THE CLERK: Please have a seat. Once you're seated,
19 state your full name spelling your last name please.

20 THE WITNESS: Charles Brooks, B-r-o-o-k-s.

21 DIRECT EXAMINATION

22 BY MS. COLEMAN:

23 Q. Good morning, Mr. Brooks. How are you?

24 A. I'm okay. How are you?

25 Q. Fine. Thank you. How long have you been practicing

1 law?

2 A. I think 20 years. 21 years now.

3 Q. And were you appointed or retained in this case?

4 A. Appointed.

5 Q. How long did you represent the applicant before his
6 trial?

7 A. I can't remember specifically but I was on his case
8 for -- I'm trying to think. We tried it in December 2014. He
9 didn't have any other attorneys so I think I got the case
10 maybe two years prior to that.

11 Q. Now, I have had you as a witness before and I know
12 you just kind of like to tell what happened so...

13 A. Sure.

14 Q. Can you start with the facts of this case? What was
15 the State alleging happened?

16 A. Well, in this situation Mr. Wilson allegedly had
17 killed his mother with a baseball bat. Mr. Wilson had some
18 mental health issues to put it mildly and he had bludgeoned
19 her to death on this particular day and his brother who
20 testified stated that, you know, he and another brother had
21 come to the house shortly thereafter and had found their
22 mother on the floor bloodied up and had seen Mr. Wilson with
23 the bat and his one brother who testified said that he was, I
24 can't remember the term that he used, but he said that he was
25 winding up the bat as if to start swinging it on them and he

1 had testified that both of them, you know, had subdued him and
2 had called the police and the police had come out there and
3 found Mr. Wilson bloodied up.

4 So basically this wasn't a who done it case. This
5 was a why was it done. There wasn't any issue about what the
6 actual facts were. I mean, he had taken a baseball bat and
7 killed his mother. Obviously I had investigation because I
8 use Glenn Harrell as an investigator and, you know, obviously
9 it became real apparent early on that there was some mental
10 health issues. And I had Dr. Thomas Martin, forensic
11 psychiatrist, appointed to help me with the case. He
12 evaluated Mr. Wilson and it obviously became apparent that,
13 you know, because of his age and the question of there was no
14 real factual questions about what had happened, the whole
15 issue was whether or not he was going to be declared insane
16 versus guilty but mentally ill. That was really the issue.

17 Dr. Martin felt that, and I think he testified to
18 this, that he thought in his opinion that Alexander was
19 insane. Obviously from an insanity situation if the jury had
20 decided that, he would have put in the Department of Mental
21 Health and it would come up periodically to determine whether
22 or not he would get out or whether or not he was gonna be
23 guilty but mentally ill and put into SCDC's guilty but
24 mentally ill wing. Those were the issues. And John Meadors
25 tried the case on behalf of the state. He had a doctor. I

1 don't remember the doctor's name. It's in the transcript, who
2 basically said that he thought it was more guilty but mentally
3 ill. That was the posture in his witness' testimony.

4 And, of course, I wanted Alexander to testify so
5 that his only hope of I thought of him being declared insane
6 is I wanted the jury to see and hear him in all of his glory
7 so to speak because once we had talked to Alexander, he let
8 out a lot of things and there were a lot of things that was
9 documented with Dr. Martin and I wanted the jury to see that
10 firsthand in order to have a chance at winning, convincing
11 them of deciding that he was insane.

12 Q. So was it your strategy to have him testify?

13 A. Oh, absolutely. We felt that that was our only
14 hope. And I say we. I obviously had Dr. Martin forensic
15 psychiatrist with me and obviously in addition to, obviously
16 he was helping me with the case, but he and I both felt, you
17 know, in order for - we needed to impress upon the jury that
18 this man had some, I mean, some deep seated mental issues that
19 we wanted the jury to come to a conclusion that he was insane
20 and having Alexander testify was the best way to bear that
21 out. And I think you can see in the transcript his testimony.
22 He said a lot of the things that he had told Dr. Martin as
23 part of his evaluation. Uhm, there were other incidents that
24 Dr. Martin had testified about that we were hoping to kind of
25 set the stage for that but that was the strategy.

1 Q. Did you discuss this with Mr. Wilson, his right to
2 testify and his right to remain silent?

3 A. We - we - we did. I did.

4 Q. When did you do that, do you recall?

5 A. He said - he said -- I sent him a letter because
6 that was part of being able - because it's part of getting his
7 mental state and conveying that to the jury. Uhm, I probably
8 talked to him on the phone about it, met with him at the jail
9 and mentioned it to him and, of course, you know, prior to the
10 trial say, you gonna testify, Mr. Wilson? Yeah. I'm ready to
11 testify, Mr. Brooks. So that was the strategy.

