

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Greenwood County

S.C. SUPREME COURT

Honorable Donald B. Hocker, Circuit Court Judge

ADRIAN KEITH NEAL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000149

APPENDIX

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ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

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State of South Carolina)
 vs.) Transcript of Record
)
Adrian Neal)
 DEFENDANT)

July 16, 2012
Greenwood, South Carolina

B E F O R E:

Honorable D. Garrison Hill, Judge

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

Andrew Hodges, Assistant Solicitor
Attorney for the State

Janna Nelson, Assistant Public Defender
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

1

EXHIBITS

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(No exhibits introduced.)

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1 THE COURT: Solicitor.

2 MR. HODGES: If it please the Court, Your Honor,
3 standing before you is Adrian Keith Neal. Mr. Neal is
4 represented by Janna Nelson of the Greenwood Bar. He is
5 entering a plea of guilty on indictment 2012-GS-24-134 to
6 the offense of murder. We have negotiated a sentence of
7 30 years with the understanding that he would serve day
8 for day of those 30 years. He would be entitled to credit
9 since September the 20th of 2011.

10 THE COURT: 2011?

11 MR. HODGES: Yes, sir.

12 THE COURT: Okay. Thank you. You are Adrian Keith
13 Neal?

14 MR. NEAL: Yes, sir.

15 THE COURT: And how old are you, sir?

16 MR. NEAL: 42.

17 THE COURT: How far did you go to school?

18 MS. NELSON: Twelfth grade.

19 THE COURT: What kind of work have you done, Mr.
20 Neal.

21 MR. NEAL: Power Track Service, (Phonetic.)

22 THE COURT: Are you under the influence of any
23 alcohol or drugs or medication?

24 MR. NEAL: No, sir.

25 THE COURT: Do you have any physical or mental or

1 emotional condition that might keep you from understanding
2 what is happening here today?

3 MR. NEAL: No, sir.

4 THE COURT: Ms. Nelson, do you have any question
5 about his competency?

6 MS. NELSON: No sir, I don't.

7 THE COURT: And, Mr. Neal, have you had enough time
8 to talk to Ms. Nelson about your case?

9 MR. NEAL: Yes, sir.

10 THE COURT: Are you satisfied with her services?

11 MR. NEAL: Yes, sir.

12 THE COURT: Do you understand the maximum sentence
13 for this offense is life in prison?

14 MR. NEAL: Yes, sir.

15 THE COURT: And do you understand the elements of
16 murder that the State has to prove beyond a reasonable
17 doubt to convict you?

18 MR. NEAL: Yes, sir.

19 THE COURT: And do you enter this plea here today
20 because you are guilty?

21 MR. NEAL: Yes, sir.

22 THE COURT: Has anyone threatened you or put any
23 pressure on you to get you to enter this plea?

24 MR. NEAL: No, sir.

25 THE COURT: Are you doing so of your own free choice

1 and will?

2 MR. NEAL: Yes, sir.

3 THE COURT: Have you had enough time to think about
4 what you are doing, sir?

5 MR. NEAL: Yes, sir.

6 THE COURT: Do you understand that this offense is
7 classified as a violent offense and a most serious offense
8 under South Carolina law?

9 MR. NEAL: Yes, sir.

10 THE COURT: And do you understand the consequences of
11 pleading to a violent offense and a most serious offense?

12 MR. NEAL: Yes, sir.

13 THE COURT: And do you understand the two strikes and
14 the three strikes law?

15 MR. NEAL: Yes, sir.

16 THE COURT: And do you understand that if you were
17 ever to be convicted of another most serious or serious
18 offenses you would be subject to mandatory sentence of
19 life in prison without any possibility of parole?

20 MR. NEAL: Yes, sir.

21 THE COURT: And do you understand you have the right
22 to a jury trial on this charge, Mr. Neal?

23 MR. NEAL: Yes.

24 THE COURT: At a jury trial you would be presumed
25 innocent, you wouldn't have to prove you are innocent or

1 prove you were not guilty. Instead this burden of proof
2 would be entirely on the State and you could only be
3 convicted if all twelve jurors agreed that the State has
4 proven each and every element of the crime beyond a
5 reasonable doubt. Do you understand this, sir?

6 MR. NEAL: Yes, sir.

7 THE COURT: And at your trial you would be entitled
8 to see and hear the witnesses, to cross-examine them,
9 confront the evidence against and to use the subpoena
10 power of this Court to bring your own witnesses in and
11 present any evidence that you may have at the trial and
12 present any defenses you may have the trial. Do you
13 understand?

14 MR. NEAL: Yes, sir.

15 THE COURT: And I don't know if you have a defense or
16 not but do you understand that by pleading guilty you give
17 up your right to present a defense as well as the right to
18 challenge or contest any of the evidence in the case
19 including any statements you may have given, searches that
20 were made or testing that was done or that should have
21 been done. Do you understand that, sir?

22 MR. NEAL: Yes, sir.

23 THE COURT: And do you understand furthermore that at
24 your trial you could testify or you could choose to not
25 testify. And if you chose not to testify the Court will

1 tell the jury that you have the absolute right guaranteed
2 by the Constitution to remain silent and they could not
3 hold that against you for claiming that right or use that
4 in any manner in reaching their decision as to the
5 verdict. Do you understand that?

6 MR. NEAL: Yes, sir.

7 THE COURT: Do you understand, sir, that by pleading
8 guilty here today you give up all of your rights I have
9 gone over with you?

10 MR. NEAL: Yes, sir.

11 THE COURT: And knowing that do you still wish to
12 enter your plea of guilty here today?

13 MR. NEAL: Yes, sir.

14 THE COURT: Have you understood all of my questions,
15 sir?

16 MR. NEAL: Yes, sir.

17 THE COURT: Do you have any questions of me at this
18 time?

19 MR. NEAL: No, sir.

20 THE COURT: Has anyone told you how to answer my
21 questions?

22 MR. NEAL: No, sir.

23 THE COURT: All right, thank you for your attention.
24 Listen carefully, Mr. Hodges is going to set forth the
25 facts of the case. Yes, sir.

1 MR. HODGES: Your Honor, this offense occurred on
2 September the 19th of 2011. Mr. Neal along with the
3 victim in the case, Kaybreisha Timpson and their
4 two-year-old child were riding in Mr. Neal's automobile.
5 They got into a verbal argument at which time Mr. Neal
6 produced a firearm from the glove box of the vehicle and
7 fired one shot that passed through Ms. Timpson's hand and
8 then into her chest. She got out of the vehicle on the
9 side of the road at Merrywood Drive. Mr. Neal fired a
10 second shot that struck her in the back, she went a few
11 steps and then fell there at the side of the road. Some
12 passing motorists found her deceased at the side of the
13 road. Law enforcement began an investigation. At that
14 point they didn't really have any idea of who she was or
15 what had happened. But as the investigation continued
16 they were able to learn her identity and then started
17 getting information from family members of the defendant
18 indicating that he had been sending out text messages to
19 them that he had shot the mother of his child. They
20 started looking for Mr. Neal and ended up getting a phone
21 call from a lady in Atlanta who indicated that she had
22 been speaking with Mr. Neal on the telephone. That he was
23 sort of in the upstate area of South Carolina and that he
24 had admitted to shooting the mother of his child.
25 Eventually he called law enforcement and arranged to turn

1 himself in. He met law enforcement up in the Hodges area
2 of Greenwood County where he did surrender to law
3 enforcement. A search warrant was obtained for the
4 vehicle. Law enforcement found a pistol in the glove box.
5 They found blood in the back seat of his vehicle which was
6 analyzed by SLED and was a match for Ms. Timpson. They
7 also located in the automobile a handwritten letter that
8 Mr. Neal had written out essentially admitting to the
9 killing and the reasons why he felt that was necessary.
10 It tended to be a jealous type situation where another guy
11 was involved. So there seems to be overwhelming evidence
12 that Mr. Neal was the one that committed this offense. He
13 does have some prior record. He has three criminal
14 domestic violence convictions. Those are in 1995, 1998
15 and 2000. And there are two family members who would like
16 to address the Court at the appropriate time.

17 THE COURT: Thank you, sir. Mr. Neal, is that what
18 happened, sir?

19 MR. NEAL: Yes, sir.

20 THE COURT: I find that there is a factual basis for
21 the plea, pleading freely and voluntarily with the
22 assistance of a skilled lawyer. And I am glad to hear
23 from the victims at this time who wish to speak.

24 SHEILA TIMPSON: My name is Sheila Timpson, I am
25 Kaybreisha Timpson's mom. I feel like 30 years is not

1 enough. He has no remorse. Not only did he shoot my
2 daughter one time, he shot her three times for no reason,
3 out of jealousy. He killed her in front of her
4 two-year-old baby and exactly ten days she is going to be
5 one year old. I just hope he dies. I just, I don't have
6 no petty on him. I want you to just give him the max.

7 THE COURT: Thank you, Ms. Timpson.

8 KRISTY SETTERS: My name is Kristy Setters and I am
9 Kaybreisha's aunt. And, you know, Kaybreisha was a very,
10 very sweet child, she was 19 years old. Sometimes, you
11 know, it is really, really hard to just take in that
12 someone would do that to a child when you are like 20
13 years older, you know, even though she might have wanted
14 to be like a grown woman, you know, done had a baby. She
15 was still a child. I can remember sitting there talking
16 to Kaybreisha and she is telling she has got her own
17 place. And I am like, Kaybreisha, who is going to cook
18 for you, you know, just letting you know this is a child.
19 I am going to come to your house and eat, you know, I am
20 coming with you, you are going to help me do this. She
21 was only 19 and he don't have no remorse for anything. He
22 has not shed not one tear. That is just something, how
23 can you do a child like that in front of her child.
24 Kaybreisha would never be able to take a walk or do
25 anything with her mom so I hope that we can get a justice

1 today.

