

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

James R. Barber, III, Circuit Court Judge

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S.C. Supreme Court

ORIGINAL

VERNON T. HARRISON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

COURT OF GENERAL SESSIONS
08-GS-40-12141

STATE OF SOUTH CAROLINA

-vs-

VERNON T. HARRISON

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:
:
:
:

TRANSCRIPT OF RECORD

MONDAY, MARCH 9, 2009
COLUMBIA, SOUTH CAROLINA

B E F O R E:

HONORABLE J. MICHELLE CHILDS, JUDGE.

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

LUCK CAMPBELL, ASSISTANT SOLICITOR
AARON JOPLIN, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

DEON O'NEIL, ESQUIRE
NICOLE SINGLETARY, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

DIANNE A. RUTLEDGE
CIRCUIT COURT REPORTER

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E X H I B I T S

(NO EXHIBITS WERE INTRODUCED DURING THE HEARING/PLEA.)

1 MR. O'NEIL: YOUR HONOR, WE NEED TO DO THIS EX-PARTE.

2 THE COURT: OKAY. ALL RIGHT. MS. CAMPBELL, THE
3 STATE, I ASSUME, IS CALLING THE CASE OF VERNON T. HARRISON;
4 IS THAT CORRECT?

5 MS. CAMPBELL: YES, YOUR HONOR.

6 THE COURT: OKAY. AND I UNDERSTAND THAT THE DEFENSE
7 HAS A MOTION THAT THEY WANT TO HEAR EX-PARTE, SO WE'LL TAKE
8 THAT UP NOW, AND THEN PROCEED WITH THE NEXT PART OF THE
9 PROCEEDING.

10 MS. CAMPBELL: YES. MAY WE APPROACH ABOUT
11 SCHEDULING?

12 THE COURT: SURE.

13 (A BENCH CONFERENCE WAS HELD OFF THE RECORD.)

14 (PAUSE AS THE SOLICITOR EXITS THE COURTROOM.)

15 THE COURT: ALL RIGHT. MR. O'NEIL.

16 MR. O'NEIL: MAY IT PLEASE THE COURT. YOUR HONOR,
17 MAY IT PLEASE THE COURT. THIS IS THE DEFENSE MOTION TO
18 HAVE ME RELIEVED AS COUNSEL. MR. HARRISON -- I HAVE
19 REPRESENTED MR. HARRISON SINCE NOVEMBER OF 2007. MR.
20 HARRISON WAS BROUGHT OVER I THINK ON LAST TUESDAY OF LAST
21 WEEK. I THINK AT THAT TIME MR. HARRISON I THINK INDICATED
22 SOME UNEASINESS ABOUT ME REPRESENTING HIM AT THAT POINT.

23 I THINK HE WENT BACK TO THE JAIL AT THAT POINT AND
24 DRAFTED A MOTION TO HAVE ME RELIEVED AND I THINK HE
25 FORWARDED THAT MOTION TO THE CLERK'S OFFICE. I HADN'T

1 GOTTEN THAT MOTION YET, YOUR HONOR. BUT HE'S INDICATED
2 THAT HE FILED THAT MOTION TO HAVE ME RELIEVED. I THINK HE
3 ALSO INDICATED AS SUCH TO HIS MOTHER IN WRITING.

4 AND I REALIZE THAT HE FILED THAT MOTION -- I'M NOT
5 OFFERING TO THE COURT ANYTHING ON THAT MOTION. YOUR HONOR,
6 HEAR MR. HARRISON ON THE MERITS OF THAT MOTION.

7 THE COURT: OKAY. MR. HARRISON, I'M HAPPY TO HEAR
8 FROM YOU.

9 MR. HARRISON: YES, MA'AM, YOUR HONOR. I FEEL LIKE
10 IT'S IN MY BEST INTEREST IF MY FAMILY HIRE A PRIVATE
11 LAWYER. I DON'T FEEL LIKE MR. O'NEIL HAD ENOUGH TIME TO
12 PREPARE FOR MY CASE.

13 THE COURT: OKAY. HE'S HAD YOUR CASE SINCE NOVEMBER
14 OF 2007.

15 MR. HARRISON: YES, MA'AM. BUT WE DIDN'T START
16 WORKING ON MY CASE UNTIL I GOT A COURT DATE.

17 THE COURT: OKAY.

18 MR. HARRISON: WHICH WAS LIKE A FEW LIKE ---

19 THE COURT: MONTHS AGO?

20 MR. HARRISON: NO. LIKE 2, 3 WEEKS AGO I FIND OUT
21 ABOUT MY COURT DATE.

22 THE COURT: OKAY. HE'S KNOWN ABOUT YOUR COURT DATE
23 FOR A FEW MONTHS THOUGH. IT DOESN'T MEAN THAT JUST BECAUSE
24 YOU HAVEN'T SPOKEN WITH HIM THAT HE HAS NOT BEEN WORKING ON
25 IT, BECAUSE HE HAS TO FILE, YOU KNOW, MOTIONS, SUBPOENAS,

1 YOU KNOW, DO THINGS OF THAT NATURE TO GET READY FOR THE
2 CASE, TALK WITH POTENTIAL EXPERTS AND WITNESSES AND THINGS
3 OF THAT NATURE.

4 SO LET ME ASK YOU FIRST, MR. O'NEIL: ARE YOU READY
5 TO GO FORWARD?

6 MR. O'NEIL: YES, YOUR HONOR.

7 THE COURT: OKAY. BUT TELL ME, WHAT DO YOU MEAN BY
8 WORKING ON IT OR WHAT MAKES YOU UNCOMFORTABLE OR ANYTHING
9 OF THAT NATURE?

10 MR. HARRISON: I MEAN, CERTAIN ISSUE JUST STARTED
11 COMING UP RECENTLY. LIKE I SAID, I -- I -- I JUST FOUND
12 OUT ABOUT MY COURT DATE. HE MAY HAVE KNOWN FOR MONTHS, BUT
13 I ONLY KNOW FOR A COUPLE OF WEEKS.

14 THE COURT: OKAY. WHAT WOULD BE DIFFERENT THOUGH IF
15 YOU HAD KNOWN ABOUT IT A FEW MONTHS AGO?

16 MR. HARRISON: THE ISSUE THAT CAME UP, I MEAN, IT
17 STILL ISN'T CLEAR UP AND NOW IT'S TIME TO GO TO TRIAL AND
18 IT WAS -- IT'S STILL NOT CLEARED UP.

19 THE COURT: OKAY. LET'S TALK ABOUT WHAT THE TRIAL IS
20 ABOUT AND WHAT IS THE SHOWING AND THINGS THAT NEED TO BE
21 DONE HERE, BECAUSE WE NEED TO TALK ABOUT WHETHER YOU'VE HAD
22 AN OPPORTUNITY TO DISCUSS WHETHER YOU'RE GOING TO PLEAD OR
23 GO TO TRIAL. DO YOU UNDERSTAND THAT THE INDICTMENT IS
24 ACTUALLY FOR MURDER. IT WAS SENT TO THE GRAND JURY AND IT
25 WAS TRUE BILLED. AND WHAT WE MEAN BY TRUE BILLED IS THAT

1 THE GRAND JURY HAD THE OPPORTUNITY TO DETERMINE WHETHER
2 THERE WAS SUFFICIENT EVIDENCE TO EVEN INDICT YOU.

3 THE JURY WOULD BE EXPLAINED THAT THIS INDICTMENT IS
4 NOT MAKING YOU GUILTY, BECAUSE YOU'VE EXERCISED YOUR
5 CONSTITUTIONAL RIGHT TO PLEAD NOT GUILTY AND THEN GO TO
6 TRIAL. IT'S JUST THE FORMAL INSTRUMENT BY WHICH THIS CASE
7 IS BROUGHT TO TRIAL. BUT I WOULD TELL THEM THAT IN JURY
8 SELECTION. I WOULD ALSO TELL THEM THAT THROUGHOUT THE
9 COURSE OF THE TRIAL, THAT THIS IS AN INDICTMENT.

10 YOU HAVE PLED NOT GUILTY. THAT'S YOUR CONSTITUTIONAL
11 RIGHT. AND THEN IF THEY GET THE CASE, YOU KNOW, TO THE
12 JURY FOR THEIR DELIBERATIONS, THEY WOULD EVEN BE TOLD THAT
13 YOU DON'T EVEN HAVE TO TESTIFY. YOU DON'T HAVE TO PUT UP
14 ANY EVIDENCE OR ANYTHING, BECAUSE THAT'S YOUR ABSOLUTE
15 RIGHT TO GO TO TRIAL.

16 THE STATE HAS THE BURDEN OF PROOF THROUGHOUT THE
17 TRIAL, AND THAT BURDEN OF PROOF IS BEYOND A REASONABLE
18 DOUBT. AND THEY HAVE TO CONVINCING 12 JURORS THAT YOU ARE IN
19 FACT GUILTY.

20 DO YOU UNDERSTAND THAT?

21 MR. HARRISON: YES, MA'AM.

22 THE COURT: OKAY. SO IN TERMS OF THE TRIAL ITSELF,
23 THE INDICTMENT IS FOR MURDER. HAVE YOU ALL DISCUSSED
24 WHETHER YOU WANTED TO PLEAD OR GO TO TRIAL? DID YOU
25 DISCUSS A PLEA AS WELL? OBVIOUSLY, YOU'RE WANTING TO GO TO

1 TRIAL BECAUSE YOU'RE HERE. BUT DID YOU ALL DISCUSS A PLEA?

2 MR. HARRISON: YES, MA'AM.

3 THE COURT: OKAY. MURDER CARRIES A SENTENCE OF 30
4 YEARS UP TO LIFE IMPRISONMENT; AND THAT MEANS UNTIL YOUR
5 NATURAL DEATH OR THE DEATH PENALTY. THE STATE HAS NOT
6 SERVED THEM WITH ANY NOTICE OF A DEATH PENALTY, SO THAT'S
7 NOT EVEN AN ISSUE. BUT MURDER IS 30 YEARS UP TO LIFE
8 IMPRISONMENT.

9 IN OUR STATE FOR A CRIME OF MURDER, 30 YEARS MEANS
10 DAY-FOR-DAY. THERE IS NO REDUCTION IN TERMS OF CREDITS OR
11 OVER-CROWDED JAILS OR THINGS OF THAT NATURE IN TERMS OF
12 SERVICE OF THAT TIME.

13 SO A PLEA, MR. O'NEIL, DID THE SOLICITOR KEEP MURDER
14 AS THE CHARGE ON THE TABLE FOR THE PLEA?

15 MR. O'NEIL: AT THIS MOMENT, YES, YOUR HONOR.

16 THE COURT: OKAY. SO YOUR LOWEST NUMBER OF YEARS IS
17 30 YEARS, EVEN AT A PLEA BECAUSE THAT'S WHAT SHE KEPT ON
18 THE TABLE. IT HAS NOT BEEN REDUCED TO VOLUNTARY
19 MANSLAUGHTER, WHICH WOULD HAVE BEEN UP TO 30. THIS IS 30
20 OR MORE. SO THAT MEANS THAT IF SHE KEPT 30 YEARS ON THE
21 TABLE MEANING THE SOLICITOR AS YOUR POTENTIAL PLEA, THEN
22 THAT WOULD BE THE PLEA THAT THE COURT -- THE SENTENCE THAT
23 THE COURT WOULD GIVE YOU TODAY IF YOU PLED.

24 IF YOU GO TO TRIAL, I DON'T PUNISH PEOPLE FOR GOING
25 TO TRIAL. BUT I WILL TELL YOU THAT THE TRIAL TENDS TO BEAR

1 MORE EVIDENCE AND INFORMATION THAN A PLEA DOES. YOU KNOW,
2 SO I HAVE THE CHOICES THEN AT THAT POINT 30 YEARS UP TO
3 LIFE IN TERMS OF WHAT YOUR ACTUAL SENTENCE WOULD BE AT THE
4 END OF THE TRIAL.

5 SO YOU HAVE TO DO, YOU KNOW, YOUR SOUL SEARCHING WITH
6 YOURSELF. I'D BE HAPPY TO ALLOW YOU TO SPEAK WITH FAMILY
7 MEMBERS OR ANYBODY THAT, YOU KNOW, YOU ARE CLOSE TO THAT
8 PERHAPS, YOU KNOW, YOU ARE NOT ABLE TO DO SO IN THE JAIL TO
9 MAKE THAT DECISION.

10 BUT RIGHT NOW AS WE STAND HERE, YOU COULD POTENTIALLY
11 BE NOT CONVICTED AND THEN YOU WALK FREE. I DON'T KNOW THE
12 FACTS OF THIS CASE IN TERMS OF EVERYTHING THAT YOU ALL HAVE
13 BEEN LIVING WITH OVER THE LAST, YOU KNOW, YEAR OR SO. YOU
14 KNOW WHAT WENT ON. YOU KNOW IF YOU HAVE ANY STATEMENTS OR
15 ANY CONFESSIONS. YOU KNOW, NATURALLY, YOUR ATTORNEYS WILL
16 TRY TO CHALLENGE ANY OF THAT. BUT YOU CAN ONLY MAKE THAT
17 DECISION, YOU KNOW, WITH RESPECT TO WHETHER OR NOT YOU
18 SHOULD ACCEPT THE STATE'S OFFER TO LET IT BE A PLEA, WHERE
19 YOU GET THE MINIMUM SENTENCE OF THE 30 YEARS OR WHETHER OR
20 NOT YOU WISH TO CHANCE IT AT TRIAL TO EITHER GET A
21 CONVICTION -- I MEAN, A VERDICT OF NOT GUILTY OR IF YOU GO
22 GUILTY, THEN MY DISCRETION IS 30 YEARS UP TO LIFE
23 IMPRISONMENT.

24 SO DO YOU NEED FURTHER TIME TO SPEAK WITH YOUR FAMILY
25 ABOUT THAT ISSUE FIRST?

1 MR. HARRISON: NO, MA'AM, NOT ABOUT PLEAING TO 30.

2 THE COURT: OKAY. ALL RIGHT. SO YOU'VE DECIDED TO
3 GO TO TRIAL?

4 MR. HARRISON: YES, MA'AM.

5 THE COURT: OKAY. THEN THE COURT CAN, YOU KNOW, ONLY
6 LET THE DEFENSE ATTORNEY OUT UPON SOME GOOD GROUNDS, SO I
7 NEED TO HEAR FURTHER ABOUT WHAT WOULD BE YOUR GROUNDS TO
8 HAVE MR. O'NEIL OUT OF THE CASE.

9 MR. HARRISON: I MEAN, FURTHER -- I MEAN, IT'S --
10 IT'S -- IT'S JUST A FEW ISSUES THAT I DON'T -- I DON'T FEEL
11 LIKE WAS EVER CLEARED UP BETWEEN ME AND MR. O'NEIL. AND I
12 DON'T FEEL LIKE HE'S CONFIDENT THAT HE CAN HANDLE MY CASE.