12 Q. Would you characterize the State's evidence in this
13 case as overwhelming that he committed the murder?

14 A. Yeah. It was overwhelming. There wasn't any
15 question about who done it. Even Mr. Wilson said I did it.
16 That never was an issue. He said it to the police. He said
17 it to the doctor. It was his mental state and it was why he
18 did it. His version was that, you know, this wasn't his
19 mother. It was a clone and Dr. Martin basically kind of
20 explained this to me as being a lay person in that field
21 myself he was kind of explaining this to me, uhm, that he just
22 had some type of mental health issue that all of a sudden he
23 would think that this was a clone of his mother as opposed to
24 his mother.

25 And from my investigation of Mr. Wilson and talking

1 a little bit to his family and Dr. Martin he had had some
2 episodes early in life and he started taking this medication
3 and he had come home. He was living with his mother and his
4 father, but his father had died maybe about nine or ten months
5 before this incident and from my understanding the father was
6 kind of the firm hand patriarch of the family and sort of kept
7 Alexander in line in terms of making sure he took his
8 medicine.

9 Whereas his mother was, you know, more coddling.
10 More appeasing. Really didn't make him take his medicine or
11 urge him the way his father did. That was my understanding
12 from the family. So that when daddy was alive, a lot of this
13 stuff was kind of under control. Once he had passed away, I
14 think Alexander stopped taking his medicine and then all of
15 these things in his head started creeping in. And I think
16 there were episodes where he showed up at church totally
17 naked, you know, and his mother would try to cover him up.
18 The congregation, he's in there totally naked. Those things
19 came out. And I think those brothers, particularly the one
20 brother, I think there was a situation where they were kind of
21 like, hey, he don't really need to stay with mama. He needs
22 to take his medicine. They kind of started, according to that
23 one brother they started holding that principle, hey, you need
24 to do what daddy was telling him.

25 And, of course, mama was kind of in between that and

1 made sure he stayed with her and ultimately I think, what I
2 think happened is he ultimately deteriorated and on that
3 particular day he got it in his head that she was a clone;
4 that she was out to get him and that she was taking his money
5 and he heard voices of his father saying bring her to me, son.
6 I'll deal with her. And he got out a baseball bat. I think
7 she was sleeping and he, unfortunately, you know, beat her to
8 death. And, uhm, like I said, shortly thereafter his brother
9 said, I guess they came over to the house to check and see how
10 things were and they discovered it and they put it mildly,
11 subdued him. That's probably an understatement because
12 Mr. Wilson was a little, he had a few little battle scars on
13 him from his brothers subduing him.

14 But once the police got there, they testified and
15 took pictures of him, that he was in the bathroom and he was
16 very cordial to the officers. Like a zombie. They just
17 gently took him by the arm and put him down in the chair and
18 he was just sitting there and when they say okay, let's move,
19 he totally did exactly that. Moved out to the car. He got
20 some medical treatment. You know, he wasn't any problem for
21 the police. So, I mean, that, unfortunately that's what
22 happened in this situation and we were trying to, I say we,
23 myself and Dr. Martin and, of course, we told Alexander this
24 and we were trying to play for the insanity angle. That's all
25 we had.

1 Q. Now, the State, their theory, do you agree that
2 their theory was kind of to show that he was not insane? He
3 knew what he was doing at the time. And they put up those
4 witnesses to show that he was calm. He wasn't acting out. He
5 didn't say anything about clones at the time. Does that sound
6 right?

7 A. That - that - That's right. And the brother, his
8 testimony as being a fact witness say, you know, this is what
9 we found when we got there. He was also a historical witness
10 because he talked about, you know, past incidents with his
11 brother. Basically he had some mental health issues but the
12 brother was saying he knew what he was doing because he knew
13 he was supposed to take his medicine and he - he - he had a
14 combination of some mental health and maybe some not doing,
15 being as responsible as all of us were. That's kind of what
16 the brother testified to.

17 Q. Did you see any reason to object to his brother's
18 testimony that he knew what he was doing?

19 A. Oh, no. No. Because, I mean, his brother was
20 laying out facts. But my strategy was just the sheer heinous
21 nature of the crime and what happened and the fact that this
22 is your mama that, you know, my version was, man, you got to
23 be crazy to do this to your mama. I mean, that was, I mean,
24 that was my argument to the jury along with the things that
25 Alexander said. Look at him. Look at the things he says.

1 Look at what he did. This is his mama. Ladies and gentlemen
2 of the jury, he got to be crazy to do this to his mama. You
3 got to be, you know, to me to do this kind of stuff, my
4 argument was a person has got to be out of their mind to do
5 it, and you hear from my expert and that's what Dr. Martin
6 came in to be able to help us from a legal expert standpoint
7 to be able to get into those issues of why he should be
8 declared insane.

9 Q. So basically, and correct me if I'm wrong, but it
10 seems like it all comes down to the two expert witnesses, one
11 says he was, he did not understand criminal responsibility and
12 the other said he did?

