

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Honorable William H. Seals, Circuit Court Judge S.C. SUPREME COURT

RECEIVED

FEB 14 2019

GABRIEL LEE GRATTO,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001146

APPENDIX

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1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
2 COUNTY OF HORRY) (2013-GS-26-03810)
3) (2015-GS-26-01310)
4) (2015-GS-26-01342)
5 STATE)
6)
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VERSUS
TRANSCRIPT OF RECORD
April 13, 2015
Conway, S. C.

B E F O R E:

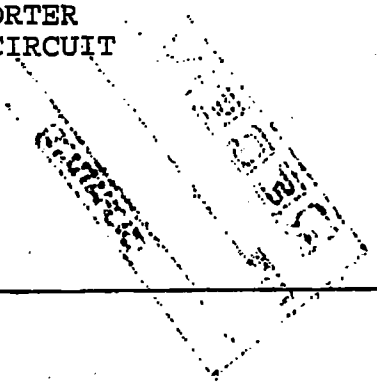
HONORABLE JOHN C. HAYES, III, Judge.

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

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DIXIE COX EUBANK
CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT



1 (THE FOLLOWING TAKES PLACE ON APRIL 13, 2015.)

2 MR. RICHARDSON: Your Honor, the State would call
3 (2013-GS-26-03810), State of South Carolina, County of Horry
4 versus Gabriel Lee Gratto, charging the Defendant -- a true-
5 billed indictment charging the Defendant with Leaving the
6 Scene of an Accident with Death.

7 Also (2015-GS-26-01310), State of South Carolina, County
8 of Horry versus Gabriel Lee Gratto, charging the Defendant
9 with Felony Driving under the Influence, Great Bodily Injury.

10 And additionally, (2015-GS-26-01342), State of South
11 Carolina, County of Horry versus Gabriel Lee Gratto, true-
12 billed indictment charging the Defendant with Felony Driving
13 under the Influence, Death.

14 Your Honor, it's the State's understanding that the
15 Defendant comes before the Court entering his plea of guilty.
16 We've placed the sentencing sheet before the Court at this
17 point, and we have documented all necessary paperwork and
18 given it to the Clerk's Office.

19 Brad Richardson on behalf of the State, John Hilliard on
20 behalf of the Defense, Your Honor.

21 There are no negotiations prior to this, Your Honor.

22 COURT: All right. Has Mr. Gratto been sworn in?

23 MR. HILLIARD: Not yet, Judge.

24 COURT: All right. Clerk will administer the oath.

25 GABRIEL LEE GRATTO, being first

1 duly sworn, states as follows:

2 COURT: Mr. Gratto, how old are you?

3 A. Thirty years old now.

4 COURT: You are represented by Mr. Hilliard? Is this
5 your lawyer?

6 A. Yes.

7 COURT: Satisfied with his services?

8 A. Yes, Your Honor.

9 COURT: Have you had an opportunity to discuss all the
10 matters that you want to regarding this case with Mr.
11 Hilliard?

12 A. All I could think of, Your Honor.

13 COURT: You are charged in three separate indictments.
14 You are charged with Felony Driving Under the Influence with
15 Great Bodily Injury, Leaving the Scene of an Accident --
16 actually four indictments. I'm sorry.

17 MR. RICHARDSON: Your Honor, he's only pleading to
18 three of them ---

19 COURT: Okay.

20 MR. RICHARDSON: ---The Leaving the Scene with Death,
21 from the 2013 indictment, and the two 2015 indictments. We
22 will be nolle prossing the other one. There are some
23 clarifications that need to be made on the Felony DUI Death,
24 and that's what we did in 2015.

25 COURT: All right, so the 2013 is out?

1 MR. RICHARDSON: The 2013 -- (2013-03809) is out, Your
2 Honor.

3 COURT: Okay. All right. I'm going to put that one
4 aside.

5 Sorry, Mr. Gratto. I have to get the paperwork
6 straight.

7 A. Yes, Your Honor.

8 COURT: You are charged with Leaving the Scene of an
9 Accident. It's alleged that on or about May 15th, 2013, while
10 operating a motor vehicle here in Horry County, South
11 Carolina, you left the scene of an accident without rendering
12 aid and complying with the law about rendering aid, and
13 leaving the scene of an accident.

14 This is a felony. It carries from one year to twenty-
15 five years, a fine is possible to be imposed, from Ten to
16 Twenty-Five Thousand Dollars, and it is a violent offense. A
17 violent offense is the type of offense ---

18 Let's wait just a minute now. I've got it marked as a
19 violent offense. On the sentencing sheet it says non-violent,
20 so let's clarify that before we go any further.

21 MR. RICHARDSON: Your Honor, that may have been my
22 error. I didn't recognize it as a violent offense. It could
23 very well be.

24 COURT: All right. We'll look that up.

25 MR. RICHARDSON: Yes sir.

1 COURT: All right. We'll check.

2 Mr. Hilliard, do you ---

3 MR. HILLIARD: Judge, my belief was that it was non-
4 violent. I know that it is ---

5 MR. RICHARDSON: It's a non-parole.

6 MR. HILLIARD: Right. It's an eighty-five percent.

7 COURT: All right. Well, see, that's probably what's
8 happened on my -- my sheet I use it does not have it marked as
9 a parole ineligible, but it does have it marked as violent.
10 Let me get that straight.

11 As I told you, this carries up to twenty-five years in
12 jail. It is a felony. It is a parole ineligible offense.
13 That means you would have to serve at least eighty-five
14 percent of your sentence before you would be eligible for any
15 early release. If you were released early it would be into a
16 community supervision program with certain conditions similar
17 to those of someone on probation. If you violated those
18 conditions you could be re-incarcerated for up to a year.
19 Then if you were, again, released early you would be put back
20 on a community supervision program, and again, if you failed
21 to comply with the conditions you could be re-incarcerated,
22 and that pattern could continue until you have served your
23 entire imposed sentence; do you understand that?

24 A. Yes, Your Honor.

25 COURT: How do you plead to leaving the scene of an

1 accident, guilty or not guilty?

2 A. Guilty.

3 COURT: You are charged with Felony Driving Under the
4 Influence with Great Bodily Injury. This carries from thirty
5 days up to fifteen years, and a fine of up to Fifty-one
6 Hundred Dollars. The Court is not allowed to give any
7 probation or suspend any portion of that sentence. It's
8 alleged that that occurred on or about May 15th, 2013, when
9 you drove a motor vehicle while under the influence of
10 intoxicants, and that you did fail to maintain a proper --
11 that you failed to maintain a proper lookout, and crossed the
12 centerline, therefore doing an act that was negligent or
13 forbidden by law, and you also are alleged to have sped
14 excessively, and that those acts ultimately caused the death
15 of Charles Broach ---

16 MR. RICHARDSON: Great Bodily Injury, Your Honor.

17 COURT: ---Caused -- I'm sorry, Great Bodily Injury of
18 Charles Broach. Do you understand that?

19 A. Yes, Your Honor.

20 COURT: How do you plead to that charge?

21 A. Guilty, Your Honor.

22 COURT: You are charged with Felony Driving Under the
23 Influence resulting in Death.

24 A. Yes sir.

25 COURT: This is a felony. It carries from one year up

1 to twenty-five years, and the possibility of a fine from Ten
2 to Twenty-Five Thousand Dollars. It does not allow for
3 probation or suspension of sentence. This, again is, as was
4 the first charge I went over, a no-parole offense, which means
5 you would have to serve at least eighty-five percent before
6 you would be eligible for an early release, under the
7 circumstances I mentioned earlier. This is a violent offense.
8 A violent offense is the type of offense which, while you are
9 incarcerated you would be ineligible for certain programs that
10 non-violent offenders are allowed to enjoy. It also is a
11 serious offense. A serious offense is the type of offense
12 which if, in your lifetime you receive three serious, or a
13 combination of three serious and most serious offenses you
14 would be subject to being incarcerated for life without
15 parole; do you understand that?

16 A. Yes sir, Your Honor.

17 COURT: In that indictment that charge alleges that, on
18 or about May 15th, 2013, you, again, failed to main -- did an
19 act forbidden by law, or neglected a duty imposed by law in
20 maintaining -- failing to maintain a proper lookout, crossing
21 the centerline, and speeding excessively.

22 It's alleged that these acts proximately caused the
23 death of Joan Errickson; you understand that?

24 A. Yes, Your Honor.

25 COURT: How do you plead to that charge?

1 A. Guilty, Your Honor.

2 COURT: Anyone promised you anything, threatened you
3 any way, or coerced you into entering pleas of guilt to these
4 three charges?

5 A. No, Your Honor.

6 COURT: Are you, today, Mr. Gratto, under the influence
7 of anything that would cause you to be intoxicated?

8 A. No, Your Honor.

9 COURT: Mr. Gratto, are you entering your plea today to
10 these three charges freely and voluntarily?

11 A. Yes sir.

12 COURT: Mr. Gratto, you have a right to a trial by jury
13 on these charges, and you are presumed innocent of these
14 charges until such time as the State is able to prove, if it
15 can, your guilt beyond a reasonable doubt. As to the charges,
16 you have a right to remain silent, that is, no one can make
17 you testify, or give any statement about this case. You have
18 the right to confront the witnesses against you, that is, to
19 see, hear, question and cross-examine the witnesses who will
20 testify for the State, and you have the right to have the
21 State issue summons and subpoenas to individuals to come to
22 court to testify on your behalf. You understand you have
23 these rights?

24 A. Yes, Your Honor.

25 COURT: I advise you that, when you enter a plea of

1 guilt to the charges you are, as to those charges, giving up
2 those rights. You are also giving up any defense that you
3 might have to a particular charge when you enter a plea of
4 guilt; do you understand that?

5 A. Yes, Your Honor.

6 COURT: Knowing those things, how do you plead to
7 leaving the scene of an accident?

8 A. Guilty.

9 Q. How do you plead to driving -- Felony Driving Under the
10 Influence which resulted in great bodily injury?

11 A. Guilty.

12 Q. How do you plead to a Felony Driving Under the
13 Influence which resulted in a Death?

14 A. Guilty, Your Honor.

15 Q. All right. I'm going to ask you to listen while I'm
16 given the facts, and at the appropriate time I'll be glad to
17 hear from anyone on behalf of the victim, but at this point --
18 you can have a seat while we do this, Mr. Gratto.

19 I understand from -- incidentally, I did have a pre-
20 trial conference in chambers with counsel, so I understand
21 from that that this may consume a little bit of time.

22 MR. RICHARDSON: Yes sir, Your Honor.

23 Your Honor, Jennifer Hague and Charles Broach are here.
24 Jennifer is the daughter of Joan Errickson, the victim, the
25 decendent in this case.

1 On May 15, 2013 this Defendant, Gabriel Lee Gratto, made
2 a series of terrible decisions that ultimately ripped Joan
3 Errickson from the world -- from this world, robbed Charles
4 Broach of a fiance, robbed Jennifer of a mother, and her
5 children of a grandmother. She had an infant daughter that
6 had met her grandmother but just doesn't know her, and will
7 only know her through photographs.

8 His choices first become terribly intoxicated that day
9 and then get behind the wheel of his own vehicle, travel
10 approximately thirty miles in a condition that no one should
11 ever drive, culminated in the killing of Joan Errickson, and
12 the severe and lingering injury to Charles Broach.

13 Your Honor, respectfully, at this point the State would
14 request to have the Defendant briefly allocute to a couple of
15 items, and then I'll attempt to go into the remainder of the
16 case, just a few questions. If I may question him.

17 **COURT:** All right. Mr. Gratto, of course you've been
18 sworn in so you are under oath, but the State is going to ask
19 you some questions regarding this incident.

20 **BY MR. RICHARDSON:**

21 **Q.** Mr. Gratto, on May 15th, 2013, when you went to Azalea
22 Sands Golf Course you took a cooler with six beers?

23 **A.** Correct.

24 **Q.** And you consumed those beers and another alcoholic
25 beverage while at the Golf Course; correct?

- 1 A. I consumed some of those beers. I did not finish the -
2 - that six-pack, Your Honor.
- 3 Q. Your golf partners, likewise, brought coolers and a
4 bottle of Fireball Whiskey that day?
- 5 A. Correct, sir.
- 6 Q. And that was to Azalea Sands Golf Course?
- 7 A. Yes sir.
- 8 Q. Azalea Sands did not prevent you or your golf partners
9 from bringing the coolers or loading them on your carts?
- 10 A. No sir.
- 11 Q. You consumed numerous beers after beginning to play?
- 12 A. Yes sir.
- 13 Q. You and your golf partners bought more beer and mixed
14 drinks from the snack shop at the Azalea Sands while -- after
15 you were clearly and visibly intoxicated?
- 16 A. I bought the -- my beers relatively early in the round,
17 probably after the third or fourth hole, after we drove by the
18 club house.
- 19 Q. You were intoxicated at this point, or impaired in some
20 way?
- 21 A. I was -- yes.
- 22 Q. After finishing golf you were intoxicated; correct?
- 23 A. Yes. Now that I look back on it, I was intoxicated.
- 24 Q. Visibly so?
- 25 A. Visibly, I could not tell for myself, but I was

1 intoxicated.

2 Q. You and your golf group proceeded to the Overtime
3 Sports Bar?

4 A. Correct.

5 Q. While at the Overtime Sports Bar you and your buddies
6 sat at the bar ---

7 A. Yes.

8 Q. ---And you were given, or purchased more beer and
9 shots?

10 A. Yes, Your Honor.

11 Q. And at this point you were visibly intoxicated?

12 A. Probably, sir.

13 Q. And you became more intoxicated at the Overtime Sports
14 Bar?

15 A. Yes. I had one Magic Hat draft beer, and a half a shot
16 of (unintelligible).

17 Q. Okay. Did the bartender, or any of the staff at the
18 bar, or the staff at the golf course even, ever ask for your
19 keys?

20 A. No sir.

21 Q. Did those people that worked at the bar or at the golf
22 course try to call you a cab?

23 A. I did not hear anything about a cab.

24 Q. And likewise, you also declined to stay at the friend's
25 house that night?

- 1 A. Yes, he -- Willis did offer me to stay there.
- 2 Q. And declined for them to call you a cab?
- 3 A. Excuse me?
- 4 Q. You declined their offer to call you a cab?
- 5 A. What I know, there was no offer to call a cab; I just
- 6 know there was an offer to spend the night on the friend's
- 7 couch.
- 8 Q. You got into your vehicle, the Jeep Wrangler?
- 9 A. Correct.
- 10 Q. And you proceeded to attempt to drive home to [REDACTED]
- 11 [REDACTED] in Myrtle Beach?
- 12 A. Correct.
- 13 Q. And you were clearly and visibly intoxicated, and
- 14 impaired whenever you drove off?
- 15 A. Correct.
- 16 MR. RICHARDSON: Thank you.
- 17 And Your Honor, this is basically the same information
- 18 that the Defendant provided at the State's insistence, in an
- 19 attempt to provide answers to benefit the victims and the
- 20 State in this case.
- 21 Your Honor, we know the route that the Defendant took
- 22 that night in a vain attempt to reach his home, not from GPS,
- 23 not from cell phone records, but because normal, everyday
- 24 citizens happened to be on Highway 31, the north/south
- 25 connector from North Myrtle Beach to the south end, down to

1 Surfside, the Surfside Beach area in Myrtle Beach, and they
2 took it upon themselves -- they were concerned after
3 witnessing the Defendant's driving. Rusty Jones called Horry
4 County 911, and another witness, John Wasse, W-A-S-S-E,
5 contacted Star (*) HP to contact Highway Patrol directly.

6 Rusty Jones first encountered the Defendant, by his
7 statements, approximately on Highway 31 near the Robert Edge
8 Parkway, which leads from Highway 31 down into North Myrtle
9 Beach. Mr. Jones watched the Defendant's erratic driving,
10 with the Defendant swerving on and off the shoulder of the
11 road, and was compelled to call 911.

12 As he called, Mr. Wasse also observed the Defendant's
13 grossly impaired driving and began to follow the Defendant, at
14 points speeding up to, I believe he said up to ninety miles
15 per hour in an attempt to get up and get the tag number from -
16 - from the Defendant. As he, Mr. Wasse, was doing this he
17 called Star (*) HP, which is the Highway Patrol dispatch.
18 This was during our Harley Week. The majority of our Highway
19 Patrol was located down at the south end of the beach, and
20 beachside, patrolling for all the Harley riders down here.
21 But Mr. Wasse got in behind the Defendant. They were heading
22 south toward Highway 501, and eventually Highway 544, on
23 Highway 31, and while I could stand here and tell you what the
24 Defendant -- or what Mr. Wasse has told me he observed the
25 Defendant doing, swerving from lane one to lane three, and

1 tearing off down the highway at truly excessive speeds in a
2 dangerous manner, I believe the recording of that call may be
3 a little more illustrative, Your Honor, and I would ask the
4 Court's indulgence to play that at this point.

