

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County

Honorable R. Scott Sprouse, Circuit Court Judge

LEON M. DAVIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001283

APPENDIX

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S.C. SUPREME COURT

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State of South Carolina
County of Aiken

Court of General Sessions

State)
)
)
v.)
)
Leon Davis)
)
Defendant.)

Transcript of Record
2014-GS-02-1049

November 9, 2015
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

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

Ashley Hammack, Assist. Solicitor
Attorney for the State

Barry Thompson, Assist. Public Defender
Attorney for the Defendant

Bethanie K. Creppon
Circuit Court Reporter

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WITNESS

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(No Witnesses.)

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DESCRIPTION

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EVD.

(No Exhibits.)

P R O C E E D I N G S

* * *

LEON DAVIS

being first duly sworn, testified as follows:

THE DEFENDANT: Yes, ma'am.

MS. HAMMACK: Thank you, Your Honor. Before you now is Leon Davis. He's charged in Indictment 2014-GS-02-1049 with homicide by child abuse. He was set for trial for this week by Your Honor, according to the 545-day scheduling order from September of 2015.

He's before you now to plead guilty to that charge. He's represented by Barry Thompson of the Aiken County Public Defender's Office. This plea is straight-up without negotiations or recommendations.

THE COURT: Has he been sworn in, ma'am?

THE CLERK: He has.

THE COURT: All right. First of all, does Mr. Davis have a prior record?

MS. HAMMACK: He does, Your Honor. He's been convicted of shoplifting from 1996; failure to stop for blue light and resisting arrest from 2008; unlawful carrying of a pistol from 2011; unlawful carrying of a pistol, assault and battery third degree, and two counts of petit larceny from 2012,

1 and a conviction for grand larceny \$2,000 to \$10,000
2 from 2014 for which he's currently serving an active
3 sentence in the South Carolina Department of
4 Corrections.

5 THE COURT: What is the indictment number on
6 the grand larceny in 2014, if you happen to have it?

7 MS. HAMMACK: I do have it, Your Honor. I do
8 have that, if Your Honor will give me two seconds.

9 THE COURT: All right. I need everyone to be
10 able to control their emotions; if not, you need to
11 leave.

12 MS. HAMMACK: The indictment on the grand
13 larceny is 2013-GS-02-288.

14 THE COURT: And he's currently incarcerated on
15 that?

16 MS. HAMMACK: He is, Your Honor. He received a
17 three-year sentence. And that was on March -- I'm
18 sorry. The sentence date was December 9th of 2013.
19 Sentencing was deferred until March 13th of 2014,
20 and at that time he received a three-year sentence
21 on that charge.

22 THE COURT: Mr. Thompson, do you agree that's
23 an accurate representation of his prior record?

24 MR. THOMPSON: I do, Your Honor.

25 THE COURT: And his current situation at the

1 department of corrections, SCDC?

2 MR. THOMPSON: Yes, sir.

3 THE COURT: Mr. Davis, good afternoon.

4 THE DEFENDANT: Good afternoon, Your Honor.

5 THE COURT: Mr. Barry Thompson, have you
6 advised Mr. Leon Davis of the charges contained in
7 the indictment called?

8 MR. THOMPSON: Yes, sir.

9 THE COURT: Have you advised him of the
10 potential sentence which is a minimum of 20 years in
11 the department of corrections up to life at my
12 discretion?

13 MR. THOMPSON: I have, Your Honor.

14 THE COURT: Have you advised him that this is
15 what we commonly refer to as an 85-percent,
16 no-parole sentence and that, perhaps, it's a minimum
17 20-year sentence, he'd do the day for day?

18 MR. THOMPSON: We've discussed that, Your
19 Honor.

20 THE COURT: Have you advised him that it's
21 classed as violent which will have some effect on
22 where and how he's housed in the department of
23 corrections?

24 MR. THOMPSON: Yes, sir, Your Honor.

25 THE COURT: Have you advised him that it's

1 classified as most serious and the implications of
2 that under our current enhancement laws of two
3 strikes and three strikes --

4 MR. THOMPSON: Yes, sir.

5 THE COURT: -- and what that means?

6 MR. THOMPSON: Yes, sir.

7 THE COURT: In your opinion does he understand
8 all of that?

9 MR. THOMPSON: He does.

10 THE COURT: Have you advised him of his right
11 to trial by jury?

12 MR. THOMPSON: I have, Your Honor.

13 THE COURT: And has he indicated to you how he
14 wishes to plead?

15 MR. THOMPSON: He wishes to plead guilty, Your
16 Honor.

17 THE COURT: MR. Thompson, having had an
18 opportunity to review all the evidence in this case,
19 research the law, and spend time with your client,
20 are you in agreement with his decision?

21 MR. THOMPSON: I am.

22 THE COURT: Mr. Davis, please listen carefully.
23 If you do not understand my questions, please ask me
24 to repeat it so we'll all be on the same page. Fair
25 enough?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You're charged and indicted for the
3 offense of homicide by child abuse. Do you
4 understand that offense?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Speak up for me.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Under our statutory law, that
9 carries a mandatory minimum of 20 years in the
10 department of corrections up to the balance of your
11 natural life. That's the range of sentence. Do you
12 understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: It is classified as a violent
15 offense which will have some effect on where and how
16 you're housed in the department of corrections. Do
17 you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: It's further classified as a most
20 serious offense which means under our -- our being
21 the State of South Carolina's -- enhancement law, or
22 three- or two-strike law, means that you would now
23 have one strike. If you become involved in criminal
24 activity classified as most serious one more time,
25 that would be two most serious strikes, or if you

1 become involved in criminal activity classified as
2 serious two more times with the most serious strike
3 would be three strikes, that you would be subjecting
4 yourself to the possibility of life in prison
5 without the possibility of parole. Do you
6 understand what most serious means and the
7 implications?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you have any questions you wish
10 to ask of me concerning what you're charged with,
11 the range of sentence, the mandatory minimum of 20
12 years, the classification of violent and/or most
13 serious?

14 THE DEFENDANT: No, sir.

15 THE COURT: Do you understand all of that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Understanding that, sir, how do you
18 wish to plead to these charges, not guilty or
19 guilty?

20 THE DEFENDANT: Guilty, Your Honor.

21 THE COURT: Now, Mr. Davis, when you enter a
22 plea of guilty, you'll give up your constitutional
23 right to remain silent.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You'll have to discuss with me

1 these facts and admit the allegations contained in
2 the indictment --

3 THE DEFENDANT: Yes, sir.

4 THE COURT: -- admit your involvement in the
5 death of the child. Is his name in here --
6 two-year-old child -- what's his name?

7 MS. HAMMACK: ██████████.

8 MR. THOMPSON: ██████████, Your Honor.

9 THE COURT: ██████████ I see it in here
10 now.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You'll be giving up that right to
15 remain silent.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: We have a jury that just came to
18 the courthouse, they're ready and willing and able
19 to serve.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: The jury can be drawn in the
22 morning; however, if you plead guilty, you'll be
23 giving up your right to that jury trial. Do you
24 understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: If you pled not guilty and demanded
2 a jury trial, then, obviously, we'd start tomorrow.
3 During that jury trial you would have the right to
4 confront and cross-examine everyone who testified
5 against you through your lawyer. Do you understand
6 that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You'd have the right to present
9 your own defense, that means telling your your side
10 of the story, by calling witnesses, introducing
11 relevant exhibits, and you could even get on the
12 witness stand and testify in your own defense, tell
13 your side of the story.

14 If during that trial you exercised your Fifth
15 Amendment right to remain silent, then I would tell
16 the jury that they could not hold the fact that you
17 did not testify against you in any manner whatsoever
18 and I would instruct them that they could not even
19 consider the fact that you did not testify when they
20 deliberated your guilt or innocence.

21 Under the constitution you'd be presumed to be
22 innocent throughout the trial and the State of South
23 Carolina would have the burden of proving you guilty
24 beyond a reasonable doubt to a jury of 12 people.
25 And in order for that jury to convict you, all 12

1 jurors would have to unanimously agree that you
2 were, in fact, guilty. And even if you were
3 convicted, you would still have the right to an
4 appeal. Now, do you understand your rights to trial
5 by jury?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Understanding your rights to trial
8 by jury, do you still wish to plead guilty or do you
9 want me to call the jury in tomorrow?

10 THE DEFENDANT: I want to plead guilty.

11 THE COURT: Has anyone promised you anything,
12 held out any hope of reward, or threatened you in
13 any manner in order to make you plead guilty?

14 THE DEFENDANT: No, sir.

15 THE COURT: Mr. Barry Thompson has been
16 representing you. Are you satisfied with his legal
17 representation?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: In your opinion has he had enough
20 time to spend with you, enough time to investigate
21 the facts, and enough time to research the law so
22 that he can properly defend you here today?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Is there anything else you want
25 Mr. Thompson to do for you today before we move

1 forward other than speak up on your behalf?

2 THE DEFENDANT: No, sir.

3 THE COURT: And I ask you once again, are you
4 totally and completely satisfied with his services
5 as your lawyer?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Sir, are you today under the
8 influence of alcoholic beverages, drugs, or
9 prescription medication?