2 THE COURT: Thank you, Ms. Setters.

3 MR. HODGES: That is all from the State, Your Honor.

4 THE COURT: Yes Ma'am, Ms. Nelson.

5 MS. NELSON: Thank you very much, Your Honor. As Mr.
6 Hodges has already told you Keith is 42 years old and we
7 are asking that the Court accept the negotiated sentence
8 of 30 years in this case. This is one of the toughest
9 pleas I have ever had to put up because I think it was
10 tragic all the way around. What happened to the Timpson
11 family and what has happened to Keith's family because,
12 there are losses in every corner. And I am sorry I am
13 getting emotional, I have never had to stand up here with
14 somebody taking this amount of time. And I am sure that
15 the sleep that I have lost over is nothing compared to the
16 sleep that Keith and the Timpson family and Keith's family
17 has lost over what happened. Your Honor, he would be 72
18 when he gets out if you impose sentence, almost 72. He
19 will have credit for, I believe it is 301 days he has been
20 in. And I can't imagine that at that point in his life
21 that anyone would ever again see any trouble out of him if
22 he does live to see his 30 years in prison satisfied.
23 What happened was horrible and all I can say about that is
24 it was a domestic situation and I think a lot of times
25 when people are attached to someone else they do things

1 that they would never under other circumstances do when
2 they have strong emotional feelings about somebody else.
3 And I will tell you that the Keith that I have seen is
4 nothing compared to the man that is described to you in
5 these facts. He is a very meek individual, he is, there
6 are a lot of clients that are very angry about the
7 situation they are in and want to blame other people for
8 what has happened. And that is not what he has done. I
9 think if there was anything that he could do to take back
10 what he chose to do that day that he would do it. And I
11 know the family feels like there has been no remorse but
12 that is not what I have seen. I have seen sorrow and I
13 have seen the tears and I am not just discounting anything
14 that they are feeling or thinking. But I can tell Your
15 Honor that the man I have seen and dealt with just doesn't
16 match up to what happened that day. And I do really
17 believe that Keith is sorry for what happened. Prior to
18 this happening he held a job at Power Track Service for 11
19 years. He is a hard worker, he has got five children
20 including the one he had with Ms. Kaybreisha Timpson.
21 They range in age from that child was almost one up to 19
22 years old. Despite the record that Mr. Hodges read to you
23 it is, he does not have a lengthy record, he has never
24 been to prison for anything, has been on probation one
25 time prior to this and I think this was one of those

1 situations that unfortunately you hear about too often
2 where somebody just kind of snapped and couldn't cope with
3 the term that their life was taking and I think that is
4 all I have to say to you, Your Honor. We just, I think
5 that, the only justice would be something that would bring
6 Kaybreisha back and that is impossible for any of us to
7 do, it is impossible for Keith to do. And so I think what
8 we worked out here is close to justice as we can get, Your
9 Honor. And Keith is standing here to accept the
10 responsibility for what happened. He called the police
11 that day and made arrangements to turn himself in without
12 incident. I think when that day started his intention was
13 to kill himself too and that didn't happen, he did
14 surrender himself to police and he did fully cooperate.
15 He gave a statement admitting to what happened. Since he
16 has been locked up has had absolutely no incidents
17 whatsoever at the jail. He has been housed in Laurens
18 because originally when this happened Ms. Timpson's son
19 was living across the street at the detention center. So
20 out of an abundance of caution Keith was housed, not to
21 say anything was said or there were no threats made that I
22 am aware of anything like that but just to be cautious
23 they put Keith in Laurens County. And he has never had a
24 single disciplinary incident there which goes along with
25 the man that I have seen. And, Your Honor, just ask that

1 you accept what we have worked out. I don't know if Keith
2 or any, he has got several family members over there, some
3 cousins and his aunt and his brother. I don't know if any
4 of them wish to address you and I am not sure if there is
5 anything that Keith wants to say. But that is everything
6 that I have for you, Your Honor.

7 THE COURT: Thank you, Ms. Nelson. Okay, anything
8 that you want to say, sir.

9 MR. NEAL: I am sorry, I don't bother nobody. It was
10 just the situation. I never meant no harm to anybody, I
11 wasn't thinking. Thank you for your time.

12 THE COURT: All right, anything further?

13 MS. NELSON: Your Honor, this is his cousin, Cheryl
14 Spencer, Your Honor. I have had a number of conversations
15 with Cheryl.

16 THE COURT: Yes, ma'am.

17 CHERYL SPENCER: I am sorry for the Timpson family.
18 Ever since it happened my heart has went out. Keith is
19 not a bad person. He just got caught up as we all do
20 sometimes. But I am asking for you to accept what they
21 offered. I would be grateful.

22 THE COURT: Thank you, Ma'am.

23 COUSIN: I am a cousin and I helped raise him. And as
24 Cheryl has said, my heart goes out to the Timpson family.
25 I am hoping that they can find forgiveness one day. There

1 is two sides to every story and we just see one side. And
2 like I said, we all got our issues, we all got our
3 problems. But Keith is not really a bad person, he is
4 always good for his children. He loved Kaybreisha, he did
5 anything and everything that he could for her. So I just
6 pray that you can find mercy and accept this plea. And if
7 the Timpson family would allow us to help them to take
8 care of the baby if they would allow it. Thank you.

9 THE COURT: Anything else?

10 MS. NELSON: No, Your Honor.

11 THE COURT: Thank you for your presentations. And I
12 certainly appreciate both families and supporters and
13 friends of both the victim and the defendant being here
14 this afternoon and everything that was said. I give a
15 great deal of deference and credit to the prosecutor's
16 office and the defendant's lawyer's office in researching
17 and investigating this matter. Under our system of
18 justice which is based on the adversarial system a
19 negotiation or a compromise sometimes works out in a way
20 that reflects a reasonable resolution of a tragic
21 occurrence. And this certainly was tragic and justice is
22 not perfect and I often wish I had a magic wand instead of
23 a gavel so I could make perfect justice but I can't. If I
24 were part of the victim's family, in their shoes I would
25 certainly want the maximum sentence. If I were part of

1 the defendant's family in their shoes I would certainly
2 want the least sentence. It is not my job to be one side
3 or the other. It is my job to pose a sentence that is
4 reasonable and speaks justice. In this situation I
5 believe the State and the defendant's lawyer have reached
6 a reasonable compromise, one that is rationally based on
7 the evidence and all of the circumstances. And the fact
8 that Mr. Neal is accepting responsibility, sparing
9 everyone the expense of trial and the emotional expense of
10 this event is something that is in consideration. And I
11 understand that the victim's family may be disappointed in
12 the resolution the State is imposing. But I know also
13 many times families want revenge and I would just remind
14 everyone that revenge is a poison that you take, somehow
15 think that it is going to hurt somebody else. So I hope
16 that this will bring some finality to this tragic event.
17 I know this will affect the lives of people here and
18 elsewhere for years to come. I hope this will provide
19 some solace to the extent that the justice system can
20 provide that. So, Mr. Neal, the sentence is you be
21 committed to the Department of Corrections for 30 years.
22 Thank you.

23 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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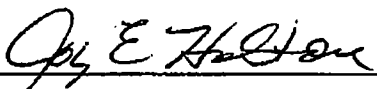
CERTIFICATE OF REPORTER

State of South Carolina)
)
County of Newberry)

I, Joy E. Holston, Official Court Reporter for the
Eighth Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete transcript of record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the County of Greenwood, South
Carolina on the 16th day of July, 2012.

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

March 5, 2014



Joy E. Holston, Court Reporter

My Commission expires: March 13, 2016

FORM 5

13CP24-00594

STATE OF SOUTH CAROLINA

County of GREENWOOD

IN THE COURT OF COMMON PLEAS

ADRAIN KEITH NEAL

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.

2013 JUN 21 PM 9:58

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LIEBER CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence GREENWOOD COURT
of GENERAL SESSION EIGHTH JUDICIAL CIRCUIT
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2012-65-24-0184

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ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S.C.

- (b) _____
 (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) 36 years 7/16/12
 (b) _____
 (c) _____
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty ✓
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?

8. If you answered "yes" to (7), list:
 (a) the name of each Court to which you appealed:
 i. N/A
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. N/A
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. N/A
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. N/A
 ii. _____
 iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
 (a) Didn't understand the nature of the proceeding

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 GREENWOOD COUNTY
 S. C.

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) Ineffective Assistance of Counsel
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel fail to petition the Court of mental Evaluation
- (b) for failure to advise the Applicant of his rights to Appeal
- (c) See Attachment "A" thru "D"
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____

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 CCCP AND GS
 GREENWOOD COUNTY
 S. C.

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

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

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

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

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 CCCP AND GS
 GREENWOOD COUNTY
 S. C.

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

(a) Not discovered

(b) _____

(c) _____

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

(a) your arraignment and plea? NO / YES

(b) your trial, if any? YES

(c) your sentencing? YES

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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

(a) the name and address of each attorney who represented you:

i. N/A

ii. YANA A. NELSON Suite 200, Park Plaza 600 Monument Street Greenwood, South Carolina 29646

iii. N/A

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

i. N/A

ii. GENERAL SESSIONS

iii. N/A

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 CCCP AND GS
 GREENWOOD COUNTY
 S.C.

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

The vacating or setting aside of the judgment

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of GREENWOOD)

VERIFICATION

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

Adrian K. Neal

SWORN to and subscribed before me this 31st
day of May, 2013.

Ludheen Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

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Angela Woodhurst
ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S.C.

Attachment B
1 of 5

Laurens County
Sheriff Office At: Adrian Keith Neal
P.O. Box 329
Laurens, S.C. 29360

GREENVILLE SC 296

25 OCT 2011 PM 2 11

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ATTEST A TRUE COPY
Angela Woodhurst
ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S.C.

Office of the Public Defender
Suite 208, Park Plaza
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Greenville S.C. 29604

because Mrs. Timpson was telling me
 that those guys had weapons on
 them and made it clear that that guy
 name monkey especially had a weapon
 for me, that if it came down and me
 or any of those guys would have had
 a confrontation that if I could get them
 first and that I couldn't see myself in
 jail for the rest of my life and that I would
 take my own life. So what I'm trying to
 say is that if something would have went
 down and I had to protect myself and
 caused harm to someone that I had that
 thought on hurting myself, because ~~I~~
~~didn't think I would have had to~~ ^{because}
~~hurt someone that I shouldn't have to go~~
~~to jail for protecting myself. I only took~~
~~the weapon for my protection, due to the~~
~~fact that, their company that was coming~~
~~around had weapons on them and thought~~
~~and was afraid that if me and Mrs.~~
~~Timpson were to have had a disagreement~~

"A"
 3/5

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

Adrian Keith Neal, #351553,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

2013-CP-24-0594

RETURN

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.
2014 APR -11 PM 11:03

The Respondent, making its Return to the application for post conviction relief (PCR) filed on June 21, 2013, would respectfully show this Court:

1.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenwood County Clerk of Court. The Applicant was indicted at the January 2012 term of the Greenwood County Grand Jury for Murder (2012-GS-24-0134). The Applicant was represented by Janna Nelson, Esquire. On July 16, 2012, the Applicant pled guilty to Murder as indicted. The Honorable D. Garrison Hill sentenced the Applicant, pursuant to a negotiated sentence, to confinement for thirty (30) years. The Applicant did not appeal his conviction and sentence.

Attached herewith and incorporated herein are the records of the Greenwood County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "Ineffective Assistance of Counsel"
 - a. "Counsel failed to petition the Court of mental evaluation"
 - b. "for failure to advise the Applicant of his rights to appeal."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

For purposes of this Return, Respondent interprets Applicant's allegations to be allegations of ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

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

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on Applicant's allegations.