5 COURT: You may.

6 You've heard this, Mr. Hilliard?

7 MR. HILLIARD: Yes sir, Judge, I have.

8 COURT: Okay.

9 MR. RICHARDSON: And Your Honor, both the video I'll
10 play in a short while, and this recording, have been marked as
11 Court's Exhibit 1.

12 COURT: All right. It will be in as Court's Exhibit
13 1.

14 MR. RICHARDSON: Thank you, Your Honor.

15 (RECORDING OF CALL TO HIGHWAY PATROL MARKED COURT'S
16 EXHIBIT NUMBER 1.)

17 (AT THIS TIME RECORDING OF CALL TO HIGHWAY PATROL WAS
18 PUBLISHED IN OPEN COURT.)

19 MR. RICHARDSON: Your Honor, there was not a time stamp
20 on that recording. Actually information provided by the
21 Defense, after speaking, showed that the Defendant tabbed out,
22 got a receipt about 6:34 that afternoon. The collision that
23 resulted in the death of Ms. Errickson and the injury to Mr.
24 Broach occurred sometime around 7:15 to 7:30, so we know that
25 that is in that time frame there.

1 Unfortunately, although Mr. Wasse watched the Defendant
2 lose control of his vehicle and run off the road just short of
3 Highway 501 the Defendant was undeterred. Mr. Rusty Jones had
4 been following the Defendant from the north end of the beach,
5 actually pulled up behind the Defendant, saw that he was off
6 the road, and he was calling 911 at that point. He believed
7 the Defendant to be disabled and he just wanted to stay there,
8 but he witnessed the Defendant hop out of the vehicle with a
9 floormat in hand, throw the floormat under his rear tire in an
10 attempt to get traction to get back on the road, and
11 eventually he did get back on the road, Your Honor. He re-
12 entered Highway 31, proceeded on south down 31 toward Highway
13 544, which is about five or six miles south of that
14 intersection.

15 That tag number that we just heard Mr. Wasse read out,
16 that's the exact tag number that Trooper Jacob Fox actually
17 found on the Jeep that was part of this collision, Your Honor.
18 That happened just a short time later. It's that Jeep that,
19 just a short time later, would swerve left of center,
20 traveling at a speed in exceed -- at a speed of approximately
21 fifty-one miles per hour in a posted thirty-five, forced Joan
22 Errickson and Mr. Charles Broach off the side of the road, but
23 there was no escape to them, Your Honor. As Ms. Errickson
24 pulled off to the side of the road, to her right lane, toward
25 the ditch embankment, in her Buick, the Defendant went left of

1 center, struck Ms. Errickson's vehicle in the driver's side
2 door, spun her car around, Your Honor, spun the Jeep around
3 into the middle of the roadway.

4 Too often, Your Honor, the State has no choice but to
5 rely on the M.A.I.T. team with the physics that they've been
6 trained to go out and investigate a crime with, to tell us
7 what happened, and then a lot of times we will go back and we
8 will plug all the factors in, all the elements in, and we will
9 develop a computer animation that's an attempt at a recreation
10 of what happened, but while we often do rely on that, and we
11 appreciate all the M.A.I.T. team is able to do with that, Your
12 Honor, in this case, this is a new instance, at least in my
13 prosecution career, this is a collision that was actually
14 caught on video. The -- there is a video from a tool shed at
15 the Prestwick Golf Course. It's -- the golf course and tool
16 shed were immediately adjacent to where this terrible crime
17 occurred. This occurred on secondary 394, a public roadway,
18 Your Honor, here in Horry County, and if I may now play that
19 video.

20 COURT: All right. I may have to reposition myself to
21 see it.

22 MR. RICHARDSON: Yes sir, yes sir, Your Honor. The
23 screen is just not in a great position.

24 (VIDEO OF COLLISION MARKED COURT'S EXHIBIT NUMBER 2.)

25 (AT THIS TIME VIDEO OF THE COLLISION WAS PUBLISHED IN

1 OPEN COURT.)

2 COURT: Yes sir, you may proceed.

3 MR. RICHARDSON: Yes sir, Your Honor. What we just
4 saw, Your Honor, was not only the collision, but up in the
5 upper right-hand side, Your Honor, what we saw was, after the
6 collision, when faced with the result of what the Defendant's
7 choice to drive drunk, what it -- what it caused, the
8 Defendant got out of his vehicle, went and looked into that
9 Buick, into the vehicle of Ms. Errickson, at her bruised and
10 battered body, then he fled off into the woods.

11 Officers and troopers arrived on the scene and the
12 investigation began. Horry County Police Department was first
13 on the scene. Highway Patrol, Trooper Fox, actually responded
14 from the south end and got there in a pretty quick fashion,
15 Your Honor. When he got there he was informed of what was
16 going on, and officers had gone ahead, they had run the tag
17 number on the back of that Jeep in an attempt to locate the
18 drive. They didn't know if anyone else was injured. They saw
19 what appeared to be somebody ran off in the woods. They
20 actually went over to the Defendant's home, and that's where
21 they found him, Your Honor.

22 But while troopers were on the scene Ms. Errickson's
23 lifeless body was pulled from that Buick she had been driving
24 by the EMTs. Mr. Broach was extracted. He was taken to
25 Conway Medical Center where he was diagnosed with a severely

1 bruised sternum. Actually the EMTs at the scene thought it
2 was broken. He had a torn patella tendon from which he still
3 suffers this day. Of course as we saw, Your Honor, the
4 Defendant was nowhere on the scene. He had abandoned his Jeep
5 in the middle of the roadway, he ran off.

6 But at that time Officer Brad Boggs, he went to the
7 assistance of the Highway Patrol. He was able to identify
8 where the Defendant lived, a short distance away from the
9 collision, Your Honor. He went and found the Defendant there
10 and brought him back to the scene.

11 Trooper Fox administered Miranda to the Defendant, and
12 after he administered Miranda the Defendant actually, at that
13 point, said he didn't want to talk anymore without an
14 attorney, and the Trooper said okay, and they didn't ask him
15 any questions, but immediately after that the Defendant went
16 ahead and made several voluntary statements including, "I had
17 five beers." He smelled strongly of alcohol. They conducted
18 field sobriety tests. He further admitted to driving, Your
19 Honor Due -- due to the condition of the victims, the fact the
20 Defendant ran from the scene, the Defendant's statements and
21 the Trooper's assessment after administering those field
22 sobriety tests, Your Honor, the Defendant was charged with
23 Felony DUI, Death, and Great Bodily Injury, as well as Leaving
24 the Scene of an Accident with Death. A Search Warrant was
25 sought, and was obtained for the Defendant's blood. The

1 Defendant was taken to Conway Medical Center, blood was drawn,
2 and it was sent off to S.L.E.D. for testing. The toxicology
3 report on that blood showed a blood alcohol content, or a
4 blood alcohol level of point one three six. He was grossly
5 intoxicated. And bear in mind, this collision occurred
6 sometime between seven twenty and seven thirty. Blood was
7 drawn about -- the arrest was made at 8:15 and the blood was
8 drawn at 9:55, Your Honor, about two and a half hours after
9 the collision, and the Defendant's BA was still point one
10 three six, time and a half of the legal limit.

11 Your Honor, this Defendant chose to drink and bar hop,
12 and this Defendant chose to get behind the wheel and drive
13 approximately thirty miles from the golf course and Overtime
14 Sports Bar, undeterred by his own erratic driving when he ran
15 off the road on Highway 31, Your Honor. He posed a danger to
16 all on the roads that day, but we are not here about the
17 danger he posed to the public in general, we are here for the
18 Defendant to answer for the damage he did inflict. We merely
19 ask that he answer for his crimes by his choices on May 15,
20 2015, this Defendant killed Joan Errickson, and he grievously
21 injured Charles Broach to the point he still suffers today.
22 And Mr. Broach watched helplessly, trapped in that Buick, his
23 fiance's head over toward him as she lay lifeless. He watched
24 this Defendant got out of his own Jeep and went over and
25 stared down through the window, Your Honor, and chose to run

1 rather than face what he had done.

2 Your Honor, this family and Mr. Broach, they don't want
3 revenge or some sort of reckoning. In a perfect world they
4 would have Joan Errickson back with them today. They would be
5 able to leave this courtroom and have lunch, but that's not
6 going to happen.

7 I believe that Mr. Broach and Jennifer, on behalf of the
8 family, would wish to address the Court in a short while. The
9 family and the State merely ask for justice, Your Honor, a
10 sentence that speaks to the reprehensible nature of the crimes
11 this man committed. This day has been almost two years in the
12 making, and the family has been patient. All we ask for is
13 justice.

14 Thank you.

15 COURT: All right. Be glad to hear from any one of the
16 victim's -- well, before I do that ---

17 Mr. Gratto, you've answered some questions already, and
18 now you have seen the video, and heard the State's recitation
19 of what they contend happened that night. Do you agree that
20 those facts are correct as are related to me by the Solicitor?

21 A. Yes, Your Honor.

22 COURT: Okay. Thank you.

23 MR. HILLIARD: Judge, there was one thing that was of
24 interest that I don't think we got into, and of course I'm
25 doing what I can on behalf of Mr. Gratto, but it's my

1 understanding that there is some question about -- he did
2 purchase a bloody mary, and I will just ask him to say under
3 oath, for the purpose of the record, where and when he
4 purchased the bloody mary.

5 A. I purchased one bloody mary by cash after the third or
6 fourth hole, after we drove -- after we got down in the hole
7 and drove near the club house we decided to stop at that
8 point.

9 COURT: And this was at the Azalea ---

10 A. Azalea Sands, sir.

11 MR. HILLIARD: Thank you, Your Honor.

12 COURT: Okay.

13 All right, I'll be glad to hear from the victims.

14 I think it would be better if she use the podium. She
15 can see her notes better.

16 JENNIFER HAGUE: Good morning, Your Honor.

17 COURT: Good morning.

18 JENNIFER HAGUE: My name is Jennifer Hague, and I am the
19 daughter of Joan Errickson, which is the deceased.

20 I never thought that I would be standing here in this
21 position to do this, but I am, so I need to -- to speak today
22 on behalf of someone who can't be here, though I know that she
23 so badly wanted to be. To you she is the deceased victim,
24 just a case number. To me she's the only person in the world
25 who knew me better than I knew myself. She was the only

1 person who could comfort me before the nurses wheeled me into
2 the O.R. to have my tonsils removed. I was four. She was
3 also the only person who could comfort me the first time I had
4 my heart broken by a boy. I was sixteen. And in February of
5 2013, after the birth of my daughter, Eva, left me with a
6 massive hemorrhage she was the only person in the world who
7 would fly seven hundred miles to be by my side, to comfort me
8 at my worse. I had no idea then that it would also be the
9 last time I could call on her for comfort.

10 My son, Daniel, will be four in May. I signed him up
11 for soccer a few weeks ago. His team is made up of the most
12 adorable three and four-year-old boys and girls with moms and
13 dads cheering on the sidelines. On the way to his first
14 practice Danny promised me he would bring home the gold. He
15 was so excited. It was all he talked about. When we got out
16 to the field he was crippled with fear. There were so many
17 new faces and rules, kids were yelling and laughing. He
18 buried his head in my legs, looking for the comfort that only
19 a mother can give. Thanks to my mom, I know that comfort.
20 Last week on our way to practice I asked Danny if he was going
21 to be shy again on the field. No, mommy, he said. He was so
22 proud. And sure enough, when we got to the field he ran out
23 to meet his coach without any hesitation. I watched him
24 butterfly last week from a frightened toddler into a confident
25 child. He ran up and down the field following the coach's

1 instructions, kicking the ball between orange cones and
2 through goals. I was smiling from ear to ear, and I couldn't
3 wait to call my mom and tell her what her grandson did that
4 day. I knew she would be so proud of him. She's been gone
5 nearly two years and I'm still doing this to myself several
6 times a week, and every single time it feels like I have been
7 the target of (unintelligible) jokes. My son was two when his
8 grandmother was taken from him. He asks questions about her
9 whereabouts. He calls her "Mama J", and he always wants to
10 know if "Mama J" is in heaven where God is. That's an easy
11 one. It's when he asks when she's coming back that I just
12 don't know how to answer. The truth is that she's not coming
13 back to visit, to watch the kids play soccer and t-ball. She
14 missed Eva's first steps, her first words, Danny overcoming
15 his speech delays, she'll miss them grow from helpless babies
16 into curious children, and eventually into independent teens
17 and adults. Even more difficult than these questions from my
18 son is the lack of questions from Eva, who is now a chatty
19 two-year-old. Eva was only three months old when her
20 grandmother died, so she will have no memories to cherish of a
21 woman who would have given the world for her.

22 There are a total of four pictures of my mom holding
23 Eva, and there will never be another. Why?

24 My mom struggled with quitting cigarettes. She was
25 determined to be a healthy -- she was determined to be

1 healthier so that she could live longer, to see her
2 grandchildren grow. I wanted her to be there so badly when
3 Danny started school, and when Eva started playing -- when Eva
4 starts playing t-ball. I'll be there she said. She was so
5 confident when she told that to me. I believed her. I think
6 she believed it too. Gratto stole that from her, he stole
7 that from me, and from Danny and from Eva. They will grow up
8 never knowing their grandmother because Gratto had too much to
9 drink one day and drove his Jeep on the wrong side of the
10 road, and as she lay in the driver's seat this man walked over
11 to the car, looked in the window, and instead of offering her
12 help he just ran. He left her there to die.

13 She was my best friend, she was also my mother. Without
14 her I wouldn't be here, and now I'm here because she couldn't
15 be, because her life was taken from her by Gratto. Her life
16 was taken from -- from us, from all of us, from my
17 grandparents, from Chuck, from her friends, from Danny and
18 Eva, and my husband, Dan, who swears he was the only husband
19 in the world who actually loved spending time with his mother-
20 in-law. She did love him like a son.

21 Everything was good in her world. She was happy. She
22 called me during the afternoon of May 15th. I was napping
23 with the kids. I asked her if I could call her back later.
24 That was the last time I would ever hear her voice.

25 Today I implore the Court to make our loss a meaningful

1 one, use my mom's death to set an example that South Carolina
2 will not tolerate more lives taken this way. Maybe in this
3 way her death will mean that others will be safe from a
4 similar fate. My mom would have proudly given her life to
5 save someone else's, so please give her a chance to do that,
6 to save another life, and another family from this burden of
7 loss. She would want that. This time it was my mom, but next
8 time it could be your mom or your child in that car and you
9 could be on the receiving end of the phone call that brings
10 you to your knees, crying out for someone who doesn't exist
11 anymore. Use our loss as an example to the people of South
12 Carolina, those who choose to drink and get behind the wheel
13 will be held responsible for the lives that they end.

14 That will be all. Thank you, Your Honor.

15 COURT: Thank you.

16 MR. RICHARDSON: Your Honor, Charles Broach.

17 COURT: All right. Good morning.

18 MR. BROACH: Good morning.

19 Joan, basically, she was my livelihood. We were two
20 months away from getting married. We had been together for
21 eight years and good -- we had, you know -- she was always
22 happy, go-lucky, smiling, the nicest person you could ever
23 meet, and she was a major influence on my life, and my
24 lifestyle, and when I -- we were looking -- waiting -- she
25 owned her house, and I owned mine. We were going to get

1 married, sell both our houses and get a larger house so that
2 when the family came down from New Jersey they would have a
3 place to stay, because not only was I going to gain a wife, I
4 was going to gain -- I was going to get a daughter and two
5 grandkids too, and now the only memory I have is sitting in
6 the car holding her head, looking into her lifeless eyes, and
7 the Defendant looking in, and I'm screaming for help, to help
8 her, she's not breathing, and then he's gone. I can't say
9 anything else.

10 COURT: Thank you, Mr. Broach.

11 MR. RICHARDSON: Your Honor, I believe that would be
12 the State's showing.

13 COURT: Mr. Hilliard, you want to ---

14 MR. HILLIARD: Thank you, Your Honor.

15 COURT: Yes sir.

16 MR. HILLIARD: Judge, at the outset, we have some
17 letters that I would like to pass up. We've provided these to
18 the Prosecutor prior to now. He's got his own copies.

19 COURT: Bear with me a minute. I'll ---

20 MR. HILLIARD: Yes sir.

21 COURT: ---Read through them.

22 MR. HILLIARD: Thank you, Judge.

23 (THE COURT REVIEWS DOCUMENTS.)