13 THE COURT: OKAY. MR. O'NEIL HAS BEEN A PUBLIC
14 DEFENDER FOR QUITE SOME TIME AND IN FACT HAS TRIED CASES IN
15 FRONT OF ME, AND IN FACT HAS GOTTEN A NOT GUILTY VERDICT,
16 YOU KNOW, IN VARIOUS CASES. HE DOES A GREAT JOB. HE'S IN
17 COURT EVERY DAY AND PLEADS PEOPLE ALL THE TIME. SO IN
18 TERMS OF HIS ABILITY TO TRY THIS CASE, THE COURT IS
19 CONVINCED THAT HE'S ABLE TO HANDLE IT.

20 NOW, LET'S TALK ABOUT YOUR PARTICULAR CASE. BUT IF
21 YOU'RE JUST TALKING ABOUT CAN HE HANDLE A MURDER TRIAL, THE
22 COURT IS CONFIDENT IN HIS ABILITY TO DO SO.

23 MR. HARRISON: NO. I'M SAYING MY PARTICULAR CASE.

24 THE COURT: OKAY. TELL ME A LITTLE BIT MORE BECAUSE
25 I DON'T KNOW ENOUGH TO SAY THAT ---

1 MR. HARRISON: LIKE AS FAR AS THE PLEA GOES, HE NEVER
2 -- NOTHING WAS NEVER NEGOTIATED. IT ALWAYS STOOD AT 30
3 YEARS. IT NEVER WAS ---

4 THE COURT: OKAY. YOU NEED TO UNDERSTAND MR. O'NEIL
5 WHO HAS BEGGED ME -- BEGGED ME, AND BEGGED ME ON BEHALF OF
6 HIS CLIENTS DOES IT ALL THE TIME.

7 WHEN YOU SAY INsofar AS THE PLEA GOES AND
8 NEGOTIATIONS, THE SOLICITOR IS THE ONE WHO HAS THE
9 AUTHORITY TO TAKE MURDER OFF THE TABLE SO TO SPEAK AND
10 MAKE IT A LESSER CHARGE.

11 IF THE SOLICITOR DOESN'T DO THAT AND YOU ACTUALLY
12 MEET THE ELEMENTS OF THE CRIME, THEN THAT'S THE ONLY PLEA
13 THAT THE COURT CAN ACCEPT. DO YOU UNDERSTAND WHAT I'M
14 SAYING? I CAN'T REDUCE THE CHARGE. I HAVE NO LEGAL
15 AUTHORITY TO MAKE THEM SAY THAT, NO, LET'S ONLY FIND HIM
16 GUILTY OF VOLUNTARY MANSLAUGHTER OR INVOLUNTARY
17 MANSLAUGHTER, WHICH CARRIES THE 5 YEARS. I CAN'T DO THAT.

18 IF THAT'S THE CHARGE THAT THEY HAVE THAT THEY WANT TO
19 PROVE WITH THE EVIDENCE AND IN FACT HAD IT TRUE BILLED BY
20 THE GRAND JURY, THAT IS UP TO THEM TO NEGOTIATE THAT CHARGE
21 OR NOT.

22 HE HAS DONE THE NEGOTIATIONS. TRUST ME. THAT
23 HAPPENED IN MY OFFICE EVEN LAST WEEK. HE HAS DONE THE
24 NEGOTIATIONS WITH THE SOLICITOR. THE SOLICITOR HAS DECIDED
25 BECAUSE THEY'RE FACING VICTIMS, THEY'RE FACING PEOPLE IN

1 THE STATE OF SOUTH CAROLINA QUITE FRANKLY THAT THEY DON'T
2 WANT TO TAKE MURDER OFF THE TABLE. SO THAT IS YOUR PLEA IS
3 TO THIS INDICTMENT WHICH HAS BEEN TRUE BILLED.

4 AND THEY DO IT ALL THE TIME. THEY NEGOTIATE CASES
5 ALL THE TIME. WE'VE GOT OVER 8,000 ON THE DOCKET. SO ALL
6 THE CASES CAN'T STICK BECAUSE YOU WOULD HAVE PEOPLE SITTING
7 IN JAIL 5, 10 YEARS IF THEY ALL STUCK. SO EVERY DAY, EVERY
8 HOUR, EVERY MOMENT THEY NEGOTIATE AND THEN THEY DISMISS
9 CASES THAT DON'T NEED TO BE TRIED.

10 SO SHE HAS DECIDED TO NOT LET IT GO UNDER MURDER. SO
11 THE ONLY CHOICE HERE IS 30 YEARS OR UP TO LIFE
12 IMPRISONMENT, BECAUSE -- AND YOU ALL CAN SPEAK TO ME
13 FURTHER AND PUT IT ON THE RECORD ABOUT YOUR NEGOTIATIONS
14 WITH THE SOLICITOR. MS. SINGLETARY HAS NOW JOINED US AS
15 WELL.

16 MR. O'NEIL: YES, YOUR HONOR. I THINK I NEGOTIATED
17 PROBABLY WITH MS. CAMPBELL EVER SINCE MR. HARRISON'S SECOND
18 APPEARANCE, WOULD HAVE BEEN AROUND MAY OR JUNE OF 2008.

19 AND I'VE SPOKEN WITH MR. HARRISON. HIS DESIRE TO
20 PLEA WAS ONLY IF WE COULD HAVE GOT AN APPROPRIATE SENTENCE
21 UNDER A VOLUNTARY MANSLAUGHTER PLEA; THAT WAS THE ONLY
22 CRITERIA THAT HE WOULD BE WILLING TO CONSIDER A PLEA ON.

23 SO I APPROACHED THE SOLICITOR AND TRIED TO ACCOMPLISH
24 THAT, TO GET HER TO REDUCE THE CHARGE TO VOLUNTARY
25 MANSLAUGHTER, DOWN TO A RANGE WHERE MR. HARRISON WOULD BE

1 SATISFIED WITH.

2 HOWEVER, TO REDUCE THE CHARGE -- WHICH IS WHAT I
3 RELAYED TO MR. HARRISON FINALLY WHEN MS. CAMPBELL GAVE ME
4 HER FINAL DECISION WAS BASED ON THE FACT THAT THE VICTIM
5 HAD A SHOT IN OTHER WORDS TO THE BACK, AND THAT THE FATHER
6 OF MR. HARRISON HAD GAVE -- GAVE A STATEMENT SAYING THAT
7 THE VICTIM WAS WALKING TOWARDS THE DOOR, THEN -- THEN A
8 SHOT WAS FIRED AT THE VICTIM.

9 I WENT OVER THAT STATEMENT WITH MR. HARRISON. AND I
10 ASKED MY INVESTIGATOR TO GO OUT AND TALK TO THE FATHER OF
11 MR. HARRISON, ONE OF THE POTENTIAL EYE WITNESS TO VERIFY IF
12 THAT'S GOING TO BE HIS CONTINUAL VERSION OF THE EVENTS.

13 I GOT SOME INDICATION FROM MR. HARRISON'S FATHER THAT
14 THAT'S NOT GOING TO BE HIS CONTINUING VERSION OF THE
15 EVENTS. AND I RELAYED THAT TO MR. HARRISON AS WELL.

16 THE COURT: OKAY.

17 MR. O'NEIL: BUT I DID -- I DID NOT RELAY THAT
18 VERSION OF EVENTS, OF COURSE, TO MS. CAMPBELL BECAUSE THAT
19 WAS PRIVILEGED INFORMATION. BUT SHE HAS SINCE CALLED MR.
20 HARRISON'S FATHER OVER TO THE COURTHOUSE ON I THINK LAST
21 TUESDAY AND SPOKE WITH HIM IN PREPARATION FOR TRIAL, AND HE
22 RELAYED TO HER THAT SAME INDICATION THAT HIS VERSION OF
23 WHAT HAPPENED.

24 HER OFFER OF MURDER, 30 YEARS, HAS NOT CHANGED.

25 THE COURT: OKAY. THE OTHER THING IS ON VOLUNTARY

1 MANSLAUGHTER, AS YOU GO THROUGH THE TRIAL, I'M SURE MR.
2 O'NEIL WILL TRY TO GET ME TO CHARGE IT TO THE JURY. BUT I
3 HAVE TO DO THAT BASED ON WHAT EVIDENCE IS BORNE OUT AT
4 TRIAL, AND THERE HAS TO BE EVIDENCE OF THAT ISSUE, MEANING
5 THAT THE ELEMENTS OF VOLUNTARY MANSLAUGHTER CARRY SUDDEN
6 HEAT OF PASSION AND SUFFICIENT LEGAL PROVOCATION, MEANING
7 THAT THERE HAS TO BE SOME ANGER OR SOME KIND OF EVENTS THAT
8 -- IT'S ALMOST LIKE SOMEBODY WALKING IN ON THEIR SPOUSE
9 WHO'S IN BED WITH SOMEBODY ELSE; THAT SOMETHING JUST CAUSES
10 THIS INSTANT RAGE THAT YOU FOR THAT SUDDEN MOMENT JUST LOSE
11 IT. AND INSTEAD OF MAKING IT BE MURDER WHICH CARRIES THE
12 30 YEARS TO LIFE, THEN THE COURTS HAVE FOUND THAT IN THAT
13 CASE THAT YOU HAD SOME KIND OF PROVOKING THAT OCCURRED THAT
14 WOULD THEN MAKE IT GO TO A VOLUNTARY MANSLAUGHTER.

15 HE CAN TRY THAT AT TRIAL. I CAN'T TELL YOU HOW I
16 WILL RULE BECAUSE I HAVEN'T SEEN ANYTHING. I DON'T KNOW
17 WHAT THE EVIDENCE IS GOING TO BEAR OUT.

18 THEY TRIED IT LAST WEEK IN A TRIAL FOR MURDER. I
19 DIDN'T RULE FOR IT. THAT'S NOT TO SAY I WON'T DO IT HERE.
20 I DON'T KNOW WHAT THE EVIDENCE IS GOING TO BE. THEY CAN
21 TRY FOR IT. YOU ALL KNOW YOUR FACTUAL SCENARIO AS TO
22 WHETHER OR NOT YOU THINK THAT'S GOING TO OCCUR OR NOT. I
23 DON'T KNOW. BUT I HAVE TO SEE IT AND THEN DO MY RULING
24 BASED ON THE LAW IN TERMS OF WHETHER THERE'S SUFFICIENT
25 EVIDENCE TO ACTUALLY MEET THOSE ELEMENTS. SO THAT'S THE

1 OTHER WAY OF DOING IT.

2 BUT RIGHT NOW IT STANDS AS A MURDER INDICTMENT. YOUR
3 LAWYER, WHO YOU'RE SAYING THAT YOU WISH TO BE RELIEVED HAS
4 NEGOTIATED THAT. I SPOKE WITH THEM ABOUT THAT LAST WEEK AS
5 WELL.

6 BUT THE SOLICITOR THROUGH HER AUTHORITY HAS THE RIGHT
7 TO LET THIS CHARGE STICK FOR MURDER, BECAUSE SHE HAS THE
8 ELEMENTS THAT IT MEETS AS OPPOSED TO DISMISSING IT OR
9 BRINGING IT DOWN FURTHER TO SOMETHING ELSE. SHE PROBABLY
10 ALSO DOESN'T HAVE THE CONSENT OF THE VICTIMS TO BRING IT
11 DOWN TO ANY LESSER CHARGE. SO THAT'S WHY SHE ALSO IS
12 INCLINED TO LET IT STICK AS A MURDER TRIAL.

13 HER BEST OFFER IS TO ONLY HAVE YOU PLEAD TO THE
14 MINIMUM SENTENCE, WHICH IS THE 30 YEARS FROM WHAT I
15 UNDERSTAND RIGHT NOW.

16 SO IT'S NOT DUE TO YOUR LAWYERS' LACK OF NEGOTIATION,
17 BECAUSE THEY DID NEGOTIATE AND IN FACT WAS IN MY OFFICE ON
18 FRIDAY STILL NEGOTIATING. AND THEN WHEN THAT HALTED THE
19 NEGOTIATIONS, THEN I SAID, OKAY. APPEAR AT TRIAL ON
20 MONDAY. I'LL BE HAPPY TO TALK WITH YOUR CLIENT AND
21 EXPLAIN, YOU KNOW, A LOT OF THIS TO HIM AS WELL TO VERIFY
22 YOUR CONVERSATIONS WITH THE SOLICITORS BECAUSE I WAS A PART
23 OF SOME OF THEM.

24 SO THAT'S WHERE WE STAND NOW. SO HE HAS NEGOTIATED,
25 TO ANSWER YOUR QUESTION. BUT THAT IS WHERE WE ARE, THAT

1 THIS IS WHAT THE OFFENSE THAT YOU WOULD BE TRIED FOR. AND
2 YOU EITHER GET CONVICTED OR YOU DON'T. SO REALLY YOUR ONLY
3 DECISION AT THIS POINT IS ACCEPT THE NEGOTIATION TO WHERE
4 YOU WOULD ONLY PLEAD TO 30 YEARS OR GO TO TRIAL AT WHICH IF
5 YOU GOT CONVICTED THEN MY SENTENCING BASED ON WHAT I HEAR
6 AT TRIAL WOULD BE TO SENTENCE YOU FROM 30 YEARS TO LIFE OR
7 THEY GO TO TRIAL AND FIGHT THEIR HARDEST TO TRY TO GET YOU
8 A VOLUNTARY MANSLAUGHTER. BUT EVEN THEN IT CAPS AT 30
9 YEARS. I CAN GO ANYWHERE FROM ZERO TO 30.

10 DO YOU UNDERSTAND THAT?

11 MR. HARRISON: YES, MA'AM.

12 THE COURT: OKAY. SO HAVE YOU BEEN DISCUSSING THOSE
13 SCENARIOS WITH YOUR ATTORNEYS?

14 MR. HARRISON: YES, MA'AM.

15 THE COURT: OKAY. ANYTHING ELSE YOU WANT TO TALK TO
16 ME ABOUT ON THE MOTION TO BE RELIEVED IN TERMS OF WHAT YOU
17 BELIEVE IS ANY REASON THAT MR. O'NEIL SHOULD NOT BE YOUR
18 ATTORNEY?