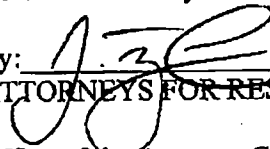
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
~~ATTORNEYS FOR RESPONDENT~~

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

March 27, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF GREENWOOD)

IN THE COURT OF COMMON PLEAS

2013-CP-24-0594

ADRIAN K. NEAL, 351553)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

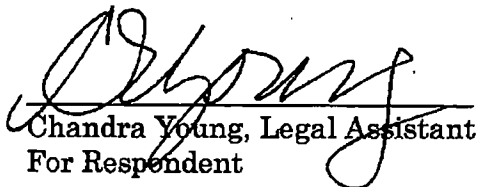
STATE OF SOUTH CAROLINA,)

Respondent.)
_____)

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

James C. Johnson
229 Jackson Ave.
Greenwood, South Carolina 29646

DATED this 27th day of March 2014.


Chandra Young, Legal Assistant
For Respondent

State of South Carolina)
County of Greenwood) Court of Common Pleas
) Post Conviction Relief
 2013-CP-24-00594

Adrian Keith Neal)
 vs.) Transcript of Record
)
State of South Carolina)
 Defendant)

October 17, 2016
Greenwood, South Carolina

B E F O R E:

Honorable R. Ferrell Cothran, Judge

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

Justin Hunter, Assistant Attorney General
Attorney for the State

Laura Saunders, Esq.
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

INDEX OF WITNESSES

(IC) - Denotes In Camera
(AW) - Denotes Defense Witness
(SW) - Denotes State's Witness

(AW) Adrian Keith Neal

Direct examination by Ms. Saunders: 6
Cross-examination by Mr. Hunter: 17

(SW) Janna Nelson

Direct examination by Mr. Hunter: 22
Cross-examination by Ms. Saunders: 30

Certificate of Reporter 36

EXHIBITS

(There were no exhibits introduced.)

1 MR. HUNTER: May it please the Court, Your Honor.

2 THE COURT: Yes.

3 MR. HUNTER: The next case is Adrian Keith Neal
4 versus the State of South Carolina, 2013-CP-24-594. Your
5 Honor, he was indicted in January, 2012 for murder,
6 2012-GS-24-134. He was represented by Ms. Janna Nelson.
7 On July 16, 2012 he plead guilty as indicted and pursuant
8 to a negotiation he was sentenced to 30 years in prison.
9 He has now filed a notice of appeal. He filed this
10 current action June 21st, 2013. He is present today
11 represented by Ms. Laura Saunders.

12 THE COURT: Okay.

13 MS. SAUNDERS: Thank you, Your Honor. I appreciate
14 your patience in allowing us to get a little more time
15 into meeting today. Your Honor, we have an, or Mr. Neal
16 does wish to amend his pleadings. And Mr. Hunter has
17 consented to those amendments on the record. We are going
18 to amend and then argue the points immediately.

19 THE COURT: Okay. Is that correct?

20 MR. HUNTER: That's correct, Your Honor.

21 THE COURT: All right.

22 MS. SAUNDERS: Your Honor, Mr. Neal would just like
23 to amend his pleadings to add a few points. One being
24 that he did not properly receive his discovery in time.
25 Two, that he did not properly or did not receive adequate

1 communications and visits from his attorney. And then the
2 third one and Mr. Neal is pretty adamant that I add this
3 and I am going to add it, Your Honor, and allow you to
4 consider it for, to the best of your consideration. He
5 has raised the issue that there are some insufficiencies in
6 a search warrant that was done on the vehicle. I have
7 advised him that I disagree with that allegation but I do
8 want to add it for completeness purposes today. There was
9 also, on his sentencing sheet he did not, he says that he
10 did not waive presentment or check that box, the waiver of
11 presentment. But, Your Honor, I believe that the
12 indictment does indicate that it was true billed. So the
13 purposes of that argument I would just challenge the
14 sufficiency or he wishes to add that he feels that the
15 search warrant was invalid.

16 THE COURT: Okay.

17 MS. SAUNDERS: As well as the arrest warrant, Your
18 Honor. And so with that, if you will allow us to add
19 those points and then go forward I would appreciate it.

20 THE COURT: Okay. And the State has no objections?

21 MR. HUNTER: No objections, Your Honor.

22 THE COURT: All right. You may proceed.

23 MS. SAUNDERS: Thank you, Your Honor. I will call
24 Mr. Adrian Keith Neal to the stand.

25 THE COURT: You can come around, please, sir.

1 ADRIAN NEAL, being
2 first duly sworn, testified as follows:

3 MS. SAUNDERS: May it please the Court, Your Honor.

4 THE COURT: Yes, ma'am.

5 DIRECT EXAMINATION

6 By Ms. Saunders:

7 Q Mr. Neal, will you please state your full name for
8 the record.

9 A Adrian Keith Neal.

10 Q What do you go by?

11 A Keith.

12 Q Okay. And you are here today on a PCR application,
13 is that your understanding?

14 A Yes, ma'am.

15 Q And that is for post conviction relief. Is that your
16 understanding?

17 A Yes.

18 Q And from what I gather in my conversation with you as
19 well as looking back into the file and reading all the
20 paperwork including the State's return. You plead guilty
21 on or about July 16th of 2012. Is that correct?

22 A Yes, ma'am.

23 Q And your attorney was Ms. Janna Nelson. Is that
24 correct?

25 A Yes, ma'am.

Adrian Neal - Direct by Ms. Saunders

7

1 Q Is she here today?

2 A She are.

3 Q Are you a resident, a longtime resident of Greenwood?

4 A I am.

5 Q Tell the Court a little bit about yourself, if you
6 don't mind?

7 A I was born and raised in Greenwood. I have six kids
8 and have some of my family members here with me today.
9 And I had a job for eleven years with Powers Trans,
10 (phonetic), before my incident happened.

11 Q And you say you have six children?

12 A I do.

13 Q Were you married at the time that this happened?

14 A No, ma'am.

15 Q So when you plead in July of 2012 you plead to a
16 negotiated sentence of 30 years. Is that true?

17 A I did.

18 Q Now, we have some allegations we want to make before
19 the Court, so as we talk this is your opportunity to tell
20 the Court the specific reasons why you feel that you
21 should be granted post conviction relief. Now, let's go
22 through the first one on your application. Leading up to
23 this point, how many times did you meet with Ms. Nelson?

24 A Ms. Nelson came to Laurens County. With all due
25 respect, after I had my family to come to the Court House

1 to see if she could come over there, you know, to meet
2 with me. When she did come, she didn't come but twice.
3 And from my understanding the first time she came, she
4 just came, I thought she was coming to let me know whether
5 the Court, excuse me, the Judge was going to grant me a
6 bond or not. She was coming to let me know what the State
7 was offering me.

8 Q Okay. Had you had a bond hearing?

9 A No, ma'am. We was waiting, my Auntie right there, I
10 had asked if they had granted me bond, if she would look
11 out for me and she said yes but we had no idea.

12 Q So you only went in front of the Judge for a bond one
13 time?

14 A That's it.

15 Q Did Ms. Janna go with you, did Ms. Nelson go with
16 you?

17 A She was there.

18 Q So she did represent you for a bond hearing?

19 A Yes.

20 Q So the Judge never set it?

21 A He told us he would let us know but we had no idea.

22 Q So you don't know if he had it under advisement or if
23 he denied it?

24 A I didn't know it was denied until she came and told
25 me.

1 Q Okay, so she came and told you that?

2 A Yes.

3 Q So the first time that she came to meet with you,
4 what is the nature of that meeting. Where were you and
5 what did she tell you?

6 A I was in Laurens County.

7 Q Okay.

8 A To my best knowledge, she said, I come to you with
9 some news but unfortunately it is not no good news, about
10 what the State wanted to offer me and all. They were
11 looking at, what Mr. Hodges decided, you know, deciding,
12 you know, the status of the, you know, whether it was
13 going to be murder or what Mr. Hodges said.

14 Q Did she come and convey an offer to you, like what
15 the State wanted out of this?

16 A That is what she said, yes.

17 Q Did she tell you anything like you had to make a
18 decision or did she say just think about it?

19 A At that time I really just didn't know what to say
20 and then she just said, I think she did say just think
21 about it.

22 Q Okay. So you weren't under any type of forced
23 situation like you had to make a decision right then and
24 there. Is that correct?

25 A I know I asked her about the first offer, something

1 like that, you know. But she said that was the only offer
2 from what she told me. And I don't have to tell no story
3 on nobody.

4 Q So did she come back to talk to you again?

5 A She did.

6 Q And what was the nature of that conversation?

7 A She brought some guy with her to see what my answer
8 was and stuff like that.

9 Q Did you give her an answer on that day?

10 A I think, yes ma'am, yes.

11 Q What did you tell her?

12 A I said I just don't have no choice. I don't think,
13 but again, I just didn't know.

14 Q Okay. All right. And then I think you met with her
15 again on the day that you were transported back over to
16 Greenwood before, right?

17 A Yes, ma'am.

18 Q Did you know that you were going to plead guilty that
19 day?

20 A I was told, again, that Lieutenant Champagne told me,
21 you know, I found out through her in Laurens County that
22 they called over there.

23 Q So the jailer indicated to you that you were going to
24 be going to court soon?

25 A Uh-huh.

Adrian Neal - Direct by Ms. Saunders

11

1 Q And so you went a few days later?

2 A Yes, ma'am.

3 Q All right. Did you have an opportunity to meet with
4 her that day?

5 A She sat me over there on those black chairs and she
6 gave me a paper to sign.

7 Q Okay. Was it just to sign you up for the, you knew
8 you were there to plead guilty, right?

9 A That's what the jailer said, yes.

10 Q Okay. So let's talk about your discovery, you know
11 what discovery materials are?

12 A I didn't know what it was.

13 Q But you have done a lot of research and you know what
14 the discovery materials are. That's all the
15 investigation, documents and the warrants and the
16 indictments and the notes from the officers and that kind
17 of thing?

18 A I know what it is.

19 Q When did you receive that information?

20 A Seven months and seven days after the plea.

21 Q Okay. Why did it take so long for you to get that?

22 A I have no idea. Again, to be honest with the
23 situation. I didn't know anything about the motion of
24 discovery until one of the guys up there at Lieber was
25 asking me about going back to court. I never knew I

1 could, you know, appear, I didn't know none of that. I
2 had no idea.

3 Q Well, let's wait on that for a minute.

4 A Okay.

5 Q Did you ever go over any documents with Ms. Nelson?

6 A No.

7 Q So you received your information on February the
8 19th, 2013?

9 A It was dated, her letterhead was dated February 19th,
10 2013, I received it seven days later.

11 Q And you plead guilty on July 16th of 2012?

12 A Yes, ma'am.

13 Q Okay. Now, let's talk about the other allegation in
14 your application with the mental evaluation. You assert
15 that Ms. Nelson should have had you evaluated. Is that
16 true?