24 COURT: All right. Does Mr. Gratto have any prior
25 record?

1 MR. RICHARDSON: No sir, Your Honor.

2 MR. HILLIARD: Judge, if we could, if I could say a bit
3 more about Gabe.

4 COURT: Okay.

5 MR. HILLIARD: I brought those letters because there
6 are a lot of people who couldn't be here today, connected to
7 this, but there are a lot of people who are, in fact, here,
8 and I'm not going to ask them all to speak, but if we could
9 talk about little bit about -- about Gabe, and the
10 circumstances of this.

11 One of the things about this is that, walking into the
12 courtroom today he knows that he's not walking back out. He's
13 effectively brought his toothbrush and knows that he's going
14 off to prison.

15 This has never been a trial; it's always been a guilty
16 plea. It takes time for things to percolate through the
17 system, and for information to come through, but it's never
18 been a trial that was going to be happening. When Gabe
19 started out that day he was a good guy, and had lived a decent
20 life, and as the Prosecutor said so eloquently, he made tragic
21 and terrible decisions. One of the things that, of course,
22 happened was that he became intoxicated, and in hindsight,
23 recognizes that he was intoxicated. As has been seen so many
24 times, in so many ways, when you are drunk you don't know you
25 are drunk. Other people know you are drunk but you don't, and

1 that's where he -- that's where he found himself that day.

2 He ran away, and there's no -- there's no good excuse
3 for that. That's bad. It's a situation where he got
4 frightened, he ran way, he ran home. He was near his house,
5 he ran home. The police came, and went directly to his house,
6 and he came right back with them.

7 He had a thirteen blood alcohol. There's no -- no
8 debating that, no doubting it. That's what happened in the
9 case. But when you think about how to sentence - and I
10 wondered over this past weekend, I thought well what -- it's
11 almost like, what point is there to have a lawyer, what can I
12 do that's really going to have any impact on this, and really
13 there's nothing. The only thing that matters now that it's
14 too late for him to do anything about the crime that he's
15 committed, now that it's too late for anything to change, if
16 there were anything to do to bring her back, or to ought not
17 cause this harm, if there was anything, any way to change
18 anything on that day I know that he would. And I've -- I've
19 had the opportunity, over the past two years, as we've
20 progressed through this, to become friends with Gabe. I mean
21 he has been to my office any number of times, and we've talked
22 about it.

23 He had a monitor, an alcohol monitor on his leg for --
24 as soon as he got out of jail he got -- he spent, I think,
25 five days in jail, and came out with an alcohol monitor on his

1 leg, and he reacted to that monitor well, and to -- so well,
2 in fact, that ultimately they let him progress to where he's
3 got the blow-in-the alcohol monitor instead of the one that's
4 attached to his leg. He's got that with him here today. They
5 called him just the other day at five o'clock in the morning
6 and said, blow in it, and he blew in it. He's not had a drink
7 or anything like that for the -- since the time this accident
8 happened.

9 He's committed himself to the church. He has done his
10 best to make it an event which is going forward, that he can
11 make some difference in -- perhaps in the lives of other
12 people. He's had a tremendous impact in his church. In fact,
13 his pastor is here, and I'm going to ask him to speak in just
14 a minute. I know that they have prayed together for the
15 family of the victims in this case, and I -- there --
16 obviously ask the members of the congregation, just the people
17 who are here from the congregation, if y'all will just stand
18 up, and I'm -- this is his church family, Judge.

19 Y'all can sit down.

20 I'm not going to ask any of them to speak. They would
21 all say something good about him. His family, of course,
22 would say something good, his -- one of the letters that you
23 have there is from his grandmother and grandfather. You
24 probably noticed that the date on that letter was sometime
25 ago. That grandfather has since passed away, and Gabe was

1 unable to travel because of the monitoring situation, and he
2 was unable to see that grandfather before he -- before he
3 passed away.

4 And when you think about to make an example of a
5 particular situation - and I'm certainly glad not to be a
6 judge, because it's got to be an awful, awful task to try to
7 decide, to try to balance that. When I was thinking about it
8 this weekend what I thought was, you know, I could be -- I
9 could be sitting, as I think one of the victim's said, I could
10 be sitting on that side, with my loved one dead by the act of
11 another, or I could be sitting on this side, not as a lawyer,
12 but as a person whose loved one is going to prison, and every
13 one of these people are hoping against hope for mercy, that's
14 all, mercy, recognizing that it is mercy that is within Your
15 Honor's power, and recognizing that there's nothing to be done
16 to bring back these folks, to make this not be true.

17 When you are thinking about sentencing I would believe,
18 maybe, that his life, up until the time this happened, was a
19 good life. He's not a scofflaw, or a person who's been in
20 prison, or had DUIs in the past, or that sort of thing. He
21 was a good person up until the time this happened, and since
22 then he's, I think, arguably a better person. He's started
23 going to church more regularly.

24 He's worked hard. He was working hard. He was an
25 apprentice at the Grove Park Inn. He's got a B.A. in -- or a

1 B.S. in Culinary Arts. He's worked hard. He's worked up
2 through Greg Norman, and what enormous, enormous pressure it
3 must be for a person to know that he's going to prison, day
4 after day after day, for two years, and still work through
5 that process, I mean, he -- he worked hard, and progressed on.

6 One of the things that would be within Your Honor's
7 power, in the event you decide to do it, is to give him credit
8 for the two years that he's been on this house-arrest monitor.
9 You could give him time-served credit for that, as to whatever
10 sentence you give him, recognizing again, that he's going off
11 to prison, but he could have credit for those two years that
12 he's spent on that monitor, and on that device.

13 And I'm -- I never know how much to say. I don't know
14 what to do, to tell you the truth. I want to do the best I
15 can for him, but I don't know that there's much to be done.
16 He's cooperated with the prosecution. He has provided them
17 with physical evidence that they would not have but for the
18 fact that he voluntarily turned it over. He made his criminal
19 case worse, he made him -- the truth, nothing but the truth,
20 but he certainly has put himself in the lion's mouth by virtue
21 of the things that he's said that were true, but were more
22 than they knew about the crime.

23 And Judge, if you would, I would like for you, if you
24 don't mind, to hear from his grandmother, briefly.

25 If you could stand up, please Ma'am, if you will, and

1 give your name to the Court Reporter. And I've had the
2 opportunity to spend a great deal of time with his
3 grandmother, as you might imagine, once you hear from her,
4 Judge. Her husband has passed. He was the one who wrote the
5 paper, but ---

6 COURT: Your name?

7 MS. RUSSELL: My name? Your Honor, my name is Marlene
8 Russell.

9 COURT: All right.

10 MS. RUSSELL: And my husband was Ronald Russell, and we,
11 more or less, helped raise him since he was a little one.

12 And can I read it to you?

13 COURT: You may. You may. And I -- in one of the
14 letters -- one of the letters from, I think his Aunt, talks
15 about how you raised him.

16 MS. RUSSELL: Good. This is brief.

17 He's always been a good grandson, and we loved him
18 dearly. Gabriel's life will never be the same, and this is
19 true of the other family, and Ms. Errickson's friends also.

20 Gabriel would do anything he could to undo the damage.
21 He has lost everything he worked so many years to achieve. He
22 is a loving person that makes a bad -- made a bad decision on
23 his day off. Our hearts go out to the families, and we are so
24 very sorry. I have thought about it for two years, every
25 minute when I wake up. I don't sleep very well, Gabe doesn't

1 either.

2 Your Honor, I'm eighty-three this year, and I plead,
3 could you give me a few more years with him. Gabe is
4 devastated too.

5 Thank you, Your Honor.

6 COURT: Yes Ma'am. Thank you.

7 MR. HILLIARD: His mom, Judge.

8 MS. KELLY: Your Honor ---

9 COURT: Your name.

10 MS. KELLY: Lorraine Kelly.

11 I have given you like a brief, light overall -- it will
12 be quick.

13 MR. HILLIARD: The Judge has read the letters that we
14 provided him.

15 MS. KELLY: Did you read the letter from me?

16 COURT: Yes. I can't remember exactly which one it is,
17 but I saw -- but I did read -- read them all.

18 MS. KELLY: One day in a good man's life has affected so
19 many people's lives, that we will live with, regret, sorrow.
20 There's an Almighty God that we have to all face someday.

21 My son is well-loved by everyone. His decisions, and
22 what happened that day are a nightmare. I can't even fathom
23 it's the same person with alcohol. You are not that person
24 when you drink it. You are just not. My father was an
25 alcoholic. It was horrible. And my son was raised by my

1 grandparents and I because I worked a lot. They were good
2 kids. I have an older son. Gabriel's father was never around
3 for any child support or anything. I did a lot of overtime,
4 and I wish I would have been home more, but I've had to pay
5 the bills.

6 Gabriel graduated from high school and then went off to
7 culinary school and graduated, went to work, did his
8 internship in Grove Park Inn, Asheville, North Carolina, and
9 this is where his love for the South - and I've got to say, I
10 love it too, but I like my winters, it's too hot down here.

11 But he -- then he went back to college and got his
12 degree in Nutrition and Dietetics. His girlfriend and him
13 graduated at Indiana, University of Pennsylvania, in December,
14 and they both landed jobs in Myrtle Beach. And she's an
15 Autistic teacher, for special needs children. He got his job
16 at Greg Norman's, and then he sat for his State Boards, got
17 registered, certified for dietetics, and now this is all,
18 because of the decisions he made, it's a wash, and it was ten
19 years plus of work. It breaks for heart for him.

20 I now speak for mercy for all of us, the Errickson's
21 family, us, so we can salvage some kind of life. I pray, and
22 beg of you for mercy. He knows he has to do time, but I don't
23 even think I can survive a long time without being with my son
24 on the outside free world.

25 Please consider all I've said, and thank you for

1 listening. Thank you.

2 COURT: Yes Ma'am. Thank you.

3 MR. HILLIARD: And the pastor, Judge, will be my last.

4 PASTOR: Do you mind if I stand at the podium?

5 COURT: That will be fine.

6 PASTOR: I can stand at the podium?

7 COURT: You may.

8 PASTOR: Eight days ago was Easter Sunday, and we had a
9 thousand people in church - we are the church down from Market
10 Common in Myrtle Beach - and of those thousand people I
11 thought about, if I were to ask every single one of them, do
12 they want to grow, do they want to change, do they want to be
13 a productive member of society, do they want to help people,
14 do they want to give, do they want to serve, I'd imagine every
15 one of them would say yes, they want to. Unfortunately,
16 ninety-nine percent of people live stagnant, they don't
17 change, they don't really grown, they kind of stay the same
18 throughout their life. But there's one percent that a pastor
19 loves to see, of people who, for some reason that's
20 unexplainable, other than God, that they really want to grow,
21 they really desire to change, and they don't just want to,
22 they do it, they take steps of faith, they give, they serve,
23 they change their attitude, they change their life, they
24 change their ways, they help change other people's lives.
25 Gabe is part of that one percent. I can't speak on behalf of

1 him before this incident took place. I met him within a week
2 or two after the incident took place.

3 You would think after doing something like this that
4 most people would run away from God. Gabe ran straight to
5 God, and immediately his heart went out to the family of the
6 victim. He has become an incredibly broken, humble man, which
7 is rare in men nowadays. He's at the altar every single
8 Sunday without fail, which is, again, very difficult to see in
9 anyone. His attitude surpasses almost the thousand people
10 that were in church just a few days ago. His service is
11 faithful. You can count on him. He means what he says, he
12 does what he says, he shows up on time. He's one of the last
13 ones to leave. He served our youth. One of his passions is
14 cooking, and he taught our teenagers how to cook. He's served
15 on the sports team, he's an usher in church. He reads his
16 Bible, he studies, he prays, he worships free and incredibly,
17 without shame. He became the head usher of our noon service
18 just a few months ago, not because he's authoritative, or he
19 likes telling people what to do, but because he loves people,
20 and they tend to really like him a lot as well. It's unusual
21 that the choice that he made hurt somebody, because his
22 passion now at church is to create safety, and an environment
23 of peace. As a head usher that's his job, that's his goal,
24 especially with me being the speaker, he always makes sure I'm
25 very comfortable, very secure, ready to stand up there and do

1 what I need to do. Knowing he's at the very back of church I
2 watch him the entire time as he keeps order and seats people,
3 and smiles and greets.

4 We make twenty-five hundred choices a day, from what I
5 understand. It's amazing how one, one wrong choice can do
6 such awful damage. He's a man of repentance, he's a man of
7 integrity. Again, I can't speak before this incident, only
8 what we know now. He's become a person of influence. He's
9 helped many other people. He's served our youth. He's a
10 friend of mine. He's a man of God. And if the goal for jail
11 time is for him to have pain in his life for what he did I can
12 assure you, knowing him like I do, the pain of what he did
13 outweighs hundreds of years of prison. If the goal of prison
14 is for him to change, and never do this again, which was
15 mentioned earlier by the family of one of the victims, to
16 prevent this from happening again, I can assure you change has
17 already occurred where, not only will that not happen again,
18 but him having more time as a free man his testimony could
19 help other people not ever do something like this again. If
20 the purpose of jail is for him to become a productive member
21 of society that's already taken place, as one of the most
22 productive members of our church, and our City, and the sooner
23 he gets out of prison the more people he can continue to help,
24 and serve, and give and bless.

25 Twenty years ago - and I'll close - but twenty years ago

1 I was in that old courthouse across the street as a convicted
2 felon, and for some reason that I can't explain, other than
3 God, in front of all the people the Judge looked at me, when
4 he could have sent me to jail for a long time, and he gave me
5 five hundred hours community service with a church, the last
6 thing I wanted to do, the last place I wanted to be, and it's
7 because of the mercy of that Judge, in large part, that I'm
8 wearing this collar today.

9 And so I ask, if there's any mercy in you, if there's
10 any grace that you can extend today, that you judge Gabe, not
11 by what you see on paper from two years ago, if possible, but
12 what you see in him today, and have heard from us.

13 Thank you, Judge. I appreciate it.

14 MR. HILLIARD: Thank you, Pastor.

15 COURT: Mr. Gratto, would you like to make a statement
16 yourself?

17 MR. GRATTO: Yes, Your Honor.

18 Your Honor, I have had plenty of time to think about
19 this, and I have put it through my head over a hundred times
20 of things I would say, and nothing ever seemed to be right,
21 nothing that I could ever think of, words would never help
22 this situation out. I feel so deeply repentant for what I
23 did, and knowing that I can't do anything to turn the
24 situation around, it has deeply driven into my soul that I
25 could not rid this situation, and it just -- my heart goes out

1 to that family. I have prayed over a thousand time, as I
2 drive by the accident, as I'm in church, as I'm just laying
3 there, just trying to get my mind right, and I just shout it
4 out to God, because before this situation I was not a God
5 loving man, but it opened up my eyes, and I had to realize
6 there was a better purpose in life, and -- because I was
7 slowly slipping down after the accident, and I went and saw --
8 saw a therapist, and I saw a therapist at least four or five
9 times, and it really wasn't doing it for me, and then that's
10 when I started to go to Solid Rock Ministries, right there
11 around the corner from my house, and at first I wasn't a firm
12 believer. I just kept going and going, and then all of a
13 sudden I could see certain changes in my life, to where I
14 wasn't a hundred percent depressed every day, and that I could
15 actually get out of bed and move forward, but there's still a
16 heavy weight that is pulling me down, and I'll never get over
17 it, Your Honor. It's driven deep in down to me, and I don't
18 know what else to say, to do anything to correct this
19 situation. There is nothing I can do. I know I made a
20 horrible mistake. That is on me, and that's something I'll
21 have to deal with God with. I know I have to pay for that.

22 I don't know what else to do. I just keep trying to
23 move forward and doing what's possible, Your Honor. My heart
24 goes out to their families, to all the pain to my family. I
25 never meant to hurt anyone in this manner, especially right

1 here, my own grandmother and Mom cry, my grandpa not being
2 around.

3 I'm sorry. And my brother, my brother is my backbone.
4 If he wasn't here I don't know where I'd be. I'm sorry, Your
5 Honor. My emotions have taken control. I'm sorry. All this
6 I'm just saying that I repent, and repent, and repent. I'm
7 responsible for my actions, yes. I wish there was some type
8 of thing I could take it back and give my life for hers, but
9 there's nothing I can do to bring her back.

10 I'm sorry, Your Honor.

11 COURT: Thank you. I've been doing this for over
12 twenty years, and these are the most difficult of cases. A
13 tragic event affects -- has a ripple effect that really
14 ripples on forever, through generations, unfortunately, when
15 someone is the victim, and when someone is the perpetrator.

16 In this particular case, Mr. Gratto, I -- it appears to
17 me that you are truly remorseful, and truly repentant. I have
18 seen many, many of these, and I think I'm a pretty good judge
19 of that at this stage of my history.