10 THE DEFENDANT: No, sir.

11 THE COURT: Sir, are you today aware of any
12 mental, nervous, or emotional conditions which would
13 keep you from understanding these proceedings?

14 THE DEFENDANT: No, sir.

15 THE COURT: Have you understood all of my
16 questions?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you have any questions you'd
19 like to ask me?

20 THE DEFENDANT: No, sir.

21 THE COURT: Mr. Davis, are you entering a plea
22 of guilty to homicide by child abuse of your own
23 free will? No one is pressuring you to do so; is
24 that correct?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Mr. Davis, did you here in Aiken
2 County, on or about February 21 of the year 2014,
3 commit the crime of homicide by child abuse in that
4 you did cause the death of a child two years of age
5 named [REDACTED] while either committing child
6 abuse or neglect as defined by the South Carolina
7 law; that you were responsible for the welfare of
8 that child, and that you did inflict or failed to
9 protect the child from physical injury, causing the
10 child's death?

11 THE DEFENDANT: Yes, sir, but it wasn't
12 intentional.

13 THE COURT: I didn't say it was intentional --

14 THE DEFENDANT: Yes, sir.

15 THE COURT: -- I said did you do it.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Are you pleading guilty because you
20 are guilty of the death of [REDACTED]

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. I find your decision to
23 plead guilty to the crime of homicide by child abuse
24 to be freely, voluntarily, and intelligently made.
25 You've had the representation of an excellent

1 lawyer, Mr. Barry Thompson, with whom you tell me
2 you're satisfied, and I will accept your plea. If
3 you disagree with my sentence or these proceedings,
4 you have ten days from today's date to file a notice
5 of intent to appeal. Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Madam Solicitor?

8 MS. HAMMACK: Thank you, Your Honor.

9 On February 21st, 2014, law enforcement was
10 dispatched to [REDACTED] here in Aiken
11 County in reference to a nonresponsive child. EMS,
12 first responders, and law enforcement all responded
13 to the location where they found the defendant and
14 the two-year-old decedent in this case in the living
15 room. The child was in full cardiac arrest at that
16 time.

17 EMS attempted to perform CPR to revive the
18 child and immediately took the child to Aiken
19 Regional Medical Center. They were able to regain a
20 pulse long enough to get the child on machines that
21 would keep his heart beating. The child never
22 breathed on his own again. He was airlifted to
23 Georgia Regents University the night of February
24 21st, 2014. He was pronounced dead on Sunday
25 February 23rd, 2014. He was four months shy of his

1 second birthday.

2 After his death he was taken to Newberry
3 Pathology for an autopsy. Dr. Ross with Newberry
4 Pathology performed an autopsy on the child,
5 determined the child died from blunt-force trauma to
6 the head. He had a subdural hematoma that covered a
7 significant portion of his brain.

8 Additionally, his brain had swollen to the
9 extent that there was what they call blurring of the
10 gray-white matter, meaning that the child's brain
11 had swollen so much that the crevices of the brain
12 had actually smoothed out. That swelling cut off
13 oxygen to the child and he died as a result of that
14 trauma.

15 Law enforcement spoke with the defendant at the
16 hospital that Friday night. He initially told law
17 enforcement that the child was in the shower, fell,
18 struck his head, and had a seizure. After the
19 child's death, law enforcement spoke with the
20 defendant a second time. At that point he informed
21 law enforcement that he was playing with the child
22 in the living room, that he was twirling the child
23 up in the air, and that the child fell and struck
24 his head on a table.

25 After being confronted with some of the other

1 injuries that the two-year-old received in this
2 case, his story changed again. At that point the
3 defendant indicated that the child was crying for no
4 reason and that he was whining, and that the child
5 was standing between his legs and he stood up, said
6 why are you crying, came down with both fists, and
7 struck the child on the top of the head.

8 In speaking with the doctors that treated this
9 child --

10 THE COURT: Hold on one second, please.

11 (Brief interruption in the proceedings.)

12 THE COURT: You may continue.

13 MS. HAMMACK: Significantly, in speaking with
14 the doctors who treated the child, both the
15 pediatric intensive care doctor at Georgia Regents
16 University as well as the pediatric ophthalmologist,
17 in addition to the subdural hematoma, [REDACTED] also
18 suffered retinal hemorrhaging in both eyes, in all
19 four quadrants, so complete hemorrhaging in both
20 eyes. He also suffered from what is called a
21 schisis cavity in the right eye, meaning that the
22 layers of the eye were actually torn. And, lastly,
23 he also suffered a retinal detachment in the right
24 eye.

25 The reason this is significant is because the

1 doctors would testify that in order to cause those
2 types of injuries, that this would require violent,
3 repetitive, nonaccidental trauma; that this could
4 not have resulted from a single strike, but from
5 repeated trauma. They liken this to someone being
6 ejected from a vehicle in a high-speed car collision
7 and striking a tree headfirst.

8 The doctors would testify that in order for a
9 child to sustain these injuries, an adult would have
10 to be acting with all the force in that person's
11 body in order to enact that type of force on this
12 child.

13 Your Honor, as far as family in the courtroom,
14 the lady that just had to leave is Ms. Brandy
15 Brooks; she is the aunt of [REDACTED] in this
16 case, she is the sister of the [REDACTED] Child's mother. The
17 defendant in this case is the stepfather of the
18 child. He was married -- or still is married to the
19 [REDACTED] Child's mother in this case. He was living in the
20 home and was caring for the child at the time of
21 this incident.

22 The mother had a job, was out of the residence
23 during the day. On this day she was taking her
24 five-year-old son to school for a parent-teacher
25 conference. He was alone with the child and he did

1 admit that to law enforcement.

2 THE COURT: Does the mother want to say
3 anything?

4 MS. HAMMACK: Your Honor, the **Child**'s
5 mother is -- I don't see her in the courtroom. She
6 has not been cooperative with our office. Back in
7 2014 she filed an affidavit for us to dismiss the
8 charges against the defendant in this case.
9 Ms. Brooks, the **Child**'s aunt, came here from North
10 Carolina. She does not wish to address the court,
11 but wanted to be here in support of the prosecution
12 of this case.

13 Additionally, Investigator Adam Truesdale with
14 the Aiken County Sheriff's Office is here. It was
15 his investigation and his case, and he's here in
16 support of the plea today.

17 THE COURT: Mr. Thompson?

18 MR. THOMPSON: Your Honor, may it please the
19 Court. Leon is 36 years old. He grew up in
20 Wagener, went to the 10th grade at Wagener-Salley
21 High School, at which point he dropped out to go to
22 work at a pallet company in Pelion to support his
23 first child. He worked for about 12 years as a
24 forklift operator at McEntire Produce Company.

25 From 1998 until 2007, in those years, he

1 volunteered and then was hired on part-time at the
2 Aiken-Barnwell Head Start Program. He was actually
3 a mentor to little children who didn't have fathers.
4 He has -- and, Your Honor, we were prepared later on
5 this week to call the lady who runs the Head Start
6 as a witness to his character on his behalf.

7 Your Honor, he has four biological children; a
8 19-year-old daughter, a 17-year-old daughter, a
9 16-year-old son, and 12-year-old son who live in
10 Perry, that when he was not incarcerated, he sees
11 regularly and supports.

12 Your Honor, on February 9th of 2013, he married
13 a high school sweetheart, Ms. Shawn Davis. I can
14 tell you, I don't know why she's not here now. She
15 was here earlier today. Before lunch she was
16 present in the courtroom. She -- I've met with her
17 extensively. She was also prepared later on this
18 week to be a witness for the defense --

19 THE COURT: She wasn't there though, was she?

20 MR. THOMPSON: She was not present; however,
21 she would have talked to the Court about Leon and
22 the type of father he was. Your Honor, Leon was the
23 stepfather of [REDACTED] and [REDACTED] [REDACTED] is now seven,
24 and [REDACTED], his birthday was [REDACTED], so he
25 would have been four today. He was about two at the

1 time.

2 I will represent to you this is a little bit of
3 a harder case for me because I actually represented
4 Leon on the grand larceny case. I had the
5 opportunity to see Leon and his wife and the
6 children in my office. I will tell you from talking
7 with Leon and from talking with Shawn and with
8 talking with Leon's mother that it's doubtful that
9 [REDACTED] even knew that he was a stepchild. He called
10 Leon Daddy. There was, on at least one occasion
11 when he was in my office and got his finger hurt
12 with something, when he got hurt, he didn't want
13 Mama, he wanted Daddy, and Daddy meant Leon.

14 Leon at -- at the time that all this happened,
15 Leon was actually enrolled in adult ed and was
16 trying to get his GED, and at the time had been laid
17 off and was a stay-at-home father. Shawn, his wife,
18 was an assistant manager at a Family Dollar store,
19 and Leon stayed home with the child.

20 Your Honor, that morning, actually -- actually
21 Shawn had to go to a -- like a parent-teacher
22 conference at Head Start for them to tell her that
23 [REDACTED] was actually doing really well in school,
24 didn't have any problems with the children. She was
25 going to take -- she was going to take [REDACTED] and

1 going to take him to a friend's house because she
2 was going to pick him up later because that
3 afternoon she had a job interview over in Augusta
4 because they were going to offer her to be a manager
5 of her own store.