17 A Yes.

18 Q Tell me about that.

19 A Because I was being, dealing with migraine headaches
20 and I just knew I wasn't in my right mind and these people
21 talking about doing something to me. And I don't have no
22 reason to tell nobody no story.

23 Q Who are these people?

24 A Ms. Timpson and again, the guy, I don't know him, he
25 could walk up to me today, I can't even tell who he is.

1 But I know what she told me.

2 Q Do you have a history of mental illness?

3 A No, ma'am.

4 Q Any kind of type medications you have taken for a
5 mental illness, whether it be depression or anxiety or
6 bipolar disorder or anything like that?

7 A Well, if I could say this with all due respect. You
8 know, my attorney at the time had asked me if I had been
9 seen about my depression. But again, I told her, you
10 know, I didn't have no money, no insurance. You know,
11 they wasn't going to see me. She felt I should have been,
12 but she knew about it way before this happened.

13 Q Okay. Did you ever ask Ms. Nelson to be evaluated?

14 A No, ma'am.

15 Q Did you ever have any discussions with her about
16 that?

17 A No.

18 Q Okay. Let's move on to the next point. As far as
19 the day of your plea you have asserted that you weren't
20 properly advised and communicated your rights, your
21 constitutional rights?

22 A Yes, ma'am.

23 Q Tell me about that.

24 A Had I knew, been properly advised and I was giving up
25 my amended rights, you know, maybe we could have did

1 something different. But I didn't know anything about no
2 rights like that. My Fourth Amendment rights, you know, I
3 didn't know, with all due respect, the State was
4 violating, I had no idea because again, this case, this
5 file of mine, I never seen this until seven months and
6 seven days later.

7 Q Okay. So I guess you probably need to inform the
8 Court of how you decided to plead guilty. Like what
9 communications with Ms. Nelson made you want to plead
10 guilty or make that decision on that day, if you remember?

11 A To be honest with you, it is just like, she scared
12 me. She told me, you know, about the 30 years and if not,
13 you know, they were going to give me life. I just didn't
14 want to spend all of my life in prison, you know, for
15 trying to protect myself and stuff, you know. And I
16 didn't want to take no life.

17 Q Did you talk to Ms. Nelson about the fact that you
18 were asserting that you were defending yourself when this
19 happened?

20 A Again, to be honest with you, I told her in Laurens
21 County, you know, anybody knew that them people trying to
22 hurt me, the lady that was talking to Georgia on the
23 phone. But she said, I remember her saying, she said why
24 didn't she tell them. I don't have the slightest idea why
25 she didn't tell the dispatcher when she was talking to

1 them that the people were trying to do something to me
2 first.

3 Q Did you ever ask her for an appeal of your sentence
4 after you walked out of the Court House or after you plead
5 guilty on that day?

6 A When the Judge sentenced me I was escorted out of
7 that door right there by four officers back behind him
8 down to an elevator that crossed the parking lot to the
9 Detention Center. We never spoke again. Again, I never
10 had no idea, I could appeal the Judge's decision. I had
11 no idea.

12 Q Let's talk about the search warrant issue that you
13 want to talk about. I am going to let you guide the Judge
14 on that issue because you and I have had a little bit of a
15 disagreement on that issue. Okay. Tell me about the
16 arrest warrant and then about the search warrant and why
17 that you feel that those should have been challenged more
18 thoroughly.

19 A Again, if I had of knew about my rights and the State
20 advised me of my rights. You know, South Carolina statute
21 code, 17-13-140 in 1976 requires a warrant to be executed
22 and returned within ten days. And from what I see, when I
23 finally got my, the information from Ms. Nelson and stuff
24 it wasn't properly, you know, it was lacking the issuing
25 officer's signatures, you know. The mandate of the

1 statute is clear, you know, you have to have a warrant
2 from what I have been doing research on. And from what I
3 seen it is lacking.

4 Q Okay. The reason it is lacking is, you say because
5 the signatures aren't all there and the copy that you
6 have?

7 A Exactly.

8 Q What specific signatures aren't there?

9 A The one that the issuing officer should have endorsed
10 it back as his signature of the warrant to charge me with
11 the offense.

12 Q So did you ever have a discussion with Ms. Nelson
13 about the, your opinion about the warrants?

14 A Again, I never seen it, never seen a case that filed
15 mine until seven months and ten days later. Excuse me,
16 seven months and seven days later, I had no idea.

17 Q So I want you to tell the Court how you feel about
18 the prejudice element. You feel like the deficiencies in
19 not receiving your discovery and not talking with you
20 about the search warrant had caused you some prejudiced.
21 Is that correct?

22 A Yes. My legal rights, if I had of knew, again, the
23 deficiency, you know, the words and stuff, you know. It
24 states, you know, that, you know, that she should have
25 been mindful of the deficiency of the defects, the

1 completeness, you know, lacking a whole lot of stuff. If
2 she had of brought enough to my attention, you know, maybe
3 the proceeding would have been different. I just don't
4 know.

5 Q Okay. But you feel like you should have been
6 afforded the opportunity to see your discovery and ask
7 those questions before you plead guilty?

8 A Yes, ma'am.

9 Q And you feel like you were denied that opportunity?

10 A Yes, ma'am.

11 Q And if you had been given that opportunity you may
12 have elected to go to trial and not plead guilty, right?

13 A If I had knew, with all due respect, if I knew then
14 what I know now, yes ma'am.

15 MS. SAUNDERS: Thank you, Your Honor, no further
16 questions.

17 MR. HUNTER: Briefly, Your Honor.

18 CROSS-EXAMINATION

19 By Mr. Hunter:

20 Q So prior to your plea you met with Ms. Nelson twice?

21 A Yes.

22 Q And what happened during those meetings?

23 A Again, she just told me, you know, basically she said
24 she hadn't been on that side. I guess because they had
25 built a new part to the jail and stuff. And she just told

1 me, she said, you know, I come in here with some news.
2 Unfortunately, it is not no good news. Mr. Hodges feels
3 like he has enough evidence against you to charge you with
4 the murder.

5 Q So did y'all discuss what this evidence was?

6 A Excuse me?

7 Q Did you discuss what the evidence was that the State
8 had against you?

9 A She said that the gun, the letter, I think that is
10 about it.

11 Q Did you ever give her your side of the story?

12 A Well I know, like I say, you know, I just didn't
13 really know what to say and I was just trying, asking her,
14 she could ask me anything, you know. And, again, I stated
15 to her, you know, why they didn't talk to the lady on the
16 phone and told the Judge, you know.

17 Q So did you go over possible defenses with her?

18 A She just, I remember her saying that. I said that,
19 with all due respect because I don't have no reason to
20 tell a story. She said she don't see how we could win.

21 Q Did she tell you why she thought that?

22 A She talked about the gun and the letter and that's
23 it, and the statement.

24 Q Okay. So was this always going to be a plea when you
25 talked to her, was it always assumed that you would plead

Adrian Neal - Cross by Mr. Hunter

19

1 to this charge?

2 A No, she just told me to think about it.

3 Q And after thinking about it you did decide to plead?

4 A Again, she scared me when she said, you know, if you
5 don't take this plea and they find you guilty they can
6 give you life or something like that she said.

7 Q So she made you aware, I guess, of the sentencing
8 range that you were facing, possible punishment?

9 A Not, the 30 years, yeah.

10 Q Okay. And during your meetings you never went over
11 any of the discovery?

12 A No.

13 Q You ever ask her about it?

14 A I didn't know nothing about that.

15 Q Okay. And did you ever ask her, can you show me what
16 the State has against me?

17 A I didn't know nothing about it.

18 Q Okay. Now with your mental evaluation, do you know
19 what, possibly what would have come from the evaluation?

20 A Stress, just stressed out, you know, scared because
21 like I say, you know, I just felt like the people were
22 going to do something to me.

23 Q Did you ever tell this to the Judge?

24 A No, sir.

25 Q Okay. And you never ask her to be evaluated?

1 A No.

2 Q Okay. Do you remember the Judge going over with you
3 your constitutional rights, that you had the right to take
4 this to trial and that you were giving up that right?

5 A Again, I remember, I think I remember him saying
6 that. But, again, I just didn't understand, you know,
7 everything. I just thought, I thought, you know, since
8 she told me, you know, it is in my best interest to take
9 these 30 years. If I had of knew I could have challenged
10 the decision or say no, I would have. Again, I didn't
11 know, I just didn't know.

12 Q So you just didn't, you never spoke up?

13 A I just did what she said.

14 Q Okay. And as far as an appeal, you never asked her
15 to appeal, correct?

16 A I didn't know I could appeal the Judge's decision.

17 Q Okay. And did you ever speak to her at all after
18 your plea?

19 A Again, like I told Ms. Saunders, I was escorted out
20 as soon as the Judge made the decision. I was escorted
21 out of here, I never seen her no more.

22 Q But when you were incarcerated, once everything was
23 finished did you ever contact her office?

24 A Yes. When I sent her a letter. Again, I do not
25 recall a date, I submitted her a letter asking for the,

1 you know, the motion of the discovery of the evidence and
2 stuff. That is the only time, you know, I received back,
3 you know. Seven months and seven days later.

4 Q Now, you want a new trial on this case?

5 A Yes.

6 Q But leading up to your plea you didn't want a trial,
7 you wanted to plead guilty the whole time?

8 A Again, I didn't know. Again, it scared me when she
9 said what she said, you know, about the 30 years, if you
10 don't take this they can give you life.

11 Q And the Judge told you that you were facing 30 to
12 life, too, correct?

13 A I can't recall that, sir.

14 MR. HUNTER: No further questions, Your Honor.

15 THE COURT: Ms. Saunders.

16 MS. SAUNDERS: No questions, Your Honor.

17 THE COURT: Thank you.

18 MS. SAUNDERS: Your Honor, that is our case for
19 application for PCR, we have no further witnesses.

20 THE COURT: Okay.

21 MR. HUNTER: Your Honor, the State calls Janna Nelson
22 to the stand.

23 THE COURT: All right.

24 JANNA NELSON, being

25 first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Hunter:

Q Good morning, please state your name for the record.

A Janna Nelson.

Q And where are you currently employed?

A I am employed by the State of South Carolina at the Eighth Circuit Public Defender's office.

Q Could you give us a brief employment history?

A I finished law school in 2002. I went to work for Nelson, Mullins for five years and then I have been over here at the Public Defender's office since then, 2007.

Q That is where you were employed when you met Mr. Neal?

A Yes.

Q And could you just go over how you became, I guess, appointed to represent him?

A Our office would have gotten an application, we would have opened the file and then it was assigned to me.