20 I've taken into consideration that you have no prior
21 record, I've taken into consideration that whatever sentence
22 you receive you have to serve at least eighty-five percent of
23 that, and that as a violent offender you will be restricted to
24 certain opportunities that non-violent offenders are allowed
25 to enjoy, I've taken into consideration, with heavy heart, the

1 victims' situation. It's hard to imagine. My parents died of
2 natural causes. It's hard to imagine that instant when
3 someone knows that someone else, through illegal action and, I
4 hate to say it like this, but somewhat infantile action, takes
5 someone's life, so I've tried to balance all these things. My
6 job, part of my job, as we hear so often, is justice tempered
7 with mercy. It's an easy thing to say, but it's awful hard to
8 do.

9 I've read the letters, I've heard from everyone, and I
10 have scratched my head mentally, not physically, in trying to
11 fashion what is an appropriate sentence that does justice, and
12 in this case, is tempered, to some degree, with mercy, mainly
13 because I do see true repentance, and true remorse. That
14 doesn't heal the wounds, doesn't bring back anyone that's not
15 with us anymore, but I do have to, and do take that in
16 consideration.

17 The sentence on all three of these - and I'm only going
18 to give him credit for the five days he served in jail, I'm
19 not giving credit for the two years street-time, as some
20 people call it, while he was out on bond. The sentence on all
21 these are all to run concurrent. They are for fifteen years
22 each.

23 Thank you.

24 MR. HILLIARD: Thank you, Your Honor.

25 MR. RICHARDSON: Thank you, Your Honor.

1 COURT: Mr. Richardson, my law clerk has checked, and
2 the Leaving the Scene of an Accident is a violent offense.

3 MR. RICHARDSON: Okay.

4 COURT: So I'm going to mark that ---

5 MR. RICHARDSON: I knew it was a no-parole, Your Honor.
6 They ---

7 COURT: Well, there was another violent offense, and I
8 did explain what that was, but just so the paperwork will be
9 right I'm going to make sure that's accurately reflected.

10 MR. RICHARDSON: Yes sir, Your Honor.

11 COURT: Thank you all. We'll be at ease.

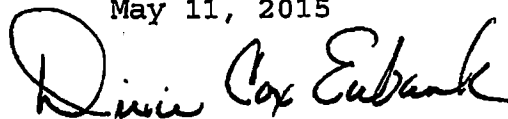
12 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
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C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the GUILTY PLEA of the captioned case, relative to appeal, in the COURT OF GENERAL SESSIONS for HORRY COUNTY, SOUTH CAROLINA, on the 13th day of April, 2015.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

May 11, 2015


DIXIE COX EUBANK

CIRCUIT COURT REPORTER

FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

GABRIEL LEE GRATTO, SCDC # 363659,
Applicant,

v.

STATE OF SOUTH CAROLINA
Respondent.

IN THE COURT OF COMMON PLEAS

2015-CP-

216 5563

APPLICATION FOR
POST-CONVICTION RELIEF

1. Place of Detention: Kirkland Correctional Institution.
2. Name and location of Court which imposed sentence: Horry County Court of General Sessions, Horry County Courthouse, Conway, South Carolina.
3. Name(s) of co-defendant(s): n/a.
4. The indictment number or numbers upon which and the offense or offenses for which sentence was imposed:
 - a. 2015-GS-26-03810 Hit and Run.
 - b. 2015-GS-26-01310 Felony DUI resulting in Great Bodily Injury.
 - c. 2015-GS-26-01342 Felony DUI resulting in Death.
5. The date upon which sentence was imposed and the terms of the sentence:
 - a. April 13, 2015 15 years concurrent for all charges.
6. A finding of guilty was made after a plea of guilty.
7. Did you appeal the judgment of conviction or the imposition of sentence? No.
8. If you answered "yes" to (6), list
 - a. The name of each Court to which you appealed:
 - i. N/A.
 - b. The result in each such Court to which you appealed:
 - i. N/A.
 - c. The date of each such result:
 - i. N/A.
 - d. If known, the citations of any written opinion or orders entered pursuant to such results:
 - i. N/A.
9. If you answered "no" to (7), state your reasons for not so appealing: Trial counsel failed to file Notice of Appeal.

HORRY COUNTY
2015 JUL 23 AM 9:18
MELBA J. BROWN, CLERK OF COURT

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

- a. Ineffective assistance of counsel;
- b. Failure to investigate by trial counsel;
- c. Failure of counsel to advise the Applicant of his constitutional rights including but not limited to his right to Appeal;
- d. Failure of counsel to file Notice of Appeal.

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

- a. Applicant reserves the right to Amend this Application with the specific facts underlying each allegation for post-conviction relief;
- b. Counsel failed to file Notice of Appeal.

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 petitions in State or Federal Courts for habeas corpus or post-conviction relief? No.
- c. Any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in # 7? No.
- d. Any other petitions, motions or applications in this or any other Court? No.

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

- a. The specific nature thereof: n/a.
- b. The name and location of the Court in which each was filed: n/a.
- c. The disposition thereof: n/a.
- d. The date of each such disposition: n/a.
- e. If known, citations of any written opinions or orders entered pursuant to each such disposition: n/a.

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: n/a.
- b. The proceedings in which each ground was raised: n/a.

16. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented: All issues in Section (9) are being presented for the first time, in part due to the fact that trial counsel failed to initiate a direct appeal.

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

- a. Your arraignment and plea? Yes.
- b. Your trial, if any? n/a.
- c. Your sentencing? Yes.
- d. Your appeal, if any, from the judgment of conviction or imposition of sentence? n/a.
- e. Preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction which you filed? n/a.

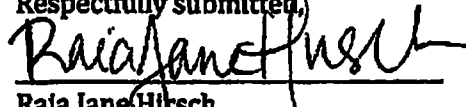
18. If you answered "yes" to one or more parts of (17), list:

- a. The name and address of each attorney who represented you:
 - i. John Hilliard, III Esquire, Hilliard Law Firm LLC, Post Office Box 658, Georgetown South Carolina 29442-0658.
- b. The proceedings at which each such attorney represented you:
 - i. Plea.

19. State clearly the relief you seek in filing this application: Conviction reversed with remand for new trial, or if appropriate, remand for resentencing.

20. Are you now under sentence from any other court that you have challenged? No.

Respectfully submitted,



Raia Jane Hirsch
Attorney for Plaintiff

1720 Main Street, Suite 301
Columbia, SC 29201
Phone (803) 929-0770
raia@rjhirschlaw.com



Kristy Goldberg
Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.
1720 Main Street, Suite 303
Columbia, SC 29201
Phone (803) 667-6633
kristy@kristygoldbergllaw.com

Columbia, South Carolina

This 21st day of July, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

GABRIEL LEE GRATTO, SCDC # 363659,)
Applicant,)

v.)

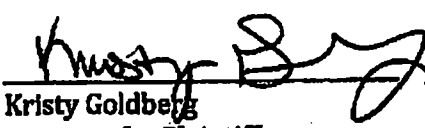
STATE OF SOUTH CAROLINA)
Respondent.)

IN THE COURT OF COMMON PLEAS

2015-CP- *26 5563*

CERTIFICATE OF SERVICE

I certify that on this date I served the Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this Notice to the State Attorney General's Office, by delivering a copy of this motion via U.S. Mail said copy to the Office of the Attorney General, Post Office Box 11549, Columbia South Carolina 29211.


Kristy Goldberg
Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.
1720 Main Street, Suite 303
Columbia, SC 29201
Phone (803) 667-6633
kristy@kristygoldberglaw.com

FILED
CLERK OF COURT

2015 JUL 23 AM 9:18

HORRY COUNTY

Columbia, South Carolina

This *21st* day of *July* 2015

LAW OFFICE OF
Kristy Grafton Goldberg, LLC
 ATTORNEY AT LAW

20 15 CP26 3363

July 21, 2015

Clerk of Court
 Horry County Clerk of Court
 Horry County Government & Justice Center
 1301 Second Avenue
 Conway, South Carolina 29526

HORRY COUNTY
 2015 JUL 23 AM 9:45
 MELBA CLERK OF COURT

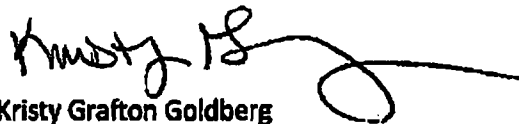
Re: *Gabriel Lee Gratto, SCDC # 363659 vs. State of South Carolina*

Madam Clerk,

Please find enclosed two copies of an Application for Post-Conviction Relief on behalf of Gabriel Lee Gratto SCDC # 363659 along with a Certificate of Service. Please file the Application, stamp the copy, and return the copy to me in the enclosed, self-addressed stamped envelope.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,


 Kristy Grafton Goldberg

Enclosure

CC: Gabriel Lee Gratto, SCDC # 363659
 Kirkland Correctional Institution
 4344 Broad River Road
 Columbia, South Carolina 29210

Office of the Attorney General
 Post Office Box 11549
 Columbia, South Carolina 29211-1549

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
	)	2015-CP-26-05563
GABRIEL LEE GRATTO, SCDC # 363659,	)	
Applicant,	)	
	)	AMENDED APPLICATION FOR
v.	)	POST-CONVICTION RELIEF
	)	
STATE OF SOUTH CAROLINA	)	
Respondent.	)	

1. Place of Detention: Kirkland Correctional Institution.
2. Name and location of Court which imposed sentence: Horry County Court of General Sessions, Horry County Courthouse, Conway, South Carolina.
3. Name(s) of co-defendant(s): n/a.
4. The indictment number or numbers upon which and the offense or offenses for which sentence was imposed:
 - a. 2015-GS-26-03810 Hit and Run.
 - b. 2015-GS-26-01310 Felony DUI resulting in Great Bodily Injury.
 - c. 2015-GS-26-01342 Felony DUI resulting in Death.
5. The date upon which sentence was imposed and the terms of the sentence:
 - a. April 13, 2015 15 years concurrent for all charges.
6. A finding of guilty was made after a plea of guilty.
7. Did you appeal the judgment of conviction or the imposition of sentence? No.
8. If you answered "yes" to (6), list
 - a. The name of each Court to which you appealed:
 - i. N/A.
 - b. The result in each such Court to which you appealed:
 - i. N/A.
 - c. The date of each such result:
 - i. N/A.
 - d. If known, the citations of any written opinion or orders entered pursuant to such results:
 - i. N/A.
9. If you answered "no" to (7), state your reasons for not so appealing: Trial counsel failed to file Notice of Appeal.

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

- a. Ineffective assistance of counsel for failure to vigorously defend Applicant and fully advise him regarding the state's evidence, potential defenses and mitigating information that could be presented during a trial or plea;
- b. Ineffective assistance of counsel for failure to have the Applicant evaluated;
- c. Ineffective assistance of counsel for failure to vigorously defend Applicant by unreasonably advising him to make statements against his own interest prior to disposition of the case, thereby preventing the Applicant from having a meaningful option of contesting the issues at trial;
- d. Ineffective assistance of counsel for failure to keep the applicant fully informed regarding case status, his constitutional rights, and potential sentence and sentencing consequences, resulting in an unknowing and involuntary guilty plea on the part of the Applicant;
- e. Failure of counsel to file Notice of Appeal.

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

- a. Counsel failed to explain and advise the Applicant regarding his options including the benefits and consequences of presenting issues related to the Applicant's car, the toxicology reports, and other mitigating information; failure to present to the Court documentation regarding home detention;
- b. As described above;
- c. Counsel was unreasonable in interjecting himself into the related civil matter and advising the Applicant to make statements and provide documentation related to that case which provided him no benefit but was used against him in the criminal matter;
- d. As described above;
- e. As described above.
- f. Applicant reserves the right to Amend this Application with the specific facts underlying each allegation for post-conviction relief

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

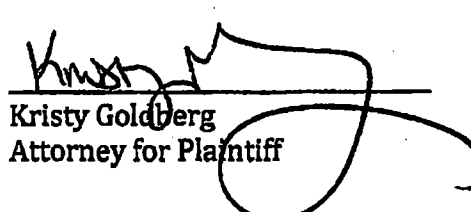
- a. Any petition in a State Court under South Carolina Law? No.
- b. Any petitions in State or Federal Courts for habeas corpus or post-conviction relief? No.
- c. Any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in # 7? No.
- d. Any other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

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

- a. The specific nature thereof: n/a.
- b. The name and location of the Court in which each was filed: n/a.
- c. The disposition thereof: n/a.
- d. The date of each such disposition: n/a.

- e. If known, citations of any written opinions or orders entered pursuant to each such disposition: n/a.
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:
- Which grounds have been presented: n/a.
 - The proceedings in which each ground was raised: n/a.
16. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented: All issues in Section (9) are being presented for the first time, in part due to the fact that trial counsel failed to initiate a direct appeal.
17. Were you previously represented by an attorney at any time during the course of:
- Your arraignment and plea? Yes.
 - Your trial, if any? n/a.
 - Your sentencing? Yes.
 - Your appeal, if any, from the judgment of conviction or imposition of sentence? n/a.
 - Preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction which you filed? n/a.
18. If you answered "yes" to one or more parts of (17), list:
- The name and address of each attorney who represented you:
 - John Hilliard, III Esquire, Hilliard Law Firm LLC, Post Office Box 658, Georgetown South Carolina 29442-0658.
 - The proceedings at which each such attorney represented you:
 - Plea.
19. State clearly the relief you seek in filing this application: Conviction reversed with remand for new trial, or if appropriate, remand for resentencing.
20. Are you now under sentence from any other court that you have challenged? No.

Respectfully submitted,


 Kristy Goldberg
 Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.
1720 Main Street, Suite 303
Columbia, SC 29201
Phone (803) 667-6633
kristy@kristygoldberglaw.com

Columbia, South Carolina

This 29th day of August, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
)

IN THE COURT OF COMMON PLEAS
OF THE FIFTEENTH JUDICIAL CIRCUIT

Gabriell L. Gratto,
S.C.D.C. No. 363659,

Case No.: 2015-CP-26-5563

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

In response to the Applicant's post-conviction relief application filed July 23, 2015, the Respondent would respectfully show this Court:

I.

Applicant is presently incarcerated with the South Carolina Department of Corrections pursuant to the Horry County Clerk of Court's orders of commitment. The Horry County Grand Jury indicted Applicant at the August 2013 term for leaving the scene of an accident (2013-GS-26-3810). The Horry County Grand Jury also indicted Applicant at the April 2015 term for felony DUI resulting in great bodily injury (2015-GS-26-1310) and felony DUI resulting in death (2015-GS-1342). John M. Hilliard, III, Esquire, represented Applicant.

On April 13, 2015, Applicant pled guilty to all charges as indicted. The Honorable John C. Hayes, III sentenced Applicant to fifteen (15) years imprisonment for each charge. The sentences were to run concurrently. Applicant did not appeal his conviction or sentence.

II.

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

unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Failure to investigate
 - b. Failure to advise Applicant of his right to appeal and other constitutional rights
2. Failure to File a Direct Appeal

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRPC.

Attached to this return and incorporated herein are the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript and the records of this action. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent asserts Applicant's allegation of ineffective assistance of plea counsel is without merit. 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, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show 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, 59 (1985).

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

IV.

Respondent submits that any allegation that trial counsel failed to file a direct appeal following Applicant's guilty plea is without merit. Counsel has a constitutionally imposed duty to consult a defendant about an appeal only when there is reason to think either that a rational defendant would want to appeal or that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. In making this determination, courts must take into account all the information counsel knew or should have known. One highly relevant factor will be whether the conviction follows a trial or a guilty plea, because a plea both reduces the scope of potentially appealable issues and may indicate that the defendant seeks an end to judicial proceedings. Even then, a court must consider such factors as whether the defendant received the sentence bargained for and whether the plea expressly reserved or waived some or all appeal rights. Roe v. Flores-Ortega, 120 S.Ct. 1029, 528 U.S. 470 (2000). The Respondent submits that the Applicant cannot satisfy the requirements set forth in the Roe test. However, the allegation of counsel's failure to advise the Applicant regarding the possibility of an appeal probably raises questions of fact that cannot be conclusively refuted by the record. As such, Respondent requests an evidentiary hearing to fully resolve this issue.

[Remainder of page left intentionally blank]

V.

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

VI.

WHEREFORE, having made its Return, Respondent requests that a hearing be held and counsel appointed to represent Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

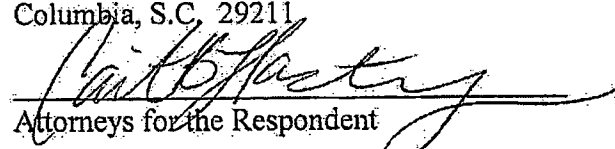
ROBERT BULCHOZ
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

CAITLIN BAZAN HASTINGS
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondent

December 6th, 2016.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

GABRIELL L. GRATTO, 363659,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

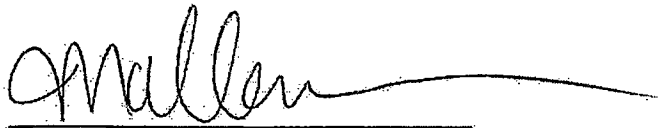
2015-CP-26-5536

AFFIDAVIT OF SERVICE BY MAIL

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

Mrs. Kristy G. Goldberg, Esquire
Law Office of Kristy Goldberg, LLC
1720 Main Street, Suite 303
Columbia, SC 29201

DATED this 6th day of December, 2016.