6 Leon -- the baby had been sick and Leon said,
7 no, don't take him out in the weather, why don't you
8 leave him here with me and I'll get him up, because
9 he'd been out of sorts, he'd been irritable, and
10 hadn't been feeling well. I'll get him up and I'll
11 bathe him and we'll get him dressed and we'll go
12 with you to your interview, and then afterwards
13 we'll go out to lunch and try to do something
14 special, maybe we can go to McDonald's for [REDACTED] to
15 play around a little bit because it was -- it was
16 really kind of too cold to be outside.

17 Your Honor, he -- for about six weeks prior to
18 this, [REDACTED] had been sick. He'd started out with a
19 cold and sinus problems. And this is -- this would
20 be January -- late December, January, February of
21 2014. The baby had been sick for a little while.
22 It snowed; Leon didn't want to let him go outside in
23 the snow because he wasn't feeling well. Shawn was
24 at home because they had all kind of been snowed in
25 kind of thing.

1 Leon had walked down to try to get some
2 supplies. While he was gone, the kids, [REDACTED] and
3 [REDACTED] had taken a box -- they'd seen all of the
4 other kids sliding around outside, and they had
5 taken a box and they were sliding off the bed down
6 this box. While Leon was gone, [REDACTED] slid down,
7 hit his head, and he started having nausea and
8 throwing up.

9 And when Leon got home, he said, look, we got
10 to take this child to the doctor. So they went to
11 the emergency room in Lexington -- well, went to the
12 pediatrician first --

13 THE DEFENDANT: Pediatrician first.

14 MR. THOMPSON: -- and then went to the
15 emergency room. They said there was really nothing
16 wrong with him, he was just sick. Came back. The
17 very short time after that, there was a great big
18 ice storm. And in the ice storm Shawn didn't want
19 [REDACTED] going outside because he had been sick and
20 stuff, but Leon said, you know, we'll bundle him up
21 real good and we'll watch out for him, he'll only go
22 out just a little while, and then I'll bring him
23 back in and we'll kind of get him warmed back up,
24 he'll be all right, we can't keep him inside the
25 whole time.

1 ██████████ had gone out and one of the other kids
2 had kind of rubbed his face in the ground and he had
3 gotten into some animal feces that gave him
4 Impetigo. He had horrible scratching and itching
5 and they went to the hospital again, went to
6 Lexington emergency room, and then subsequently got
7 got referred to Palmetto Richland Hospital. He was
8 scratching and itching and was miserable and had
9 been miserable for a while.

10 I don't offer -- none of these injuries have
11 anything to do with the injury that Leon caused.
12 But I want to offer them to try to give you a
13 context as to what was going on in the home before
14 this happened, because I think -- after talking with
15 many, many witnesses in Wagener, I think that by all
16 accounts, Leon was a really great father; that this
17 is not something that was a -- pardon me.

18 This is not something that was a repetitive,
19 preplanned, malicious type of event. It was
20 something that happened at the spur of the moment,
21 in the heat of passion. He's still responsible for
22 it, he's still guilty, but it probably was not more
23 than a few seconds of time. Your Honor, with the
24 Court's permission, I'd like to -- pardon me just a
25 moment.

1 I think these pictures are more representative
2 about how Leon remembers the child. They were
3 really, really close. The third one is a picture of
4 ████████ feeding Leon cake. I -- the only -- he's
5 guilty though. He did this. The only part of this
6 he'd dispute in any way would be the idea of him
7 ever raising a fist. He represented both to me and
8 on the video confession that he made that this was
9 kind of an open-hand kind of thing.

10 Your Honor, we'd like to ask that the Court
11 consider his record; that, yes, he does have some
12 prior convictions, but none of them are for any type
13 of violence, none of them are for -- no CDVs, no
14 serious assaults, no -- nothing directly related to
15 any of the type of event that we're talking about
16 today.

17 We'd like to ask that the Court also consider
18 that he's not denying that he used -- Leon is a big
19 man, and he used some force, but it was not enough
20 force to fracture the child's skull, it was not
21 enough force to fracture any of the vertebra in the
22 child's neck.

23 The idea that the doctors say, hey, this would
24 be like being ejected from a car, well, that's one
25 strike. And it might be a significant strike, but

1 it also would not necessarily be contraindicative of
2 what Leon said happened in that he hit him one time.

3 Your Honor, we'd like to ask that the Court
4 consider a concurrent sentence in this matter to his
5 grand larceny case, that the Court consider a
6 minimum sentence in this case. He has a -- we'd
7 just like to represent that this very short window
8 of time is not necessarily representative or
9 indicative of his relationship with the child and
10 the way he treated the child in the past. And
11 that's all.

12 I realize that the law does not allow you to
13 take into account that the child was crying, and we
14 understand that completely. But all of this does
15 put a little bit of context in the type of action
16 that Leon took. Your Honor, I will tell you his
17 mother is here present in the courtroom. I don't
18 know if --

19 Do you want to speak?

20 Your Honor, she tells me she does not want to
21 speak. I would like to ask also, Your Honor, he
22 understands that the very minimum sentence you can
23 give him is 20 years, and she is a little bit of
24 advanced age, and he would like to ask that the
25 Court also allow him at least one [REDACTED] to be able

1 to hug his mother before he goes.

2 THE COURT: Mr. Davis, anything you want to
3 tell me?

4 THE DEFENDANT: I just would like to apologize
5 to my wife's family. And, like I said, it wasn't --
6 it wasn't most -- I never hit my child most of the
7 times. It was one hit and he fell and hit his head
8 on the table. But it wasn't something that I -- you
9 know, it wasn't no repeated swinging. It was just
10 one hit. When I turned and tried to walk away, I
11 slung my hands down. And he was just real fussy
12 that morning and he wanted to be picked up.

13 But, yes, sir, I just want to -- I just -- for
14 the Court's record, I want to apologize to my wife
15 and her family for all the emotional damage that I
16 caused them. And that's it.

17 THE COURT: Does the aunt want to speak?

18 MS. HAMMACK: No, Your Honor.

19 THE COURT: Mr. Davis, one of my biggest
20 responsibilities in this position that I have as a
21 circuit court judge is to protect small children.
22 And I looked at the picture of the little fellow.
23 God, what a cute child. And he's in his grave today
24 because he was fussing and crying. That's
25 unacceptable in our society. You were in a

1 protective role for that child. Instead of
2 protecting him, for some reason your actions
3 resulted in his death.

4 The sentence of the Court is that you be
5 committed to the state department of corrections for
6 a period of 30 years. Good luck to you. It will
7 run concurrent with his other sentence.

8 MR. THOMPSON: Thank you, Your Honor. Your
9 Honor, can he hug his mom?

10 THE COURT: He may.

11 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Aiken County, South Carolina, on the 9th of November, 2015.

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

August 29, 2017

s/Bethanie K. CrepponBethanie K. Creppon
Circuit Court Reporter

WITNESSES

Aiken County Sheriff

Sgt. Adam Truesdale

Law Enforcement Case #: 14-010526

AAH

ARREST WARRANT NUMBER

2014A0210200163 FILED 10 July 2014

Liz Godard
J.C.C.P. & G.S.
Angel Wilcox am
Deputy Clerk

ACTION OF GRAND JURY

true bill



Robert Wade

Foreperson of Grand Jury
Date: July 10, 2014

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS0201049

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

JULY TERM 2014

THE STATE
vs.

LEON MARQUIS DAVIS

CDR #: 2356

Indictment for

HOMICIDE BY CHILD ABUSE

§ 16-03-0085(A)(1)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
HOMICIDE BY CHILD ABUSE
§ 16-03-0085(A)(1)

At a Court of General Sessions, convened on July 14, 2014, the Grand Jurors of Aiken County present upon their oath:

That LEON MARQUIS DAVIS did in Aiken County on or about February 21, 2014, commit the crime of Homicide By Child Abuse in violation of South Carolina Code Section 16-3-85, in that the defendant did cause the death of [REDACTED] a child two years of age, while committing child abuse or neglect as defined by South Carolina Code Section 16-3-85(B)(1) and 16-3-85(B)(2), and the death of said child occurred under circumstances manifesting an extreme indifference to human life, in that Leon Marquis Davis was responsible for the welfare of said child and the defendant did inflict or fail to protect the child from physical injury. All in violation of South Carolina Code of Laws (1975), as amended.