Q Okay. Can you just discuss the meetings you had with him?

A I don't know how many there were and it is not documented in my file. But we, we talked, we talked about a bond and did have a bond hearing and bond was denied. At the meeting where we talked about the bond hearing I was primarily getting information to try to support our

Janna Nelson - Direct by Mr. Hunter

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1 application for a bond to be set. So I was getting
2 information about his background, stuff to try to convince
3 the Judge that he was not a flight risk and that he was
4 not a danger to the community. We did also talk some
5 about the case at that point but I don't remember what
6 details there were. And in our subsequent meetings, my
7 recollection is that we did go over the discovery to the
8 extent that Mr. Neal wanted to talk about it. I always
9 had his file with me when I met with him. I would have
10 gone over, usually what I do when I meet with people is I
11 kind of go over, I paraphrase what's in the incident
12 reports, the supplemental reports. I tell them about any
13 SLED results I received. I specifically remember us
14 having conversations about the SLED report about the semen
15 that was found in the decedent's body and who it matched
16 to, which was not Mr. Neal. I remember us having
17 discussions about the gunshot residue results, the
18 ballistics results. One of the things we primarily talked
19 about was the letter that he had written that was found in
20 his car. I remember us also talking, him telling me about
21 feeling threatened by this fellow he knew as Monkey who
22 was, sounded like someone the decedent was now seeing. A
23 prior incident where Monkey had hit his car and then the
24 decedent telling Keith that this fellow had a gun. So we
25 had those discussions about him feeling threatened by that

1 person specifically. And then in general being concerned
2 that other people who might be around the decedent would
3 also be armed. The problem that I had that I conveyed to
4 him was that at the time that the incident happened, this
5 fellow he was worried about was not anywhere around. And
6 that the decedent, Ms. Timpson, was not, there did not
7 appear to be an indication that she was armed or that she
8 was threatening him in any way at the time of the
9 incident. So we had, I mean my recollection is that we
10 had a lot of conversation back and forth about why I
11 didn't think there was a self-defense claim in this case.
12 Does that answer your question?

13 Q That does.

14 A And we, of course, talked about plea versus trial.
15 We talked, I am sorry, we talked about the plea offer that
16 had been made. I would have told him that the prosecutor
17 was trying to call his case to trial as early as June of
18 that following year. I was able to get that kind of
19 pushed back to give Keith time to actually consider this
20 30 year offer that had been made. I am sure that I told
21 him that I felt, that I did not feel good about a trial
22 outcome. There was, in addition to the letter that he had
23 written, there was the statement that he gave the police
24 about the gun being in the car. There was a related
25 charge of, a burglary charge where he was accused of

1 getting the same gun from his cousin's house shortly
2 before the incident occurred. There was a call to a
3 family member saying that he had killed his baby's mama.
4 There were text messages from his phone. And I am certain
5 that I conveyed to Keith that I was very concerned about
6 the outcome at trial. I don't think I would have told him
7 that he would have automatically gotten a life sentence
8 but I am sure that I told him that the penalty range was
9 30 to life on a murder charge and that I did have concerns
10 that because of the allegations in the case, because of
11 the baby being in the car at the time this incident
12 occurred, just the letter that was found in the car, that
13 because of those things I was concerned that he would have
14 a bad outcome at trial.

15 Q Okay. And what is this letter that was referred to?

16 A What is it?

17 Q Yes, what was in this letter?

18 A There were, he talked about this fellow, Monkey, in
19 the letter. And, I mean, the gist of it from the letter
20 was, it sounded like a plan to kill both Monkey and the
21 decedent. And it was dated September 19th which was the
22 same day as the incident. There were also, you can
23 construe that he might have intended to take his own life
24 after he killed them. There was specific things about, he
25 called her names and there were specific things about

1 where she was going to be, where she was going to get it.

2 Q Okay. And you went over all of this with him?

3 A Yes, sir.

4 Q Okay. So, is it safe to say that the State's
5 evidence would have been overwhelming against him?

6 A I did not feel good about an outcome at trial and I
7 definitely told Keith that.

8 Q Okay. Did he ever say, I understand that but I still
9 want to go to trial?

10 A No, I think when he said, when he said a few minutes
11 ago that he felt like he didn't have any choice, I think
12 that was accurate. I think he felt like the plea was,
13 that he didn't have a good, what I kept, you know, usually
14 when people say that to me, what I say back is, well, you
15 don't really have good choices. You have this bad choice
16 of taking a lot of time or you have this other bad choice
17 of going to trial where I feel strongly that we are going
18 to lose and you could get even more time. Those are not
19 great choices but I, my perception was that in his mind he
20 felt like taking the plea was the better of the two bad
21 choices.

22 Q Okay. Now, let's go over, I guess, his mental state.
23 Did you ever have any problems communicating with him?

24 A No, I didn't.

25 Q Was there anything about him that caused concern

Janna Nelson - Direct by Mr. Hunter

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1 about his mental state?

2 A I wasn't concerned that there were competency issues
3 or insanity issues. I did think in my layman's impression
4 that was that he was probably depressed about losing his
5 girlfriend and depressed about being in jail over what had
6 happened. But I didn't, in hindsight I wish that I had
7 had him evaluated so that I had that documented in my
8 file. But I did not, at the time, have concern that there
9 were competency or insanity issues.

10 Q Okay. And if you recall, do you recall during this
11 plea hearing, did you have concern that would make you
12 want to stop the hearing because of his competency or his
13 mental state during the time?

14 A No, sir.

15 Q Do you think a mental evaluation, had you done it, do
16 you think it would have changed anything?

17 A No, sir.

18 Q Okay. And as far as an appeal goes, was there ever
19 any talk of appealing this plea?

20 A When I, when I go over a sentencing sheet with
21 anyone, I tell them about their basic constitutional
22 rights to go to trial, to confront witnesses, to call
23 witnesses. And I tell them that they have a right to
24 appeal their sentence from the guilty plea but that their
25 reasons for appeal are going to be very limited. And I

1 usually give an example, like if the Judge gave you an
2 illegal sentence, if your charged carried up to 10 years
3 and a Judge gave you 20, that would be an illegal
4 sentence. That would be a basis for an appeal. But that
5 part of the advisement of rights is usually very brief
6 because there are so few opportunities to successfully
7 appeal a guilty plea.

8 Q And in this case did you see anything that would have
9 been preserved for appeal?

10 A No, sir. And we did not have any discussions about
11 an appeal afterwards. That is certainly accurate.

12 Q Okay. Now you heard his concerns about a search
13 warrant, I assume you received the warrant and the
14 indictment, you received all of that pretty early on?

15 A I don't receive the indictment. I have to go get the
16 indictment when I want to see it. And I can, I think I
17 saw the search warrant earlier today when I was reviewing
18 this file. I don't know exactly when I got the search
19 warrant but I would have had it before, I certainly would
20 have had it before the plea.

21 Q Did anything jump out at you, if you can recall, that
22 would have been illegal about the search warrant?

23 A No, sir.

24 Q If there was would you have brought it to the Court's
25 attention?

Janna Nelson - Direct by Mr. Hunter

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1 A Well, if we had gone to trial I certainly would have.

2 Q Correct.

3 A I don't know that I would have at a plea.

4 Q Right, right. And did you, obviously the Judge did
5 but did you go over with him the fact that he was
6 pleading, that he couldn't challenge evidentiary issues?

7 A I don't know.

8 Q Okay. And again, just to make sure, this discovery
9 he says that was sent to him seven months later but did
10 you go over with him before this plea?

11 A Yes sir, to the extent that he wanted to know what
12 was there. I don't provide copies of discovery as a
13 matter or course. I do it when people ask me for it. I
14 don't really, my preference is that isn't floating around
15 the jail because I think people can use it against people
16 sometimes and take it as an opportunity to be a snitch by
17 getting ahold of things that are in discovery. I prefer
18 not to give, in homicide cases I prefer not to give people
19 actual pictures of the incident location or the decedent.
20 If they ask, if they tell me they want them I give them to
21 them anyway. But my preference is not, I prefer it if
22 people don't want those in their cell or in their
23 possession. But if somebody ask me for discovery I
24 certainly will give it to them. And when Mr. Neal asked
25 me, after the plea, I sent him the entire file.

1 Q Okay. But did he ever ask for anything before this
2 plea?

3 A No, sir. Not for his own personal copies. No sir, I
4 would have give them to him.

5 Q Did he ever tell you that he needed something, that
6 you disputed something. Were y'all on the same page
7 regarding the discovery that the State had, the evidence
8 against him before the plea?

9 A Well, I thought we were at the time. I don't know
10 that we are, I could have been wrong but I thought we were
11 at the time.

12 Q Okay. No further questions.

13 MS. SAUNDERS: Thank you, Your Honor. I will be
14 brief.

15 CROSS-EXAMINATION

16 By Ms. Saunders:

17 Q Ms. Nelson, I am Laura Saunders, I am the appointed
18 attorney for Mr. Neal. Just a few questions about your
19 meetings. You indicated that you did have a bond hearing
20 and you represented him at the bond hearing. Is that
21 correct?

22 A Yes, ma'am.

23 Q And his bond was denied?

24 A Yes, ma'am.

25 Q That is just for clarification, he indicated to me

1 that he never heard anything but that usually indicates
2 that the bond was denied?

3 A It was. And I called, my notes reflect that I called
4 a family member when I heard, when I heard that news,
5 October 20th of 2011 I called his sister to let her know
6 that Judge Griffith had denied the bond.

7 Q So you had contact with his family as well?

8 A Yes, ma'am.

9 Q All right. And then after that, I think you did meet
10 with him to convey the offer, was that a separate meeting?

11 A Yes, ma'am. I didn't have the offer at the time of
12 the bond hearing.

13 Q Okay. And you gave him time to think about that, is
14 that correct?

15 A Yes, ma'am. Like I said, the, originally the
16 prosecutor at the time was pushing to put the case on a
17 trial docket. They knew they had a good case and they
18 were pushing for it to be on the trial docket that
19 following June. And then he ended up making me the 30
20 year offer. I tried to get that negotiated down into a
21 voluntary manslaughter offer, was unsuccessful in doing
22 that. I think in part because of the strength of the
23 State's case and I was able to get some, some time for Mr.
24 Neal to consider that without the case actually being
25 placed on the trial docket.

1 Q Okay. So you did consider a lessor included offense
2 or reduction in the charge in negotiating your offer with
3 the Solicitor or the offer that went to Mr. Neal, right?

4 A Yes, ma'am. I asked more than once for the
5 prosecutor to consider a lower offer. That at the time
6 was the highest amount of time that somebody I had ever
7 represented was going to, was going to receive and I
8 certainly wanted him to have a better offer. But I was
9 not able to get the prosecutor to agree to reduce it out
10 of murder.