Mallory Morris, Legal Assistant
 For Respondent

1

2 State of South Carolina) Court of Common Pleas
3 County of Horry) 2015-CP-26-05563

4

5

6 Gabriel Lee Gratto)

7

8 vs.)

9

10 State of South Carolina)

11

12

November 27, 2017
Conway, South Carolina

13

14

15 BEFORE:

16

17 Honorable William H. Seals, Jr., Judge.

18

19 APPEARANCES:

20

Kristy G. Goldberg, Esq.
Attorney for the Applicant

21

Johnny E. James, Jr., Esq.
Attorney for the State

22

23

24

25

Teresa J. F. Bautz, RPR
Official Court Reporter

26

27

28

29

E X H I B I T S

NO.	DESCRIPTION	ID	EV
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4	No exhibits submitted.		
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23	Exhibits retained by Clerk of Court.		
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1 (The hearing commenced at approximately
2 11:10 a.m.)

3 MR. JAMES: If it may please the Court, the State
4 calls the matter of Gabriel Lee Gratto versus State of
5 South Carolina. That is Docket No. 2015-CP-26-5563.
6 Mr. Gratto is present here today in the courtroom and
7 is represented by Ms. Kristy G. Goldberg, Esquire.

8 Mr. Gratto was indicted in August of 2013 for
9 leaving the scene of an accident. And Mr. Gratto was
10 additionally indicted in April 2015 for felony DUI
11 resulting in great bodily injury and felony DUI
12 resulting in death. Mr. John M. Hilliard, III, Esquire
13 represented Mr. Gratto on those charges.

14 On April 13, 2015, Mr. Gratto pled guilty to all
15 of those charges as indicted. The Honorable John C.
16 Hayes, III, sentenced Mr. Gratto to 15 years
17 incarceration for each charge. Mr. Gratto thereafter
18 filed this application for post conviction relief on
19 July 23rd, 2015.

20 Before we proceed, Your Honor, shortly before this
21 hearing a few days ago, I received an e-mail from
22 opposing counsel to indicate that Mr. Gratto does not
23 want to ask for a new trial but only wishes to seek a
24 new sentencing hearing. Your Honor, the State's
25 position with respect to that is, one, to ask for a

1 colloquy between Your Honor and opposing counsel and
2 Mr. Gratto to confirm that that is in fact what he
3 wishes to seek. And, secondly, if he is seeking only
4 resentencing, that that relief is not available in a
5 post conviction relief action typically.

6 And, Your Honor, I have a number of cases to hand
7 up for your consideration that fall on both sides of
8 that issue but primarily the State is relying on Smith
9 v. State, and that is 413 South Carolina 194, 775 S.E.
10 2d 696. That is a 2015 case out of our Supreme Court
11 which states in no uncertain terms: We now clarify
12 that the proper remedy in a post conviction relief
13 action is a new trial.

14 Additionally, Your Honor, I am handing up to you
15 for your consideration the cases of Gilstrap versus
16 State, Thompson versus State, and Davy versus State, if
17 I may approach.

18 THE COURT: You may. Thank you.

19 MR. JAMES: If Mr. Gratto is not seeking any
20 relief that is available to him, then there is no point
21 in going forward with an entire post conviction relief
22 hearing. And in that instance, the State would
23 respectfully move to dismiss the matter.

24 THE COURT: All right.

25 MR. JAMES: And I give the floor over to

1 Ms. Goldberg.

2 THE COURT: Ms. Goldberg.

3 MS. GOLDBERG: Thank you, Your Honor, may it
4 please the Court, couple of housekeeping matters first.
5 I am sitting here today with my client along with my
6 co-counsel, Raia Hirsch. She is an attorney who's
7 representing Mr. Gratto as well, she'll be
8 participating in the hearing. The application was
9 filed under my name which is why the State had me as
10 counsel of record. But just so the Court is clear, we
11 both represent our client.

12 An amended application was filed in this matter,
13 most recently on August 31st, 2017. Does Your Honor
14 have a copy of that amended application?

15 THE COURT: I do.

16 MS. GOLDBERG: Very good. That was filed under
17 the belief that we would be going forward as a normal
18 PCR. After speaking with our client, we have decided
19 officially to withdraw allegations B and D altogether.

20 And then as to the remaining allegations,
21 essentially, amend them to the context that we are not
22 alleging that our client wanted to pursue a trial in
23 this case. Our argument is that our client obviously
24 has a constitutional right to effective assistance of
25 counsel regarding the disposition of his charges but

1 also at the sentencing hearing as well.

2 My client has allegations that certain information
3 could have or should have been presented at the plea
4 and sentencing hearing that was not presented, not
5 considered by the judge, not within his discretion.
6 There was also information presented that should not
7 have been. It all goes to the sentencing hearing
8 itself and the mitigation. The argument is that had
9 this information been presented, there is a likelihood
10 that the ultimate outcome could have been different,
11 and therefore he was prejudiced.

12 Now, Your Honor, I understand the State's
13 position. I know he relies, as he just stated, mostly
14 on Smith v. State. And Smith v. State is not similar
15 to this. And I'm going to quote from Smith v. State.
16 "Although Smith's attorney was deficient for failing to
17 object at the sentencing hearing, the underlying
18 question in that case was whether Smith would have
19 entered into the plea agreement had he known the State
20 was going to breach it."

21 So Smith and the other cases he cites to go
22 towards an argument that the plea itself is involuntary
23 because of certain terms and conditions that were
24 relied on. A lot of these cases do involve the
25 existence or nonexistence of a plea agreement or an

1 understanding as to what the State would be offering or
2 suggesting, that kind of thing. And the argument in
3 most of these cases is that had I known that the State
4 was going to act otherwise, I wouldn't have pled guilty
5 at all.

6 That's not the argument that Mr. Gratto is
7 bringing before the Court. His argument is that he
8 would have and was at all times going to plead;
9 however, the mitigation in this case was insufficient
10 by trial counsel, and that that insufficiency
11 prejudiced him.

12 Your Honor, there is no case law I know that says
13 that cannot be argued in post conviction relief. In
14 fact, there are cases that state specifically -- and
15 I'm citing Bone v. State, which I apologize, my printer
16 at home is not working and I do not have a copy of.
17 But Bone v. State is 388 South Carolina 272, 2010. I
18 did send the cite to Attorney General days prior, so he
19 was on notice.

20 But it specifically says that our courts have held
21 that post conviction relief may be tailored to remedy
22 the precise prejudice resulting from trial counsel's
23 deficient performance. And there is a whole line of
24 cases that do that, including Smith at the appellate
25 level and some of the cases that Smith cites. So it

1 really depends on what is being argued as to what the
2 Court has the authority or ability to do.

3 There are cases like Roland v. State which is a
4 2009 case 484 South Carolina 409, where the Court
5 basically said it was so clear during the plea colloquy
6 that the Defendant wanted to withdraw that defense
7 counsel should have asked, should have moved for him to
8 withdraw his plea.

9 So they remanded for sentencing so that they could
10 ask the Court to withdraw the plea, but still giving
11 the Court discretion whether to do that or not. So I
12 would object to the State's characterization that this
13 is an impossible remedy. I do believe it's within the
14 Court's discretion.

15 THE COURT: I think if you won on your
16 application, you would simply be starting over. You
17 would have to plead all over again if you wanted to, or
18 you would have a trial all over again, is where I'm
19 coming from, so...

20 MS. GOLDBERG: Yes, Your Honor. So that's what we
21 need to make clear going forward here.

22 THE COURT: That's great.

23 MS. GOLDBERG: So my argument is that there is
24 case law that would establish that it is within the
25 Court's discretion to just remand for sentencing rather

1 than remand for --

2 THE COURT: You know, if I had that before me all
3 the time and every judge had that before me every time
4 a PCR came up, we'd be inundated with an unbelievable
5 amount of work.

6 MS. GOLDBERG: I understand.

7 THE COURT: You know, but he does have position to
8 start over if I grant the application.

9 MS. GOLDBERG: Well, and Your Honor, but --

10 THE COURT: Which in essence puts him right back
11 to where he can do his plea again and present all of
12 that mitigating information.

13 MS. GOLDBERG: So the way we can go forward with
14 this, and you know, I do take the position that the
15 case law does support my argument that that is within
16 an option. Now, obviously whether it is or not, you
17 still may not grant it. So Your Honor has several
18 options. Obviously you can say that it is an option
19 that you have and you still -- you grant it or you
20 still deny it or it's not an option at all.

21 But if Your Honor believes that that is not an
22 option at all, we should confer with our client
23 briefly, see if he does want to go forward as a whole.
24 Because if he does, we can present that testimony
25 today. If he does not, I would suggest that we still

1 present our testimony and create a record to preserve
2 the issue.

3 THE COURT: I'm either going to grant the
4 application or deny it.

5 MS. GOLDBERG: Okay.

6 THE COURT: So if you want to talk to him --

7 MS. GOLDBERG: Yes, Your Honor.

8 THE COURT: And that depends on how you want to
9 go, I'm fine.

10 (Discussion off the record.)

11 MS. GOLDBERG: I would feel most comfortable if we
12 went ahead and let the next case go ahead of ours and
13 give him that brief time to think. And then we would
14 be ready regardless one way or another. We're not
15 asking for a continuance is what I'm saying. We would
16 go forward one way or another today.

17 MR. JAMES: Your Honor, at this present time, the
18 final matter that we had for today, Shannon Cooper, has
19 been continued by this Court. My understanding is that
20 the matter of Zachary Bullock is we're waiting on a
21 witness to appear. I don't see Ms. Lacy Thompson in
22 the courtroom at this moment, so I don't think --

23 THE COURT: Why don't we take a 15-minute break.

24 MS. GOLDBERG: That would be fine.

25 THE COURT: Just think about it, talk about it.

1 MS. GOLDBERG: Thank you, sir.

2 THE COURT: I'll come back and hear from you.

3 MS. GOLDBERG: Thank you, Your Honor.

4 (WHEREUPON, a brief recess was taken at
5 11:22 a.m.)

6 THE COURT: Thank you, everybody-have a seat.

7 We're back on the record with Gratto. Is that correct?

8 MS. GOLDBERG: Yes, Your Honor.

9 THE COURT: All right. I'm ready when you are.

10 MS. GOLDBERG: Your Honor, during the break, I
11 guess just so that the record's clear, during the
12 break -- or prior to the break, the State had stated
13 their desire to make a motion to dismiss because the
14 Applicant was only asking for a remedy that the State
15 believes is not cognizable in PCR court.

16 The Defense is objecting to that. I've cited Bone
17 v. State, 388 South Carolina 272, and Roland v. State,
18 484 South Carolina 409. I'll also cite Scott v. State,
19 381 South Carolina 601, and Jordan v. State, 297 South
20 Carolina 52. All of those cites were provided to
21 opposing counsel prior to today.

22 We have spoken during the break with our client,
23 told him what his options are, understanding that his
24 options today are essentially if he goes forward and
25 he's successful, the only remedy that this Court is

1 inclined to give him is a new trial. He is very
2 adamant that he does not --

3 THE COURT: Well, he would start over.

4 MS. GOLDBERG: He would start over.

5 THE COURT: He could plead or maybe plead or maybe
6 have a new trial. He would simply start over.

7 MS. GOLDBERG: A full remand of his case.

8 THE COURT: A full remand of his case back from
9 the beginning.

10 MS. GOLDBERG: He has very clearly stated that he
11 does not want that.

12 THE COURT: And then he could plead if he wanted
13 to perhaps.

14 MS. GOLDBERG: He could.

15 THE COURT: And then he could have all of this
16 information submitted to the Court.

17 MS. GOLDBERG: Yes, Your Honor.

18 THE COURT: From a good lawyer and have another
19 resentencing.

20 MS. GOLDBERG: And he has very clearly stated that
21 he does not want a full remand of this case. All he
22 wants is a resentencing.

23 THE COURT: But, I mean, are you saying that any
24 post conviction relief applicant can come before the
25 Court and ask to be resentenced?

1 MS. GOLDBERG: I am -- what I am saying is that if
2 the allegations are specific to errors in sentencing,
3 then they can ask for a new sentencing hearing. They
4 can ask the Court to undo the errors that were made.

5 THE COURT: So they can either get a granting of
6 their PCR application or denial, or a granting of a
7 resentencing?

8 MS. GOLDBERG: Depending on the allegations --

9 THE COURT: So there's three alternatives that
10 you're saying are applicable in a PCR application?

11 MS. GOLDBERG: Yes, Your -- well --

12 THE COURT: And I'm just saying this to keep the
13 record clear as to where we're coming from.

14 MS. GOLDBERG: And thank you because I appreciate
15 that. Well, as I said before, the courts have said
16 that the relief can be tailored to remedy the precise
17 prejudice resulting. So I think that every case is --
18 for example, one of the cases, this is Scott v. State,
19 the Defendant was sentenced as a second offender in a
20 drug case, it's a second offense, the sentencing range.

21 The Court went back and looked, and I think they
22 had determined that the first drug offense was
23 uncounseled. So he should have been sentenced as a
24 first time offender.

25 THE COURT: Did they grant the application?

1 MS. GOLDBERG: They granted the application and
2 remanded it back for resentencing as a first offender.
3 So he had a whole new resentencing hearing with a
4 different sentencing scheme, I guess, if that makes
5 sense.

6 THE COURT: And he won his application. He was
7 granted post conviction relief?

8 MS. GOLDBERG: He was granted the new sentencing
9 hearing, yes, Your Honor. He won that through a PCR.

10 THE COURT: What's the difference in that and me
11 granting his application?

12 MS. GOLDBERG: Well, you're talking about in this
13 case or the one I read?

14 THE COURT: No. If I grant him this application,
15 then he starts over and maybe have a full sentencing
16 hearing again.

17 MS. GOLDBERG: Well, Your Honor, in this
18 particular scenario, if he were to start over again he
19 would be starting over free and clear without any
20 negotiations. Not that there were negotiations in this
21 case, but if there were any outstanding potential
22 charges that the State could have indicted and
23 forewent, they could do that.

24 THE COURT: So he wants to go forward with the
25 post conviction relief application and have it tailored

1 to whereby it's granted, but he has no risk as well?

2 MS. GOLDBERG: Now, technically speaking, at a
3 resentencing I don't think anything would bind a judge
4 to give him the same sentence.

5 THE COURT: Well, limited risk.

6 MS. GOLDBERG: But there would be limited risk as
7 he would at all times be still admitting guilt, so
8 there wouldn't be any negative connotation in that
9 regard. And also, the State wouldn't be free and clear
10 to like, you know, they likely wouldn't be indicting
11 new charges and things like that because there wouldn't
12 be a trial. No one would have to prepare for a trial.

13 THE COURT: Limited risk.

14 MS. GOLDBERG: Right, you're right, that is
15 correct, Your Honor. So that's been our argument what
16 he's entitled to. I would state for the record that we
17 are here today to -- prepared to present testimony.
18 But all of that testimony would only be to information
19 that could have or should have presented in the
20 sentencing hearing or that shouldn't have been
21 presented in the sentencing hearing.

22 We were not going to present any testimony or
23 facts as to his plea being involuntary. So if we're to
24 go forward today with the testimony we have prepared,
25 there would not be a ground for this Court to fully

1 grant the PCR and remand it in full because his plea
2 was voluntary and he's not denying guilt, he's not
3 asserting innocence.

4 So if this Court is inclined to only offer the
5 remedies of full remand, then we have no PCR
6 allegations to -- no testimony to present. But we do
7 object to the State's motion to dismiss, as we do feel
8 he would be -- he is entitled legally to the potential
9 of a resentencing hearing.

10 THE COURT: So you don't want it dismissed?

11 MS. GOLDBERG: Well, I'm objecting on the legal
12 basis as to the State's argument and what I understand
13 the Court's ruling to be.

14 THE COURT: Okay. And I'm a lot of times just
15 thinking out loud. So I'm not necessarily disagreeing
16 with you, but I am thinking out loud.

17 MS. GOLDBERG: Thank you, Your Honor.

18 THE COURT: All right. Go ahead, let me hear from
19 you, Mr. James.

20 MR. JAMES: Your Honor, given that Mr. Gratto
21 firmly insists that he does not challenge his guilt,
22 that he would still plead guilty and that he only seeks
23 a resentencing with, as you described, limited risk,
24 Your Honor, the position of the State is that he's not
25 entitled to that relief. And accordingly, since he

1 fails to seek any relief that is available to him in
2 this court, that there's no sense in going forward.