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



J. STROM THURMOND, SOLICITOR

SCD 359221

35922

12/11/15

COUNTY OF Aiken
 STATE VS.
Leon Marquis Davis
 AKA: _____
 Race: B Sex: M Age: 36
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: _____
 DL#: _____ SID#: _____
 *CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Murder / Homicide by child abuse (20Y to Life)

INDICTMENT # 2014GS0201049
 A/W#: 2014A0210200163V
 Date of Offense: 2/21/2014
 S.C. Code § : 16-03-0085(A)(1)
 CDR Code #: 2356

SENTENCE SHEET 20 years - lif

CONVICTED OF or PLEADS

in violation of § 16-03-0085(A)(1) of the S.C. Code of Laws, bearing CDR Code #: 2356
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Ashley Agnew 80176 Leon David Barry Thymal 72900
 Hammark Ashley Agnew SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____ plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

CONCURRENT or CONSECUTIVE to sentence on: 13-65-02-288
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
 Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

_____ days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing. _____
 Fine may be pd. in equal, consecutive _____
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender _____
 Other: _____

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

INMATE RECORDS OFFICE
 AM 8:35
 STATE OF SOUTH CAROLINA
 COUNTY OF AIKEN
 I, Lisa Hodard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina, do hereby certify that the foregoing is a true and correct copy of the original document which has been filed in my office, this _____ day of _____, 2015.
 Lisa Hodard
 Clerk of Court
 Deputy Clerk

Clerk of Court/ Deputy Clerk Katie J. Williams
 Court Reporter: Bethanie Creppon
 SCCA/217 (03/2011)

Presiding Judge [Signature]
 Judge Code: 0150
 Sentence Date: NOV 9, 2015

FORM 5

2014A0210200163
STATE OF SOUTH CAROLINA

COUNTY OF Aiken

Leon M. Davis 359221
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2016CP0201451

APPLICATION FOR
POST-CONVICTION RELIEF

FILED 6.27.16
Shirley Headland
Clerk of Court
Clerk of Court
Shirley Headland
8:00

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 McCormick Correctional Institution
2. Name and location of Court which imposed sentence Aiken county Judicial
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014A0210200163 / 2014GS0201049 case no.
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Nov 9, 2015 30 years in South Carolina Department of Correction
 - (b) _____

- (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes I did, but my public Defender refuse to do an appeal on my behalf.
- 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. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. I was told that it was not an appeal on my case _____
 - ii. I have attach the copy from the clerk of court Liz Gedard in Nov. 2015. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) _____
 - (b) _____
 - (c) _____
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) My attorney denied a Manslaughter plea without my consent
- (b) He also withheld info from my family pertaining to my plea or investigation
- (c) Ineffective assistant Counsel

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

- (a) He was Ineffective under oath as my counsel for not telling me about any plea offer.
- (b) He never gave me any results from the expert he said he hired
- (c) Involuntary plea

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

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

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. Aiken County
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____

- iv. _____
- (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

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

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

- (a) which grounds have been presented:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - iii. _____

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

- (a) My Public Defender Barry L Thompson III denied me my
- (b) right to appeal. his advice was it won't do me any Good.
- (c) _____

17. Were you represented by an attorney at any time during the course of: yes I was appointed
a Attorney

- (a) your arraignment and plea? _____
- (b) your trial, if any? _____
- (c) your sentencing? 30 years
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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

- (a) the name and address of each attorney who represented you:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____

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

My Attorney Darryl L. Thompson Never presented the plea agreement from solicitor,

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

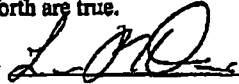
NO

STATE OF SOUTH CAROLINA)

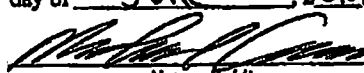
County of)

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.



SWORN to and subscribed before me this 24th
day of June, 2016.


Notary Public Michael Canare (L.S.)

My Commission Expires: July 09, 2026

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN)	SECOND JUDICIAL CIRCUIT
)	
Leon M. Davis, #359221,)	Case No.: 2016-CP-02-01451
)	
Applicant,)	
)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	

Respondent, making its Return to the application for Post-Conviction Relief ("PCR") filed on June 27, 2016,¹ would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. In July 2014, the Aiken County Grand Jury indicted Applicant for homicide by child abuse (2014-GS-02-1049). The charge stems from an incident on February 21, 2014 in which EMS, first responders, and law enforcement all responded to a residence where they found Applicant and the two-year-old decedent, who was in full cardiac arrest. Tr. p. 15. EMS attempted to perform CPR to revive the child and immediately took the child to Aiken Regional Medical Center. Tr. p. 15. The child was airlifted to Georgia Regents University on February 21, 2014, and was pronounced dead on February 23, 2014. Tr. p. 15. When questioned by the authorities, Applicant indicated that the child was crying for no reason and whining, and that the child was standing between his legs and he stood up, said "why are you crying", came down with both fists, and struck the child on the top of the head. Tr. p. 17. Doctors would liken this to someone being ejected from a vehicle in a

¹ Respondent did not receive the application until February 14, 2017.

high-speed car collision and striking a tree head first. Tr. p. 18.

Barry Thompson, Esquire represented Applicant. Assistant Solicitor Ashley Hammack, Esquire prosecuted the case. On November 9, 2015, Applicant pled guilty as indicted to before the Honorable Doyet A. Early, III. Judge Early sentenced Applicant to imprisonment thirty years for homicide by child abuse, set to run concurrent with Applicant's previous three year sentence for grand larceny.² Applicant states in his Application that he filed an appeal; however there are no records to indicate this is correct.³

Attached to this Return and incorporated by reference are the records of the Aiken County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective Assistance of Counsel
 - a. "My attorney denied a manslaughter plea without my consent."
 - b. "He also withheld info from my family pertaining to any plea or investigation."
 - c. "He never gave me any results from the expert he said he hired."
2. Involuntary Guilty Plea

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his

² Applicant was previously indicted in 2013 for grand larceny \$2,000 to \$10,000 (2013-GS-02-0288). Applicant was sentenced to three years imprisonment on December 9, 2013. Sentencing was deferred until March 13, 2014. Applicant was incarcerated when indicted for the homicide by child abuse.

³ Applicant did file an appeal in regards to his previous grand larceny conviction, which was ultimately dismissed due to Applicant's failure to provide a sufficient explanation for appealing.

application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

In this case, the record refutes Applicant's allegations of ineffective assistance of counsel. Applicant testified at his guilty plea hearing that he was satisfied with his representation and there was nothing else he wanted his plea counsel to do. Tr. pp. 12-13. In fact, Applicant reaffirmed his "total" and "complete" satisfaction with his representation. Tr. p. 13. Applicant also testified that he was not promised anything in exchange for his plea and was pleading guilty because he was indeed guilty. Tr. pp. 13-15.

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

IV.

Applicant also asserts his plea was involuntary. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea

of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137–38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise a

question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

VII.

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 § 17-27-70 of the South Carolina Code of Laws 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.

VIII.

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

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
)
 LEON DAVIS, #359221)
)
) Applicant,)
)
) vs)
)
 STATE OF SOUTH CAROLINA,)
)
) Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

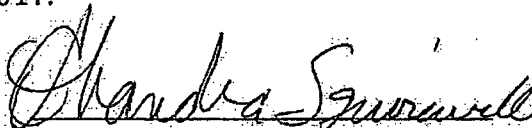
2016-CP-02-1451

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 in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Arthur K. Aiken
 2231 Devine St., Ste 201
 Columbia, SC 29205

DATED this 19th day of December, 2017.


 Chandra E. Squirewell,
 Legal Assistant For Respondent

**STATE OF SOUTH CAROLINA
COUNTY OF AIKEN****COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT**

<p>Leon M. Davis # 359221, Applicant vs. State of South Carolina, Respondent.</p>	<p>Case No.: 2016-CP-02-01451 AMENDMENT TO PCR APPLICATION</p>
---	--

The Applicant, Leon M. Davis (Davis), amends his PCR Application filed in the above captioned case as follows:

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

Davis amends his response to item 10 to add the following:

a. Ineffective assistance of plea counsel

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

Davis amends his response to Item 11 to add the following:

a.

i. Davis' guilty plea was not made with or based on advice of competent counsel.

ii. Davis' guilty plea was not intelligently made.

iii. Plea counsel did not discuss the evidence with Davis.

iv. Plea counsel did not prepare Davis' case for trial, and Davis was left with no choice but to plead guilty.

v. Plea counsel did not advise Davis of the elements of the offense charged and did not discuss potential defenses with Davis.

vi. Plea counsel never reviewed the pretrial discovery with Davis.

vii. Plea counsel never discussed the advantages and disadvantages of a trial versus the advantages and disadvantages of a plea with Davis so that Davis could make an informed choice of whether to enter a plea or try his case.

viii. Plea counsel did not investigate Davis' case.

ix. Plea counsel never discussed the findings of the State's expert witnesses and the defense expert witness with Davis.

x. Plea counsel never advised Davis that he could move to suppress his pretrial statement.

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

Davis amends his response to Item 19 to state the following:

Order vacating conviction and sentence.

Furthermore, Davis requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the hearing that have not been specifically addressed in the Application or this Amended Application.

Respectfully Submitted,

AIKEN & HIGHTOWER, P.A.