19 MR. HARRISON: THAT WAS BASICALLY MY BIGGEST CONCERN,
20 BECAUSE THE WITNESSES STATEMENTS WAS OVERLOOKED THE WHOLE
21 TIME UNTIL RECENTLY. AND IT COULD BE OTHER THINGS THAT'S
22 OVERLOOKED BECAUSE I NEVER ---

23 THE COURT: WHEN YOU SAY OVERLOOKED, MEANING WHAT?
24 HE SAID HE HAD HIS INVESTIGATOR CHECK OUT TO SEE THE
25 STATEMENTS, IF THOSE WITNESSES WERE GOING TO STAND BY THEIR

1 STATEMENTS.

2 MR. HARRISON: YES, MA'AM. THAT WAS -- THAT WAS LAST
3 WEEK.

4 THE COURT: BUT THAT'S TRUE PERHAPS. I DON'T KNOW.
5 MAYBE IT WAS BEFORE THEN AS WELL AS LAST WEEK. BUT THE
6 THING IS ONCE A TRIAL IS SET AND THE WITNESSES ARE GETTING
7 CLOSER TO TRIAL, THAT'S WHEN YOU REALLY KNOW WHAT THEY'RE
8 GOING TO SAY. I MEAN, IF HE HAD EVEN DONE IT 6 MONTHS AGO,
9 YOU KNOW, WHEN THEY'RE ACTUALLY GOING TO FACE THE COURT, BE
10 PLACED UNDER OATH, AND BE SUBJECT TO PERJURY AND EVEN
11 PUTTING THEMSELVES IN JAIL, THAT'S WHEN YOU REALLY KNOW
12 WHAT THEY'RE GOING TO SAY. SO EVEN THE WEEK BEFORE IS
13 SUFFICIENT BECAUSE IF THEY HAD SAID IT 6 MONTHS AGO, THEY
14 STILL NEEDED TO CHECK IT OUT LAST WEEK TO SEE, ARE YOU
15 STILL GOING TO STAND BY THIS SO I CAN KNOW TO ADVISE MY
16 CLIENT?

17 MR. O'NEIL: I THINK WHAT MR. HARRISON IS CONCERNED
18 ABOUT -- I THINK, LIKE I SAY, I STARTED REPRESENTING MR.
19 HARRISON IN NOVEMBER OF 2007. WE PROBABLY WENT OVER HIS
20 DISCOVERY PROBABLY IN MARCH OF 2008. I THINK IN PROBABLY
21 THE END OF FEBRUARY OF THIS YEAR WE WENT BACK OVER HIS
22 DISCOVERY AGAIN. AND HE'S CONCERNED THAT HIS FATHER'S
23 STATEMENT WASN'T HIGHLIGHTED UNTIL THE END OF MARCH -- I'M
24 SORRY, THE END OF FEBRUARY. I HIGHLIGHTED THAT TO HIM
25 AGAIN BASED ON THE SOLICITOR'S -- TOLD HIM THAT'S WHAT THE

1 SOLICITOR WAS BASING HER REFUSAL TO REDUCE HIS CHARGE DOWN
2 TO VOLUNTARY MANSLAUGHTER BASED PRIMARILY ON THE FACT THAT
3 THE FATHER CORROBORATES TO SHOT IN THE BACK.

4 I THINK HE'S CONCERNED THAT THAT DIDN'T COME TO HIS
5 ATTENTION AGAIN UNTIL FEBRUARY OF THIS YEAR.

6 THE COURT: OKAY. ANYTHING ELSE?

7 MR. HARRISON: NO, MA'AM.

8 THE COURT: OKAY. I WILL RESPECTFULLY DENY YOUR
9 MOTION TO HAVE THEM RELIEVED AS COUNSEL. I BELIEVE THEY'RE
10 ADEQUATELY PREPARED TO GO TO TRIAL, AND THAT THEY HAVE
11 SUFFICIENTLY DISCUSSED WITH YOU THE OPTIONS.

12 I'M GOING TO ALLOW YOU A LITTLE MORE TIME TO DISCUSS
13 WITH THEM HOW YOU WISH TO PROCEED BEFORE WE GO TO TRIAL.
14 IF YOU WANT TO TALK WITH THEM FURTHER ABOUT THE PLEA, JUST
15 ABOUT ANY OTHER ISSUES. OTHERWISE, THE COURT WILL BE READY
16 TO DEAL WITH YOUR MOTIONS AND BE READY TO GO TO TRIAL.

17 SO I'M GOING TO RECESS ABOUT 15 MINUTES AND LET YOU
18 ALL HAVE SOME TIME WITH YOUR CLIENT.

19 MS. SINGLETARY: THANK YOU, YOUR HONOR.

20 MR. O'NEIL: THANK YOU, YOUR HONOR.

21 (A RECESS WAS TAKEN.)

22 THE COURT: MR. HARRISON, HAVE YOU MADE DECISIONS
23 WITH RESPECT TO HOW YOU WISH TO PROCEED?

24 MR. HARRISON: YES, MA'AM. I WOULD PROCEED TO GO TO
25 TRIAL.

1 THE COURT: OKAY. LET'S CALL MS. CAMPBELL THEN AND
2 SEE HOW WE'LL DEAL WITH SCHEDULING.

3 (PAUSE.)

4 THE COURT: WE'RE BACK ON THE RECORD. JUST SO YOU'RE
5 AWARE. MS. CAMPBELL AND MR. JOPLIN, I HAVE DENIED THE
6 DEFENDANT'S MOTION TO RELIEVE MR. O'NEIL AND MS. SINGLETARY
7 AS COUNSEL. I HAVE THOROUGHLY EXPLAINED TO HIM WHAT A
8 MURDER INDICTMENT CARRIES IN TERMS OF THE SENTENCE.

9 AND JUST SO THAT I MAKE SURE THAT I HAVE NOT MIS-
10 REPRESENTED ANYTHING, THAT YOU AND MR. O'NEIL HAVE
11 EXTENSIVELY NEGOTIATED -- MR. O'NEIL WANTED VOLUNTARY
12 MANSLAUGHTER. I TOLD MR. HARRISON THAT THAT WAS UP TO THE
13 SOLICITOR, THAT THIS HAD BEEN TRUE BILLED, INDICTED AS A
14 MURDER CHARGE. IF THAT IS SOMETHING THAT YOU FEEL LIKE YOU
15 CAN PROVE, YOU HAVE EVERY RIGHT TO MAKE IT ONLY STAND AS A
16 MURDER TRIAL.

17 HE HAS EVERY RIGHT TO HAVE THROUGH HIS COUNSEL ASK
18 FOR VOLUNTARY MANSLAUGHTER. THAT DOESN'T MEAN THAT HE
19 WOULD GET IT. AND IT DOESN'T MEAN THAT HE IS ANY LESS OF
20 AN ATTORNEY BECAUSE HE DIDN'T GET IT.

21 MS. CAMPBELL: RIGHT.

22 THE COURT: THE OTHER THING IS THAT HE HAS EVERY
23 RIGHT TO ASK FOR IT DURING THE TRIAL IF THE EVIDENCE SHALL
24 SO FIT. BUT IT DOESN'T MEAN THAT HE WOULD GET IT EITHER.
25 BUT MAYBE HE WILL. I DON'T KNOW WHAT THE EVIDENCE WILL BE.

1 BUT AS WE STAND RIGHT NOW, IF HE PLED NOW, THEN YOU
2 WOULD ALLOW HIM TO BE AT THE MINIMUM 30 YEAR. IF HE GOES
3 TO TRIAL, THEN MY RANGE IS 30 YEARS UP TO LIFE
4 IMPRISONMENT, AND I EXPLAINED THAT TO HIM AS WELL AND THAT
5 YOU'RE TRYING TO PROVE MURDER. THEY WILL TRY TO SEE IF
6 THEY COULD GET VOLUNTARY MANSLAUGHTER. BUT EVEN THEN IT'S
7 A ZERO TO 30 YEAR RANGE. IT'S NOT A DAY-FOR-DAY OFFENSE.
8 BUT AS WE STAND NOW, THAT'S WHAT THE SOLICITOR'S OFFICE HAS
9 DECIDED TO DO IS TO GO FORWARD ON MURDER. HE HAS CHOSEN TO
10 PROCEED TO TRIAL.

11 MS. CAMPBELL: OKAY.

12 THE COURT: OKAY. I HAVEN'T MISREPRESENTED ANY OF
13 THE NEGOTIATIONS?

14 MS. CAMPBELL: THAT'S CORRECT, YOUR HONOR.

15 THE COURT: OKAY. ALL RIGHT. SO AT THIS JUNCTURE,
16 IT'S ABOUT 12:20. WE'VE GONE AHEAD AND RELEASED THE JURORS
17 TO GO TO LUNCH, AND THEY CAN COME BACK AROUND 2:00. I
18 BELIEVE WE'VE ALL AGREED THAT WE'LL START THE TRIAL IN THE
19 MORNING, BUT THAT WE CAN GO AHEAD AND DEAL WITH PRETRIAL
20 NOW AND THEN COME BACK TO JURY SELECTION AFTER LUNCH. OR
21 WE CAN GO TO LUNCH AND DO THE PRETRIAL AFTER LUNCH.

22 MS. CAMPBELL: THE ONLY THING, I LET MY INVESTIGATORS
23 RUN TO LUNCH, YOUR HONOR, BECAUSE I JUST DIDN'T -- I
24 APOLOGIZE.

25 THE COURT: THAT'S OKAY. OKAY.

1 MS. CAMPBELL: I DIDN'T KNOW HOW LONG THIS WAS GOING
2 TO TAKE.

3 THE COURT: OKAY. WELL, WE CAN ALL COME BACK AT
4 2:00. HOW LONG DO YOU EXPECT THE PRETRIAL TO LAST AND WHAT
5 WILL BE THE ISSUES?

6 MS. CAMPBELL: THERE'S A STATEMENT IS THE MAIN ISSUE,
7 AND A FEW MINOR OTHER MOTIONS.

8 THE COURT: OKAY. ALL RIGHT. WE'LL SEE YOU ALL BACK
9 AT 2:00.

10 MS. CAMPBELL: SO WE SHOULD BE ABLE TO FINISH EASILY
11 THIS AFTERNOON.

12 THE COURT: OKAY. THANK YOU.

13 (COURT IS IN RECESS FOR LUNCH.)

14 THE COURT: FOR THE RECORD WITH RESPECT TO THE STATE
15 VERSUS VERNON T. HARRISON, I UNDERSTAND THAT YOU ALL HAVE
16 BEEN TRYING TO WORK OUT SOME NEGOTIATIONS. IF YOU WOULD
17 LIKE TO INFORM THE COURT WHERE WE ARE WITH RESPECT TO
18 PLEADING OR GOING TO TRIAL?

19 MS. CAMPBELL: YOUR HONOR, IT'S MY UNDERSTANDING THAT
20 MR. HARRISON IS GOING TO PLEAD GUILTY TO VOLUNTARY
21 MANSLAUGHTER FOR A NEGOTIATED SENTENCE OF 30 YEARS WITH THE
22 COURT'S APPROVAL.

23 THE COURT: OKAY. ALL RIGHT. MR. O'NEIL AND MS.
24 SINGLETARY, IF YOU WOULD HAVE YOUR CLIENT STEP FORWARD.

25 (PAUSE.)

1 (THE DEFENDANT WAS FIRST DULY SWORN.)

2 THE COURT: MR. HARRISON, ARE YOU UNDER THE INFLUENCE
3 OF ANY ALCOHOL, DRUGS, OR MEDICATION?

4 MR. HARRISON: NO, MA'AM.

5 THE COURT: AND HAVE YOU EVER BEEN EVALUATED FOR YOUR
6 MENTAL HEALTH?

7 MR. HARRISON: NO, MA'AM.

8 THE COURT: AND DO YOU UNDERSTAND THAT THE ORIGINAL
9 INDICTMENT AS I INDICATED TO YOU EARLIER WAS A TRUE BILL
10 FOR MURDER?

11 MR. HARRISON: YES, MA'AM.

12 THE COURT: AND THAT THIS IS ALLEGED TO HAVE OCCURRED
13 IN RICHLAND COUNTY ON OR ABOUT NOVEMBER 12, 2007 WITH
14 RESPECT TO AN ANTONIO DWAYNE RISH; IS THAT CORRECT?

15 MR. HARRISON: YES, MA'AM.

16 THE COURT: AND MY UNDERSTANDING IS THAT WE HAD A
17 LENGTHY DISCUSSION THIS MORNING ABOUT YOUR OPTIONS ABOUT
18 WHETHER YOU WANTED TO PLEAD OR GO TO TRIAL. AND ONE OF
19 YOUR CONCERNS WAS WHETHER OR NOT YOU COULD PLEAD TO
20 VOLUNTARY MANSLAUGHTER. I INDICATED TO YOU THAT THE
21 SOLICITOR FELT LIKE THEY HAD ADEQUATE PROOF TO GO FORWARD
22 ON MURDER, AND THAT THAT WAS NOT FOR THE JUDGE TO DROP THAT
23 CHARGE SO TO SPEAK, ALTHOUGH YOUR ATTORNEYS HAVE DILIGENTLY
24 TRIED TO NEGOTIATE TOWARD THAT PLEA. DO YOU UNDERSTAND
25 THAT?

1 MR. HARRISON: YES, MA'AM.

2 THE COURT: SO NOW WE COME TO THAT DECISION BASED ON
3 YOU AND YOUR ATTORNEYS AND THE SOLICITOR'S OFFICE THAT YOU
4 WOULD ACTUALLY PLEAD TO VOLUNTARY MANSLAUGHTER. DO YOU
5 UNDERSTAND THAT?

6 MR. HARRISON: YES, MA'AM.

7 THE COURT: AND THAT THAT STILL CARRIES A RANGE OF UP
8 TO 30 YEARS. YOU'RE AWARE OF THAT?

9 MR. HARRISON: YES, MA'AM.

10 THE COURT: OKAY. ALL RIGHT. WITH RESPECT TO THIS
11 OFFENSE, I NEED TO ADVISE YOU OF CERTAIN RIGHTS TO MAKE
12 SURE THAT THIS WOULD BE A KNOWING, INTELLIGENT, AND
13 VOLUNTARY PLEA. OKAY. SO LET'S BEGIN FIRST. HAS ANYONE
14 FORCED YOU OR THREATENED YOU TO PLEAD TODAY?

15 MR. HARRISON: NO, MA'AM.

16 THE COURT: ARE YOU DOING SO OF YOUR OWN FREE WILL?

17 MR. HARRISON: YES, MA'AM.

18 THE COURT: AND WHAT IS YOUR DECISION WITH RESPECT TO
19 PLEADING GUILTY OR NOT GUILTY TO THE OFFENSE OF VOLUNTARY
20 MANSLAUGHTER?

21 MR. HARRISON: GUILTY.

22 THE COURT: AND DO YOU FEEL LIKE YOU HAVE ANY
23 COMPLAINTS AGAINST ANY OF THE ARRESTING OFFICERS, THE
24 SOLICITOR'S OFFICE, OR ANYONE WHO HAS HANDLED THIS CASE?