11 Q Looking at the warrant issue, I know that we brought
12 that up, it is not really a way to challenge it, challenge
13 at PCR level. But what Mr. Neal wanted to clarify is why
14 weren't those warrant issues considered or why wasn't he
15 informed of those issues?

16 A For one, I didn't know that there were issues. And
17 we, even if I had thought there were, even if we had been
18 able to exclude the gun and the letter, there was other
19 evidence against him that unfortunately he had created
20 himself by calling people and texting people and saying
21 what had happened. But I did not perceive problems with
22 the search warrant.

23 Q And from a professional standpoint is it within the
24 purview of your job to decide those things, it is not your
25 client's job to tell you whether or not those, a search

1 warrant issue needs to be pursued?

2 A Of course it is not their job. No, that is my job.

3 Q So you made that decision in light of the fact that
4 there was all of this other evidence, not to go down that
5 road because it would have to be done at trial. Is that
6 correct?

7 A You would have had to challenge the search warrant at
8 trial if I had seen a basis for actually challenging it,
9 yes ma'am.

10 Q Okay. Now, as far as the self-defense defense, I am
11 sure that you evaluated that as to whether or not it was a
12 valid defense in this case. And could you just tell me
13 again, I think you may have already been questioned about
14 this, but what was your thoughts on the self-defense
15 defense?

16 A My thoughts were that that was just not going to be
17 viable because the person that Keith had told me he was
18 primarily concerned about was not anywhere around at the
19 time of the incident. My understanding was that he had
20 picked up Ms. Timpson from her home along with their child
21 because he wanted to talk to her and that she got in the
22 car with him and sometime during the course of that drive
23 they got into an argument. And he talked about feeling
24 threatened but did not articulate to me that she had
25 actually ever done anything to him other than verbal,

1 other than talking. And I didn't, I didn't feel that this
2 knowledge that he had about Monkey having a gun was going
3 to get us very far with a jury and any kind of
4 self-defense.

5 Q Thank you. As far as, one last question about the
6 evaluation, I am just curious, in doing your job when does
7 the issue of evaluation come into play. Is it normally
8 something that the defense attorney initiates or is it
9 something that comes from higher-ups and tells you have
10 got to evaluate, get a client evaluated or is it a
11 decision that you make.

12 A It is a decision, generally it is a decision that I
13 make. I have had instances where I represented someone
14 with known mental health issues where the Solicitor had
15 actually taken the initiative to ask the Court for an
16 evaluation. But I usually make that decision after I meet
17 with a client and feel like there are, if we have problems
18 communicating, if it seems like the client has trouble
19 understanding what is going on. If I hear from the client
20 or the family about a mental health history, I usually get
21 those records and then make a decision about whether I
22 want to have someone looked at for purposes of those two
23 legal issues that you have of criminal responsibility and
24 competency. And I just, like I said, in retrospect, I
25 wish I had done that in Keith's case because I think it

1 would have documented my file better. But I did not see
2 in meeting with him issues about him understanding the
3 charge or understanding the penalty or understanding the
4 choice that he had to make between plea and trial. And I
5 didn't hear anything that made me concerned that he was
6 psychotic at the time or that would otherwise have some
7 sort of insanity defense. But that is all a decision I
8 make in meeting with a client.

9 Q Thank you, Ms. Nelson, no further questions.

10 MR. HUNTER: Nothing else from the State, Your Honor.

11 THE COURT: Thank you, Ma'am.

12 MR. HUNTER: The State rests, Your Honor.

13 THE COURT: Anything further?

14 MS. SAUNDERS: Your Honor, nothing further from the
15 Applicant.

16 THE COURT: Thank y'all. I will review the file and
17 let y'all know something.

18 MS. SAUNDERS: Thank you, Your Honor.

19 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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21
22
23
24
25

1 CERTIFICATE OF REPORTER
2
3

4 State of South Carolina)
5 County of Newberry)
6
7

8 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Greenwood, South
14 Carolina on the 17th day of October, 2016.

15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
17

18 May 19, 2018
19

20 *Joy Holston*
21

22 Joy E. Holston, Court Reporter

23 My Commission expires: May 2, 2026
24
25

FILED COMMON PLEAS
8th JUDICIAL CIRCUIT
GREENWOOD, SC
2017 NOV -8 PM 5:20

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Adrian Keith Neal, #351553,

2013-CP-24-0594

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed June 21, 2013. Respondent made its Return on or about March 27, 2014. An evidentiary hearing into the matter was convened on October 17, 2016, at the Greenwood County Courthouse. Applicant was present at the hearing and represented by Laura Saunders, Esquire. Justin J. Hunter, Esquire, of the South Carolina Attorney General's Office represented the Respondent. At the hearing, Applicant testified on his own behalf. Janna Nelson, Esquire, also testified. This Court also had before it a copy of the records of the Greenwood County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenwood County Clerk of Court. Applicant was indicted at the January 2012 term of the Greenwood County Grand Jury for Murder (2012-GS-24-0134). Applicant was represented by Janna Nelson, Esquire. On July 16, 2012, Applicant pled guilty to

murder as indicted. The Honorable D. Garrison Hill sentenced Applicant, pursuant to a negotiated sentence, to confinement for thirty (30) years.

Applicant did not appeal his conviction and sentence.

Allegations

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

- I. Ineffective Assistance of Counsel
 - a. Counsel failed to petition the Court of mental evaluation
 - b. Failure to advise Applicant of his rights to appeal

Applicant also moved at the hearing to amend his pleadings to include the following allegations:

- I. Ineffective Assistance of Counsel
 - a. Counsel did not properly review or share discovery with Applicant
 - b. Counsel did not communicate or visit Applicant
 - c. Counsel did not challenge the insufficient search warrant on Applicant's vehicle
 - d. Counsel did not challenge the insufficient arrest warrant

II. SUMMARY AND EVIDENCE PRESENTED AT PCR HEARING

Applicant's Testimony

Applicant testified that he met with Counsel twice in Laurens County. He testified that during their first meeting they discussed the State's plea offer. He testified that he felt like he had no choice but to accept the plea offer because Counsel told him that he had little chance to win. Applicant testified that he was taken to Greenwood County to meet with Counsel and sign the plea. Applicant testified that he did not get the discovery until seven months and seven days after his plea.

Applicant testified that he should have had a mental evaluation. He testified that he suffered from migraines and depression but has no history of mental illness. He also testified that he never told Counsel that he should have been evaluated.

Applicant testified that he pled guilty because Counsel scared him into accepting the plea. He testified that he did not want life in prison and was defending himself when he committed the crime. Applicant further testified that he did not ask Counsel for an appeal and did not know that he could do so.

Applicant testified that the search warrant was defective because it lacked the officer's signature on the back.

Counsel's Testimony

Counsel testified that she has been a public defender since 2007. She testified that she was not sure how many times she met with Applicant prior to the plea. She testified that they initially met to get background information, discuss the case, and go over the discovery. She testified that she always had the discovery file when she met with him, which included SLED reports and letters that Applicant wrote that were in the car.

Counsel testified that Applicant told her that he felt threatened by another person who had a gun, but she believed this story would not work because this person was not present at the incident. She further testified that the victim herself was not armed or threatening. She testified that self-defense would not work in Applicant's case.

Counsel testified that she relayed the State's plea offer because the State wanted to call the case quickly. She testified that she asked the State to lower the offer but was unsuccessful. Counsel testified that she did not feel good about their chances at trial because of the gun and calls and texts to family members confessing to the crime. She testified that she told Applicant of

the penalty range and was not worried about competency issues. She testified that she never saw any issues concerning his competency other than that he was probably depressed. Counsel testified that she wished she would have obtained an evaluation but also testified that she does not believe that a mental evaluation would change the outcome of Applicant's plea.

Counsel testified that she did not believe the search warrant or arrest warrant had any issues. She testified that there was a lot of other evidence against him, and would have to proceed to a trial in order to challenge the warrants.

Counsel testified that she always tells all of her clients that they have the right to appeal their conviction and would have done the same in Applicant's case as well. She testified that she always tells her clients that they can appeal their case, but an appeal from a guilty plea will be more difficult. She further testified that she and Applicant never had a discussion after the plea concerning Applicant's desire for an appeal.

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective Assistance of Counsel

Counsel failed to petition the Court for a mental evaluation

Applicant alleged that Counsel was ineffective for failing to obtain a mental evaluation prior to the guilty plea. This Court finds this allegation to be without merit.

Applicant testified that he suffered from migraines and depression but admitted that he had no history of mental illness. Counsel testified that, although in hindsight she would have liked to have obtained a mental evaluation, she never had any question about Applicant's mental competency other than that he was maybe depressed. Applicant has failed to provide any documentation showing a history of mental illness or any other evidence to show that a mental evaluation was necessary or would have revealed relevant information. Additionally, the PCR Court questioned Applicant and Counsel concerning his mental competency and the conversation went as follows:

The Court:	Are you under the influence of any alcohol or drugs or medication?
Applicant:	No, sir.
The Court:	Do you have any physical or mental or emotional condition that might keep you from understanding what is happening here today?
Applicant:	No, sir.
The Court:	[Counsel], do you have any question about his competency?
Counsel:	No sir, I don't.

Trial Transcript p. 3, l. 22 – p. 4 l. 6.

This Court finds that Applicant has failed to meet his burden of proving that Counsel was ineffective for failing to obtain a mental evaluation, and also finds that Applicant has failed to prove that he was prejudiced by Counsel's failure or that a mental evaluation would have changed the outcome. Accordingly, this allegation must be dismissed.

Failure to advise Applicant of his right to appeal

Applicant alleged that Counsel failed to advise him of his rights to appeal. He testified that he did not ask for an appeal because he did not know that he could do so. This Court finds

that Counsel provided credible testimony that she always goes over her clients' appellate rights in her discussions with clients and would have done the same in this case. Applicant has failed to meet his burden of showing that Counsel did not advise him of this right and that her failure to do so resulted in prejudice. Applicant has failed to show that there was anything raised and ruled upon at the plea hearing or that he had appealable issues that should have been appealed, but for Counsel's failure to advise. Accordingly, this allegation must be dismissed.

Counsel did not properly review or share discovery with Applicant

Applicant alleged that Counsel was ineffective for failing to review or share the State's discovery with Applicant. Applicant testified that he did not receive a copy of the discovery until seven months and seven days after the plea. This Court finds that Counsel provided credible testimony that she always had the discovery file with her when she met with Applicant and reviewed the discovery with Applicant during their meetings. This Court finds that Applicant has failed to show that he did not review the discovery with Counsel, but has only alleged that he did not receive an actual personal copy for himself until after the plea. This Court finds that Counsel's actions did not fall below the standard of reasonableness as she reviewed all discovery with Applicant. Applicant has failed to meet his burden of proving that Counsel's actions were deficient and has failed to show that but for Counsel's actions, he would not have pled guilty but would have proceeded to trial. Accordingly, this allegation must be dismissed.