BY: 

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ATTORNEYS FOR APPLICANT

Columbia, South Carolina
May 2, 2018

State of South Carolina)	In the Court of Common Pleas
County of Aiken)	Second Judicial Circuit
	2016-CP-02-01451

Leon M. Davis,)
)
Plaintiff,)
)
vs.)
)
State of South Carolina,)
Defendant,)
)
)

May 7, 2018
Aiken, South Carolina

B e f o r e :

The Honorable R. Scott Sprouse, Judge

A p p e a r a n c e s :

Arthur Aiken, Esquire
Attorney for the Plaintiff

Julie Coleman, Esquire
Attorney for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

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-- NO EXHIBITS ENTERED --

DIRECT EXAMINATION BY MR. AIKEN - LEON DAVIS

4

1 (On the record at 9:54 a.m.)

2 THE COURT: This is the matter of Leon M. Davis. It's
3 2016-CP-02-1451. Mr. Davis is represented by Mr. Aiken.

4 Mr. Aiken, is the Applicant ready to proceed?

5 MR. AIKEN: The Applicant's ready, Your Honor.

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

7 MR. AIKEN: The Applicant calls Leon Davis.

8 LEON DAVIS, having been first duly
9 sworn, testifies as follows:

10 DIRECT EXAMINATION

11 BY MR. AIKEN:

12 Q Mr. Davis, back in 2014, were you charged with
13 homicide by child abuse?

14 A Yes.

15 Q Okay. And you subsequently pled guilty to that
16 offense?

17 A Yes, sir.

18 Q And that was on November 9th of 2015?

19 A Correct.

20 Q And I believe you got a 30-year sentence?

21 A Correct.

22 Q And were you represented by Mr. Barry Thompson?

23 A Yes.

24 Q Now, in the preparation of your case, did Mr.
25 Thompson investigate your case?

1 A Not that I'm aware of. He told me he did.

2 Q But you never discussed the investigation with him?

3 A Well, he -- yeah. I asked him about it, but he never
4 discussed anything with me. And he also told my -- my mom
5 that he was gonna hire -- he was gonna have it
6 investigated, but I never seen any results of the
7 investigation or heard of anybody having any investigation.

8 Q Did you discuss expert witnesses with Mr. Thompson?

9 A I did.

10 Q And tell us what you discussed with Mr. Thompson
11 concerning expert witnesses.

12 A Well, I explained to him that I had some expert
13 witnesses that wanted to show up to court. But from my
14 understanding, he tried to contact them within a -- like a
15 48-hour period before the court hearing.

16 Q Did Mr. Thompson discuss expert witnesses with you?

17 A No, sir, he didn't.

18 Q Did -- did he discuss any findings by any expert
19 witness?

20 A No, sir, he didn't.

21 Q Now, when you pled on November 5 [sic] of 2015, was
22 your trial fixing to start?

23 A It -- it was supposed to that day.

24 Q That day?

25 A Yes, sir.

1 Q Or perhaps the next morning?

2 A Yes, sir.

3 Q Now, did you have some character witnesses that you
4 wanted to call at your trial?

5 A I did.

6 Q And tell me what happened with those.

7 A From my understanding, they said that the notice was
8 too late and that they just couldn't take off in time. But
9 he knew months prior, you know what I'm saying, 'til my
10 trial that I needed them to be there, but I guess he
11 neglected to contact them at a reasonable time.

12 Q Now, when you -- when you pled guilty, did you discuss
13 with Mr. Thompson the advantages and disadvantages of a
14 trial and the advantages and disadvantages of a plea?

15 A I did. And from my understanding, we was [sic] all
16 set to go to trial for 19 months that I was incarcerated in
17 South Carolina Department of Correction. But the day of --
18 well, the Friday before the 9th, he came to me and told me
19 that it was no way. But I just don't know what he found in
20 a week's time that he didn't see in 19 months.

21 Q Did you discuss what -- what might happen to you if he
22 lost at trial?

23 A Yes, he did.

24 Q And what did he tell you?

25 A He said that I would be sentenced a life sentence if I

1 went to trial.

2 Q Did you understand that to be a natural life sentence?

3 A Yes, sir, I did.

4 Q Now, prior to your guilty plea and the scheduling of
5 your trial, were there any plea offers made?

6 A Well, I was told that there was a plea offer made, but
7 he never corresponded with me about that plea offer. Only
8 thing he told me that it was too much and he wasn't going
9 to allow me to take a plea like that. But he never
10 explained to me what the plea was or the conditions of the
11 plea or anything.

12 Q Did you understand the terms of the plea?

13 A I didn't.

14 Q He didn't explain those to you?

15 A No, sir, he didn't.

16 Q Now, in the course of the investigation of the
17 homicide by child abuse charge, did you make a statement to
18 the authorities ---

19 A I did.

20 Q --- law enforcement?

21 A I did.

22 Q And tell me the circumstances surrounding your giving
23 that statement.

24 A Well, Mr. Truesdale told me that if I made a
25 statement, that he was just going to tell the Court that I

1 was very forthcoming and cooperative and he was going to
2 ask for a less [sic] included offense. But at the time, I
3 didn't even know that I was arrested because I wasn't read
4 my rights.

5 Q So nobody read you your Miranda warnings?

6 A No, sir.

7 Q Did they have you sign any sort of form with your
8 Miranda warnings on it?

9 A Yeah, he did. He slid me a piece of paper, and he
10 said initial -- initial and sign.

11 Q Did you -- did you tell Mr. Thompson about the
12 circumstances surrounding your statement?

13 A I believe I did. I explained all that to him.

14 Q Did he explain to you that there -- that -- that you
15 could present an argument that your statement would be
16 inadmissible at trial?

17 A He did not.

18 Q Now, in general terms, did Mr. Thompson go over the
19 evidence with you?

20 A No, sir. Mr. Thompson spoke to me only on two
21 occasions. I think he came to see me around April, and I
22 had been incarcerated in the South Carolina Department of
23 Corrections about four -- almost five months at the time.
24 And then he came another time in -- maybe, like, the
25 October before I went to court or November. I only saw him

1 twice before I went before the judge with him.

2 Q You were -- you were at McCormick Correctional
3 Institution?

4 A Yes, sir.

5 Q Because you had been charged with a grand larceny and
6 had previously pled guilty and been sentenced --

7 A Right.

8 Q -- to the Department of Corrections?

9 A Correct.

10 Q So he would have gone to McCormick CI to meet with
11 you?

12 A Yes, sir.

13 Q Now, did Mr. Thompson ever advise you of the elements
14 of the offense of homicide by child abuse?

15 A He -- he spoke to me briefly, but he didn't -- at the
16 time, I had no education, to be honest with you, you know,
17 and I didn't understand a lot of the things he was trying
18 to explain to me until afterwards.

19 Q Did -- did he review all of the pre-trial discovery
20 with you?

21 A No, he did not. I didn't receive my Rule 5 until a
22 year or so after I was incarcerated.

23 Q Now, if Mr. Thompson had discussed the evidence with
24 you and gone over the Rule 5, if he had advised you that
25 you had the right to contest the admissibility of your

DIRECT EXAMINATION BY MR. AIKEN - LEON DAVIS 10

1 statement and if he'd gone over the elements of the offense
2 with you, would you have pled guilty?

3 A No, sir.

4 Q Now, you're aware, are you not, that your -- your
5 guilty plea was taken down like a court reporter -- by a
6 court reporter like the one sitting in front of you.

7 A Well, he didn't tell me that, but I figured it out.

8 Q Okay. Now, in the transcript of that guilty plea, you
9 indicated that you were satisfied with Mr. Thompson's
10 representation.

11 A Right.

12 Q Were you at that time satisfied with Mr. Thompson's
13 representation?

14 A No, sir. I wasn't, but I had tried to -- I tried to
15 fire him months -- well, a year or so prior, you know,
16 'cause I just -- he represented on the case -- on the grand
17 larceny case, and I wasn't satisfied with that with a first
18 offense, you know what I'm saying.

19 So I did speak to Mr. -- I wrote Mr. Joe Gibbons or
20 Gibson or whatever his name is, and asked him to -- I
21 needed better representation. But he told me he wouldn't
22 change it.

23 Q Well, were you satisfied with Mr. Thompson's
24 representation in this case?

25 A No, sir.

CROSS-EXAMINATION BY MS. COLEMAN - LEON DAVIS 11

1 Q Well, why did you say on the record during your guilty
2 plea that you were satisfied with Mr. Thompson?

3 A Because I would have had to proceed on my own.

4 Q You understood that you would lose your lawyer?

5 A Right. But I wasn't going to be -- he wasn't going to
6 be replaced, to my understanding. And me with not having
7 no education at all, it would have been foolish for me to
8 continue alone.

9 MR. AIKEN: Thank you very much, Mr. Davis. Please
10 answer any questions the government might have.

11 THE WITNESS: Okay.

12 THE COURT: Yes, ma'am.

13 MS. COLEMAN: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. COLEMAN:

16 Q Good morning, Mr. Davis.

17 A Good morning.

18 Q You said you didn't review any discovery with your
19 attorney at all before the plea?

20 A I had -- I had -- I had to request my discovery
21 through the Clerk of Court.

22 Q Before the plea or after?

23 A After.

24 Q After.

25 A I never -- I never saw it before. I had my discovery

1 packets for my grand larceny, but I never had the one for
2 this case.