25 MR. HARRISON: NO, MA'AM.

1 THE COURT: OKAY. YOU UNDERSTAND THAT WITH RESPECT
2 TO YOUR PLEA THOUGH, THIS IS STILL GOING TO BE A STRIKE
3 AGAINST YOU?

4 MR. HARRISON: YES, MA'AM.

5 THE COURT: AND IT'S A MOST SERIOUS STRIKE, WHICH
6 MEANS THAT TO THE EXTENT THAT YOU GOT OTHER SERIOUS OR MORE
7 SERIOUS CRIMES, CATEGORICAL CRIMES, ON YOUR RECORD, YOU
8 COULD FIND YOURSELF WITH OTHER STRIKES LEADING TO YOU
9 FACING MANDATORY LIFE WITHOUT THE POSSIBILITY OF PAROLE.
10 DO YOU UNDERSTAND THAT?

11 MR. HARRISON: YES, MA'AM.

12 THE COURT: AND THAT TO THE EXTENT THAT YOU HAD THAT
13 SECOND OFFENSE THAT WAS A SERIOUS OR MOST SERIOUS CATEGORY
14 OFFENSE, THERE WOULD BE NO DISCRETION BY THE COURT. THEY
15 WOULD HAVE TO IMPOSE THE SENTENCE OF LIFE WITHOUT THE
16 POSSIBILITY OF PAROLE. DO YOU UNDERSTAND THAT?

17 MR. HARRISON: YES, MA'AM.

18 THE COURT: OKAY. YOU HAD EVERY OPPORTUNITY TO GO TO
19 TRIAL; AND THAT'S A CONSTITUTIONAL RIGHT TO DO SO. YOU'RE
20 AWARE OF THAT?

21 MR. HARRISON: YES, MA'AM.

22 THE COURT: ARE YOU CHOOSING TO WAIVE YOUR
23 CONSTITUTIONAL RIGHT TO TRIAL?

24 MR. HARRISON: YES, MA'AM.

25 THE COURT: OKAY. AND INSTEAD GOING FORWARD WITH A

1 PLEA OF GUILTY?

2 MR. HARRISON: YES, MA'AM.

3 THE COURT: DO YOU UNDERSTAND THAT AT TRIAL AND EVEN
4 PRIOR TO TRIAL YOUR ATTORNEYS HAD EVERY OPPORTUNITY TO
5 CHALLENGE ANY OF THE STATEMENTS BY THE STATE'S WITNESSES,
6 AND EVEN AT TRIAL TO CROSS EXAMINE THEM, TO CHALLENGE ANY
7 OF THE EVIDENCE THAT THE STATE WANTED TO BRING FORWARD TO
8 THIS COURT. BUT YOU WOULD BE GIVING UP THOSE RIGHTS IF YOU
9 GO TO PLEAD AS OPPOSED TO TRYING THE CASE. YOU'RE AWARE OF
10 THAT?

11 MR. HARRISON: YES, MA'AM.

12 THE COURT: ARE YOU AWARE THAT THE SOLICITOR HAS TO
13 PROVE THE CASE BEYOND A REASONABLE DOUBT AND CANNOT REQUIRE
14 YOU TO TESTIFY AGAINST YOURSELF IN ORDER TO SEEK THEIR
15 CONVICTION. DO YOU UNDERSTAND THAT?

16 MR. HARRISON: YES, MA'AM.

17 THE COURT: AND YOU ALSO GIVE UP YOUR RIGHT TO REMAIN
18 SILENT IF YOU GO FORWARD WITH YOUR PLEA. YOU'RE AWARE OF
19 THAT?

20 MR. HARRISON: YES, MA'AM.

21 THE COURT: DO YOU UNDERSTAND THAT YOU DON'T HAVE TO
22 PRESENT ANY DEFENSES OR TESTIMONY OR OTHER WITNESSES, NOR
23 DO YOU HAVE TO TESTIFY IN YOUR OWN CASE BECAUSE IT'S THE
24 SOLICITOR'S BURDEN OF PROOF THROUGHOUT THE TRIAL. YOU'RE
25 AWARE OF THAT?

1 MR. HARRISON: YES, MA'AM.

2 THE COURT: AND THAT THE JURY WOULD EVEN HAVE TO BE
3 INFORMED THAT YOU DON'T HAVE TO PUT UP ANY EVIDENCE. YOU
4 DON'T HAVE TO TESTIFY. YOU DON'T HAVE TO DO ANYTHING,
5 BECAUSE THEY ALWAYS KEEP THE BURDEN OF PROOF AND THEY'RE
6 HELD TO THAT BURDEN OF PROOF AT TRIAL. YOU'RE AWARE OF
7 THAT?

8 MR. HARRISON: YES, MA'AM.

9 THE COURT: OKAY. ALL RIGHT. AND ARE YOU STILL
10 PLEADING OF YOUR OWN FREE WILL AND ON A VOLUNTARY BASIS?

11 MR. HARRISON: YES, MA'AM.

12 THE COURT: HAVE YOU HAD ENOUGH TIME TO SPEAK WITH
13 YOUR ATTORNEY ABOUT THE NATURE OF THE CHARGES, YOUR MAXIMUM
14 POSSIBLE PUNISHMENT AND YOUR CONSTITUTIONAL RIGHTS?

15 MR. HARRISON: YES, MA'AM.

16 THE COURT: AND HAVE YOU FELT LIKE YOUR ATTORNEYS
17 HAVE LISTENED TO YOUR CONCERNS AND QUESTIONS AND ANSWERED
18 THOSE CONCERNS AND QUESTIONS?

19 MR. HARRISON: YES, MA'AM.

20 THE COURT: OKAY. YOU SATISFIED WITH THEIR
21 REPRESENTATION?

22 MR. HARRISON: YES, MA'AM.

23 THE COURT: OKAY. THE COURT WILL ACCEPT YOUR PLEA.
24 YOU WOULD HAVE 10 DAYS TO APPEAL A GUILTY PLEA AND/OR
25 SENTENCE. AND IF YOU WISH TO CHALLENGE HOW YOUR ATTORNEYS

1 HAVE REPRESENTED YOU, YOU WOULD NEED TO DO SO IN A TIMELY
2 MANNER UNDER A POST CONVICTION RELIEF APPLICATION. DO YOU
3 UNDERSTAND THAT?

4 MR. HARRISON: YES, MA'AM.

5 THE COURT: OKAY. HAVE YOUR ANSWERS BEEN TRUTHFUL?

6 MR. HARRISON: YES, MA'AM.

7 THE COURT: AND HAVE YOU UNDERSTOOD MY QUESTIONS TO
8 YOU?

9 MR. HARRISON: YES, MA'AM.

10 THE COURT: AND HAVE YOUR ANSWERS IN ANY WAY BEEN
11 SUGGESTED BY ANYONE?

12 MR. HARRISON: NO, MA'AM.

13 THE COURT: AND HAS ANYONE PROMISED YOU ANYTHING IN
14 EXCHANGE FOR THIS PLEA OR ANY TYPE OF HOPE OF REWARD OTHER
15 THAN THE NEGOTIATIONS?

16 MR. HARRISON: NO, MA'AM.

17 THE COURT: OKAY. YOU HAVE ANY QUESTIONS OF ME?

18 MR. HARRISON: NO, MA'AM.

19 THE COURT: OKAY. LISTEN CAREFULLY AS THE SOLICITOR
20 JOPLIN GIVES ME THE FACTUAL INVESTIGATION THAT SUPPORTS
21 THIS INDICTMENT, AND THEN, YOU, YOUR ATTORNEY, OR ANYONE
22 WHO WISHES TO SPEAK ON YOUR BEHALF WILL HAVE AN OPPORTUNITY
23 TO RESPOND. OKAY?

24 YOU NEED TO VERBALLY SPEAK.

25 MR. HARRISON: YES, MA'AM.

1 THE COURT: OKAY. ALL RIGHT. MR. JOPLIN.

2 MR. JOPLIN: THANK YOU, YOUR HONOR. MAY IT PLEASE
3 THE COURT. THIS INCIDENT DID OCCUR ON NOVEMBER 12, 2007 IN
4 THE NORTHEAST PART OF RICHLAND COUNTY, THE AREA OF A ROAD
5 CALLED TELFORD LANE.

6 ON THAT DAY IT APPEARS THROUGHOUT THE COURSE OF THE
7 INVESTIGATION THE STATE IS PREPARED TO PRESENT WITNESS
8 TESTIMONY AND FORENSIC EVIDENCE TO THE FACTS THAT MR.
9 HARRISON'S FATHER CALLED THE VICTIM OVER SHORTLY BEFORE MR.
10 HARRISON ARRIVED AT THE RESIDENCE. HE CALLED HIM OVER TO
11 DEAL WITH ANOTHER INDIVIDUAL WHO HAPPENED TO BE THERE. I
12 THINK IT WAS A COROLLARY MATTER THAT HE WAS BEING CALLED
13 OVER THERE FOR.

14 ONCE THERE, MR. HARRISON AND HIS -- THE MOTHER OF ONE
15 OF HIS CHILDREN, TATIA HEARN (PHONETIC), DROVE UP INTO THE
16 YARD. THEY ENTERED THE RESIDENCE TO WHERE MR. HARRISON WAS
17 CONFRONTED WITH MR. RISH. AND APPARENTLY IN THE PAST FEW
18 WEEKS HAD UP AND DOWN ALTERCATIONS AND CONFRONTATIONS
19 BETWEEN THE TWO OF THEM AND BETWEEN THE TWO FAMILIES FOR
20 THE PAST SEVERAL WEEKS, RANGING ANYWHERE FROM MR. -- FROM
21 THE VICTIM CONFRONTING THE DEFENDANT IN PUBLIC, TO SOME
22 OTHER MATTERS OF GETTING IN ARGUMENTS IN THE MIDDLE OF THE
23 YARD, ON THE STREET. AND SO THERE'S SOME ANIMOSITY THERE
24 BETWEEN THE TWO PARTIES.

25 WHILE IN THE HOUSE THERE IS WITNESS TESTIMONY THAT

1 WOULD HAVE BEEN PRESENTED TO SHOW THAT RISH WAS CONFRONTING
2 THE DEFENDANT. HE WAS, YOU KNOW, SAYING, WHY AREN'T YOU MY
3 BOY?

4 I THINK IN THE DEFENDANT'S STATEMENT THAT HE HAS
5 GIVEN TO THE OFFICERS WOULD HAVE SHOWN THAT RISH WAS SORT
6 OF LIKE IN A WORD, IN HIS FACE SAYING HOW HE WASN'T BEHIND
7 HIM ANY MORE, THAT HE WASN'T HIS BOY. AND DOING WHAT ALL
8 THE PARTIES INVOLVED TERM WHAT WAS CALLED MUSHING. THEY
9 APPARENTLY STICKING EITHER HIS FINGER -- ANYWHERE FROM
10 PUTTING HIS FINGER TO HIS FOREHEAD OR HIS WHOLE HAND UP --
11 RISH WAS PUTTING HIS WHOLE HAND UP TO HARRISON'S FOREHEAD,
12 SORT OF PUSHING HIS FACE IN A FORM OF INTIMIDATION.

13 AT THAT TIME THEY'RE INSIDE THE LIVING ROOM OF THE
14 HOUSE -- OF HARRISON'S, I THINK, GRANDMOTHER'S HOUSE THERE
15 ON TELFORD LANE.

16 AND THE STRUCTURE OF THE HOUSE, YOUR HONOR, AS WHEN
17 YOU WALK IN THE FRONT DOOR, THERE'S A SMALL LITTLE OPENING
18 FOYER AREA. TO THE LEFT IS A LARGE LIVING ROOM AREA WHERE
19 A COUPLE COUCHES WERE.

20 ACCORDING TO WITNESS TESTIMONY, THE TWO OF THEM WERE
21 ARGUING ABOUT 10 MINUTES. THE DEFENDANT'S FATHER WAS IN
22 THE LIVING ROOM. TATIA HEARN, THE MOTHER OF ONE OF HIS
23 CHILDREN, WAS IN THERE WITH THEM. AND THEN THERE WAS THE
24 DEFENDANT AND THE VICTIM. AND THEN MR. HARRISON'S UNCLE,
25 ARTHUR TELFORD (PHONETIC), WAS BACK IN THE KITCHEN. HE

1 HEARD WHAT WAS GOING ON BUT DID NOT SEE IT.

2 AND AFTER ABOUT 10 TO 15 MINUTES OF THIS ARGUING
3 CONFRONTATION, APPARENTLY THE DEFENDANT'S FATHER WAS TRYING
4 TO BREAK IT UP. TATIA WAS TRYING TO BREAK IT UP. THEY
5 BOTH FINALLY STARTED GOING AT EACH OTHER.

6 ACCORDING TO THE DEFENDANT, MR. HARRISON'S OWN
7 FATHER, WHO WAS PREPARED TO COME UP AND TESTIFY BEFORE YOUR
8 HONOR, IS THAT THE VICTIM, MR. RISH WAS IN THE FOYER AREA
9 AT THE DOOR PREPARING TO WALK OUT THE DOOR AND WHEN MR.
10 HARRISON PULLED OUT HIS 45 AND SHOT HIM 3 TIMES.

11 ACCORDING TO MR. HARRISON'S OWN STATEMENT, THE ONLY
12 REASON HE STOPPED -- ONE OF THE ONLY REASONS HE STOPPED IS
13 BECAUSE THE GUN JAMMED. AND WHEN HE TALKED TO THE
14 INVESTIGATORS HE SAID -- THERE SHOULD STILL BE A BULLET IN
15 THE GUN READY TO GO OFF BECAUSE IT JAMMED. I COULDN'T
16 SHOOT ANY MORE.

17 AT THAT TIME MR. RISH FELL TO THE GROUND. CHAOS SORT
18 OF BROKE LOOSE WITH TATIA APPARENTLY.

19 THERE'S TESTIMONY RANGING THAT THE DEFENDANT AT THAT
20 TIME JUST SORT OF COOLY WALKED OUT THE BACK DOOR, WENT IN
21 TO BEHIND HIS HOUSE, THROUGH THE WOODS TO ANOTHER
22 NEIGHBOR'S HOUSE, AND CALLED HIS COUSIN ANTONIO TO COME AND
23 PICK HIM UP.