3 And we motion to dismiss this matter, again,
4 pursuant to cases that we've previously handed up, that
5 is Smith v. State, wherein the Court clarified some of
6 the muddy legal issues and made evident that the proper
7 remedy is a new trial and that the proper remedy for
8 counsel's ineffective assistance is invalidation of the
9 entire agreement, the entire plea process.

10 And, additionally, Your Honor, the State relies on
11 Gilstrap versus State, that is 252 SC 625, which it
12 very simply states that, Your Honor, if the Applicant
13 seeks only relief to which he is not entitled that
14 there is no sense in conducting a full evidentiary
15 hearing and that the matter should be dismissed.

16 THE COURT: All right. I'm going to grant the
17 State's motion. And it seems to me that if what you're
18 asking for becomes applicable and becomes law, that
19 we've opened up a whole other avenue to all of these
20 avenues that everybody that's convicted in South
21 Carolina has.

22 For example, you can appeal the case to the Court
23 of Appeals, then you can take it to the Supreme Court,
24 and then take it to the United States Supreme Court.
25 Then you can file post conviction relief. And then now

1 we're wanting to go one step further and say, not only
2 can the Court grant or deny post conviction relief, but
3 we can do it another avenue through post conviction
4 relief. And you may be right in the long run, but I
5 think from a practical point of view in this state it
6 would be burdensome upon the Court to do that.

7 Because I think if you win your appeal, then we're
8 going to see this beyond comprehension, that's it's
9 already a bogged down judicial system with limited
10 resources anyway, when, if I granted his post
11 conviction relief, he could probably get what he wants
12 anyway, which is what I have a right to do and I know
13 he has a right to it.

14 It is taking some risk off the table for him, but
15 that's a part of the ball game. That's what makes you
16 think, that's what makes you analyze what it is you
17 want to do when you do something, when you go to court,
18 and when you file your post conviction relief
19 application. Those are just my thoughts. Thank y'all.

20 MS. GOLDBERG: Thank you, Your Honor.

21 MR. JAMES: Thank you, Your Honor.

22 THE COURT: You did a good job.

23 MS. GOLDBERG: Thank you.

24 THE COURT: You had a good lawyer this time.

25 (The hearing concluded at approximately

1 11:59 a.m.)
2 (End of Transcript of Record)
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1 CERTIFICATE OF REPORTER

2

3 STATE OF SOUTH CAROLINA)
4 COUNTY OF HORRY)

5

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7 I, TERESA J.F. BAUTZ, Official Court
8 Reporter for the Fifteenth Judicial Circuit of the
9 State of South Carolina, do hereby certify that the
10 foregoing is a true, accurate and complete Transcript
11 of Record of the proceedings had and evidence
12 introduced in the trial of the captioned case, relative
13 to appeal, in the Court of Common Pleas for Horry
14 County, South Carolina, on the 24th day of July, 2018.

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S/Teresa J. F. Bautz

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TERESA J.F. BAUTZ, RPR
Official Court Reporter

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STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Gabriel Lee Gratto,
S.C.D.C. No. 363659,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT

) Case No.: 2015-CP-26-05563

) ORDER OF DISMISSAL
) (Motion to Dismiss Granted)

HORRY COUNTY
2018 FEB -5 PM 1:01
RENEE M. CLARK
CLERK OF COURT
HORRY COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed by Gabriel Lee Gratto ("Applicant") on July 23, 2015. Respondent made its return on or about December 6, 2016. The Court convened an evidentiary hearing into the matter on Monday, November 27, 2017, at the Horry County Courthouse in Conway, South Carolina.

Applicant was present at the hearing and represented by Kristy G. Goldberg, Esquire. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

No testimony was taken at the hearing. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Horry County Clerk of Court regarding the subject convictions, the pleadings, and copies of caselaw provided by the parties in arguing Respondent's motion to dismiss. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the August 2013 term of the Horry County Grand Jury for felony DUI resulting in death (2013-GS-26-03809),

leaving the scene of an accident (2013-GS-26-03810). Applicant was further indicted at the April 2015 term for felony DUI resulting in great bodily injury (2015-GS-26-01310), and a second count of felony DUI resulting in death (2015-GS-26-01342). John M. Hilliard, III, Esq. ("Counsel") represented Applicant, and Bradley C. Richardson, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On April 13, 2015, the State dismissed *nolle prosequi* indictment -03809, and Applicant pled guilty as indicted to the remaining three charges. The Honorable John C. Hayes, III sentenced Applicant to imprisonment for concurrent terms of 15 years on each charge. Applicant did not appeal his plea or sentence.

Present Application

In his post-conviction relief application, as amended by and through counsel on August 31, 2017, Applicant alleges he is being held unlawfully for the following reasons:

1. "Ineffective assistance of counsel for failure to vigorously defend Applicant and fully advise him regarding the state's evidence, potential defenses and mitigating information that could be presented during a trial or plea;"
 - a. "Counsel failed to explain and advise the Applicant regarding his options including the benefits and consequences of presenting issues related to the Applicant's car, the toxicology reports, and other mitigating information; failure to present to the Court documentation regarding home detention;"
2. "Ineffective assistance of counsel for failure to have the Applicant evaluated;"
 - a. "As described above;"
3. "Ineffective assistance of counsel for failure to vigorously defend Applicant by unreasonably advising him to make statements against his own interest prior to disposition of the case, thereby preventing the Applicant from having a meaningful option of contesting the issues at trial;"
 - a. "Counsel was unreasonable in interjecting himself into the related civil matter and advising the Applicant to make statements and provide documentation related to that case which provided him no benefit but was used against him in the criminal matter;"
4. "Ineffective assistance of counsel for failure to to [sic] keep the applicant fully informed regarding case status, his constitutional rights, and potential sentence and sentencing consequences, resulting in an unknowing and involuntary guilty plea on the part of the applicant;"

- a. "As described above,"
- 5. "Failure of counsel to file Notice of Appeal."
 - a. "As described above."

Applicant requested relief as follows:

- "Conviction reversed with remand for new trial, or if appropriate, remand for resentencing."

At the evidentiary hearing, Applicant withdrew the second and fourth allegations restated above.

Furthermore, Applicant firmly indicated that the only relief in which he was interested was a remand for resentencing.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Respondent's Motion to Dismiss

At the outset of the evidentiary hearing, upon learning Applicant wished only to seek resentencing, Respondent requested this Court dismiss the application. Counsel for the Applicant informed the Court that they were ready to proceed that day with testimony and evidence, but that testimony and evidence would only go towards a showing that counsel was ineffective in mitigating the Applicant's case during sentencing. This Court determined it was appropriate to rule on the merits regarding the legal availability of that option, the request for resentencing only, and proceeded without testimony.

Generally speaking, where a PCR Court finds a defect in the original proceedings, the appropriate relief would be vacation of the conviction and a new trial on the original indictments. Gilstrap v. State, 252 S.C. 625, 168 S.E.2d 88 (1969); see also Grant v. MacDougall, 244 S.C. 387, 137 S.E.2d 270, 272 (1964) (relief of absolute release not available); Reed v. Becka,

333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999) (no constitutional right to plea bargain). Where an applicant seeks only relief to which he or she is not entitled, "it is not incumbent upon [the] court to pass upon what relief, if any, he [or she] might, perchance, be entitled to." Young v. State, 250 S.C. 476, 479, 158 S.E.2d 764, 765 (1968).

Applicant argues that Counsel was deficient in representing him in preparation for and during the mitigation phase of his guilty plea proceeding. Upon this narrow allegation of ineffective assistance of counsel, Applicant firmly indicates that he does not wish to withdraw his guilty plea, but rather asks this court to remand his plea for resentencing *only*, with a limitation that his new sentence not exceed his current sentence. Applicant argues that more recent precedents provide the Court substantially greater flexibility in determining the appropriate relief and that, since the only allegations are against Counsel's performance in mitigation, the appropriate relief should be narrowly tailored to resentencing. See Boan v. State, 388 S.C. 272, 277, 695 S.E.2d 850, 852 (2010) (citing Rolen v. State, 384 S.C. 409, 414-15, 683 S.E.2d 471, 474 (2009)) ("This Court has previously held that post-conviction relief may be tailored to remedy the precise prejudice resulting from trial counsel's deficient performance[.]" remanding for resentencing where the sentence written outside of the defendant's presence did not match the sentence orally pronounced); see also Jordan v. State, 297 S.C. 52, 374 S.E.2d 683 (1988) (remanding for resentencing where counsel failed to enforce the plea agreement); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000) (remanding for resentencing where defendant pled with the understanding the State would not recommend the maximum sentence, after which the State recommended the maximum sentence).

Respondent, in support of its motion, argues that the above precedents muddled precisely what relief was available in a post-conviction relief action, were subsequently corrected by the

Supreme Court, and that the only proper remedy potentially available to Applicant is total vacation of the plea and remand for a new trial. See Smith v. State, 413 S.C. 194, 775 S.E.2d 696 (2015). The State argues that in order to show ineffective assistance of counsel in a guilty plea, an 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. See Hill v. Lockhart, 474 U.S. 52, 59 (1985). According to Respondent, since Applicant instead insists that he does not wish to go to trial, but only seeks to achieve a reduction in his sentence, and that he would have pled guilty regardless, there is no purpose to be achieved by further proceedings, and the application should be summarily dismissed. See S.C. Code Ann. § 17-27-70(c) (authorizing the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.").

The Court finds Respondent's argument compelling and agrees with the State's reasoning. There is no question that Applicant pled guilty and would have pled guilty regardless. Applicant does not insist that, but for the deficiency, he would have gone to trial, but rather insists the contrary. As such, Applicant cannot meet his burden under Hill v. Lockhart.

The Court acknowledges that the Supreme Court of South Carolina has remanded cases for resentencing only, as they did in Boan, Rolen, Jordan and Thompson. In each of those cases Applicant's guilty plea was prompted by a plea agreement not properly honored by the State, and not properly enforced by counsel. Where the State entices a defendant to plead guilty by way of an agreement, and where it breaches that agreement, it is not difficult for an applicant to thereafter show that he would not have pled guilty but for that breach. However, the present matter involves no allegation of duplicitous dealing by the State or failure on the part of Counsel

to enforce an agreement—there is no agreement to enforce upon the requested remand. As such, the examples provided by those cases are not analogous to that at hand and are not particularly guiding. The underlying question remains that set forth in Hill and the answer provided by Applicant is that he would not have gone to trial.

This Court and Applicant discussed at the hearing that Applicant seeks relief which presents no risk to him—or “limited” risk, as suggested by Applicant. There can be no doubt that if convicted defendants are presented a vehicle by which they may take a second swing at sentencing, with limited to no risk, they will not fail to pursue it. Indeed, a substantial number of applications for relief are withdrawn every term after applicants, consulting with appointed counsel, learn that a simple “time cut” is not available relief in PCR. In a judiciary already thoroughly strained in its resources, the Court is of the opinion that entertaining claims seeking only sentence reductions or “time cuts” would only further bog down the system, to the considerable detriment of those applicants whose claims actually cast doubt on their culpability and guilt.

Applicant affirmatively disavows the claims necessary to proceed and rejects the only relief this Court could conceivably give him were he to prevail. Accordingly, Respondent’s motion to dismiss is **GRANTED** and the application for relief is **DISMISSED**.

[Conclusion and signature on following page]

III. CONCLUSION

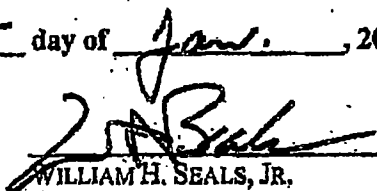
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 25 day of Jan., 2018.


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

Main, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS	2018 MAR 26 PM 2:17 CLERK OF COURT HORRY COUNTY, SC
COUNTY OF HORRY	)		
	)	2015-CP-26-05563	
GABRIEL LEE GRATTO, SCDC # 363659,	)		
Applicant,	)		
	)	MOTION TO ALTER/AMEND JUDGMENT	
v.	)		
	)		
STATE OF SOUTH CAROLINA	)		
Respondent.	)		

Counsel for the Applicant has received the Order of Dismissal of the Applicant's claims for Post-Conviction Relief on March 20, 2018. Pursuant to South Carolina Rule of Civil Procedure Rule 59(e) the Applicant hereby requests that this Court reconsider the current Judgement based on the following argument:

At the evidentiary hearing on November 27, 2017 counsel for the Applicant withdrew allegations (b) and (d) of the PCR Application filed August 31, 2017. Prior to the commencement of arguments, counsel for the Applicant informed the Court that the remaining allegations would be amended to remove any allegation that Mr. Gratto entered an involuntary plea and/or that absent ineffective assistance of counsel, Applicant would have proceeded to trial. Rather, Applicant's counsel stated that Mr. Gratto would argue only that there had been ineffective assistance of counsel for failure to present sufficient mitigation during the guilty plea. The Applicant alleged that specific mitigating information known to trial counsel should have been presented to the Court, and if this mitigating information had been presented during sentencing, it was likely and/or probable that he would have received a lesser sentence.

The Applicant informed the Court that the remedy sought was a remand for resentencing rather than a new trial. After argument, this Court ruled that remand for resentencing only was not an available remedy in Post-Conviction Relief matters, and determined that the presentation of testimony and evidence was unnecessary as it would not change the decision of the Court. The Court instructed the State to draft a proposed order reflecting this ruling.

This Court clearly understands the request by the Applicant as seen by the oral and written rulings that have been made. The Order also correctly acknowledges that the Supreme Court of South Carolina has remanded cases for resentencing only in Boan v. State, 388 S.C. 272 (2010), Rolen v. State, 384 S.C. 409 (2009), Jordan v. State, 297 S.C. 52 (1988), Thompson v. State, 340 S.C. 112 (2000). However, the Applicant objects and disagrees with the idea asserted in the order that these precedents have been overruled or "corrected" by Smith v. State, 413 S.C. 314 (2015).

In State v. Smith, 407 S.C. 279 (Ct. App. 2014), *affirmed by* 413 S.C. 194 (2015), the Applicant plead to voluntary manslaughter for killing his drug supplier. The prosecution requested the maximum sentence and the Judge sentenced the Applicant to 24 years. The Defendant then filed for Post-Conviction Relief asserting that his attorney was deficient for failing to object when the State had previously promised to remain silent as to sentencing during the plea. The Appellate Court found that the State breached the terms of the plea agreement and trial counsel was ineffective for failing to object to this breach. The matter was remanded back to the lower court for a new sentencing hearing only. The Supreme Court found there had been ineffective assistance of counsel but clarified that the appropriate remedy "under these circumstances" was a new trial because "the underlying question [was] whether Smith would have entered into the plea agreement had he known the State was going to breach the agreement." 413 S.C. 194, 196 (2015). In other words, Smith would not have plead guilty but for the agreement by the State to remain silent.

In the case at bar, it is important to distinguish that Mr. Gratto in fact plead guilty without negotiations or recommendations. There is no argument that Mr. Gratto would have gone to trial absent the alleged ineffective assistance of Mr. Hillard. The argument that Mr. Gratto makes is that he has a constitutional right to effective assistance of counsel in respect to disposition of his charges *as well as* in sentencing mitigation.

While Smith clarified the proper remedy "under these circumstances," or according to the facts of that particular case, Smith did not overrule all prior jurisprudence where the specific and circumscribed remedy of a new sentencing hearing was ordered. Smith limited its criticism to the remedy as ordered by Jordan v. State, 297 S.C. 52 (1988) and Thompson v. State, 340 S.C. 112 (2000). In both of those matters there were factual similarities in relation to the breach of a plea agreement. Again, Mr. Gratto's plea did not involve a plea agreement of any kind. Therefore, the Applicant would ask this Court to take a broader view of the existing case law and precedent which have allowed specifically tailored remedies in PCR cases.

For example, in Boan v. State the Judge orally imposed a 20 year sentence while writing a 30 year sentence on the sentencing sheet. In remanding for resentencing the Court noted "[t]his Court has previously held that post-conviction relief may be tailored to remedy the precise prejudice resulting from trial counsel's deficient performance." 388 S.C. 272, 277 (2010). The Court referenced Rolen v. State in reaching the decision. In Rolen, the Applicant expressed his innocence several times during his plea and it was apparent he wanted to withdraw his plea. The Court found that counsel was ineffective for never requesting that the Defendant be allowed to withdraw his plea and remanded the matter back to the trial court for a hearing to determine whether or not the Defendant should be allowed to withdraw his plea. 384 S.C. 409 (2009). Neither Rolen nor Boan have been overruled by Smith or any other case, and we respectfully ask this Court to consider the intent behind such a finding, allowing Mr. Gratto to request a tailored and specific remedy that allows for a remand of resentencing only.