3 Q Okay. So you never saw any medical records or
4 anything?

5 A Not 'til after I request it, but I had took my plea by
6 then.

7 Q And you knew you had given a statement to law
8 enforcement, right?

9 A Correct.

10 Q Okay. And in that statement, you admitted to harming
11 the child and -- which caused his death, right?

12 A Well, I did it under the influence of Mr. Alvin
13 Truesdale who told me if I -- 'cause I made more than one
14 statement. But he didn't -- he wasn't -- I guess he wasn't
15 happy with the original statement that I made and he told
16 me, "Well, if you do this and do that, that I would tell
17 the Courts that you was very forthcoming and I would ask
18 for a less included offense."

19 Q And you gave three statements; is that right?

20 A I mean, I don't remember how many statements I gave to
21 be honest with you.

22 Q And they were all different from each other?

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

24 Q Okay. But in the final statement that you gave, you
25 admitted to harming the child and causing his death, right?

1 A I don't know which part when I said that.

2 Q Okay. At the guilty plea, you admitted the harming
3 cause his death, right?

4 A I mean, I don't remember saying that. I mean, I don't
5 know when I said it or what part I said it in. So, I mean,
6 if you -- what you asking me is I don't know. You would --
7 I would have to see the paperwork.

8 Q Okay. But at the guilty plea, I'm talking about the
9 guilty plea --

10 A Right.

11 Q -- with Judge Early.

12 A Yeah.

13 Q You told him that it was an accident, but you did it,
14 right?

15 A Right.

16 Q And you apologized to everybody.

17 A Well, it wasn't -- well, I did, yeah.

18 Q Okay.

19 A But it was under -- my -- listen, my lawyer told me
20 that if I tried to fight it, you know, I was gonna get a
21 life sentence. So I figured it would be better to fight
22 from 30 years -- which I don't understand how the judge
23 could sentence me before he even hear the case any way.

24 Q Okay. So if you win today, you're trying to get a new
25 trial, right?

1 A Yes, ma'am.

2 Q Okay. And if you go and get a new trial, you could
3 face up -- face up to life in prison again. You ---

4 A Yeah.

5 Q --- understand that?

6 A Yeah. I do.

7 Q Okay. You still want a new trial?

8 A If -- if -- if it's possible, yes, ma'am, I do.

9 Q Okay. You remember waiving your constitutional rights
10 at the guilty plea, like your right to remain silent and
11 your right to a jury trial?

12 A Yes, I do.

13 Q And you told the judge -- he asked you a moment ago,
14 you told the judge you were satisfied with your attorney at
15 the plea, right?

16 A Right.

17 Q Why didn't you raise your complaints then?

18 A Well, because like I said, if had I -- had I would
19 have asked for it, he wasn't gonna -- he had already told
20 me that he wasn't gonna give me a new lawyer. So -- and me
21 with having no education, I mean, like, what's my odds?

22 Q Okay. But you could have told the judge all your
23 complaints about your attorney then, right?

24 A I could have, but it wouldn't have made any
25 difference.

1 Q Okay.

2 A I was aware of that already.

3 Q Okay. No further questions. Thank you.

4 THE COURT: Any redirect?

5 MR. AIKEN: No redirect, Your Honor, and that's the
6 Applicant's case.

7 THE COURT: Okay. Thank you, sir. You can step down.

8 (The witness complies.)

9 MS. COLEMAN: Your Honor, the State calls Barry
10 Thompson.

11 THE WITNESS: Barry Thompson, T-h-o-m-p-s-o-n.

12 BARRY THOMPSON, having been first
13 duly sworn, testifies as follows:

14 COURT CLERK: All right. State your full name for the
15 Court. Oh, you already --

16 THE WITNESS: Barry Thompson, T-h-o-m-p-s-o-n.

17 DIRECT EXAMINATION

18 BY MS. COLEMAN:

19 Q Good morning, Mr. Thompson.

20 A Good morning.

21 Q Where are you currently employed?

22 A I'm Assistant Public Defender for the Aiken County
23 Public Defender's Office.

24 Q And how long have you been employed there?

25 A Here?

DIRECT EXAMINATION BY MS. COLEMAN - BARRY THOMPSON 16

1 Q Yes, here.

2 A Eight years.

3 Q Okay. And how long have you been practicing law?

4 A Fourteen years.

5 Q Did you represent Mr. Davis on the case we're here for
6 today?

7 A I did.

8 Q And were you appointed or retained in this case?

9 A Appointed.

10 Q How long did you represent him before his guilty plea?

11 A I don't exactly know. It would have been at least --
12 it would have been at least a year and a half. I actually
13 represented Leon for the grand larceny charge and had -- he
14 and I developed some rapport. He'd been in the office
15 several times, and I've met with him multiple times before
16 the grand larceny case.

17 Q How many times did you meet with the Applicant before
18 his guilty plea on this charge?

19 A On this charge we met at least -- at least five
20 occasions. I met -- met once at the office, twice here at
21 the courthouse, and twice I went to the McCormick
22 Correctional Institution.

23 Q Did you file any Rule 5 or Brady motions?

24 A I did.

25 Q And did you review the discovery with the Applicant?

1 A I did.

2 Q Okay. What were -- what was the State alleging that
3 the Applicant had done?

4 A That Leon had struck **Child** in the head and had killed
5 him.

6 Q Okay. And did he agree with those facts, or did his
7 facts differ?

8 A When you say "he," you talking about Leon?

9 Q Yes. Sorry, Mr. Davis. Did his version of the facts
10 differ from what the State was alleging?

11 A Did his facts differ? No.

12 Q What did he -- how did he explain this happened?

13 A He -- the way that he spoke to me is exactly -- is
14 exactly the story that he gave to the police. This case
15 was always about -- **Child** had been ill for at least
16 several weeks. When they did the autopsy on him, in part
17 of the autopsy reports he -- he had what was probably going
18 to be some brain cancer that was behind his eyes that would
19 have -- that would have given him horrible headaches and --
20 and a lot of pain. And up -- before -- before **Child** dies,
21 he, on multiple occasions, Leon and -- and his wife took
22 the baby to the hospital. They took him to the emergency
23 room, they took him to a pediatrician, and -- and I had
24 seen Leon with the child before in my office. Leon was a -
25 - frankly, was a pretty good father.

DIRECT EXAMINATION BY MS. COLEMAN - BARRY THOMPSON 18

1 They had -- they had taken child to the doctor a
2 couple of times and could not get any relief because, for
3 whatever reason, the doctors at the time did not -- did not
4 detect and understand what was happening with the child.
5 The child would cry, cry, cry all the time.

6 And when **Child** -- when **Child** was in pain, when he
7 cried, even though Leon's not the biological father, that
8 child wanted Daddy. And he would follow -- he would follow
9 Leon around, "Daddy, Daddy, Daddy, Daddy, Daddy. Daddy,
10 Daddy, Daddy, Daddy, Daddy. Daddy, Daddy, Daddy, Daddy,
11 Daddy, Daddy," to the point where on the day this happened,
12 from what Leon told me and from what's in the video and
13 frankly from common sense, Leon just snapped. He -- he --
14 he lost it and in the -- in the video, he talks about how
15 the child comes up to him and Leon stands up and, "Please
16 stop crying." And that's where our defense and the State's
17 case diverged.

18 Our -- my efforts in this case were always to try to
19 figure out how to get some type of manslaughter charge in
20 this case because manslaughter carries 0 to 30. It would
21 have carried -- it would not have carried a floor on the
22 punishment, and it would have allowed the judge to show,
23 frankly, quite a bit of compassion to Leon.

24 The State -- and -- and that's -- when Leon talks
25 about "plea offers," that's what he's talking about. We --

1 we tried to get the State to offer us a manslaughter
2 charge. Frankly, if they had offered us straight up to
3 manslaughter, we'd have probably taken it because it -- it
4 has, again, a -- it does not have a minimum on it.

5 Homicide by child abuse has a 20-year minimum, and I
6 could never get a lesser charge. The State would not offer
7 me a lesser charge on this, which is why we ended up all
8 the way to trial, not really wanting to go to trial, but at
9 trial with a homicide by child abuse charge.

10 Our case, Leon would have -- would have said, "Hey,
11 look. I -- I just lost it and I hit the child in the head
12 and the child died." The State would have said that he
13 struck the child on multiple occasions at -- at -- on the
14 top of the head that day, but multiple strikes and that
15 that's what killed the child.

16 The problem in this case is that, by statute, the
17 child crying and being absolutely unconsolable and driving
18 you just nuts is not an aggravated factor. By statute,
19 it's not an aggravating factor for homicide by child abuse,
20 and the Court is specifically directed to overlook it and
21 to not consider it, which is -- which would have been the
22 key.

23 The key to our case is something that, by statute, the
24 judge is ordered not to take into consideration and that
25 was the problem.

DIRECT EXAMINATION BY MS. COLEMAN - BARRY THOMPSON 20

1 Q What kind of evidence did the State intend to present
2 at trial?

3 A There was a detailed investigation, there was a very
4 heartfelt videotaped confession by Leon, and there was a
5 significant amount of autopsy medical evidence by -- that
6 was done by pediatric doctors from over at the Medical
7 College of Georgia.