24 AT THE TIME ANTONIO CAME AND PICKED HIM UP, MR.
25 HARRISON GOT IN HIS CAR, AND INSTRUCTED HIS COUSIN

1 BASICALLY JUST, GO GET ME A BEER AND CIGAR, AND TAKE ME TO
2 ANOTHER FRIEND'S HOUSE.

3 AT THAT TIME -- FROM THERE HE TALKED WITH TATIA.
4 SHE'D CALLED 9-1-1, FABRICATED HER STORY.

5 THE OFFICERS ARRIVED ON THE SCENE. SHE GAVE HER
6 FIRST OF APPROXIMATELY 4 STATEMENTS TO THE OFFICERS AT THAT
7 TIME.

8 THE FATHER GAVE THE FIRST OF, I BELIEVE, 3 STATEMENTS
9 AT THAT TIME AND BASICALLY TRYING TO COVER UP WHAT HAD JUST
10 HAPPENED.

11 THE FORENSIC EVIDENCE WOULD SHOW DURING TRIAL THAT
12 THERE WAS GUNSHOT RESIDUE ON A COUCH NEAR WHERE THE
13 DEFENDANT WAS STANDING, WHICH IS ON THE INTERIOR OF THAT
14 LIVING ROOM. APPROXIMATELY 10 TO 15 FEET AWAY WAS THAT
15 FRONT DOOR AREA WHERE THE VICTIM'S BODY WAS FOUND.

16 THE DOOR WAS OPEN. ACCORDING TO THE RECONSTRUCTION,
17 THE DOOR WAS AJAR AT THE TIME OF THE SHOOTING AT
18 APPROXIMATELY 1.3 FEET. SO IT DOES SUPPORT THE FACT THAT
19 THE VICTIM WAS ON HIS WAY OUT THE DOOR AT THE TIME THE
20 SHOOTING OCCURRED.

21 MORE IMPORTANTLY, THE CORONER'S REPORT DOES SHOW THAT
22 ONE OF THE BULLETS ENTERED -- TWO OF THE BULLETS ENTERED
23 THE FRONT OF THE BODY TO THE ABDOMEN. ONE OF THE BULLETS
24 ENTERED THROUGH THE BACK AND WENT THROUGH THE ABDOMEN. SO
25 THAT FURTHER SUPPORTS THAT HE WAS EXITING THE HOUSE AT THE

1 TIME OF THE SHOOTING.

2 THE INVESTIGATION IN THIS CASE WAS EXEMPLARY BY THE
3 SHERIFF'S DEPARTMENT. THEY HAD TO WEED THROUGH A MOUNTAIN
4 OF LIES AND DECEPTION THAT THE DEFENDANT HAD CREATED IN
5 TRYING TO COVERING UP THIS MESS.

6 HE HAD INSTRUCTED TWO ACTUALLY CO-DEFENDANTS,
7 SHANEEKA JAMES (PHONETIC), AND TATIA HEARN, ON WHAT TO SAY
8 AND SORT OF CORROBORATED THEIR STORIES TO MAKE IT SEEM LIKE
9 HE HAD JUST BEEN WALKING AROUND COLUMBIA MALL, ONE OF THEM
10 PICKED HIM UP, WENT TO SO-AND-SO'S HOUSE, WENT TO SO-AND-
11 SO'S HOUSE.

12 BUT FINALLY AFTER ABOUT 5 DAYS AND MULTIPLE
13 STATEMENTS LATER, THEY FINALLY GAVE STATEMENTS SUPPORTING
14 -- SOMEWHAT SUPPORTING THE ACTUAL FACTS OF WHAT HAPPENED.
15 WE STILL DON'T HAVE, I DON'T THINK A FULL, TRUTHFUL
16 RESITATION FROM ANY OF THESE WITNESSES OF WHAT ACTUALLY
17 HAPPENED. BUT IT STARTED GIVING US A GOOD PICTURE OF WHAT
18 WAS GOING ON.

19 THE DEFENDANT WAS ARRESTED. HE GAVE A STATEMENT --
20 ORAL STATEMENT TO BOTH INVESTIGATOR MCROBERTS AND
21 INVESTIGATOR SMITH WITH THE SHERIFF'S DEPARTMENT ADMITTING
22 THAT HE HAD SHOT THE VICTIM, ANTONIO RISH. HE SAID THAT HE
23 HAD BEEN PUSHED, AND THAT RISH JUST KEPT PUSHING HIM, KEPT
24 PUSHING HIM, AND THAT HE FINALLY SHOT HIM.

25 THERE'S NEVER ANY MENTION TO THE INVESTIGATORS OF ANY

1 TYPE OF SELF-DEFENSE. NO MENTION OF RISH, YOU KNOW, COMING
2 AT HIM IN ANY KIND OF WAY. IT'S MORE THAT HE WAS BEING
3 PICKED ON AND IN RETALIATION HE PULLED A GUN AND SHOT HIM 3
4 TIMES.

5 YOUR HONOR, I BELIEVE THAT DOES SUM UP THE FACTUAL
6 ALLEGATIONS. I DO KNOW MR. RISH'S LARGE, EXPANDED FAMILY
7 IS SITTING OUT IN THE GALLERY TODAY. THERE ARE SOME
8 REPRESENTATIVES OF HIS FAMILY THAT WOULD LIKE TO ADDRESS
9 THE COURT AT THE APPROPRIATE TIME.

10 THE COURT: OKAY.

11 MR. JOPLIN: AND, MR. -- I APOLOGIZE. THE DEFENDANT
12 DOES HAVE A PRIOR RECORD. I BELIEVE HE'S ON PROBATION
13 CURRENTLY FROM A 2005 OR 2006 RATHER, DRUG CHARGE. I THINK
14 IT IS A P.W.I.D. COCAINE FIRST OFFENSE.

15 AND THEN HE HAD A SIMPLE ASSAULT AND BATTERY FROM
16 2007.

17 WE'RE JUST ASKING THAT YOUR HONOR ACCEPT THE
18 NEGOTIATION.

19 THE COURT: THANK YOU. ALL RIGHT. MR. HARRISON, DO
20 YOU HAVE ANYTHING THAT YOU WOULD LIKE TO CHANGE OR AMEND
21 WITH RESPECT TO THE FACTS THAT MR. JOPLIN HAS GIVEN THE
22 COURT?

23 MR. O'NEIL: YOUR HONOR, IT'S OUR POSITION HAS ALWAYS
24 BEEN THAT THE VICTIM, MR. RISH, WAS NOT SHOT AS HE WALKED
25 OUT THE DOOR. IT'S ALWAYS BEEN OUR CONTENTION AND I THINK

1 THERE IS ALSO FORENSIC EVIDENCE THAT SUPPORTS THE FACT THAT
2 HE WAS NOT WALKING OUT THE DOOR WHEN HE WAS SHOT. BUT, I
3 THINK, YOUR HONOR, THIS IS A CLASSIC CASE OF AT WORST A
4 HEAT OF PASSION, KILLING WITH LEGAL PROVOCATION. I THINK
5 IT FALLS SQUARELY EVEN IN MR. HARRISON'S RENDITION OF WHAT
6 HAPPENED INTO THE CATEGORY OF VOLUNTARY MANSLAUGHTER, YOUR
7 HONOR.

8 THE COURT: OKAY.

9 MR. O'NEIL: WE DO DISPUTE SOME OF THE ALLEGATIONS,
10 ONE, THAT HE WAS WALKING OUT THE DOOR, AND TWO, THAT THIS
11 WAS MERELY A SHOOTING THAT OCCURRED BECAUSE MR. HARRISON
12 WAS BEING PICKED ON. I THINK IT WAS A LOT MORE THAN THAT,
13 YOUR HONOR.

14 THE COURT: OKAY. DO YOU AGREE WITH THE PRIOR
15 RECORD?

16 MR. O'NEIL: YES, YOUR HONOR.

17 THE COURT: OKAY. I'LL BE HAPPY TO HEAR FROM YOU ANY
18 FURTHER IN RESPONSE TO THESE COMMENTS OR YOUR VICTIMS.

19 MS. CAMPBELL: YOUR HONOR, AT THE APPROPRIATE TIME.
20 THE VICTIMS ARE IN AGREEMENT WITH THIS PLEA NEGOTIATION AND
21 ALL, AND THEY HAVE MET WITH ME ON MULTIPLE OCCASIONS. THIS
22 IS THE FIRST TIME THAT I'VE MET WITH THE EXTENDED FAMILY
23 TODAY. HOWEVER, THEY'VE BEEN FULLY APPRISED OF ALL THE
24 POSSIBILITIES AND THE OUTCOMES, AND THEY ARE IN AGREEMENT
25 WITH THESE NEGOTIATIONS.

1 AT THE APPROPRIATE TIME, I BELIEVE TWO FAMILY MEMBERS
2 WOULD LIKE TO BRIEFLY ADDRESS THE COURT WHENEVER YOU FIND
3 THAT APPROPRIATE.

4 THE COURT: I'M HAPPY TO HEAR FROM THEM. STAND UP AT
5 THE MICROPHONE. PLEASE STATE YOUR NAME.

6 LADY: HI. MY NAME IS DONNA BOLES (PHONETIC). I'M
7 ANTONIO RISH'S AUNT. YOUR HONOR, AT THIS TIME I WOULD LIKE
8 TO ADDRESS THE COURT AND LET THE COURT KNOW HOW THIS HAS
9 AFFECTED MY WHOLE FAMILY AND THE IMPACT ON ALL THE FAMILY.
10 SOME OF THEM STILL REALLY ARE GRIEVING BECAUSE HE DID TOUCH
11 SOMETHING THAT WAS PRECIOUS TO US THAT REALLY DID MEAN A
12 WHOLE LOT TO US.

13 I HAVE A SON THAT WAS ENROLLED AT THE TIME THAT WAS
14 IN COLLEGE, AND WE HAD TO TAKE HIM OUT OF COLLEGE BECAUSE
15 THIS IMPACTED HIS LIFE TO WHERE HE COULD GO NO LONGER
16 FOCUS.

17 ANTONIO WAS REALLY LOVED BY MANY FAMILY MEMBERS AND
18 MEANT A LOT. WE JUST CAN'T SAY ON MY BEHALF -- YOU KNOW,
19 I'M A FIRM BELIEVER IN THE WORD OF GOD AND THE BIBLE THAT
20 THOU SHALL NOT KILL. AND I FURTHER BELIEVE THAT ON TODAY
21 HE JUST TOOK A PART OF ME THAT IS GONE, TO WHERE I WILL
22 NEVER CAN HEAR ANTONIO -- WILL CALL AND SAY, AUNTIE, WHAT
23 YOU DOING. HE WAS A VERY RESPECTED PERSON. AND ANYTHING
24 THAT I NEEDED OR WANTED, HE WOULD HAVE BEEN THERE.

25 AND IT HAVE TOOK A LOT OUT OF MY FAMILY BECAUSE I

1 HAVE TO SEE MY SISTER GO ABOUT EVERY DAY BEFORE WORK TRYING
2 TO KEEP HER CALM, TRYING TO KEEP THE WHOLE FAMILY TOGETHER,
3 YOU KNOW, AND JUST BELIEVING THAT JUSTICE WILL BE DONE
4 TODAY.

5 THE COURT: THANK YOU, MA'AM.

6 MOTHER: YOUR HONOR, I AM ANTONIO RISH MOTHER.

7 THE COURT: STATE YOUR NAME PLEASE.

8 MOTHER: I'M EVELYN (PHONETIC) RISH, I'M ANTONIO RISH
9 MOTHER. ONE THING I WANT TO SAY, I WILL FORGIVE HIM, BUT I
10 NEVER FORGET WHAT HAVE BEEN DONE BECAUSE HAVE TOOK
11 SOMETHING FROM ME THAT WAS MY FIRST BORN. AND HE WAS
12 ALWAYS THERE FOR US. I DON'T CARE WHAT -- WHAT THE NEED
13 IS, WHAT HAD TO BE DONE. YOU CALL HIM AND HE'S ALWAYS
14 THERE. AND NOT ONLY THAT, HE NOT ONLY DID FOR HIS FAMILY,
15 HE DID FOR THE PEOPLE IN THE NEIGHBORHOOD AND STUFF. HE
16 FED THEM WHEN THEY DIDN'T HAVE. I HAVE HAD STRANGERS COME
17 TO MY HOUSE I DON'T KNOW -- DON'T EVEN KNOW -- YOU KNOW,
18 LET ME KNOW WHAT MY SON HAVE DONE FOR THEM.

19 BUT I WANT HIM TO KNOW HE REALLY TOOK SOMETHING FROM
20 ME, AND HAVE AN IMPACT ON ME. NOT ONLY THAT, FROM DAY TO
21 DAY I HAVE TO GO TO AND FROM WHERE MY SON GOT KILLED INTO
22 WORK. AND WHEN IT FIRST HAPPENED, I HAD TO TRY AND FIND
23 ANOTHER ROUTE TO GO TO KEEP FROM GOING THIS WAY.

24 BUT LIKE I SAY, I FORGIVE HIM. BUT I CAN'T FORGET
25 WHAT HE DONE.

1 THE COURT: HOW OLD WAS YOUR SON?

2 MOTHER: HE'S 30 NOW.

3 THE COURT: OKAY. THANK YOU.

4 MOTHER: AND I THANK YOU.

5 THE COURT: OKAY. I'LL BE HAPPY TO HEAR FROM THE
6 DEFENSE.

7 MR. O'NEIL: THANK YOU, YOUR HONOR. MAY IT PLEASE
8 THE COURT. FIRST OF ALL, I THINK THIS IS TRULY A TRAGEDY
9 FOR EVERYBODY INVOLVED IN THIS SITUATION, YOUR HONOR. BUT
10 I THINK A PLEA TO VOLUNTARY MANSLAUGHTER IS PROBABLY THE
11 APPROPRIATE RESOLUTION INVOLVED.

12 TERRELL, YOUR HONOR, IS ONLY 23 YEARS OLD. HE
13 FINISHED HIGH SCHOOL AND HE ACTUALLY WAS ENROLLED IN
14 MIDLANDS TECH TRYING TO FURTHER HIMSELF IN THAT FASHION
15 BEFORE THIS INCIDENT OCCURRED. HE'S THE FATHER WITH A
16 YOUNG SON. AND, CERTAINLY, HE WANTS TO TRY TO GET BACK TO
17 AT SOME POINT IN HIS LIFE AND TRY TO MAKE SURE THAT HIS SON
18 GROWS UP IN THE WAY THAT HE WOULD WANT HIM TO GROW UP WITH.

19 HERE TODAY IS, I THINK, HIS MOTHER AND SOME OTHER
20 FAMILY MEMBERS ON HIS BEHALF. I THINK HIS MOTHER ACTUALLY
21 HAD TO STEP OUT FOR A SECOND HERE. BUT HE DOES HAVE STRONG
22 FAMILY SUPPORT.