13 A. That's correct. The jury really even though they
14 got the charges of innocent, insanity, guilty and guilty but
15 mentally ill there was really just two choices that they had
16 which was insanity or guilty but mentally ill because there
17 really wasn't an issue about like I said what had happened.

18 Q. In your opinion, if Mr. Wilson had not taken the
19 stand and testified at trial, do you think the outcome would
20 have been different? Do you think the jury --

21 A. I think we would have had even less of a chance to
22 be able to get the insanity defense.

23 Q. Okay. And looking back now in retrospect, I know
24 that's not the standard to follow, but even looking back now
25 is there anything else you think you could have done in this

1 trial to change the outcome?

2 A. No. Unless I could have -- Unless you want to give
3 me an ideal situation and give me tons of money and I can find
4 tons of other Dr. Martins who would have come in here and said
5 that this was insanity. Other than the ideal situation of
6 being able to bring in other witnesses who would have
7 subscribed to the same thing that Dr. Martin said which
8 there's no guarantee in that no matter how much money you
9 have. But other than that I don't think there was anything
10 else we could have done.

11 Q. And you did have Dr. Martin testify?

12 A. Oh, absolutely. Absolutely testify. I had a - I've
13 had a wonderful rapport with Dr. Martin on various cases and
14 he makes a great witness.

15 MS. COLEMAN: Thank you. Nothing further.

16 THE COURT: Mr. Griffith.

17 MR. GRIFFITH: May it please the Court, Your Honor.

18 CROSS EXAMINATION

19 BY MR. GRIFFITH:

20 Q. Attorney Brooks, do you recall how many expert
21 witnesses on mental health that the, that were called as
22 witnesses either by you or the State?

23 A. As far as I know there were only two witnesses, one
24 that the State had and one that Dr. Martin is who I had.

25 Q. So but they qualified as expert witnesses and were

1 qualified by the court as experts in mental health?

2 A. That's correct.

3 Q. As you may recall?

4 A. That's correct.

5 Q. And so were you given a list of witnesses by the
6 State before the trial?

7 A. I mean, if I - I probably was. Either the - John
8 Meadors may have said to me, hey, Charles, this is who I'm
9 gonna be calling but those fact witnesses really weren't a
10 concern of mine because, I mean, obviously he had the officers
11 there. He had the pathologist which they always have in a
12 murder case. He's gonna bring a pathologist to talk about,
13 you know, the body and that kind of thing and he brought in
14 the officers and he had the brother which, you know, John and
15 I had talked about it so it wasn't a surprise. I mean, I knew
16 what he was doing. I mean, we knew what the factual situation
17 was. So no. That wasn't a surprise. He probably -- And at
18 the outset of the trial he probably had it typed up on a sheet
19 of paper and he handed it to me prior to, you know, picking
20 the jury. So I guess your question is did I know the
21 witnesses he was going to call?

22 Q. That was the question.

23 A. Sure.

24 Q. And knowing the witnesses that he was going to call,
25 have you talked about what they were going to testify to or

1 were you made aware of what they were going to testify to?

2 A. Yeah. I mean, I knew what they were gonna testify
3 to. It wasn't, I mean, it wasn't rocket science to what
4 officer so and so is going to testify to. What the
5 pathologist is going to testify to. I mean, I knew that.
6 They were gonna testify we got to the scene. This is what we
7 found. Took these pictures. So on and so forth. Pathologist
8 is gonna come in and testify about I did the autopsy. This is
9 what I found. Blah, blah, blah, blah, blah.

10 And the brother was going to be there to testify
11 about how he came to the house and found his mama. Found his
12 brother with the baseball bat and how they subdued him and I
13 knew John had a - a - a - a witness expert who was going to
14 take the different posture than Dr. Martin and say, you know,
15 this guy knew what he was doing, et cetera, et cetera, et
16 cetera and John knew that I had Dr. Martin. I think he
17 actually talked to Dr. Martin, you know, and he had told me he
18 had done some other things with Dr. Martin before so it wasn't
19 anything new to him as far as Dr. Martin so it was almost
20 like, it was as if everybody knew what the people were gonna
21 to testify to. The issue was whether or not the jury would
22 determine whether or not this was gonna be an insanity or
23 guilty mentally ill. That was really the issue.

24 Q. When Mr. Wilson hears his brother testify, you heard
25 him begin to describe the mental condition of Mr. Wilson,

1 didn't you? Did you not?

2 A. I remember him describing -- What I remember the
3 brother saying is he said when we got to the house because it
4 was him and another brother so there were two brothers, the
5 one that testified and another brother that accompanied him,
6 he said when we got to the house, he said, Mr. Brooks, we got
7 to the house. We went in. We saw mama laid out in a bloody
8 mess on the floor and we saw my brother. They had a nickname
9 for him. I can't remember the nickname, you know, what they
10 referred to him as. He had that bat and he did this gesture.
11 He had it and he said he was winding up slow and he said, the
12 brother said I looked at my brother that accompanied me and we
13 made an instantaneous decision. You hit him, I hit for the
14 bat because we were worried. He was basically saying we were
15 worried that he was going to cause us bodily harm now.