8 Q Okay. Let's talk about the Applicant's confession.
9 Did he give -- he gave a statement in this case?

10 A He did.

11 Q Did he give multiple statements in this case?

12 A He did.

13 Q Okay. Were they the same or different?

14 A They were slightly different.

15 Q Okay. But in his final statement, he agreed with the
16 State.

17 A He did.

18 Q Okay.

19 A And unfortunately, by Supreme Court case law, police
20 are allowed to lie to you to get you to confess to crimes.

21 Q Did you ever discuss with him the idea of filing a
22 motion to suppress that statement?

23 A We did discuss it. It would have been possible at
24 trial. I did not rate it to have a high degree of
25 possibility of success, but we did discuss it.

1 Q Okay. And had you filed anything on that motion yet
2 or you plan -- did you plan to argue that at trial?

3 A I planned to argue it at trial.

4 Q Okay.

5 A As you might know, the solicitor has control of the
6 docket. And so what ends up happening as a practical
7 matter, those motions don't get heard up until the day that
8 the case goes to trial.

9 Q Did you discuss with him the elements of the charge
10 and what the State was required to prove?

11 A I did.

12 Q How would you characterize the evidence against him?

13 A Very strong.

14 Q What kind of investigation did you do in this case?

15 A Reviewed all the discovery. I went and spoke with the
16 family, I -- I spoke with his -- with the child's mother.
17 I spoke with some of the police officers that investigated
18 the case, and I also reviewed all of the medical evidence
19 and had a doctor help me review the medical evidence.

20 Q Did you consult with or hire an expert in this case?

21 A Did not hire. I consulted with a doctor and because I
22 was -- I was trying to explore the possibility of whether
23 or not to go ahead and hire a medical expert. And before I
24 did that, I wanted to make sure that I understood the
25 medical evidence first.

DIRECT EXAMINATION BY MS. COLEMAN - BARRY THOMPSON 22

1 So I had a doctor sit down with me and explain -- we
2 laid all of this stuff out and went through it page by page
3 and line by line, and the problem was that the medical
4 evidence more supported the State's case of multiple
5 strikes to the head. And I didn't want an expert to
6 generate any kind of reports on that because I'm trying not
7 to create evidence against my client.

8 Q Did you discuss this with the Applicant?

9 A I did.

10 Q And did he seem to understand that discussion?

11 A He did. The -- the autopsy photographs and -- and
12 such are difficult emotionally to review. And we discussed
13 it verbally, but there were things that he told me he just
14 did not want to look -- to physically look at.

15 Q So you testified you were preparing this case for
16 trial?

17 A Yes. We -- we were in a position where we had to
18 prepare for trial. It was either going to go to trial or
19 it was gonna be a plea that day.

20 Q And what was your strategy going to be had you
21 proceeded to trial?

22 A To try to object to Leon's statement and to try to as
23 best I could attack the basis for the expert's opinions and
24 hope for the best. I -- I did not -- I did not believe
25 that we had a very strong chance of success at trial.

1 Q You've already testified a bit about plea negotiations
2 with the State. What was the final offer that Mr. Davis
3 ended up accepting?

4 A There wasn't an offer.

5 Q Okay. He pled straight up?

6 A Correct.

7 Q Okay.

8 (Unknown person sneezes.)

9 THE WITNESS: Bless you.

10 Q Did he seem to understand the difference -- did you
11 explain the difference between pleading straight up or to a
12 negotiated sentence?

13 A I did.

14 Q Did he seem to understand that?

15 A He did. Leon's a very intelligent guy.

16 Q Who's decision was it to plead guilty?

17 A It was Leon's.

18 Q Do you agree with that decision?

19 A I -- I do.

20 Q You still agree with that now?

21 A I still do.

22 Q Okay.

23 MS. COLEMAN: Beg the Court's indulgence.

24 (Brief pause.)

25 MS. COLEMAN: Nothing further. Thank you.

1 THE COURT: Mr. Aiken, your witness.

2 MR. AIKEN: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. AIKEN:

5 Q I think you indicated that some of the medical
6 information Mr. Davis did not want to review it; is that
7 right?

8 A Correct. The way that would have gone is he and I
9 would have been sitting there across the table from each
10 other. I said, "Look, this is the autopsy report. I can
11 show it to you page by page, or I can tell you what it
12 says." And there were, on a couple of occasions,
13 especially things with pictures, he -- he asked me, "Please
14 just tell me -- tell your analysis of it. Please don't
15 show me all the horrible pictures."

16 Q So some of the medical evidence, you didn't actually
17 go over with Mr. Davis.

18 A I discussed the results of it, but I did not page by
19 page go over all of the medical evidence with him.

20 Q But before he made his decision to plead guilty, did
21 you have some concerns he might get a life sentence?

22 A I did. The sentencing range for homicide by child
23 abuse is anything from a floor of 20 up to a possible life
24 sentence. That's -- that's the range on it. And I always
25 tell everybody -- he can probably -- he can probably

1 remember me saying this right now. I always tell
2 everybody, "I can't predict exactly what the future is. If
3 I could exactly predict the future, I wouldn't be doing
4 this job. I'd be betting on football games in Las Vegas.
5 But I can tell you, based upon my training and experience,
6 if we go to trial, here's about the sentencing range that
7 you're probably looking at, and here's -- if we plea,
8 here's about the sentencing range that we're look -- that
9 you're looking at. And Judge Early gives very -- very
10 regular types of sentences. I'm not a stranger to his
11 courtroom and very familiar with his practices."

12 Q Did you believe at that time that, if you lost at
13 trial, that Mr. Davis would get a life sentence?

14 A Did not believe he would get a life sentence. I
15 thought he would probably get upwards of 50.

16 Q Upwards of 50 years?

17 A Yes, sir.

18 Q And how old is Mr. Davis?

19 A I don't exactly know at the time how old Mr. Davis is,
20 but that would have been a long time because this carries
21 85 percent time.

22 Q And other than meeting in your office and at the
23 courthouse in connection with this case, you would have had
24 to go to McCormick CI to meet with Mr. Davis, right?

25 A I met with him at least twice at the correctional

REDIRECT EXAMINATION BY MS. COLEMAN - BARRY THOMPSON 26

1 institution, but -- and I don't mean to get him in trouble,
2 but he and I spoke frequently by telephone. We're not
3 supposed to be able to do that, but he and I spoke
4 relatively frequently by telephone.

5 MR. AIKEN: May I have just one moment, please, Your
6 Honor?

7 THE COURT: Yes, sir.

8 (Brief pause.)

9 MR. AIKEN: That's all I have. Thank you, Mr.
10 Thompson.

11 THE WITNESS: Thank you.

12 MS. COLEMAN: Just one brief follow up.

13 REDIRECT EXAMINATION

14 BY MS. COLEMAN:

15 Q Do you recall what Mr. Davis was sentenced to at the
16 plea?

17 A I -- I believe it was 30 years.

18 Q Okay. Thank you.

19 MS. COLEMAN: Nothing further.

20 THE COURT: Anything further from this witness?

21 MR. AIKEN: No, sir.

22 THE COURT: Thank you, sir. You can step down.

23 THE WITNESS: Your Honor, may I be excused. I ---

24 THE COURT: Any objection to him being excused?

25 MS. COLEMAN: No objection.

1 MR. AIKEN: None, Your Honor

2 THE COURT: Mr. Thompson, you are excused.

3 THE WITNESS: Thank you, Your Honor.

4 MS. COLEMAN: And the State has no further witnesses,
5 Your Honor.

6 THE COURT: Any reply testimony from the Applicant?

7 MR. AIKEN: No reply testimony from the Applicant.

8 THE COURT: All right. Well, I will take a little
9 time to read the materials that have been submitted. I'd
10 like to read the transcript and the other thing. So I'm
11 gonna take this under advisement, and I'll have my law
12 clerk send you the results.

13 MR. AIKEN: Thank you, Your Honor.

14 MS. COLEMAN: Thank you, Your Honor.

15 THE COURT: Thank you.

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17 -- END OF TRANSCRIPT RECORD --

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CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Second Circuit Court for Aiken County, South Carolina, on the 7th day of May, 2018.

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

e/s BONNIE H. KELLY

Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

August 7, 2018

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STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS)
SECOND JUDICIAL CIRCUIT)

Leon M. Davis, #359221,)

2016-CP-02-01451)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL
A TRUE AND CORRECT COPY

Robert J. Hart

By: *Arthur K. Knepper* Date: *6/15/18*
Deputy Clerk

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on June 27, 2016. Respondent was served with the application on February 14, 2017, and submitted its Return on December 19, 2017. An evidentiary hearing into the matter was convened on May 7, 2018, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Arthur Aiken, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony from Barry Thompson, II, Esquire ("Plea Counsel"). This Court had before it the records of the Aiken County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. In July 2014, the Aiken County Grand Jury indicted Applicant for homicide by child abuse (2014-GS-02-1049). The charge stems from an incident on February 21, 2014 in

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which EMS, first responders, and law enforcement all responded to a residence where they found Applicant and the two-year-old decedent, who was in full cardiac arrest. Tr. p. 15. EMS attempted to perform CPR to revive the child and immediately took the child to Aiken Regional Medical Center. Tr. p. 15. The child was airlifted to Georgia Regents University on February 21, 2014, and was pronounced dead on February 23, 2014. Tr. p. 15. When questioned by the authorities, Applicant indicated that the child was crying for no reason and whining, and that the child was standing between his legs and he stood up, said "why are you crying", came down with both fists, and struck the child on the top of the head. Tr. p. 17. Doctors would liken this to someone being ejected from a vehicle in a high-speed car collision and striking a tree head first. Tr. p. 18.