23 I'VE SPOKEN WITH HIS UNCLES, HIS FATHER, HIS
24 GRANDMOTHER ON SEVERAL OCCASIONS, YOUR HONOR. HE DOES HAVE
25 A FAMILY STRUCTURE TO GO BACK TO ONCE HE GETS THIS ALL

1 TAKEN CARE OF.

2 I'VE REPRESENTED HIM PROBABLY ABOUT 15 MONTHS NOW.
3 HE'S PROBABLY BEEN ONE OF MY MOST AMICABLE CLIENTS TO DEAL
4 WITH. HE'S ALWAYS BEEN MILD MANNERED AND QUIET. YES, SIR
5 AND NO, SIR. AND NEVER REALLY HAD A HARSH WORD WITH HIM
6 FOR THE LAST 15 MONTHS, YOUR HONOR.

7 HE HAS A MINIMAL PRIOR RECORD. HE WAS ON PROBATION
8 WHEN THIS HAPPENED, YOUR HONOR. AND I ATTEMPTED TO TRY TO
9 GET THE PROBATION CASE TERMINATED AND RAN CONCURRENT DURING
10 THESE PROCEEDINGS, YOUR HONOR, BUT PROBATION WAS UNABLE TO
11 GET THE PAPERWORK NECESSARY TO GET THAT ACCOMPLISHED TODAY.
12 I THINK THEY WILL HAVE TO WAIT UNTIL TOMORROW TO GET THAT
13 ACCOMPLISHED.

14 WE WOULD ASK, I THINK HE ONLY HAS A 5 YEAR SUSPENDED
15 SENTENCE ON HIS PROBATION CASE. WE WOULD JUST ASK THAT
16 THAT RUN CONCURRENTLY WITH THIS SENTENCE YOUR HONOR WILL
17 IMPOSE ON HIM TODAY, YOUR HONOR.

18 MS. SINGLETARY WOULD LIKE TO SPEAK ON TERRELL'S
19 BEHALF AS WELL.

20 THE COURT: OKAY.

21 MS. SINGLETARY: THANK YOU, YOUR HONOR. IF IT
22 PLEASES THE COURT. I WOULD LIKE TO JUST ECHO WHAT MR.
23 O'NEIL JUST SAID. I THINK THAT THIS WHOLE SITUATION IS
24 TRULY A TRAGEDY AND TRULY IS TEARING APART NOT ONLY MR.
25 RISH'S FAMILY, BUT ALSO MR. HARRISON'S FAMILY, YOUR HONOR,

1 BECAUSE FROM ALL APPEARANCES MR. RISH AND MR. HARRISON WERE
2 FRIENDS. AND IT JUST CAME TO A HEAD ON THAT DAY, YOUR
3 HONOR. AND I KNOW THAT IN TALKING TO MR. HARRISON, HE
4 REGRET WHAT HAPPENED ON THAT DAY. AND HE WISH THAT IT
5 DIDN'T HAPPEN, BECAUSE OF THE FACT THAT ANTONIO WAS HIS
6 FRIEND AND HE USED TO SEE ANTONIO ALL THE TIME, YOUR HONOR.

7 SO HE IS VERY APOLOGETIC TO THE FAMILY FOR WHAT HAS
8 OCCURRED AND TO HIS FAMILY, BECAUSE OF THE FACT THAT HE IS
9 GOING TO HAVE TO BE APART FROM THEM FOR A CONSIDERABLE
10 AMOUNT OF TIME. AND HIS SON IS GOING TO BE AN ADULT BEFORE
11 HE'S ABLE TO ACTUALLY GET OUT OF JAIL, YOUR HONOR.

12 I'VE BEEN THE SECOND SEAT ON THIS CASE. AND EVERY
13 TIME, WHETHER IT'S THE WEEKEND, WHETHER IT'S THE WEEKDAY
14 WHEN WE GO AND ACTUALLY VISIT HIM, HE HAS NEVER RAISED HIS
15 VOICE. HE HAS NEVER SAID A UNKIND WORD TO US. AND THIS
16 INCIDENT IS SO UNLIKE HIS CHARACTERISTIC, YOUR HONOR, FROM
17 WHAT I HAVE ACTUALLY OBSERVED AND FROM HIS RECORD, YOUR
18 HONOR.

19 WE JUST ASKING THAT YOU RESPECTFULLY GO ALONG WITH
20 THE NEGOTIATION IN THIS CASE.

21 MR. O'NEIL: YOUR HONOR, I THINK TERRELL WANTS TO
22 ADDRESS THE COURT AT THE APPROPRIATE TIME.

23 THE COURT: OKAY. YOU CAN DO SO NOW.

24 MR. HARRISON: YOUR HONOR, I WOULD JUST LIKE TO SAY
25 THAT THIS WAS NEVER INTENTIONAL. AND I DO APOLOGIZE TO

1 EVERYONE WHO I CAUSED PAIN TO.

2 THE COURT: OKAY. ANYTHING ELSE FROM ANYONE ELSE?

3 MR. JOPLIN: NOTHING, YOUR HONOR.

4 THE COURT: OKAY. I REALLY APPRECIATE THE VERY HARD
5 WORK BY THE SOLICITOR'S OFFICE AS WELL AS DEFENSE COUNSEL
6 IN TERMS OF TRYING TO COME TO SOME RESOLUTION ON THIS
7 MATTER. THE COURT WAS HERE AND READY TO PROCEED FOR THE
8 MURDER TRIAL TODAY.

9 I PARTICULARLY WOULD LIKE TO SEND OUT MY CONDOLENCES
10 TO THE FAMILY. I KNOW THIS IS NOT EASY FOR ANYBODY TO FACE
11 THE DEATH OF YOUR LOVED ONE AND THEN NOW YOU'RE HERE AT
12 TRIAL TRYING TO DEAL WITH JUSTICE. I REALLY WANT TO
13 COMMEND YOU AS WELL IN THE NEGOTIATIONS IN TERMS OF REALLY
14 EVEN AGREEING TO GO TO A LESSER CHARGE.

15 THIS GENTLEMAN STILL WOULD BE FACING THE 30 YEARS,
16 REGARDLESS AND COULD HAVE BEEN FACING 30 YEARS UP TO LIFE,
17 YOU KNOW, DEPENDING ON HOW -- IF HE WAS CONVICTED AND WHAT
18 MY SENTENCE WOULD BE AT THE END OF THE TRIAL. AND I KNOW
19 THAT TAKES A LOT. SO YOU ALL APPEAR TO BE VERY SPIRITUAL
20 PEOPLE AND YOU'VE REALLY TAKEN THIS UNDER ADVISEMENT, YOU
21 KNOW, WITH YOUR GOD. AND I APPRECIATE YOU ALL TAKING THE
22 TIME TO JUST DISCUSS THE MATTER.

23 BUT THE COURT WAS READY TO TRY THE CASE AND DEAL WITH
24 IT APPROPRIATELY.

25 I WILL ACCEPT THE NEGOTIATIONS. YOU ALL HAVE WORKED

1 EXTREMELY HARD.

2 SO, THEREFORE, MR. VERNON T. HARRISON, FOR INDICTMENT
3 NO. 2008-GS-40-12141 FOR THE OFFENSE OF MANSLAUGHTER, WHICH
4 I DO REMIND YOU THAT IT WILL BE A VIOLENT AND MOST SERIOUS
5 OFFENSE AND A STRIKE AGAINST YOU, YOU ARE HEREBY SENTENCED
6 TO THE STATE DEPARTMENT OF CORRECTIONS FOR 30 YEARS.

7 MS. SINGLETARY: THANK YOU, YOUR HONOR.

8 MR. JOPLIN: THANK YOU, YOUR HONOR.

9 --- END OF TRANSCRIPT OF RECORD ---

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1 I, THE UNDERSIGNED DIANNE A. RUTLEDGE, OFFICIAL COURT
 2 REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF
 3 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
 4 TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THE RECORD OF THE
 5 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING AND
 6 GUILTY PLEA OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN
 7 THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA ON
 8 THE 9TH DAY OF MARCH 2009.

9 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
 10 COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

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APRIL 30, 2010

Dianne A. Rutledge

 COURT REPORTER

DATE 5/11/00
S. Smith
0

STATE OF SOUTH CAROLINA)
County of Richland)

IN THE COURT OF COMMON PLEAS

Vernon Terrell Harrison #333555
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

2010 MAR -8 11:11:50
RICHLAND COUNTY

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick Correctional Institution
2. Name and location of Court which imposed sentence Richland County
Courthouse 1701 Main St. Columbia, SC 29202
3. Name(s) of co-defendant(s) (if any) Tatia Evay Hearn
Arthur Vernon Telford
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-65-40-12191 Voluntary Manslaughter
 - (b) _____

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) March 9, 2009 30 years

(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?

no

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

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

i. n/a

ii. _____

iii. _____

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

i. n/a

ii. _____

iii. _____

(c) the date of each such result:

i. n/a

ii. _____

iii. _____

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

i. n/a

ii. _____

iii. _____

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

(a) Wasn't advised by counsel.

(b) _____

(c) _____

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

(a) See attachment.

(b) _____

(c) _____

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

(a) see attachment.

(b) _____

(c) _____

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

(a) any petition in a State Court under South Carolina Law? no

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no

(d) any other petitions, motions or applications in this or any other Court? no

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

(a) the specific nature thereof:

i. n/a

ii. _____

iii. _____

iv. _____

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

i. n/a

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

- i. n/a
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. n/a
- ii. _____
- iii. _____
- iv. _____

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

- i. n/a
- ii. _____
- iii. _____
- iv. _____

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

no

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

(a) which grounds have been presented:

- i. n/a
- ii. _____
- iii. _____

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

- i. n/a
- ii. _____
- iii. _____

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

- (a) This is the first year of my sentence.
- (b) _____
- (c) _____

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

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

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. Dean Ontil, P.O. Box 192-1701 Main St. Columbia, SC 29202
- ii. Nicole Singletary P.O. Box 192-1701 Main St. Columbia, SC 29202
- iii. _____

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

- i. Guilty plea
- ii. Guilty plea
- iii. _____

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

Sentence ~~is vacated~~ vacated

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

No

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

I, Vernon Harrison, 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.

Vernon Harrison

SWORN to and subscribed before me this 2 day of March, 2010.

Joyce L Young (L.S.)
Notary Public

My Commission Expires: 8 28 2011

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

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

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

Vernon Harrison
Applicant

SWORN or affirmed to and subscribed before me this 2 day of March, 2010

Joyce L Young
Notary Public

My Commission Expires: 8 28 2011

REC'D
2010 MAR -9 AM 11:50
COURT CLERK

ineffective Assistance of Counsel and Involuntary Guilty Plea.

7(a) 10(a)

Applicant claims his guilty plea wasn't voluntary and knowingly given, due to counsel performance fell below and objective standard of reasonableness. In failing to object to the court's personal jurisdiction to act upon the subject matters in the cause of action of indictment 2008-GS-40-12141, and motion the court to dismiss the indictment. Counsel deficient performance resulted in applicant's involuntary guilty plea because counsel didn't inform him that the charges in the indictment and indictment itself was never properly filed against him in the circuit court of Richland County Court of General Sessions, to invest the court with jurisdiction to act upon the subject matters in the indictment in which he involuntarily pleaded guilty to a lesser included offense of manslaughter.

Applicant's guilty plea wasn't voluntarily and knowingly given and should be allowed to withdraw his guilty plea or the court should vacate conviction under the guilty plea on grounds he was never charged in the first place by filing of the indictment against him to institute being called before the court to plea guilty before a court that was without authority to act absence the indictment being filed. If in the case of any individual against whom a complaint is filed charging such individual with an offense, no indictment or information is filed within the time required by 18 § 3161(b) such charge against that individual contained in such complaint shall be dismissed or otherwise dropped. 18 § 3162(a)(1) Counsel was ineffective assistance of counsel under the 6th, 14th U.S.C.A. and SC Const. Article I § 14, when his performance fell below an objective standard of reasonableness in failing to file a motion to dismiss or drop the charges in the indictment against applicant on grounds that the indictment containing the offense of murder was never filed against him, with the court pursuant to SCRC Rule 3(c), and pursuant to 18 § 3161(a)(1) and (b) violating the Due Process clause of the 14th U.S.C.A. where formal indictment is condition precedent to valid waiver of presentment of charge to grand jury which is prerequisite to valid guilty plea. State v. Smalls (SC app. 2003) 354 SC 448, 581 S.C. 2d 850 rehearing denied, cert. denied, 304 SC 343, 613 SC 2d 754. There is no evidence that indictment 2008-GS-40-12141 had been filed to formal charge in the circuit court of Richland County which was a want of subject matter

51
rested with the authority to act in accepting applicants guilty plea to voluntary manslaughter absent the charge of Murder being filed against applicant. Counsel deficient performance prejudice applicant of having the court drop off guilty to a lesser included offense of Murder in order to prejudice applicant of his Constitutional Right to (1) an appeal (2) Protection of speedy trial act (3) effective assistance of Counsel. Counsel coerced applicant to plead guilty to voluntary manslaughter so that he would waive his rights to challenge violation of his Constitutional Rights by the Government, such as, the right to a Speedy 4th amendment due process rights, his guilty plea was without understanding the charges against him.

Applicants guilty plea to voluntary manslaughter was by intimidation and force when he filed a motion to relieve counsel, and court denied motion and would force him to go to trial with counsel who told him he didn't want to go to trial couldn't handle case and he would be found guilty of Murder and receive life without even investigating case.

Applicant seeks relief in withdrawal of Guilty plea since absent filing of indictment gave court no jurisdiction to accept applicants plea to voluntary manslaughter (b) D(b)

Applicant counsel fell below an objective standard of reasonable professional conduct in failing to file a motion to dismiss the indictment used before the court on March 9, 2009, on grounds the solicitor failed to take action on arrest warrant 1-925687 within 90 days as required by South Carolina Rule of Criminal Procedure Rule 3. On 11-15-2007 the Magistrate issued arrest warrant 1-925687 on 11-16-2007 applicant was arrested on this arrest warrant. 90 days later grand jury convened on January 16, 2008 a day later (91 days) the Grand Jury returned the indictment outside the allotted time requirement pursuant to SC Crim P Rule 3. Counsel deficient performance in failing to file a motion to dismiss the indictment resulted in counsel coercing and advising applicant to enter plea to voluntary manslaughter, when he should have informed applicant that the order indictment was invalid and was never properly filed against him. The omission of this information made his guilty plea involuntary and not knowingly given. Counsel was ineffective in allowing applicant to appear before the court to plead guilty, rendering counsel jurisdiction over to the court without objections knowing complaint had never been filed. See Indictment 2008-GS-40-12141. There is no clock stamp time and date filed by clerk of court. Grand Jury findings not published with court records. The court cannot consent to jurisdiction over subject matters that has not been properly filed against applicant.

Therefore under counsel ineffectiveness applicant plea was involuntary and not knowingly given and he should be allowed to withdraw his plea.