16 And I'm sure in the ensuing process to do that there
17 was some injuries that Mr. Wilson sustained. Obviously they
18 got there. They see their mama in a bloody mess and they see
19 their brother winding up the baseball bat with blood all over
20 him. They made the logical conclusion that he had done it and
21 they were actually now trying to defend themselves and that's
22 what he pretty much testified to.

23 Q. Well, setting aside the events that occurred you as
24 his attorney heard the brother testifying as to the mental
25 state and mental history of Alexander Wilson while he was

1 testifying. Did you hear that?

2 A. He talked about stuff, things in the past. He had
3 mentioned and, of course, the doctors testified to that too as
4 a part of their findings when they evaluated Alexander. The
5 State's doctor did as well as Dr. Martin. Uhm, obviously Dr.
6 Martin was trying to spin it towards the insanity. But the
7 brother did testify that, you know, our brother has had some
8 issues in the past. I think he had testified to something
9 like when Alexander was in his 20's, he started having some --
10 I can't remember how he quoted it but it was something in
11 mental health and he was diagnosed and he started taking
12 medicine. But he said that that brother, I can't remember
13 that brother's name, but he said that Alexander had somewhat
14 not taken responsibility for a lot of things going on in his
15 life like, and he made it a comparison to himself and his
16 other siblings, you know. We grew up. Had families and took
17 care of our families and we worked and so on and so forth and
18 took care of ourselves. But Alexander would always try to, I
19 guess, live off mama so to speak. That's kind of the way he
20 put it. And he was, you know, after a certain period of time
21 he was back living with the parents, the mother and the
22 father.

23 Q. Well, didn't, Jerome was the brother's name --

24 A. Jerome.

25 Q. -- didn't Jerome also give opinion as to his

1 evaluation of the mental state and make statements that he was
2 trained as a mental health worker?

3 A. That Jerome himself was mental health trained?

4 Q. Did he not testify that he had mental health work
5 history with mental health?

6 A. That Jerome --

7 Q. That Jerome did?

8 A. I think that he - he - he may have. You know, it's
9 been about three years since I tried the case so I would
10 probably rely on the transcript. But, you know, the way I
11 kind of viewed it was Jerome's testimony was more in line with
12 the history of his brother and he may have mentioned that,
13 uhm, but obviously I did not - I did not think that he was
14 trying - that he being Jerome was encroaching into an area
15 that would have been expert.

16 At the same time, when I'm trying a case, you know,
17 you got to bear in mind you got an old lady who had been
18 bludgeoned to death and now you've got one son on the stand
19 who is his mama too and I didn't want to - I didn't want to
20 antagonize him because obviously he's dealing with the loss of
21 his mama and at the same time Jerome was not a fire and
22 brimstone witness either. He just basically, he was a mild
23 mannered fellow who just kind of spoke and said, you know, my
24 brother had some problems and, you know, he didn't have total
25 like I want to see my brother die type of mentality. He was

1 like my brother has problems.

2 But Jerome made it sound like my brother has
3 problems but he should have been taking his medicine because
4 my daddy had him take his medicine and everything was all
5 right. But brother didn't want to take his medicine. That
6 was the posture that Jerome took when he testified. But he
7 wasn't a very loud and fire and brimstone witness to the point
8 where he was very vocal, very vociferous. He was just, he was
9 mild mannered and just kind of stated what he knew of his
10 history with his brother and, you know, he still loves his
11 brother he said, but he said my brother's got problems. He
12 wouldn't take his medicine and that was the posture of his
13 testimony.

14 Q. Isn't it true to your best recollection that Jerome
15 repeatedly claimed that the appellant was acting purposefully
16 and willfully on the day of the incident that he killed his
17 mother?

18 A. Is your question did he testify to that?

19 Q. Did he testify to that? And I can tell you that in
20 the transcript actually on page 88 line 9 through 12 he stated
21 just that.

22 A. Well, and he may have. Obviously, you know, he was
23 upset because his mama is laying there dead, you know? But he
24 just from my recollection Jerome's testimony was more like my
25 brother is not insane. My brother is more or less got mental

1 health issues but he won't take his medicine. We try to get
2 him to take his medicine. He need to take responsibility but
3 he don't want to take his medicine and therefore didn't take
4 his medicine. That was the posture that Jerome's answers were
5 from.

6 He wasn't - he wasn't from the school of my brother
7 don't know what's going on. He was from the school of my
8 brother knows he should be taking his medicine. He should
9 have been taking his medicine. He should have been taking
10 responsibility for taking his medicine. If he had taken his
11 medicine, none of this would have happened but when my daddy
12 was alive, my daddy made sure he took his medicine. That's
13 where Jerome's testimony and posture was coming from, if that
14 kind of simplifies it a little bit.