Barry Thompson, II, Esquire, represented Applicant on the charge. Assistant Solicitor Ashley Hammack, Esquire, prosecuted the case. On November 9, 2015, Applicant pled guilty as indicted to before the Honorable Doyet A. Early, III. Judge Early sentenced Applicant to imprisonment for thirty years for homicide by child abuse, set to run concurrent with Applicant's previous three year sentence for grand larceny. Applicant did not appeal his conviction or sentence.

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. "My attorney denied a manslaughter plea without my consent."
 - b. "He also withheld info from my family pertaining to any plea or investigation."
 - c. "He never gave me any results from the expert he said he hired."
2. Involuntary Guilty Plea

Applicant filed an amended application on May 2, 2018, adding the following allegations:

- i. Davis' guilty plea was not made with or based on advice of competent counsel.
- ii. Davis' guilty plea was not intelligently made.
- iii. Plea counsel did not discuss the evidence with Davis.
- iv. Plea counsel did not prepare Davis' case for trial, and Davis was left with no choice but to plead guilty.
- v. Plea counsel did not advise Davis of the elements of the offense charged and did not discuss potential defenses with Davis.
- vi. Plea counsel never reviewed the pretrial discovery with Davis.
- vii. Plea counsel never discussed the advantages and disadvantages of a trial versus the advantages or disadvantages of a plea with Davis so that Davis could make an informed choice of whether to enter a plea or try his case.
- viii. Plea counsel did not investigate Davis' case.
- ix. Plea counsel never discussed the findings of the State's expert witnesses and the defense expert witness with Davis.
- x. Plea counsel never advised Davis that he could move to suppress his pretrial statement.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

Applicant's testimony

At the evidentiary hearing, Applicant testified he met with Plea Counsel twice before his guilty plea, and Plea Counsel never discussed anything about the case with him. He stated Plea Counsel told his mother he was going to hire an expert for his case, but he never saw any results of the investigation. He stated he pled guilty on the day the trial was supposed to start. Applicant testified he had several character witnesses he wished to call at trial, but Plea Counsel gave them notice of the trial too late and the witnesses could not take off work in time, even though Plea Counsel knew months in advance about the trial date and should have told them sooner. He stated Plea Counsel discussed with him that he could get a life sentence if he lost at trial.

Application testified Plea Counsel did not tell him the terms of any plea offers from the State, but he received an offer and Plea Counsel told him it was too much time and they would not take it. Applicant stated Plea Counsel did not review the evidence with him before the plea.

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He stated he had no education at the time and did not understand the things Plea Counsel was explaining to him. He stated he did not get his Rule 5 materials until a year after his arrest. Applicant testified he gave a statement to law enforcement, and no one Mirandized him, but he signed a piece of paper. He stated he told Plea Counsel about the circumstances around the giving of the statement, but Plea Counsel did not tell him they could file a motion to suppress the statement.

Applicant testified he would not have pled guilty if Plea Counsel had gone over the evidence with him and advised him of the risks of pleading guilty. He stated he was not satisfied with counsel at the guilty plea, and he tried to fire him months before the trial. He stated he told the plea court he was satisfied with counsel because he had asked Public Defender Grant Gibbons for another attorney, and he was told he would not get one, so he felt like he had no choice.

Plea Counsel's testimony

At the evidentiary hearing, Plea Counsel testified he had represented Applicant previously on his grand larceny charge, before this incident occurred, and he had built up a relationship with him during that time. He stated he had seen Applicant interact with the child [REDACTED] before, and although he was not the child's biological father, Applicant and the child had a very close father-son relationship. He stated the incident occurred after the child had been ill for some time. Trial Counsel testified the autopsy results likely showed the child had cancer in his brain that caused headaches, which caused him to cry all the time. He stated Applicant told him that he "snapped" and "lost it" after listening to the child cry for several days, and he admitted to slamming down his fists on the child's head, begging him to stop crying.

Plea Counsel testified he wanted to get a manslaughter charge, which would have allowed for compassion from the sentencing judge with no minimum sentence, but the State would not offer a plea deal for manslaughter when he asked. He stated he and Applicant did not want to go to trial. Plea Counsel testified that the State intended to show at trial that there were multiple strikes on the child by Applicant, not just one. He stated that the statute specifically says crying by the child is not an aggravating factor, and Applicant could not justify his attack on the child because it was crying. Plea Counsel testified Applicant gave two statements to law enforcement saying he did not hit the child, but he fell and hit his head, but he later gave a third statement admitting he struck the child. He testified he could have moved to suppress the statement, but he likely would not have been successful. Plea Counsel stated that even though they did not have a good chance of winning this motion to suppress, he would have argued the motion if Applicant chose to go to trial rather than plead.

Plea Counsel testified he went through all the medical evidence in this case line by line with a doctor looking for something to help their defense, but the doctor believed the evidence favored the State. He stated he did not ask the doctor to write a report because he did not want to create a report that would be used against him to hurt his case. Plea Counsel testified he and Applicant spoke frequently by telephone while he was in jail, and they met in person at least five times. He stated he reviewed the discovery and evidence with Applicant, but there were some upsetting photographs of the child that Applicant did not wish to see. He stated he discussed the elements of the charge and what the State was required to prove with Applicant.

Plea Counsel stated that the evidence against Applicant was very strong, and opined that they did not have a strong chance of winning at trial. He stated he advised Applicant of the potential sentencing range, and he is familiar with Judge Early and could estimate what he might

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sentence. Plea Counsel testified he thought Applicant would get upwards of a fifty year sentence if convicted at trial, but Applicant chose to plead guilty and instead got a thirty year sentence. He testified it was Applicant's decision to plead guilty, and he agreed with that decision.

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 alleges Plea Counsel was ineffective in his representation surrounding his guilty plea. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985).

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 in

proving Plea Counsel was ineffective in any regard. Plea Counsel credibly testified he reviewed the discovery with Applicant and explained the elements of the charge and what the State was required to prove. Plea Counsel credibly testified he was preparing the case for trial and would have proceeded to trial and filed a motion to suppress Applicant's statement if Applicant chose to proceed to trial. He testified he investigated the case and consulted with a doctor to review the medical records to establish a defense, but the doctor's findings supported the State's case and harmed Applicant's, so Trial Counsel made a valid strategic decision not to have the doctor generate a report. Plea Counsel credibly testified Applicant did not want a trial and they were hoping to negotiate a plea deal for voluntary manslaughter, but after counsel's negotiations, the State would not offer a plea to a lesser offense.

This Court finds Plea Counsel's representation and advice was reasonable under the circumstances and nothing he did was outside the scope of reasonable professional norms. Plea Counsel thoroughly investigated the case and fully represented his client and advised him based on his best interests in light of the evidence against him, which was to plead guilty. Accordingly, Applicant has failed to prove that Plea Counsel was deficient or that he would have gone to trial but for these deficiencies, and post-conviction relief is denied.

INVOLUNTARY GUILTY PLEA

Applicant alleges his guilty plea was not given freely and voluntarily. This Court finds otherwise and concludes Applicant's plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be

accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Applicant alleges he was coerced into pleading guilty because his attorney failed to review the evidence with him and advise him he could file a motion to suppress his statement to law enforcement. The record and Plea Counsel's testimony clearly show Applicant was not threatened, forced, or coerced to plead guilty. This Court finds very credible Plea Counsel's testimony that he reviewed the evidence and discovery with Applicant and he was prepared to argue a motion to suppress the statement if Applicant chose to proceed to trial, which he did not wish to do. Plea Counsel credibly testified Applicant did not want a trial but wanted a plea offer to voluntary manslaughter, which counsel could not get the State to offer despite his best efforts.

At the guilty plea, the plea court asked Applicant if anyone had threatened him or promised him anything to get him to plead guilty, and Applicant responded "No, sir." Tr. 12, line 11-14. Applicant testified at the plea hearing that he was satisfied with his attorney and he did not need more time to consider his decision before pleading. Tr. 12, line 15 – Tr. 13, line 6. Applicant has failed to prove he was coerced into pleading guilty and would have gone to trial otherwise.

Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process." Id. (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Id. (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486). This Court finds Applicant has not presented any credible evidence that he should be allowed to depart from the truth of the statements he presented to the plea court. Therefore, this Court finds the plea court correctly found Applicant's plea was freely, voluntary, and intelligently made. Accordingly, this allegation must be denied and dismissed.

VI. CONCLUSION

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

This Court 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 31 day of May, 2018.



R. SCOTT SPROUSE
Presiding Judge
Second Judicial Circuit

Walthalla, South Carolina