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	
)	
)	2010-CP-400-1553
HARRISON Vernon T, # 333555,)	
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed March 8, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was represented by Deon O'Neil, Esquire. On March 9, 2009, the Applicant pled guilty and was sentenced by The Honorable J. Michelle Childs. The Applicant had been indicted and/or pled guilty to the following: Murder - (2008-GS-40-121411). According to the South Carolina Department of Corrections, the Applicant is serving a 30 year sentence for "Voluntary Manslaughter."

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to

amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

III.

The Respondent interprets each of the Applicant's unspecified allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their 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, 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced 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, 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, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either 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, the 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.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Charles T. Brooks, III, Esquire regarding when the hearing should be set.¹


Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737
bpetrano@scag.gov

September 22, 2010

¹ See: <http://www.scattorneygeneral.com/inside/pcr.html> for current and archived PCR rosters.

C O N T E N T S
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Redirect By Mr. Brooks 21

> > > < < <

CERTIFICATE OF REPORTER 23

1 THE COURT: All right.

2 MR. PETRANO: Thank you, Your Honor. May it please
3 the Court. This is 2010-CP-40-1553, Mr. Vernon T.
4 Harrison. It's a Richland County PCR filed March 8th,
5 2010.

6 He pled guilty on March 9th, 2009 in front of Judge
7 Childs. He was represent by Ms. Singletary and
8 Mr. O'Neil. For the record, they are both here and
9 present.

10 He had been indicted for murder. It was
11 2008-GS-40-12141. He pled to a negotiated 30-year
12 sentence under voluntary manslaughter. There was no
13 direct appeal.

14 With that, I'll turn it over to Mr. Charles T.
15 Brooks, III, Applicant's current counsel of record.

16 THE COURT: Mr. Brooks.

17 MR. BROOKS: Judge, ready to proceed?

18 THE COURT: Yes, sir.

19 MR. BROOKS: We would go ahead and call Mr. Harrison
20 to the stand.

21 THE COURT: Come up here please. Place your left
22 hand on the Bible. Raise your right hand.

23 VERNON T. HARRISON, after being duly
24 sworn, testified as follows:

25

1 THE COURT: All right. If you'll have a seat. Give
2 us your full name, please.

3 THE WITNESS: Vernon Terrell Harrison.

4 THE COURT: Thank you. Mr. Brooks.

5 DIRECT EXAMINATION:

6 BY MR. BROOKS:

7 Q Harrison, you brought this application for Post-
8 Conviction Relief?

9 A Yes.

10 Q Now, you pled guilty, as Mr. Petrano has told the
11 court; is that correct?

12 A That's correct.

13 Q Now, you're asking Judge Barber to overturn that
14 guilty plea; is that correct?

15 A Exactly.

16 Q Now, you understand the consequences of that if Judge
17 Barber grants your PCR, you know you'll be back in the
18 position that you were in before you plead guilty?

19 A Yes, sir.

20 Q Which is murder with a possible punishment of life.
21 Do you understand that?

22 A Yes, sir.

23 Q It is still your desire to ask this Court to grant
24 you a new trial.

25 A Yes, sir.

1 Q Now, Vernon, how old are you?

2 A Twenty-six.

3 Q And how far did you go in school?

4 A I graduated high school.

5 Q Okay. Now, you had court-appointed lawyers in this;
6 is that correct?

7 A Yes, sir.

8 Q Now, once of the things that -- allegations you've
9 made in regards to the PCR is that you pled guilty because
10 of the advice of your counsel; is that correct?

11 A Yes, sir.

12 Q Knowing what you know now, would you have taken this
13 to trial?

14 A Yes, sir.

15 Q Why is that?

16 A Because counsel didn't inform me about my Protection
17 of Personal Property Act; that it was -- that I qualified
18 for that. I had concerns about that from the beginning,
19 and they never were followed up.

20 Q Okay.

21 A And --

22 Q Tell the Court what -- how does that impact your
23 case?

24 A Because I would have insisted on going to trial. I
25 would have never took a plea.

1 Q Okay.

2 A I was --

3 Q And let me help you out here, Vernon. Are you saying
4 that you had a self-defense argument?

5 A Yes, sir.

6 Q Okay. And why do you think you had a self-defense
7 argument in your cases?

8 A Because I was attacked in my home.

9 Q Okay. And you told your lawyer all of these facts?

10 A Yes, sir.

11 Q Okay. And how did it come about this that you ended
12 up pleading guilty as opposed to going to trial?

13 A Because I was basically forced to plead because no
14 investigation was done into the self-defense.

15 Q Okay. How long were -- how long did you have your
16 lawyers on your case?

17 A Probably about 15 months.

18 Q Okay. Were you incarcerated the whole time?

19 A Yes, sir.

20 Q How many times did you talk to them in preparation
21 for your case?

22 A Maybe twice, probably; 30 minutes apiece.

23 Q Okay. Do you think you had ample time to prepare a
24 defense in your cases?

25 A No, sir.

1 Q Do you feel like you basically were pressured into
2 pleading guilty?

3 A Yes, sir.

4 Q Okay. And is that basically why you want this court
5 to overturn that guilty plea?

6 A Yes, sir.

7 Q Okay. Now, is there anything else about your
8 lawyers' representation of you in this guilty plea that
9 you want to tell this court that we haven't talked about?

10 A Yes, sir. I felt like certain witnesses weren't
11 subpoenaed that I needed at trial. That's another reason
12 that I felt like I was forced to plead.

13 Q Okay. You told your lawyer about these witnesses?

14 A Yes, sir.

15 Q Who were these witnesses?

16 A One was Nashanda Boyd.

17 Q She was an eyewitness?

18 A No. She wasn't an eyewitness. She was -- she was a
19 person I needed to show the type of person that the victim
20 was.

21 Q Okay. And you told your lawyer about that?

22 A Yes, sir.

23 Q Okay. And who else?

24 A Who else did I tell?

25 Q No. What other witnesses? You say your lawyer

1 didn't have your witnesses.

2 A My father.

3 Q Your father?

4 A Uh-huh.

5 Q Okay. Is there anybody else?

6 A No, sir.

7 Q I mean, your father, was he an eyewitness?

8 A Yes, sir.

9 Q Okay. And your lawyer did not subpoena them?

10 A Well, they -- they told me that he would be
11 testifying against me, but if the lawyer would have
12 investigated his statement and the testimony, he would
13 have seen that even if it was true, it doesn't even match
14 the autopsy report.

15 Q Okay. So basically what you're saying is you had bad
16 legal advice --

17 A Yes, sir.

18 Q -- that convinced you to plead guilty; is that
19 correct?

20 A Yes, sir.

21 Q Okay. Is there anything else you want to tell the
22 court about your lawyers and why you should have your PCR
23 granted that we haven't covered?

24 A No, sir.

25 Q Are you sure?

1 A Yes, sir.

2 MR. BROOKS: Okay. Answer any questions of
3 Mr. Petranò.

4 CROSS-EXAMINATION:

5 BY MR. PETRANO:

6 Q How many times did you shoot him in the back?

7 A Once.

8 Q And how many times did you shoot him in the face or
9 the front?

10 A None.

11 Q How many?

12 A The face, none.

13 Q I'm sorry. I meant the front of his body.

14 A Twice.

15 Q All right. So walk us through it. How did it
16 happen? The State says you shot him in the back. He
17 falls and you walk up and shoot him two more times. You
18 tell us the whole thing. Tell us what happened.

19 A No, sir. That didn't -- that didn't happen. That's
20 what I was just trying to explain. If they have
21 investigated, they would have seen there's no possible way
22 I could have shot him in the back and then shot him twice
23 in the front. He was shot twice in the front and then in
24 the back.

25 Q And I'm sorry. I guess it's my -- not a real good

1 question asker. Tell us what happened. You were there.

2 A I was -- I was --

3 Q Not what the reports say. Tell us what happened.

4 A I was in my home. The victim attacked me in my home,
5 and I fired three shots until I felt like that was -- the
6 danger had ceased.

7 Q And then you called the police?

8 A My girlfriend called the police.

9 Q All right. And you stayed there and told them
10 everything that happened. You just stopped and attacked?

11 A No, sir. I panicked and I left.

12 Q The gun jammed, didn't it?

13 A Yes, sir.

14 Q At the beginning of the plea, the State steps out.
15 Stop me if I'm wrong here. I'm just going by what the
16 papers say. The State steps out. You talked to the judge
17 with your -- just your attorney and no State present,
18 right?

19 A Yes, sir.

20 Q And you complained about how they haven't interviewed
21 your father, right?

22 A I complained about a lot of different things.

23 Q All right. But the issue about interviewing your
24 father did come up, did it not?

25 A Yes, sir.

1 Q All right. And you understand that if you go back,
2 even if you get 30 for murder, that's day for day, right?

3 A Yeah.

4 Q Whereas, you got 30 now.

5 A Yes.

6 Q But you're an 85.

7 A Yes, sir.

8 Q You understand that risk?

9 A Yes, sir.

10 Q I appreciate your answering my question. Thank you.
11 Nothing further.

12 THE COURT: Anything further?

13 MR. BROOKS: No questions.

14 THE COURT: Thank you. You may step down.

15 MR. BROOKS: We'd call Mr. O'Neil to the stand.

16 MR. PETRANO: Oh, Your Honor, just -- I had
17 accidentally said -- not accidentally. I said
18 Ms. Singletary was here. I was mistaken. I thought I had
19 seen her. She is not present, but Mr. O'Neil is here.
20 Thank you. I'm sorry for interrupting.

21 THE COURT: All right. Mr. O'Neil.

22 DEON O'NEIL, after being duly sworn,
23 testified as follows:

24 THE COURT: All right. If you'll have a seat. Tell
25 us your full name.

1 THE WITNESS: Deon O'Neil.

2 MR. BROOKS: Ready, judge?

3 THE COURT: Yes, sir.

4 DIRECT EXAMINATION:

5 BY MR. BROOKS:

6 Q Mr. O'Neil.

7 A Yes, sir.

8 Q How are you today?

9 A All right.

10 Q You represented Mr. Harrison?

11 A I did.

12 Q Okay. And that was in your capacity as a public
13 defender?

14 A That's correct.

15 Q All right. Now, can you give us a brief summary of
16 what the State's case was against him?

17 A Essentially, the State's case against him was that
18 him and the victim got into some sort of argument in
19 Mr. Harrison's residence here, and that Mr. Harrison, I
20 guess, as the victim was walking away, shot him in the
21 back.

22 Q That's what the State's case was?

23 A Yeah.

24 Q All right. That's not saying that was his position.

25 A Yeah.

1 Q But that's what the State's case was.

2 A Yes.

3 Q Okay. Now, in the transcript, there were some
4 questions about going to trial. Do you remember all of
5 that?

6 A Yeah. We actually started the trial. We did the --
7 we had a motion for me to be relieved, and then we
8 scheduled a trial for that afternoon here.

9 So we were scheduled to start the trial that
10 afternoon around 2:30. Then we took a break for lunch.
11 Then after having taken a break for lunch, I think
12 Mr. Harrison talked to his family here, and he decided to
13 plead guilty that afternoon.

14 Q Okay. Did you talk to him about self-defense?

15 A Yes.

16 Q Okay. And how did it come about -- well -- let me
17 rephrase that. It came about to plead after he talked to
18 his family?

19 A How did what come about?

20 Q Going from a trial to a plea, his decision.

21 A Yeah. His -- his decision to go to plead guilty came
22 about after he talked to his family.

23 Q Okay. Did you advise him to take the plea?

24 A I did.

25 Q Okay. And why did you advise him of that?

1 A Because of the shot in the back. We discussed
2 self-defense probably one of the first times I talked to
3 Mr. Harrison here, and I told him two of the problems we
4 had with self-defense was that the individual -- the
5 victim was shot in the back and also Mr. Harrison's
6 actions after the incident occurred here, him leaving the
7 scene.

8 Q Okay. So the two biggest problems were the shot in
9 the back and leaving the scene?

10 A Yeah. And that corresponding -- the shot in the back
11 corresponding with the reconstruction done by the State
12 here and the trajectory of the entry wound in the back
13 here were all problems with self-defense.

14 Q What was the problem with the trajectory wound?

15 A The -- from my recollection, the shot in the back was
16 upward in nature here. When I had one of my experts look
17 at the shot in the back and trajectory evidence, it
18 appeared to my expert that the victim was on the ground.
19 That's the only way you could get a shot in the back that
20 was from a -- that had an upward trajectory.

21 Q Okay. Did you -- and you explained the ramifications
22 of all of that to Mr. Harrison?

23 A I did.

24 Q Okay. And you admit that you advised him to plead
25 guilty?

1 A I do.

2 Q Beg the Court's indulgence.

3 (Pause).

4 Did you talk to Mr. Harrison's father?

5 A I think Mr. Harrison's father, if I'm correct, he --
6 he reached out to me before this, about a week or so
7 before his plea here, and he told me, essentially, that
8 his version of the -- what happened would have changed, is
9 what his father told me.

10 He was not -- he gave a statement in the case, but he
11 was no longer going to testify to what he said happened.

12 Q What was he now going to say happened?

13 A I -- I got to look at my notes because I don't want
14 to say it off the top of my head. I can't remember it off
15 the top of my head, but I know he -- I remember exactly
16 that he said that his version of what he was going to say
17 was going to be different from what his statement was, and
18 it was going to be favorable to Mr. Harrison.

19 Q Okay. Was he one of the family members that talked
20 to Mr. Harrison prior to him plying guilty?

21 A I cannot remember off the top of my head, to be
22 honest with you.

23 Q And you said you had an expert look at the autopsy?

24 A Not the autopsy. Look at the gunshot wound and
25 trajectory analysis that was done by the State... The State

1 did those string trajectory analysis on the crime scene.

2 They indicated from their perspective that a shot was
3 fired from across the room towards the door on a downward
4 trajectory here.

5 Looking at my expert, he said the only way you can
6 get a shot fired in a downward trajectory that would cause
7 an upward trajectory in the victim is that if the victim
8 was on the ground, essentially, when that shot was fired.

9 Q And this was your own independent expert?

10 A Yes.

11 Q Basically, what he told you was based on the
12 trajectory, the victim had to be on the ground?

13 A Basically, what he told me, based on the trajectory,
14 that the victim had to be crawling away from whoever shot
15 him at the time it happened.

16 Q And did you relay that finding to Mr. Harrison?

17 A I did.

18 Q Okay.

19 A We --

20 Q And this was your -- that was your expert. This was
21 not the State's expert?

22 A Yeah. I could -- when me and Mr. Harrison -- we
23 actually -- probably actually did a reenactment of this
24 probably the Friday before his trial here.

25 I think Mr. Harrison's version of what happened was

1 essentially that the only way the victim could have had
2 the shot in the back is that the first two shots would
3 have spun him around. Then that's the only reason why he
4 would have had a shot in the back from our conversations.