15 Q. Do you recall Jerome testifying that he had been
16 working in mental health and dealing with a lot of different
17 clients?

18 A. I don't recall. If it's in the record, it's in the
19 record.

20 Q. Did you make any objection to his testifying
21 possibly coming across as an expert witness in mental
22 health?

23 A. You would have to look back at the record. If I
24 didn't object, I didn't object to it. I probably didn't see
25 it helpful in my strategy. You know, again, my strategy was

1 when a brother is going to come in and I knew he was going to
2 take the posture that I described in addition to being a fact
3 witness and that was going to go hand in hand with what the
4 State's doctor was saying. I had Dr. Martin and more
5 importantly I had Alexander Wilson and out of the things he
6 said to Dr. Martin, my strategy was, hey, I want this played
7 up because my position as I described was, can you believe
8 this? Can you believe this guy thought this way? Can you
9 believe this guy? He got to be crazy. That was my
10 strategy.

11 Q. So part of your strategy was that you were not going
12 to object even though that testimony under some other
13 circumstances you may have objected to as him not being an
14 expert, is that what you're saying?

15 A. Well, and that's right. Bear in mind, you know, I
16 got this brother on the stand. Like I said, he wasn't, you
17 know, he wasn't really hammering his brother, my client. His
18 position was his testimony was basically broke down into two
19 positions. He was a fact witness as to how he discovered his
20 mother and his brother on the date. In addition to that, he
21 laid out some history.

22 Now, he did say something about in his, Jerome's
23 work history he had worked in mental health so he obviously --
24 But he was testifying from a lay person who has dealt with
25 some mental health patients before and he never said my

1 brother doesn't have problems. He just said my brother has
2 got mental health problems. He has a problem. But it was a
3 problem that would be contained and remedied with taking his
4 medicine. And he said my brother Alexander has sometimes
5 doesn't want to take on the responsibility of taking his
6 medicine. Don't want to take his medicine.

7 And he talked about when daddy was alive, he took
8 his medicine because daddy basically said, boy, you gonna take
9 your medicine. And the problems exacerbated when daddy dies
10 and he doesn't really have anybody in the house because mama
11 would coddle him. You don't want to take your medicine,
12 that's fine. That's fine, you know. Just kind of coddle him.
13 And she actually kind of shielded Alexander from his other
14 siblings because they wanted him, hey, you need to be off on
15 your own. You need to be responsible and take your medicine.

16 That was the posture by which Jerome testified and
17 he say, you know, he still loves his brother. I don't know if
18 he's visited him. I can't speak to any of that. But that's
19 how Jerome came across. So he was going to be in the guilty
20 but mentally ill school of thought and testified in that way
21 for the prosecutor. His testimony was going to help bolster
22 that part of John Meadors' case.

23 Obviously I had Alexander Wilson. I had the real
24 deal. I wanted to put him on the stand and wind him up and
25 let him go. I mean, if you look at the things that he told

CHARLES BROOKS - CROSS BY MR. GRIFFITH

35

1 Dr. Martin and he told me and he told to the jury, hey, I said
2 you got to be crazy, when you factor in how he killed his mama
3 and what he said on the stand. When I read, when I saw stuff
4 and Dr. Martin told me the whole incident of, he described it
5 as being -- You ever seen the movie "Invasion of the Body
6 Snatchers"? I said, well, I remember that. Well, it's kind
7 of like this ain't my mama. This is a clone. My mama's a
8 clone. He says he's a black man with a white man's penis and
9 he says all this and says this and he says that. He said,
10 Brooks, this is classic of insanity. You can use this as an
11 insanity. This is how we need to posture the case.

12 So I said the best thing to do, doc, is we need to
13 put him on the stand and wind him up and let him go and that's
14 what I did. I put him on the stand. He knew about it. Now,
15 obviously he's not in the best mental health state to
16 determine whether I should testify or I shouldn't. That's
17 part of the reason that he's in the mental state that he's in.
18 This was not a who done it. This was a why he did it
19 situation.

20 Q. I understand. If I can interject. Your goal as you
21 stated it was to prove he was mentally ill or to preponderance
22 --

23 A. Oh, no. No. No. No. My goal was to get the jury
24 to determine he was insane.

25 Q. That's right. To determine that he was insane.

1 Your goal was to get the jury to determine that he was insane
2 whereas the brother's testimony was weighing more toward that
3 he was mentally ill and not insane --

4 A. Well, that's true.

5 Q. -- is what you're saying to us. But based on that
6 then when the brother said that he had experience in mental
7 health and so he knew that Mr. Wilson was not mentally insane,
8 did you --

9 A. He didn't say.

10 Q. -- not object? Well, the statement you made was
11 that he did not necessarily say that his brother was insane.
12 He was mentally ill because he wasn't taking his medicine.
13 You just said that.