Counsel did not communicate or visit Applicant

Applicant alleged that Counsel did not communicate or visit him prior to the plea. Applicant testified that Counsel only met him twice prior to the plea. This Court finds that Counsel provided credible testimony that she met with Applicant many times prior to the plea to review discovery and discuss many aspects of Applicant's case. This Court finds that Counsel

also properly relayed the State's plea offer to Applicant. This Court finds that Applicant has failed to show that Counsel's performance was deficient or fell below the standard of reasonableness. Applicant has also failed to show that he was prejudiced by Counsel's actions as he has not shown that any additional communication or visitation would benefit Applicant. Accordingly, this allegation must be dismissed.

Counsel did not challenge the insufficient search warrant on
Applicant's vehicle or Applicant's arrest warrant

Applicant alleged that Counsel was ineffective for not challenging the search warrant on his vehicle. Applicant testified that the search warrant was defective because it lacked the officer's signature. This Court finds that Counsel provided credible testimony that she did not find any problems with the search warrant or Applicant's arrest warrant. She also testified that in order to challenge the warrants, Applicant would have had to proceed to a trial. She testified that proceeding to trial would have been problematic given other evidence against him. Applicant has failed to show specific insufficiencies in the search warrant and the arrest warrant and has failed to show that any challenge would have been successful. As Applicant has failed to meet his burden of showing that Counsel was ineffective and that he was prejudiced by Counsel's actions, this allegation must be dismissed.

V. CONCLUSION

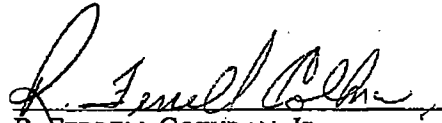
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 15th day of Nov, 2017.


 R. FERRELL COTHAN, JR.
 Presiding Judge
 Eighth Judicial Circuit

Manning, South Carolina

FORM 5

STATE OF SOUTH CAROLINA

County of GREENWOODAdrian K. Neal - 351-553

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

13CP24-00594

2018 MAR 27 PM 12:14

FILED COMMON PLEAS
8th JUDICIAL CIRCUIT
GREENWOOD, SC

APPLICATION FOR

POST-CONVICTION RELIEF

2018-CP-24 06267INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick Correctional Inst. 386 Redemption Way, McCormick, SC 29899
2. Name and location of Court which imposed sentence Greenwood County Court of Common Pleas, Greenwood County
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Murder) indictment No. 2012-GS-24-134
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) July 16, 2012) thirty years for murder
 (b) _____
 (c) _____
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty ✓
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
 (a) the name of each Court to which you appealed:
 i. N/A
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. N/A
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. N/A
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results: N/A
 i. _____
 ii. _____
 iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
 (a) counsel didn't appeal
 (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) **Plea was not voluntary and intelligently made to** _____
- (b) **the Court. 2) Austin v. State appeal** _____
- (c) **See attach sheets** _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) **Plea was made in violation of Rule 11, FRCP.** _____
- (b) **PCR Counsel did not filed an appeal from PCR** _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? **No** _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? **yes** _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? **No** _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. **PCR** _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. **Greenwood County Common Pleas Court** _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

i. **filed**

ii.

iii.

iv.

(d) the date of each such disposition:

i. **Filed**

ii.

iii.

iv.

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

i. **N/A**

ii.

iii.

iv.

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

No

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

(a) which grounds have been presented:

i. **N/A**

ii.

iii.

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

i. **N/A**

ii.

iii.

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

(a) Plea was not knowingly and intelligently made

(b) Austin v. State review

(c) _____

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

(a) your arraignment and plea? yes

(b) your trial, if any? _____

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

No

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

(a) the name and address of each attorney who represented you:

i. Janna NELSON, Esquire

ii. _____

iii. _____

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

i. Guilty Plea

ii. _____

iii. _____

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

Sentence modification to twenty year or new plea hearing

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

No

STATE OF SOUTH CAROLINA)

County of Greenwood)

VERIFICATION

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

Adrian K. Neal

SWORN to and subscribed before me this 21
day of March, 2018.

J. Frankel (L.S.)
Notary Public

My Commission Expires: 12/16/2019

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

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

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

Adrian K. Neal
Applicant

SWORN or affirmed to and subscribed before me this

21 day of March, 2018.

J. Frank
Notary Public

My Commission Expires: 12-16-2019

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

Adrian Keith Neal, #351553,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
IN THE EIGHTH JUDICIAL CIRCUIT

Case No.: 2018-CP-24-00267

**RETURN AND PARTIAL MOTION
TO DISMISS**

The State (Respondent), making its Return to the application for post-conviction relief filed by Adrian Keith Neal (Applicant) on March 27, 2018, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenwood County Clerk of Court. In January 2012, the Greenwood County Grand Jury indicted Applicant for murder (2012-GS-24-0134). The charge stemmed from an incident on September 19, 2011, when Applicant and the mother of his child got into a verbal argument while riding in a car with their two-year-old child and Applicant brandished a firearm and fatally shot the victim twice. Assistant Public Defender Janna Nelson represented Applicant. Assistant Solicitor Andrew Hodges of the Eight Circuit Solicitor's Office prosecuted the case.

On July 16, 2012, Applicant appeared before the Honorable D. Garrison Hill, where he pled guilty as indicted. Pursuant to negotiations between the State and the Applicant, Judge Hill sentenced Applicant to imprisonment for thirty years. Applicant did not appeal his conviction or sentence.

Applicant subsequently filed an application for post-conviction relief on June 21, 2013, in which he alleged the following grounds for relief:

1. Ineffective Assistance of Counsel
 - a. "Counsel failed to petition the court of mental evaluation"
 - b. "for failure to advise the Applicant of his rights to appeal"

Respondent filed its return on March 27, 2014. An evidentiary hearing into the matter was convened on October 17, 2016, at the Greenwood County Courthouse. Applicant was present at the hearing and was represented by Laura Saunders, Esquire. Justin J. Hunter, Esquire, of the South Carolina Attorney General's Office, represented the Respondent. On November 8, 2017, the Honorable R. Ferrell Cothran, Jr., issued the order of dismissal denying Applicant's application for post-conviction relief. A notice of appeal was not filed on Applicant's behalf.

II. Allegations Raised and Relief Sought

In his second and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. "Plea was not voluntary and intelligently made to the Court"
 - a. "Plea was made in violation of Rule 11, FRCP."
2. "Austin v State appeal"
 - a. "PCR counsel did not file an appeal from PCR"

As requested relief, Applicant has asked for "sentence modification to twenty year or new plea hearing"

Attached to this Return and incorporated by reference are the records of the Greenwood County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the plea transcript records and filings from Applicant's initial post-conviction relief action, and the current application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III. Response to Belated Appellate Review of Prior PCR Action

Applicant alleges that he was denied the right to an appeal from the denial of his first post-conviction relief action application. "The right to seek appellate review of the denial of PCR is

expressly authorized by state law.” Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991); S.C. Code Ann. § 17-27-100 (2014). A PCR applicant is entitled to an Austin appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. Odom v. State, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999). However, an applicant may waive the right to appeal by making a “knowing and intelligent decision not to pursue the appeal.” Simuel v. State, 390 S.C. 267, 271, 701 S.E.2d 738, 739-40 (2010). “Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver.” Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981). Even if the PCR court determines the applicant did not freely and voluntarily waive his appellate rights, the applicant must still petition the South Carolina Supreme Court to determine whether he was prejudiced by his failure to obtain review of a meritorious issue. Odom, 337 S.C. at 263, 523 S.E.2d at 756.

Respondent submits that this allegation raises questions of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

IV. Request for Summary Dismissal of All Other Allegations

Respondent submits that any further claims should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from

an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes 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.”

Applicant pled guilty on July 16, 2012. The application was therefore due on July 17, 2013. This application was filed on March 27, 2018, well beyond the statutory filing period. Therefore, Respondent moves to summarily dismiss any claims in this application beyond the belated appeal claim for Applicant’s failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

Further, Respondent submits any other claims Applicant raises claims must be summarily dismissed as successive to Applicant’s previous applications. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

Section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent

application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised ... in the previous application." Id. at 450. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant could have raised additional grounds for relief in his prior post-conviction relief application. Any allegation beyond Applicant's belated appeal claim would have to be supported by sufficient reasons why it could not have been raised in the previous post-conviction relief Application. Applicant has presented no such reason. Therefore any additional claims Applicant may present are barred as successive.

Additionally, the application is barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id.; see also Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

Applicant had a full opportunity to litigate all his allegations in his prior actions. Applicant's present allegations are indistinguishable from those offered in his prior applications

for post-conviction relief. The prior PCR Court issued a final judgement on the merits on very same issues that Applicant now raises in his present action. The finality of the previous Court rulings should be respected, and the application should be summarily dismissed as barred by the doctrine of *res judicata*.

V. Response to All Other Allegations

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

VI. Request for an Evidentiary Hearing and Partial Summary Dismissal

WHEREFORE, Respondent requests an evidentiary hearing solely to address the issue of whether counsel was ineffective in failing to appeal the order denying Applicant's initial application for post-conviction relief; Respondent further moves to summarily dismiss any additional claim for being successive to Applicant's previous PCR application, for failure to file within the Statute of Limitations and is barred by the doctrine of *res judicata*.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

 June 12, 2018

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

ADRIAN K. NEAL, 351553

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent,

IN THE COURT OF COMMON PLEAS

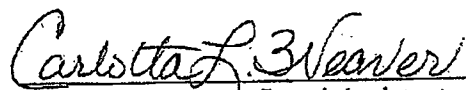
2013-CP-24-594

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 and Partial Motion to Dismiss in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ashley A. McMahan, Esquire
 Mac | Vance Attorneys, LLC
 Post Office Box 5501
 West Columbia, SC 29171

DATED this the 12th day of June, 2018.


 Carlotta L. Weaver, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

**Adrian Keith Neal, #351553,
Applicant,**

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Case No.: 2018-CP-24-00267

**AMENDED RETURN AND MOTION
TO DISMISS**

The State (Respondent), making its Amended Return to the application for post-conviction relief filed by Adrian Keith Neal (Applicant) on March 27, 2018, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenwood County Clerk of Court. In January 2012, the Greenwood County Grand Jury indicted Applicant for murder (2012-GS-24-0134). The charge stemmed from an incident on September 19, 2011, when Applicant and the mother of his child got into a verbal argument while riding in a car with their two-year-old child and Applicant brandished a firearm and fatally shot the victim twice. Public Defender Janna Nelson represented Applicant. Deputy Solicitor Andrew Hodges of the Eight Circuit Solicitor's Office prosecuted the case.