5 Q Okay. And you -- as you indicated before, you
6 advised him that he probably should take this plea?

7 A Yeah. I advised him that -- when I talked to my
8 expert, my expert said that's not -- based on the
9 trajectory of the bullet entry wound in the victim's back,
10 that would not be consistent with the victim standing up
11 and being turned -- twisted around by a gunshot wound.
12 The only thing that would be consistent with is the victim
13 laying down on the ground and being shot.

14 MR. BROOKS: Okay. Beg the Court's indulgence.

15 (Pause.)

16 No other questions, Judge.

17 THE COURT: All right. Mr. Petrano?

18 CROSS-EXAMINATION:

19 BY MR. PETRANO:

20 Q You said you met with him at least the Friday before.
21 About how many other times did you meet with him, if you
22 remember?

23 A I'm actually going to get his file here, but I know
24 it was way more than two times here. We had a policy at
25 the Public Defender's Office that you had to see your

1 client every -- at least once every three months here.

2 Then Mr. Harrison, I think I represented him for
3 about 15 months here. When I first represented Mr.
4 Harrison, our conversations were brief because probably
5 the first three times we talked, I think Mr. Harrison said
6 that his family was intending to retain a private
7 attorney. I think Mr. Swerling was who they had intended
8 to retain here.

9 So my conversation with him was based on have you --
10 your family retained an attorney. He would say, "No, not
11 yet" or something "but we're going to retain him." So we
12 didn't talk any more about his case here.

13 Q And --

14 A That's probably about the first three times that we
15 talked here.

16 Q And I got a little confused at the plea, and I don't
17 take notes fast enough. So just bear with me if you
18 already covered this. Tell me about the father's first
19 statement versus what the father said he was going to
20 testify to.

21 A Mr. Harrison's first -- Mr. Harrison's father's first
22 statement was not favorable to him at all. The statement
23 he gave to law enforcement was not favorable to him at all
24 here. Then, I think he reached out to me, his --
25 Mr. Harrison's father, about a week before the trial and

1 said that he intended to change that statement to
2 essentially be favorable to him.

3 I explained that to Mr. Harrison. I told
4 Mr. Harrison that his father would be cross-examined by
5 the State about the fact that he gave an unfavorable
6 statement concerning the incident to law enforcement and
7 now had changed that.

8 I can't remember the exact wording his father said,
9 but the gist of it was that his father's statement was --
10 the father indicated to me that he intend to testify
11 favorable to Mr. Harrison.

12 I approached the Solicitor in the case, I think
13 Ms. Campbell here, and she indicated she had talked to
14 Mr. Harrison's father additionally before the trial here
15 that when she talked to Mr. Harrison's father, that he
16 indicated to her that his statement -- his testimony
17 concerning the incident would be consistent to what his
18 original statement was. So he told it -- according to
19 Ms. Campbell, he told her something different than he told
20 me.

21 Q So at best, you had a contradiction. At worst, you
22 had an unknown.

23 A Yeah.

24 Q Did any of the other eyewitnesses mention anything
25 about the spin around?

1 A No.

2 Q Were there any other offers as the time went?

3 A No. We only got that offer, actually, the day of
4 trial here, the offer of voluntary manslaughter. Because
5 we were working towards getting a voluntary manslaughter
6 charge for less time than what we got here the whole time.

7 I think me and Mr. Harrison was discussing was -- if
8 we got a voluntary manslaughter plea that was in the --
9 more of the single digit or the teen range, he would be
10 amenable to that plea.

11 Me and Ms. Campbell possibly discussed that kind of
12 plea arrangement. She was not amenable to that. We
13 decided to go to trial on that after the motion to have me
14 relieved was denied here. We talked again with
15 Ms. Campbell here, the Solicitor here, and at that point,
16 she offered the voluntary manslaughter but for a
17 negotiated 30 years.

18 Q And had you discussed -- this being the day of trial,
19 had you discussed with the Applicant what would happen at
20 trial and what your evidence would be, that kind of thing,
21 how the trial worked?

22 A I told him. Yeah, we discussed that at trial. We
23 discussed the outcomes at trial. I told him, in my legal
24 opinion, at trial, we probably -- the best we could hope
25 for would be the voluntary manslaughter here, and that if

1 we got a voluntary manslaughter, based on my experience,
2 we're probably still likely to get a 30-year sentence
3 here.

4 Q And you're walking right into my point there. To get
5 the voluntary, to even get this as a lesser from murder,
6 the way I'm reading it -- you stop me if I'm wrong here --
7 you're going to have to put him on the stand here, aren't
8 you?

9 A Yes. I mean, just -- yeah, we would have had to put
10 him. I'm trying to remember off the top of my head. Did
11 he give a statement? I don't think he did, so we -- in
12 order to get his side, his version of what happened out,
13 we would have to put him on the stand and do that.

14 Q Unless the ever-elusive father worked something into
15 his story?

16 A Yes.

17 MR. PETRANO: All right. Thank you. Nothing
18 further.

19 REDIRECT EXAMINATION:

20 BY MR. BROOKS:

21 Q On voluntary manslaughter, there is a minimum on
22 that, isn't that correct?

23 A That's correct.

24 Q I mean, that -- and what is that minimum?

25 A Two years.

1 Q Okay. So the range would have been two to 30; is
2 that correct?

3 A That's correct.

4 MR. BROOKS: No other questions.

5 THE COURT: All right. Thank you, Mr. O'Neil.

6 THE WITNESS: Thank you, Your Honor.

7 MR. BROOKS: Judge, that's the Applicant's case.

8 THE COURT: Anything further?

9 MR. PETRANO: No.

10 THE COURT: Thank you. I'll take this matter under
11 advisement.

12 MR. BROOKS: Thank you, Judge.

13 (Whereupon, the proceedings were concluded.)
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STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Harrison, Vernon T, 333555,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2010CP4001553

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2011 DEC 14 AM 10:37
JEANETTE M. McBRIDE
C.C.P. & S.S.

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 8, 2010. The Respondent made its Return on or about October 4, 2010. An evidentiary hearing into the matter was convened on August 29, 2011 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant testified on his own behalf. The Applicant's plea counsel, Deon O'Neal, Esquire also testified. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently incarcerated following a March 9, 2009 plea to voluntary manslaughter. The Applicant had originally been indicted for Murder (2008GS4012141). The

Honorable J. Michelle Childs sentenced the Applicant, per the negotiated plea agreement, to thirty (30) years.

The Applicant did not appeal his plea.

In the PCR application, the Applicant made the following allegations:

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

- (a) See attachment.
- (b) _____
- (c) _____

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

- (a) see attachment.
- (b) _____
- (c) _____

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

Sentence ~~is~~ vacated

Attached ISSUES for PCR Application

Ineffective Assistance of Counsel and Involuntary Guilty Plea.

7(a) 10(a)

Applicant claims his guilty plea wasn't voluntary and knowingly given, due to counsel performance fell below and objective standard of reasonableness. In failing to object to the court's personal jurisdiction to act upon the subject matters in the cause of action of indictment 2008-GS-40-12141, and motion the court to dismiss the indictment. Counsel deficient performance resulted in applicant's involuntary guilty plea, because counsel didn't inform him that the charges in the indictment and indictment itself was never properly filed against him in the Circuit Court of Richland County Court of General Sessions, to invest the Court with jurisdiction to act upon the subject matters in the indictment in which he involuntarily pleaded guilty to a lesser included offense of manslaughter.

Applicant's guilty plea wasn't voluntarily and knowingly given and he should be allowed to withdraw his guilty plea or the court should vacate his conviction under the guilty plea on grounds he was never charged in the first place by filing of the indictment against him to institute being called before the court to plea guilty before a court that was without authority to act absent the indictment being filed. If, in the case of any individual against whom a complaint is filed charging such individual with an offense, no indictment or information is filed within the time limit required by 18 § 3161(b) such charge against that individual contained in such complaint shall be dismissed or otherwise dropped. 18 § 3162(a)(1) Counsel was ineffective assistance of counsel under the 6th, 14th U.S.C.A. and SC Const. article 1 § 14 when his performance fell below an objective standard of reasonableness in failing to file a motion to dismiss or drop the charges in the indictment against applicant on grounds that the indictment containing the offense of murder was never filed against him, with the court pursuant to SCRCrimP Rule 3(c), and pursuant to 18 § 3161(a)(1) and (b) violating the Due Process clause of the 14th U.S.C.A. where formal indictment is condition precedent to valid waiver of presentment of charge to grand jury which is prerequisite to valid guilty plea. State v. Smalls (SC App. 2003) 359 SC 498, 581 S.C. 2d 850 rehearing denied, certiorari granted, reversed 309 SC 343, 613 SC 2d 754. There is no evidence that indictment 2008-GS-40-12141 had been filed to formal charge applicant in the Circuit Court in which was in want of subject matters

jurisdiction of the charge. absent filing of the indictment, the court wasn't vested with the authority to act in accepting applicants guilty plea to Voluntary Manslaughter absent the charge of Murder being filed against applicant. Counsel deficient performance prejudice applicant of having the court drop or dismiss the indictment, and end resulted in applicant involuntary given of a plea of guilty to a lesser included offense of Murder in order to prejudice applicant of his Constitutional right to (1) an appeal (2) Protection of speedy trial act (3) effective assistance of Counsel. Counsel coerced applicant to plead guilty to voluntary manslaughter so that he would waive his rights to challenge violation of his Constitutional Rights by the Government, such as, the right to a Speedy trial under the 6th amendment, his confession was obtained involuntarily in violation of his 4th amendment due process rights, his guilty plea was without understanding the charges against him.

Applicants guilty plea to voluntary manslaughter was by intimidation and force when he filed a motion to relieve counsel, and court denied motion and would force him to go to trial with counsel who told him he didn't want to go to trial, couldn't handle case and he would be found guilty of Murder and receive life all without even investigating case.

Applicant seeks relief in withdrawal of Guilty plea since absent filing of indictment gave court no jurisdiction to accept applicants plea to voluntary manslaughter 4(b) 10(b)

Applicant counsel fell below an objective standard of reasonable professional norm in failing to file a motion to dismiss the indictment used before the court on March 9, 2008, on grounds the solicitor failed to take action on arrest warrant 1-925687 within 90 days as required by South Carolina Rule of Criminal Procedure Rule 3. On 11-15-2007 the Magistrate issued arrest warrant 1-925687 on 11-16-2007 applicant was arrested on this arrest warrant. 90 days later the grand jury convened on January 16, 2008 a day later (91 days) the Grand Jury True Billed the indictment outside the related time requirement pursuant to SC Crim P Rule 3. Counsel deficient performance in failing to file a motion to dismiss the indictment resulted in counsel coercing and advising applicant to enter a plea to voluntary manslaughter, when he should have informed applicant that the murder indictment was invalid and was never properly filed against him. The omission of this information made his guilty plea involuntary and not knowingly given. Counsel was ineffective in allowing applicant to appear before the court to plea guilty, render personal jurisdiction over to the court without objections knowing complaint had never been filed. see Indictment 2008-65-40-12141. There is no clock stamp time and date filed by clerk of court. Grand Jury findings not published with court. The court cannot consent to jurisdiction over subject matters that hasn't been properly filed against applicant.

Therefore under counsel ineffectiveness applicant plea was involuntary and not knowingly given and he should be allowed to withdraw his guilty plea.

At the evidentiary hearing, Applicant proceeded, in part, on the allegations stated in the application for post-conviction relief.

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).

The Applicant explained that he understood the risks of proceeding (resurrecting original murder charge). The Applicant testified that plea counsel never followed up on his claim that this was self-defense. The Applicant testified that he only met with plea counsel a few times, probably about 30 minutes each time. The Applicant explained that plea counsel would not investigate a supposed witness who would testify as to the victim's character. The Applicant explained that his father would testify at trial in support of the Applicant.¹

Plea counsel testified that the State's case was that the victim was shot in the back. Plea counsel explained that they were set for trial, but that the Applicant spoke to his family and decided to take the plea deal. Plea counsel's position was that, at best, this was a heat of passion case but that he risked a murder conviction. (Plea transcript, p. 33). Plea counsel explained that self-defense did not really work. Plea counsel explained that he and the Applicant discussed the

¹ Multiple witnesses, including the Applicant, gave multiple versions of events. (Plea transcript, p. 27 – 33).

situation and that they even tried to reenact the scene. Plea counsel testified that the Applicant at one point tried to claim that the victim was spinning around (to explain the shot(s) to the back). Plea counsel explained that they had an expert and that the expert explained that the only way to support the angles of the shots was if the victim was on the ground, crawling away. Plea counsel explained that the Applicant did tell him that his father's story, if they went to trial, would support the Applicant. However, plea counsel discussed this with the State who explained that although the father was an eyewitness with multiple stories; their position was that he would ultimately support the State's case. Plea counsel disagreed with the Applicant and explained that they met more than two (2) times.

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (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). When there has been a guilty plea, the applicant must prove that counsel's representation

was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

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. As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

Beyond his review of the undisputed procedural history, this Court finds Applicant's testimony is not credible. Plea counsel's testimony is credible. Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance.

The Applicant's failure to satisfy his burden of proof is due to the fact that the plea transcript is a valid record of the Applicant's waiver. He was set for trial but decided to accept the plea offer. He expressed his satisfaction with the arrangement at the time. He has not

demonstrated, as is his burden, that plea counsel's performance was deficient for advising the Applicant to accept the plea offer. (Plea transcript, p. 10 – 26).

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's

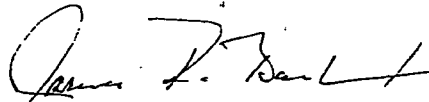
failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court cautions the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 13 day of DECEMBER, 2011.



The Honorable James R. Barber, III
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.

WITNESSES

(S) William McRoberts - RCSD

ARREST WARRANT NUMBER

I-925687

ACTION OF GRAND JURY

TRUE BILL

Bonnie Bringle
Foreperson of Grand Jury
Date: JAN 17 2008

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2008-GS-40-12141

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JANUARY TERM 2008

42

THE STATE
vs.

VERNON T. HARRISON

Indictment for

MURDER

SC Code: 16-3-10
CDR Code:0116
Class FEL/EXM(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED TRUE COPY
Bonnie Bringle
C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA 88

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on January 16, 2008, the Grand Jurors of Richland County present upon their oath:

MURDER

That VERNON T. HARRISON did in Richland County on or about November 12, 2007, feloniously, willfully and with malice aforethought, kill one Antonio Dewayne Rish, by shooting the victim multiple times and that the said victim died as a proximate result thereof. All in violation of SC Code of Laws § 16-3-10.

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

Warren B. Giese

Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

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