14 A. Jerome --

15 Q. Why wouldn't you object when he made a statement
16 based on his prior history of mental health official? And I
17 would think that you may object based on that because you
18 wanted to say he was not capable were he to take his medicine.
19 That was your goal, isn't that correct?

20 A. That's true. But one of the things when I'm sitting
21 in there in the midsts of trying that case is you make certain
22 strategic decisions. Jerome also talked about, you know, my
23 brother showed up in church naked and mama trying to, you
24 know, clothe him or whatever and he's sitting in the church
25 just naked as a jaybird. And I was like, well, that kind of

1 stuff helps me and bolsters my case for the insanity because
2 who would you think would show up in the middle of the church,
3 a house full of congregates butt naked. Okay?

4 Q. I understand that strategy.

5 A. I mean, pieces of Jerome's testimony. And bear mind
6 it was strategic because it's not like I'm gonna get into a
7 fight and antagonize this witness because he was also - he was
8 - he was - I don't want to say he was totally docile. But
9 like I said, he wasn't a fire and brimstone type witness where
10 he's just attacking and attacking and attacking.

11 So at the same time I've got to realize that this
12 guy has got a loss too. His mama died and he still had care
13 and affection for his brother because that was his brother.
14 So at the same time, you know, I got to be - I got to handle
15 him, you know, with a little bit of care. I can't just come
16 out and start antagonizing or objecting to things because some
17 of the things he said we were trying to spin for us to bolster
18 our argument to the juror for insanity.

19 Q. Back to your strategy. Your strategy was to show
20 that he was insane and when you testified earlier that Jerome
21 said that if he takes his medicine, he's fine but he was also
22 speaking in the form of an expert when he said he had mental
23 health history as, and that was his opinion having dealt with
24 many clients, I just wonder --

25 A. Okay.

1 Q. So you did not object at that time when he placed
2 himself as an expert and yet said that his brother would be
3 just fine if he took his medicine?

4 A. Well, I wouldn't necessarily agree that he placed
5 himself as an expert. I would agree with whatever is
6 displayed in the record. If I objected, I objected. If I
7 didn't, I didn't. Jerome never to me placed himself as an
8 expert witness. He might have commented on - Jerome may have
9 commented on Jerome's work history of having dealt with some
10 people. He may have commented also on the family history of
11 dealing with his brother. Obviously he would know that by
12 being his brother, okay? For all those years. And he may
13 have commented on, you know, he may have given a little bit of
14 his opinion. But there were things in Jerome's testimony that
15 were actually favorable to my argument too.

16 So in some instances sometimes you have to take the
17 good with the bad and understanding that some of this witness'
18 testimony was helpful to me in the angle that I was pursuing
19 and so you deal with him in such a way when you have a witness
20 you try to get the things out of them that are going to help
21 bolster your theory of the case. And because this was not a
22 who done it. It was I wanted - I got - I wanted some things
23 out of Jerome to show that, hey, this man is crazy in terms of
24 Alexander. That was my strategy.

25 Now, you tell me I chose the wrong strategy. If the

1 Judge agrees I chose the wrong strategy, then so be it. But
2 that's the strategy that I had. That's the cards I was dealt
3 and that's the hand I played.

4 MR. GRIFFITH: Thank you, Mr. Brooks. I have no
5 further questions.

6 THE COURT: Ms. Coleman.

7 MS. COLEMAN: Nothing further. Thank you, Your
8 Honor.

9 THE COURT: Thank you, Mr. Brooks.

10 THE WITNESS: Can I be excused, Judge?

11 THE COURT: Any objection to him being excused?

12 MS. COLEMAN: No objection.

13 MR. GRIFFITH: No objection.

14 THE COURT: Have a good day, sir. Ms. Coleman,
15 anybody else?

16 MS. COLEMAN: No further witnesses.

17 THE COURT: All right. I don't need closing
18 arguments. I listened to both of you and I might add
19 before you leave, Mr. Brooks, it's been a pleasure being
20 in the same room with three very good lawyers today.

21 I would state that as we addressed earlier at the
22 outset the defendant's mental state was determined by a
23 lay witness. That was addressed in the Court of Appeals.
24 That's not before me today. The part or allegation of
25 the applicant that he was forced to testify against

1 himself which addresses mainly A and C of the State's
2 return, I find that the questioning by the judge on the
3 record on page 237 -- Is that right Ms. Coleman?

4 MS. COLEMAN: Yes, Your Honor.

5 THE COURT: -- addresses that and I don't find that
6 to be a grounds for granting any relief. As to the other
7 ground, counsel did not object to lay testimony. To
8 borrow much of the language of the State's return here I
9 find that was a strategic decision that Mr. Brooks made.
10 I do not find that the Strickland measuring stick as I
11 call it has been satisfied so as to find counsel
12 ineffective and Mr. Brooks made it clear why he did what
13 he did. I don't find it to be unreasonable under the
14 facts of this case and I will ask Ms. Coleman if you will
15 do an order to that effect and if you wish to add any
16 other findings in there, if I find them proper and
17 supported by the record I will adopt them.