There are additional cases where the Court has tailored a remedy specific to the prejudice alleged. In Scott v. State, the Court found that a remand for resentence as a first

offender was appropriate when counsel was ineffective for failing to challenge the circuit court's decision to treat a marijuana bond forfeiture as a first offense when sentencing the defendant. 334 S.C. 248 (1999). In Davie v. State the Court remanded for resentencing when counsel was ineffective for failing to relay a plea offer to his client. 381 S.C. 601 (2009). In Dervin v. State, the Court remanded for resentencing when the Court incorrectly sentenced the Applicant to a sentence above the maximum authorized by statute. 285 S.C. 164 (2009).

Additionally there is a strong policy argument to be made that would support all of these findings. A remand for resentencing alone might be a benefit to the Applicant in that it seems to circumscribe the risk attendant in a new trial. However, such a remedy also serves the state by removing the burden of trying the case in full. There is no additional expenditure of time or funds beyond that required in a sentencing hearing, and the Applicant still faces the possibility of a lower or higher sentence. Thus, the justification for the denial of a limited remedy like a remand for resentencing –e.g. the Applicant is allowed to improperly insulate himself from the risk of a new trial—is mitigated by the fact that the Court will be assured that the Applicant's conviction will stand, could technically still receive a longer sentence and that the State is not required to prepare the case for trial a second time.

The Applicant also disagrees with the Order to the extent that it is presumed that the only way to show ineffective assistance of counsel in a guilty plea is to show that “there is a reasonable probability that, but for counsel's alleged errors, he would not have plead guilty and would have insisted on going to trial” pursuant to Hill v. Lockhart, 474 U.S. 52 (1985). In Rolen, the Court clearly addressed the fact that the prejudice asserted did not “fit squarely within the traditional guilty plea prejudice framework as set forth in Hill” and held “[n]onetheless, we hold that Petitioner was prejudiced by counsel's deficient performance because due to counsel's failure to make such a motion, the plea judge was not able to exercise his discretion.”

The Applicant, Mr. Gratto asserts that ample additional information was available to plea counsel that should have presented to the Court in mitigation of his sentence during the guilty plea. Failure to present this information was ineffective and resulted in prejudice to the Applicant because the plea judge was not able to exercise his discretion. Therefore, the appropriate remedy specific to Mr. Gratto's claims would be a remand for resentencing so that all available potentially mitigating information could be presented to the Court.

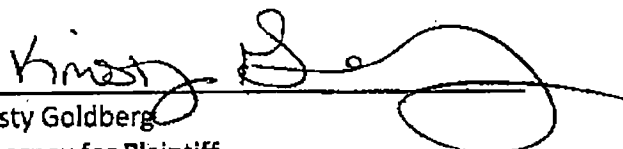
Further, Strickland v. Washington clearly states that for ineffective assistance of counsel claims, the correct burden is that the defendant must show “that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” 466 U.S. 668, 694, 104 S.Ct. 2052, 2068 (1984). A different sentence would clearly constitute a different result.

The Applicant concedes that the case law cited herein does not specifically address a case where ineffective assistance of counsel was found for failure to present mitigating information during a guilty plea such that the appropriate remedy would be a new sentencing hearing. However, it seems illogical that the Courts would find that individuals have a right to

effective assistance of counsel in determining how to dispose of charges, but not when it comes to presentation of mitigation information during guilty pleas and sentencing hearings. Our Supreme Court has clearly found ineffective assistance of counsel for failure to present mitigating information in death penalty cases and looked at whether or not the "mitigating evidence, taken as a whole, might well have influenced the jury's appraisal of the defendant's culpability." Rosemond v. Catoe, 383 S.C. 320, 326 680 S.E.2d 5, 9 (2009), *see also* State v. Council, 380 S.C. 159, 670 S.E.2d 356 (2008). By analogy, it seems appropriate that this Court may consider whether or not failure to present mitigating information might have influenced the Judge's appraisal of the defendant's culpability in a non-death penalty case. It does not seem reasonable to say that individuals only have the right to effective assistance of counsel in sentencing hearings if they are facing the death penalty but not in other contexts.

Based on the foregoing, the Applicant requests that this Court reconsider its position on the availability of the remedy of remand for resentencing and allow the Applicant to present mitigating testimony and evidence at an evidentiary hearing.

Respectfully submitted,


 Kristy Goldberg
 Attorney for Plaintiff

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 1720 Main Street, Suite 303
 Columbia, SC 29201
 Phone (803) 667-6633
 kristy@kristygoldberglaw.com

Columbia, South Carolina

This 23 th day of March, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
Gabriel Lee Gratto,	)	Case No.: 2015-CP-26-05563
S.C.D.C. No. 363659,	)	
	)	
Applicant,	)	
	)	RETURN TO APPLICANT'S MOTION
v.	)	PURSUANT TO RULE 59(e), SCRPC
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

In response to Applicant's "Motion to Alter/Amend Judgment" filed on March 26, 2018, Respondent would show this Court:

I.

This matter originally came before the Court by way of an application for post-conviction relief filed July 23, 2015. Respondent made its return on or about December 6, 2016. The Court convened an evidentiary hearing into the matter on Monday, November 27, 2017, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by Kristy G. Goldberg, Esq. Johnny Ellis James Jr. of the South Carolina Attorney General's Office, represented Respondent.

No testimony was taken at the hearing. In response to Applicant's amendment of the application and relief sought at the outset of the hearing, Respondent motioned to dismiss the application on grounds that Applicant's indication that he did not wish to withdraw his guilty plea foreclosed any conceivable relief, and that the relief requested was not available in a PCR. After hearing arguments from both parties, this Court granted Respondent's motion and dismissed the application by order dated January 25, 2018, and filed February 5, 2018.

II.

In his motion, Applicant asks the Court to reconsider its ruling pursuant to Rule 59(e), SCRCP. Applicant's motion for reconsideration should be denied. The Court's Order of Dismissal contains the required findings of fact and conclusions of law necessary to dispense with Applicant's allegations as required by S.C. Code Ann. § 17-27-80 and Rule 52(a), SCRCP; see also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). The Order of Dismissal correctly relies upon the prejudice standard to be met by Applicants who wish to challenge their guilty plea by way of an allegation of ineffective assistance of counsel: "the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59 (1985); see also Smith v. State, 369 S.C. 135, 631 S.E.2d 260 (2006) ("An applicant seeking relief from a guilty plea must present probative evidence to support the allegations in the PCR application that but for trial counsel's erroneous advice, the applicant would not have pled guilty."). Further, the Court correctly finds that the appropriate relief in a post-conviction relief matter is a new trial on the original indictments, and that the court is not obliged to pass upon his entitlement to relief that he affirmatively rejects. Gilstrap v. State, 252 S.C. 625, 628, 168 S.E.2d 88, 89 (1969) (declining to consider exceptions taken by habeas petitioner who affirmatively rejected the relief of a new trial); Smith v. State, 413 S.C. 194, 195, 775 S.E.2d 696, 696 (2015) (clarifying the proper remedy in a PCR is a new trial); Young v. State, 250 S.C. 476, 479, 158 S.E.2d 764, 765 (1968) ("Since the only relief [petitioner] seeks is that to which he is not entitled, it is not incumbent upon this court to pass upon what relief, if any, he might, perchance, [be] entitled to.").

Hill's facts are particularly on-point and dispositive in the present case. In Hill, the petitioner alleged that counsel affirmatively misadvised him as to his parole eligibility. Hill at 60; see also Coats v. State, 352 S.C. 500, 575 S.E.2d 557 (2003) (holding that misadvice on parole eligibility was an appropriate ground for PCR). *Nonetheless*, the Supreme Court found Hill failed to show prejudice because he "did not allege in his habeas petition that, had counsel correctly informed him about his parole eligibility date, he would have pleaded not guilty and insisted on going to trial." Hill at 60. Where an applicant not only fails to claim he would have insisted on going to trial, but affirmatively asserts the contrary—that he wishes to preserve his plea already entered—it stands to reason that, under Hill, he cannot meet his prejudice burden.

Applicant argues zealously that the Court operated under the belief that prior cases remanding for resentencing were overruled by Smith v. State, 413 S.C. 194, 775 S.E.2d 696 (2015).¹ The Order does not appear to assert that anything was overruled, but rather finds the appropriate relief was *clarified* by Smith and that instances of remand for resentencing were factually distinguishable from the present case. Each of the five cases cited by Applicant to support his proposition that the Court may freely tailor relief is an exception to the general rule that the only remedy is a new trial. Four² of the five involve a specific and quantifiable prejudice to the applicant and the fifth³ involves a protestation of innocence not acted upon such that the applicant was denied an appropriate hearing to withdraw the plea. As a consequence, the appellate courts were in a position to institute a specific and quantifiable relief short of imposing a hard reset.

¹ Not to be confused with the 2006 Smith cited above.

² Boan v. State, 388 S.C. 272, 695 S.E.2d 850 (2010); Scott v. State, 334 S.C. 248, 513 S.E.2d 100 (1999); Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009); Dervin v. State, 386 S.C. 164, 687 S.E.2d 712 (2009).

³ Rolen v. State, 384 S.C. 409, 683 S.E.2d 471 (2009).

Smith is succinct and clear in correcting the misapplication of the precedents upon which

Applicant relies:

We take this opportunity to explain the proper remedy under these circumstances. In Jordan,^[4] the Court reversed the PCR court's denial of relief and remanded for either a new trial or resentencing. In Thompson,^[5] the Court reversed the PCR court's denial of relief, and remanded solely for resentencing. Here, presumably following the precedent of Thompson, the court of appeals reversed and remanded for resentencing. *We now clarify the proper remedy is a new trial.* Although Smith's attorney was deficient for failing to object at the sentencing hearing, the underlying question is whether Smith would have entered into the plea agreement had he known the State was going to breach the agreement. Therefore, the proper remedy for counsel's ineffective assistance is invalidation of the entire agreement.

Smith, 413 S.C. at 196, 775 S.E.2d at 696 (emphasis added, citations omitted). Contrary to Applicant's efforts to distinguish the present facts from that of Smith, Applicant did receive a bargained for benefit as a consequence of his plea—one count of felony DUI resulting in death was dismissed. Furthermore, Hill is the default standard for applying Strickland v. Washington, 466 U.S. 668 (1984) to guilty pleas, and Smith does not establish some special rule such that distinguishing it from this case would render Hill inapplicable. Therefore, the underlying question here is whether Applicant would not have pled guilty but proceeded to trial had he known counsel was going to be (allegedly) deficient in mitigation. The answer to that question is that Applicant still would have pled guilty and not proceeded to trial.

Applicant's alternatively proposed "different outcome" is that he could have received a lesser sentence. Outside of the death penalty context, this alternative proposed standard is inherently speculative, as it calls upon one circuit court judge to determine if, in light of additional mitigation offered in a PCR evidentiary hearing, another circuit court judge would have imposed a more lenient sentence. Speculation does not satisfy the prejudice prong under

⁴ Jordan v. State, 297 S.C. 52, 374 S.E.2d 683 (1988).

⁵ Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000).

Strickland. See, e.g. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1988); Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998).

Applicant's proposed "strong policy argument" for a resentencing-only form of relief is similarly without merit. Applicant's presentation of the possibility that the State might otherwise have to take a case to trial is not compelling in the present case, since there is no risk of that in light of Applicant's avowed desire to maintain his guilty plea. Furthermore, as the Court noted from the bench at the November 2017 hearing and in its order, a very substantial number of post-conviction relief actions are withdrawn each year upon Applicant's learning that they cannot get a "time cut" by way of PCR and that the only relief available is, as established by the law, a new trial. We cannot calculate the number of potential applications which go unfilled by incarcerated persons with the knowledge that a sentence reduction or reconsideration is not available in PCR. Were incarcerated persons provided a limited-risk opportunity to take a second swing at sentencing, it stands to reason that many more would try their luck for no reason of actual injustice, but simply to try and get a shorter sentence.

The principles underlying the post-conviction relief process do not serve to ensure that every defendant gets the best possible outcome from their criminal adjudication, but rather the process exists to safeguard the fundamental fairness of the proceedings whose result is challenged. See Strickland at 696. "It is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding. Virtually every act or omission of counsel would meet that test[.]" Strickland at 693. "In every case the court should be concerned with whether, despite the strong presumption of reliability, the result of the particular proceeding is unreliable because of a breakdown in the adversarial process that our system counts on the produce just results." Strickland at 696. Notwithstanding the contrary in the death

capital context, one can hardly claim or prove such a substantial breakdown where an applicant still admits his guilt and only contends that still more mitigation might have coaxed a judge into further mercy and a lesser sentence.

Finally, Applicant argues that the Court's order effectively forecloses the ability to bring claims of ineffective assistance of counsel for deficient performance in mitigation in non-capital cases. It does not. It simply requires that Applicant seek relief available, that being vacation of the conviction and remand for a new trial, and satisfy the demands of Hill.

Accordingly, the Court properly ruled on all issues before it, and Applicant's motion should be denied.

III.

WHEREFORE, Respondent respectfully requests the Court deny Applicant's motion for reconsideration.

Respectfully submitted,

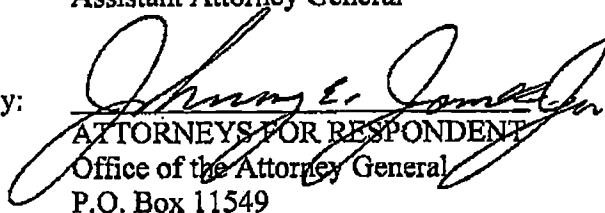
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN JAMESON HARRISON
Senior Assistant Deputy Attorney General

JOHNNY E. JAMES JR.
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

25 April 2018

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

GABRIEL L. GRATTO, #363659,)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2015-CP-26-5536

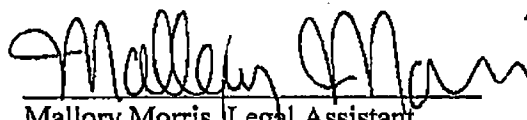
AFFIDAVIT OF SERVICE BY MAIL

HORRY COUNTY
 2018 APR 27 PM 12:54
 RECEIVED BY
 CLERK OF COURT
 HORRY COUNTY, SC

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return to Applicant's Motion Pursuant to Rule 59(e) on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Kristy G. Goldberg, Esquire
 Law Office of Kristy Goldberg, LLC
 1720 Main Street, Suite 303
 Columbia, SC 29201

DATED this 25th day of April, 2018.


 Mallory Morris, Legal Assistant
 For Respondent



ALAN WILSON
ATTORNEY GENERAL

April 25, 2018

The Honorable Renee N. Elvis
Horry County Clerk of Court
PO Box 677
Conway, SC 29528-0677

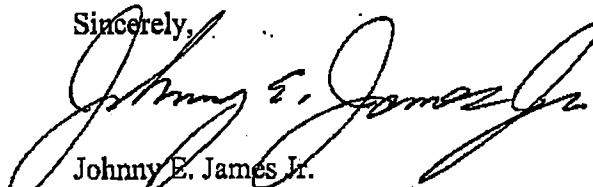
HORRY COUNTY
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC
2018 APR 27 PM 12:54

Re: Gabriel L. Gratto, 363659 v. State of South Carolina
2015-CP-26-~~4478~~ 5663

Dear Ms. Elvis:

Enclosed please find the original **Return to Applicant's Motion Pursuant to Rule 59(e)** of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,



Johnny E. James Jr.
Assistant Attorney General

JEJ/mm

Enclosure

cc: Kristy G. Goldberg, Esquire

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FOR THE FIFTEENTH JUDICIAL CIRCUIT
)

Gabriel Lee Gratto,) Case No.: 2015-CP-26-05563
S.C.D.C. No. 363659,)
)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER DENYING APPLICANT'S MOTION
PURSUANT TO RULE 59(e), SC

HORRY COUNTY
2018 MAY 17 PM 1:10
CLERK OF COURT
HORRY COUNTY, SC

This matter comes before the Court by way of Applicant's "Motion to Alter/Amend Judgment" filed on March 26, 2018. Upon request by this Court, Respondent filed a return to Applicant's motion on April 27, 2018. The Court finds as follows:

I.

This matter originally came before the Court by way of an application for post-conviction relief filed July 23, 2015. Respondent made its return on or about December 6, 2016. The Court convened an evidentiary hearing into the matter on Monday, November 27, 2017, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by Kristy G. Goldberg, Esq. Johnny Ellis James Jr. of the South Carolina Attorney General's Office, represented Respondent.