18 MS. COLEMAN: Yes, Your Honor.

19 THE COURT: Anything else? Mr. Griffith, I thought
20 you did a fine job, sir. I did.

21 MR. GRIFFITH: Thank you, Your Honor.

22 THE COURT: Thank y'all.

23 MS. COLEMAN: Thank you, Your Honor. That's all for
24 today.

25 THE COURT: We'll see you in the morning, okay?

1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4

5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of Common Pleas in and for the
10 State of South Carolina on the 15th day of November, 2017.

11 I FURTHER CERTIFY that the forgoing 40 pages
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 16th day of June, 2018.

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Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

RECEIVED

JUN 20 2018

APPELLATE DEFENCE

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

Esquire. On December 4, 2014, Applicant was found guilty but mentally ill of murder and sentenced by the Honorable W. Jeffrey Young to imprisonment for the remainder of his natural life.

Applicant filed a timely notice of appeal. An appeal was perfected and an Anders brief was submitted. The South Carolina Court of Appeals dismissed Applicant's appeal in an opinion filed June 22, 2016. State v. Wilson, Op. No. 2016-UP-310 (S.C. Ct. App. 2016). The Remittitur was returned on July 8, 2016.

II. ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. "Three weeks before trial advise[d] to testify."
 - b. "Counsel did not object to lay testimony."
 - c. "Compelled to be a witness against myself."
 - d. "Defendant mental state was determined by lay witness."

At the outset of the evidentiary hearing, Respondent moved to dismiss allegation "d" because the allegation is a direct appeal allegation that is improper for post-conviction relief and had already been raised and ruled upon in Applicant's direct appeal. Applicant voluntarily withdrew this allegation in response to the motion, and proceeded forward only on the remaining three allegations.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

Applicant's testimony

At the evidentiary hearing, Applicant testified that he had taken his medicine that day and felt good, and he knew what was going on. He stated he had previously been found mentally incapable to stand trial four times. Applicant testified that he was alleged to have killed two

people—his mother, and the clone that was impersonating his mother. Applicant stated he only met with Trial Counsel three times before his trial, and Trial Counsel did not advise him of his right to testify or his right to remain silent. He stated Trial Counsel told him to testify at trial. Applicant stated Trial Counsel sent him a letter, and after Applicant received it, he decided to testify. He stated Trial Counsel did not advise him of the consequences of testifying, and he thought that if he did not testify he could not win the case. He stated Trial Counsel failed to object to his brother's testimony about Applicant's mental state at the time of the crime, and he should have objected because his brother was a lay witness.

Trial Counsel's testimony

Trial Counsel testified he had practiced law for twenty-one years. He stated he was appointed to represent Applicant and represented him for two years prior to his trial. He testified Applicant was accused of murdering his mother by beating her to death with a baseball bat. He stated Applicant's brother came home, walked in the house, and saw Applicant standing there with a baseball bat ready to swing at him, and his deceased mother laying face-down on the floor with blood everywhere. Trial Counsel testified that Applicant seemed to believe that the woman he killed was not his mother, but was an evil clone that was impersonating his mother. He stated this case had big mental health issues, and Dr. Thomas Martin was appointed to help him handle the case, and Dr. Martin conducted a mental evaluation on Applicant. Trial Counsel testified that the State's doctor testified that Applicant was guilty but mentally ill.

Trial Counsel testified his trial strategy was to let the jury see and hear Applicant "in all of his glory" at trial to convince them that he was insane. His strategy was to put Applicant on the stand because it was the best way to prove he was insane and could not understand that he was doing wrong because he believed he was killing an evil clone, not his mother. Trial Counsel



stated he discussed the decision to have Applicant testify with Applicant over the phone, when they met at the jail, and before the trial. He stated his strategy was to argue to the jury that "you've got to be crazy to do this to your momma." Trial Counsel opined that if Applicant had not testified at trial, their chances of winning the case would have been worse.

Trial Counsel testified the evidence of Applicant's guilt was overwhelming. He stated there was no question that Applicant committed the crime, but the only question for the jury was why he committed the crime. He stated it all came down to either a not guilty by reason of insanity verdict or a guilty but mentally ill verdict. Trial Counsel testified he was not concerned about the fact witnesses' testimony because the facts were not in dispute.