No testimony was taken at the hearing. In response to Applicant's amendment of the application and relief sought at the outset of the hearing, Respondent motioned to dismiss the application on grounds that Applicant's indication that he did not wish to withdraw his guilty plea foreclosed any conceivable relief, and that the relief requested was not available in a PCR.

After hearing arguments from both parties, this Court granted Respondent's motion and dismissed the application by order dated January 25, 2018, and filed February 5, 2018.

II.

In his motion, Applicant asks the Court to reconsider its ruling pursuant to Rule 59(e), SCRCP. This Court has thoroughly reviewed the arguments presented by Applicant in his motion, as well as those presented by Respondent in its return, as well as the order subject to the motion. This Court agrees with Respondent that the motion must be denied.

The Court's Order of Dismissal contains the required findings of fact and conclusions of law necessary to dispense with Applicant's allegations as required by S.C. Code Ann. § 17-27-80 and Rule 52(a), SCRCP; see also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). The Order of Dismissal correctly relies upon the prejudice standard to be met by Applicants who wish to challenge their guilty plea by way of an allegation of ineffective assistance of counsel: "the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59 (1985); see also Smith v. State, 369 S.C. 135, 631 S.E.2d 260 (2006) ("An applicant seeking relief from a guilty plea must present probative evidence to support the allegations in the PCR application that but for trial counsel's erroneous advice, the applicant would not have pled guilty."). Further, the Court correctly finds that the appropriate relief in a post-conviction relief matter is a new trial on the original indictments, and that the court is not obliged to pass upon his entitlement to relief that he affirmatively rejects. Gilstrap v. State, 252 S.C. 625, 628, 168 S.E.2d 88, 89 (1969) (declining to consider exceptions taken by habeas petitioner who affirmatively rejected the relief of a new trial); Smith v. State, 413 S.C. 194, 195, 775 S.E.2d 696, 696 (2015) (clarifying the proper remedy in a PCR is a new trial); Young v. State, 250 S.C.

476, 479, 158 S.E.2d 764, 765 (1968) (“Since the only relief [petitioner] seeks is that to which he is not entitled, it is not incumbent upon this court to pass upon what relief, if any, he might, perchance, [be] entitled to.”).

Hill’s facts are particularly on-point and dispositive in the present case. In Hill, the petitioner alleged that counsel affirmatively misadvised him as to his parole eligibility. Hill at 60; see also Coats v. State, 352 S.C. 500, 575 S.E.2d 557 (2003) (holding that misadvice on parole eligibility was an appropriate ground for PCR). Nonetheless, the Supreme Court found Hill failed to show prejudice because he “did not allege in his habeas petition that, had counsel correctly informed him about his parole eligibility date, he would have pleaded not guilty and insisted on going to trial.” Hill at 60. Where an applicant not only fails to claim he would have insisted on going to trial, but affirmatively asserts the contrary—that he wishes to preserve his plea already entered—it stands to reason that, under Hill, he cannot meet his prejudice burden.

Applicant argues zealously that the Court operated under the belief that prior cases remanding for resentencing were overruled by Smith v. State, 413 S.C. 194, 775 S.E.2d 696 (2015). This Court’s order does not assert that anything was overruled, but rather finds the appropriate relief was *clarified* by Smith and that instances of remand for resentencing were factually distinguishable from the present case. Each of the five cases cited by Applicant to support his proposition that the Court may freely tailor relief is an exception to the general rule that the only remedy is a new trial. Four¹ of the five involve a specific and quantifiable prejudice to the applicant and the fifth² involves a protestation of innocence not acted upon such that the applicant was denied an appropriate hearing to withdraw the plea. As a consequence, the

¹ Boan v. State, 388 S.C. 272, 695 S.E.2d 850 (2010); Scott v. State, 334 S.C. 248, 513 S.E.2d 100 (1999); Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009); Dervin v. State, 386 S.C. 164, 687 S.E.2d 712 (2009).

² Rolen v. State, 384 S.C. 409, 683 S.E.2d 471 (2009).

appellate courts were in a position to institute a specific and quantifiable relief short of imposing a hard reset.

Smith is succinct and clear in correcting the misapplication of the precedents upon which Applicant relies:

We take this opportunity to explain the proper remedy under these circumstances. In Jordan,^[3] the Court reversed the PCR court's denial of relief and remanded for either a new trial or resentencing. In Thompson,^[4] the Court reversed the PCR court's denial of relief, and remanded solely for resentencing. Here, presumably following the precedent of Thompson, the court of appeals reversed and remanded for resentencing. *We now clarify the proper remedy is a new trial.* Although Smith's attorney was deficient for failing to object at the sentencing hearing, the underlying question is whether Smith would have entered into the plea agreement had he known the State was going to breach the agreement. Therefore, the proper remedy for counsel's ineffective assistance is invalidation of the entire agreement.

Smith, 413 S.C. at 196, 775 S.E.2d at 696 (emphasis added, citations omitted). Contrary to Applicant's efforts to distinguish the present facts from that of Smith, Applicant did receive a bargained for benefit as a consequence of his plea—one count of felony DUI resulting in death was dismissed. Furthermore, Hill is the default standard for applying Strickland v. Washington, 466 U.S. 668 (1984) to guilty pleas, and Smith does not establish some special rule such that distinguishing it from this case would render Hill inapplicable. Therefore, the underlying question here is whether Applicant would not have pled guilty but proceeded to trial had he known counsel was going to be (allegedly) deficient in mitigation. The answer to that question is that Applicant still would have pled guilty and not proceeded to trial.

Applicant's alternatively proposed "different outcome" is that he could have received a lesser sentence. Outside of the death penalty context, this alternative proposed standard is inherently speculative, as it calls upon one circuit court judge to determine if, in light of

³ Jordan v. State, 297 S.C. 52, 374 S.E.2d 683 (1988).

⁴ Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000).

additional mitigation offered in a PCR evidentiary hearing, another circuit court judge would have imposed a more lenient sentence. Speculation does not satisfy the prejudice prong under Strickland. See, e.g. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1988); Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998).

This Court finds Applicant's proposed "strong policy argument" for a resentencing-only form of relief is similarly without merit. Applicant's presentation of the possibility that the State might otherwise have to take a case to trial is not compelling in the present case, since there is no risk of that in light of Applicant's avowed desire to maintain his guilty plea. Furthermore, as this Court noted from the bench at the November 2017 hearing and in its order, a very substantial number of post-conviction relief actions are withdrawn each year upon Applicant's learning that they cannot get a "time cut" by way of PCR and that the only relief available is, as established by the law, a new trial. We cannot calculate the number of potential applications which go unfiled by incarcerated persons with the knowledge that a sentence reduction or reconsideration is not available in PCR. Were incarcerated persons provided a limited-risk opportunity to take a second swing at sentencing, it stands to reason that many more would try their luck for no reason of actual injustice, but simply to try and get a shorter sentence.

The principles underlying the post-conviction relief process do not serve to ensure that every defendant gets the best possible outcome from their criminal adjudication, but rather the process exists to safeguard the fundamental fairness of the proceedings whose result is challenged. See Strickland at 696. "It is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding. Virtually every act or omission of counsel would meet that test[.]" Strickland at 693. "In every case the court should be concerned with whether, despite the strong presumption of reliability, the result of the particular

proceeding is unreliable because of a breakdown in the adversarial process that our system counts on the produce just results.” Strickland at 696. Notwithstanding the contrary in the death capital context, one can hardly claim or prove such a substantial breakdown where an applicant still admits his guilt and only contends that still more mitigation might have coaxed a judge into further mercy and a lesser sentence.

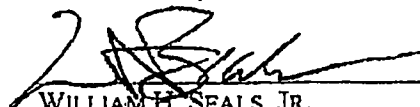
Finally, Applicant argues that the Court’s order effectively forecloses the ability to bring claims of ineffective assistance of counsel for deficient performance in mitigation in non-capital cases. It does not. It simply requires that Applicant seek relief available, that being vacation of the conviction and remand for a new trial, and satisfy the demands of Hill.

Accordingly, the Court properly ruled on all issues before it, and Applicant’s motion must be denied.

CONCLUSION

Based on all of the foregoing, this Court finds and concludes that Applicant has not established any reason to alter or amend its Order of Dismissal dated January 25, 2018, and filed February 5, 2018. Accordingly, Applicant’s Motion to Alter or Amend is **DENIED**.

AND IT IS SO ORDERED this 10 day of May, 2018.


 WILLIAM H. SEALS, JR.
 Chief Judge for Common Pleas
 Fifteenth Judicial Circuit

Mari, South Carolina

WITNESSES

J. Fox South Carolina Dept of Public Safety

DOCKET NO. 2015-GS-26- 01342

The State of South Carolina

County of Horry

Bradley C. Richardson
13H02385

COURT OF GENERAL SESSIONS

April, 2015 TERM

HORY

2015 MAR

MELANIE
CLER

DATE

ARREST WARRANT NUMBER

2015GS2801342

CDR: 0395 56-05-2945(A)(2)

DOA. 5/16/2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

MAR 26 2015

VERDICT

Foreperson of Petit Jury

Date:

Gabriel Lee Gratto

W/M

ATTORNEY: John M. Hilliard, III

Indictment for

FELONY DRIVING UNDER
THE INFLUENCE - DEATH

ORIGINAL

Jimmy A. Richardson, II, Solicitor

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT
FELONY DRIVING UNDER
THE INFLUENCE - DEATH

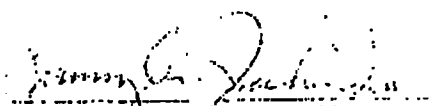
At a Court of General Sessions, convened on March 26, 2015, the Grand Jurors of Horry County present upon their oath:

FELONY DRIVING UNDER THE INFLUENCE - DEATH

CDR: 0395 56-05-2945(A)(2)

That Gabriel Lee Gratto did in Horry County on or about May 15, 2013 drive a motor vehicle while under the influence of alcohol, drugs or a combination of both and either did an act forbidden by law and/or neglected a duty imposed by law in driving the vehicle; to wit: did fail to maintain a proper lookout, and/or crossed the center line, driving left of center, and/or sped excessively; and the act or neglect proximately caused the death of Joan Errickson in violation of Section 56-05-2945 (A)(2), S.C. Code of Laws, 1976, as amended.

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


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Horry
STATE VS.
Gabriel Lee Gratto

AKA: _____
Race: WHITE Sex: M Age: 30



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

In disposition of the said indictment comes now the Defendant who was
TO: DUI / Felony driving under the influence, death results (.10 law)

in violation of § 56-05-2945(A)(2) of the S.C. Code of Laws, bearing CDR Code # 0395
☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY: Richardson, Bradley C. SC Bar# SCB68305 Defendant Attorney for Defendant SC Bar# 2515

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended probation for _____

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-13
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharges)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 31.00

Clerk of Court/ Deputy Clerk Melanie Huggins Ward
Court Reporter Dina Dubanks

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS2601342
A/W#: 2015GS2601342
Date of Offense: 5/15/2013
S.C. Code § : 56-05-2945(A)(2)
CDR Code #: 0395

SENTENCE SHEET #1

☐ CONVICTED OF or ☒ PLEADS

_____ days/hours Public Service/Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ 25.00 beginning 4/13/2013
\$ _____ paid to Public Defender Fund
Other: _____

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

Presiding Judge Jake Hays
Judge Code: 4/13/15

WITNESSES

JL Fox South Carolina Dept of Public Safety

DOCKET NO. 2015-GS-26-01310

The State of South Carolina

County of Horry

Bradley C. Richardson
13H02385

COURT OF GENERAL SESSIONS

April, 2015 TERM

ARREST WARRANT NUMBER

2013A2610200990

CDR: 0406 56-05-2945(A)(1)

DOA: 5/16/2013

THE STATE

vs.

ACTION OF GRAND JURY

Gabriel Lee Gratto
W/ MForeperson: *[Signature]*
Date: *[Signature]*

MAR 26 2015

ATTORNEY: John M. Hilliard, III

VERDICT

Indictment for

FELONY DRIVING UNDER THE
INFLUENCE
GREAT BODILY INJURY

ORIGINAL

Jimmy A. Richardson, II, Solicitor

Foreperson of Petit Jury
Date

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) INDICTMENT
) FELONY DRIVING UNDER THE INFLUENCE
) GREAT BODILY INJURY

At a Court of General Sessions, convened on March 26, 2015, the Grand Jurors of Horry County present upon their oath:

FELONY DRIVING UNDER THE INFLUENCE
GREAT BODILY INJURY

CDR: 0406 56-05-2945(A)(1)

That Gabriel Lee Gratto did in Horry County on or about May 15, 2013 drive a motor vehicle while under the influence of alcohol, drugs or a combination of both and either did an act forbidden by law and/or neglected a duty imposed by law in driving the vehicle; to wit: did fail to maintain a proper lookout, and/or crossed the center line, driving left of center, and/or sped excessively; and the act or neglect proximately caused the great bodily injury of Charles Roach in violation of Section 56-05-2945 (A)(1), S.C. Code of Laws, 1976, as amended.

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


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Horry

VS.

Gabriel Lee Gratto

AKA:

Race: WHITE

Sex: M

Age: 30

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS2601310

A/W#: 2013A2610200990

Date of Offense: 5/15/2013

S.C. Code § : 56-05-2945(A)(1)

CDR Code #: 0406

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: DUI / Felony driving under the influence, great bodily injury (.10 law)☐ CONVICTED OF or ☒ PLEADS

in violation of § 56-05-2945(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0406

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

ATTES:

SCB68305

Richardson, Bradley C.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended probation formonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-62 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fees:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ 100.00
§ 56-5-2995 (DUI Assessment)	\$12	\$ 12.00
§ 56-1-286 (DUI Breath Test)	\$25	\$ 25.00
Proviso 47.9 (Public Def/Prob)	\$500	\$ 500.00
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$ 50.00
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ 40.00
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 4.11
TOTAL	\$	\$ 141.11

Clerk of Court/ Deputy Clerk

Crime Reporter

Melanie Huggins Ward

Dina Eubanks

Presiding Judge

Judge Code:

Sentencing Panel

PTUP days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ 25.00 beginning 4/13/2030

\$ paid to Public Defender Fund

Other:

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

Presiding Judge

Judge Code:

Sentencing Panel

FILED
CLERK OF COURT
Horry County
2015 APR 13 PM 4:17
JULIE HUBBARD
CLERK OF COURT

WITNESSES

J L Fox South Carolina Dept of Public Safety

C
DOCKET NO. 2013-GS-26-03810**The State of South Carolina****County of Horry**Scott A. Graustein13H02385**COURT OF GENERAL SESSIONS****AUGUST, 2013 TERM****ARREST WARRANT NUMBER**

2013A2610200992

CDR: 2463 56-05-1210(A)(3)

DOA: 5/16/2013

THE STATE**vs.*****ACTION OF GRAND JURY****TRUE BILL**

Gabriel Lee Gratto

W/M

Foreperson of Grand Jury

Date:

AUG 22 2013

VERDICT**ATTORNEY: Hilliard, III, John M.****Indictment for****LEAVING SCENE OF ACCIDENT****Jimmy A. Richardson, II, Solicitor**

Foreperson of Petit Jury

Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF Horry)

INDICTMENT

At a Court of General Sessions, convened on AUGUST 22, 2013, the Grand Jurors of Horry County present upon their oath:

LEAVING SCENE OF ACCIDENT

CDR: 2463 56-05-1210(A)(3)

That **Gabriel Lee Gratto** did in Horry County on or about May 15, 2013, while operating a motor vehicle become involved in an accident which resulted in the death of Joan Errickson, and did leave the scene of the accident without first rendering aid and/or information, in violation of Section 56-05-1210(A)(3), S. C. Code of Laws, 1976, as amended.

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



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Horry

VS.

Gabriel Lee Gratto

AKA:

Race: WHITE

Sex: M

Age: 30

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS2603810

A/W#: 2013A2610200992

Date of Offense: 5/15/2013

S.C. Code § : 56-05-1210(A)(3)

CDR Code #: 2463

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Traffic / Hit and run, duties of driver involved in accident☐ CONVICTED OF or ☒ LEADS

in violation of § 56-05-1210(A)(3) of the S.C. Code of Laws, bearing CDR Code # 2463

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

ATTEST:

SCB68305

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*, the balance is suspended probation formonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4/13/15☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-13.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 of the S.C. Code (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fees:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (DUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$ 3.00
TOTAL	\$	\$ 103.00

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd in equal, consecutive weekly/monthly
pmts. of \$ 25.00 beginning 4/13/2015

\$ paid to Public Defender Fund

Other:

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

Clerk of Court/ Deputy Clerk

Court Reporter:

Melanie Huggins Ward

Dore Eubank

Presiding Judge

Judge Code:

Court Reporter:

John H. Ward
2014
4/13/15

FILED
Horry County
2015 APR 13 PM 4:17
CLERK OF COURT
WARD