Trial Counsel testified he saw no reason to object to the testimony of Applicant's brother, Jerome, at the time of the trial. He stated Jerome talked about Applicant's past mental health history, and Trial Counsel did not believe Jerome was encroaching into an expert area of testimony. Trial Counsel testified he did not want to antagonize Jerome in front of the jury. He stated Jerome was mild-mannered, not a "fire and brimstone" witness. Trial Counsel stated at the trial Jerome made it sound like he was saying "my brother has problems and he should have been taking his medicine," and that's what he meant when he said Applicant "knew what he was doing." He stated he did not object to Jerome's testimony as a mental health witness because Jerome did not place himself as an expert witness. He stated Jerome was a helpful witness to him because he told the jury that Applicant had mental health problems, which supported his trial strategy.



IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).



V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant has asserted several allegations of ineffective assistance of counsel. This Court finds these claims to be meritless and they should be denied and dismissed with prejudice. After considering the testimony, judging the credibility of the witnesses, and reviewing the materials presented to the court, this Court finds Applicant has failed to meet his burden of proof. Accordingly, post-conviction relief is denied. Each individual allegation is addressed below.

Applicant's decision to testify at trial

Applicant alleges he was compelled to be a witness against himself at trial, and he was not properly advised of the risks and benefits of testifying or his right not to testify at trial. These allegations are meritless. The trial transcript shows Applicant was fully advised of his right to testify at trial as well as his right to remain silent. The trial court fully reviewed these rights and advised Applicant it was entirely his decision to testify or not. Tr. 237 – 241. Applicant informed the trial court that he had no questions about the court's explanation of his rights, he had discussed the decision with his attorney, and he did wish to testify. Tr. 240, line 11-21.

Trial Counsel credibly testified that he did advise Applicant of his rights and the risks and benefits of testifying at trial. He explained that he discussed the decision with Applicant multiple times over the phone, in person at the jail, and right before the trial. Trial Counsel testified that



his trial strategy was to argue a defense of insanity, and the best way to present the defense to the jury was to have Applicant testify at trial about why he killed the evil clone that was impersonating his mother.

This Court finds it was Applicant's decision to testify at trial in alignment with Trial Counsel's strategy, and he was fully advised of his rights and the risks of testifying before he took the stand. This Court finds Trial Counsel's actions were reasonable under professional norms and nothing about his performance was deficient or prejudicial. Accordingly, Applicant has failed to meet his burden of proving that Trial Counsel was ineffective or that his constitutional rights were violated in this regard. These allegations are denied and dismissed with prejudice.

Failure to object to lay witness testimony of Applicant's mental health

This Court finds no merit in Applicant's allegation that Trial Counsel was ineffective for failing to object to the testimony of Applicant's brother, Jerome, as a lay witness giving expert opinion testimony on Applicant's mental state at the time of the crime. Trial Counsel credibly testified he saw no reason to object to Jerome's testimony because he did not believe he was holding himself out to be an expert on the subject of mental health, but he was only discussing Applicant's mental health history and his impressions of his brother's behavior at the time he witnessed him. This Court finds the choice not to object to the testimony was reasonable under the circumstances, as Jerome was not offering any opinions on Applicant's mental health in an expert manner. Jerome was simply explaining his interaction with his brother when he witnessed him immediately after the crime.

Furthermore, Trial Counsel cannot be deficient because he offered a valid strategic reason for choosing not to object to the testimony. He credibly testified that Jerome's testimony taken as



a whole helped Applicant and his defense, and Trial Counsel did not want to make Jerome look bad to the jury. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). Accordingly, this Court finds Trial Counsel was not deficient for failing to object to Jerome's testimony.

This Court further finds Applicant has failed to prove any prejudice from Trial Counsel's failure to object to Jerome's testimony. The evidence against Applicant was overwhelming, and there was no question that Applicant murdered his mother. The presence of overwhelming evidence of guilt negates any claim that counsel's performance could have reasonably affected the result of the defendant's trial. Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001), *cert. denied*, 535 U.S. 1114, (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial). While Applicant may contend that he may have been found not guilty by reason of insanity rather than guilty but mentally ill if Trial Counsel had objected to the testimony, this Court finds Applicant has failed to meet his burden of proving so. Accordingly, neither prong of the Strickland test is met, and this allegation is denied and dismissed with prejudice.



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VI. CONCLUSION

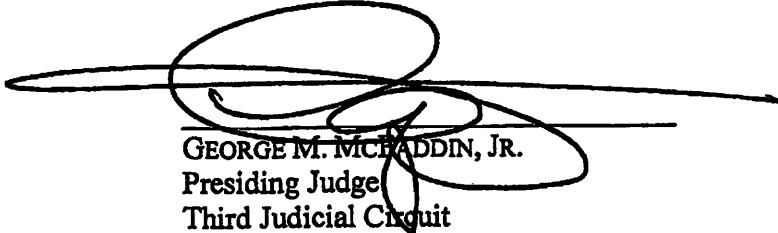
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 20th day of March, 2018.



GEORGE M. MICHAADDIN, JR.
Presiding Judge
Third Judicial Circuit

Sumter, South Carolina