On July 16, 2012, Applicant appeared before the Honorable D. Garrison Hill, where he pled guilty as indicted. Pursuant to negotiations between the State and Applicant, Judge Hill sentenced Applicant to imprisonment for thirty years. Applicant did not appeal his conviction or sentence.

2013-CP-24-0594

Applicant subsequently filed an application for post-conviction relief on June 21, 2013, in which he alleged the following grounds for relief:

1. Ineffective Assistance of Counsel
 - a. "Counsel failed to petition the court of mental evaluation"
 - b. "[F]or failure to advise the Applicant of his rights to appeal"

Respondent filed its return on March 27, 2014. An evidentiary hearing into the matter was convened on October 17, 2016, at the Greenwood County Courthouse. Applicant was present at the hearing and represented by Laura Saunders, Esquire. Justin J. Hunter, Esquire, of the South Carolina Attorney General's Office, represented the Respondent. On November 8, 2017, the Honorable R. Ferrell Cothran, Jr., issued the order of dismissal denying Applicant's application for post-conviction relief. Applicant did not appeal.

II. Allegations Raised and Relief Sought

In his second and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. "Plea was not voluntary and intelligently made to the Court"
 - a. "Plea was made in violation of Rule 11, FRCP."
2. "Austin v State appeal"
 - a. "PCR counsel did not file an appeal from PCR"

As requested relief, Applicant has asked for "sentence modification to twenty year or new plea hearing"

Attached to this Return and incorporated by reference are the records of the Greenwood County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the plea transcript, records and filings from Applicant's initial post-conviction relief action, affidavit from Laura Saunders, and the current application.

Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III. Response to Belated Appellate Review of Prior PCR Action

Applicant alleges he was denied the right to seek an appeal following the dismissal of his previous post-conviction relief application. A claim that Applicant's PCR counsel was ineffective for failing to file an appeal of the post-conviction relief decision is sufficient to allow a successive application, and if Applicant did not knowingly and intelligently waive his right to an appeal, Applicant can file a belated petition. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his or her PCR application.

After review of the affidavit provided by Applicant's original post-conviction relief attorney, the State concedes Applicant did not knowingly and intelligently waive his right to seek appellate review of the denial of his first post-conviction relief application. Accordingly, pursuant to Austin, the State also concedes Applicant is entitled to petition the South Carolina Supreme Court for belated review of appellate issues arising therefrom. Based on the records submitted from the previous post-conviction relief action, it appears to the State this Applicant did not freely and voluntarily waive the right to appeal his first application for post-conviction relief, and his counsel failed to file a timely notice of appeal of the application.

IV. Request for Summary Dismissal of All Other Allegations

Respondent submits Applicant's additional claim regarding the voluntariness of his guilty plea should be summarily dismissed as filed outside the statute of limitations and as barred by the presumption against successive applications.

Failure to Comply with Statute of Limitations

Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. With respect to his allegation his guilty plea was involuntary. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes 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.”

Applicant pled guilty on July 16, 2012. Any post-conviction relief action regarding his guilty plea was therefore due to be filed on or before on July 17, 2013. This application was filed on March 27, 2018, well beyond the statutory filing period. Therefore, Respondent moves to summarily dismiss any claims in this application beyond the Austin claim for Applicant's failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

Successiveness

Further, Respondent submits Applicant's claim regarding his guilty plea must be summarily dismissed as successive to Applicant's previous application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised ... in the previous application." Id. at 450. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant could have raised this claim of an involuntary guilty plea as grounds for relief in his prior post-conviction relief application. Raised now, this claim would have to be supported by sufficient reasons why it could not have been raised in the previous post-conviction

relief Application. Applicant has presented no such reason. Therefore this claim should be barred as successive.

V. Response to All Other Allegations

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

VI. Conclusion

WHEREFORE, Respondent agrees Applicant did not knowingly and voluntarily waive his right to appellate review of the denial of his first post-conviction relief application and consents to Applicant's request to seek belated appellate review of issues arising therefrom pursuant to Austin. However, Respondent moves to summarily dismiss the remaining allegations because the application was filed after the statute of limitations had expired and is successive to Applicant's prior post-conviction relief action.

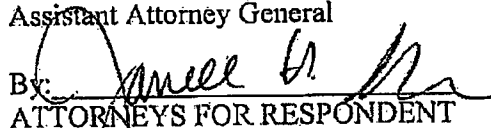
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JANEL H. GREGORY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

Nov. 1, 2018

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

ADRIAN KEITH NEAL, #351553,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

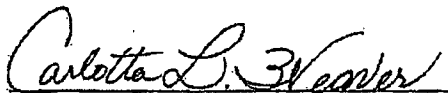
2018-CP-24-00267

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 Amended Return and Motion to Dismiss in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ashley A. McMahan, Esquire
 Mac | Vance Attorneys, LLC
 Post Office Box 5501
 West Columbia, South Carolina 29171

DATED this the 1st day of November, 2018.



Carlotta L. Weaver, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

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

Adrian K. Neal, #351553,

2018-CP-24-0267

Applicant,

v.

**AFFIDAVIT OF
LAURA M. SAUNDERS, ESQ.**

State of South Carolina,

Respondent.)

PERSONALLY APPEARED BEFORE ME, LAURA M. SAUNDERS, WHO
MAKES THE FOLLOWING SWORN STATEMENT:

1. I, Laura M. Saunders, Esquire, am an attorney practicing in South Carolina. I graduated from the Charleston School of Law in 2009 and was admitted to the South Carolina Bar on November 17, 2009. My practice is focused on family and civil law was previously on the Rule 608 appointment list for post-conviction relief cases in the Eighth Judicial Circuit for approximately three years. I am licensed to practice law in the state of South Carolina.

2. Mr. Neal filed his first application for post-conviction relief on June 21, 2013. It was assigned civil action number 2013-CP-24-0594 by the Greenwood County Clerk of Court. Attorney Jim Johnson of Greenwood was originally appointed to represent Mr. Neal. I was appointed as his attorney in that action on February 5, 2015, after Mr. Johnson cited the existence of a conflict.

3. An evidentiary hearing was held before the Honorable R. Ferrell Cothran, Jr. on October 17, 2016. I was present at the hearing, as was Mr. Neal. Janna Nelson,

Esquire appeared on behalf of Respondent, the State. Following the hearing, Judge Cothran issued an order denying and dismissing the post-conviction relief application in its entirety. The final Order of Dismissal issued by Judge Cothran on November 8, 2017 notified Mr. Neal that he had thirty days from receipt by counsel of written notice of entry of judgment in which to secure appellate review by and through his post-conviction relief counsel.

3. At the evidentiary hearing, Mr. Neal did not indicate that he wished to file a notice of appeal upon receipt of the written order denying relief.

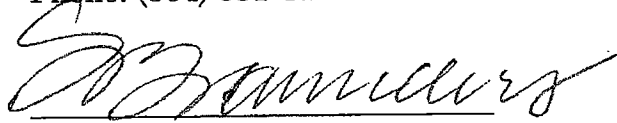
4. A written order of dismissal was entered November 8, 2017, and a copy received from the Attorney General's office on November 17, 2017. I mailed a copy to Mr. Neal via U.S. Mail on the same date. After this time, Mr. Neal notified me that he wanted to appeal the outcome of his post-conviction relief action, in a letter dated December 9, 2017. Unfortunately, I was not aware of this letter. It was inadvertently overlooked and filed away in Mr. Neal's file. Therefore, I did not file and serve any notice of post-conviction relief appeal on behalf of Mr. Neal.

4. It is my belief Mr. Neal is entitled to a belated appeal of his first post-conviction relief pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

THE AFFIANT FURTHER SAYETH NOT.

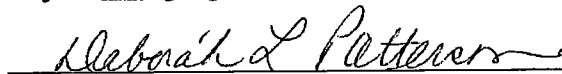
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Laura M. Saunders, Esquire
 The Law Offices of Laura M. Saunders, LLC
 Post Office Box 731
 Laurens, South Carolina 29360
 Phone: (864) 681-4444


 Laura M. Saunders (SC #77957)

October 10, 2018
 Laurens, South Carolina

SWORN TO BEFORE ME this 10th
 day of Oct, 2018.


 NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires: **DEBORAH L. PATTERSON**
~~Notary Public, State of South Carolina~~
 My Commission Expires 10/3/2027

100 Be Heard (DBA)
Original

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

Adrian Keith Neal, #351553,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Case No.: 2018-CP-24-00267

ORDER OF DISMISSAL

Filed CP 8th Jud Cir Greenwood, SC
2018 DEC 14 PM 4:44

This matter comes before the Court by way of an application for post-conviction relief filed March 27, 2018.

I. Procedural History

Adrian Keith Neal (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenwood County Clerk of Court. In January 2012, the Greenwood County Grand Jury indicted Applicant for murder (2012-GS-24-0134). The charge stemmed from an incident on September 19, 2011, when Applicant and the mother of his child got into a verbal argument while riding in a car with their two-year-old child and Applicant brandished a firearm and fatally shot the victim twice. Public Defender Janna Nelson of the Greenwood County Public Defender's Office represented Applicant. Deputy Solicitor Andrew Hodges of the Eight Circuit Solicitor's Office prosecuted the case.

On July 16, 2012, Applicant appeared before the Honorable D. Garrison Hill, where he pled guilty as indicted. Pursuant to negotiations between the State and Applicant, Judge Hill sentenced Applicant to imprisonment for thirty years. Applicant did not appeal his conviction or sentence.

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DBA

2013-CP-24-0594

Applicant subsequently filed an application for post-conviction relief on June 21, 2013, in which he alleged the following grounds for relief:

1. Ineffective Assistance of Counsel
 - a. "Counsel failed to petition the court of mental evaluation"
 - b. "[F]or failure to advise the Applicant of his rights to appeal"

Respondent filed its return on March 27, 2014. An evidentiary hearing into the matter was convened on October 17, 2016, at the Greenwood County Courthouse. Applicant was present at the hearing and represented by Laura Saunders, Esquire. Justin J. Hunter, Esquire, of the South Carolina Attorney General's Office, represented the Respondent. On November 8, 2017, the Honorable R. Ferrell Cothran, Jr., issued the order of dismissal denying Applicant's application for post-conviction relief. Applicant did not appeal.

II. Allegations Raised and Relief Sought

In his second and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. "Plea was not voluntary and intelligently made to the Court"
 - a. "Plea was made in violation of Rule 11, FRCP."
2. "Austin v State appeal"
 - a. "PCR counsel did not file an appeal from PCR"

As requested relief, Applicant has asked for "sentence modification to twenty year or new plea hearing"

Respondent filed its Return and Motion to Dismiss June 13, 2018, seeking summary dismissal of all claims beyond Applicant's request for a belated appeal. On November 1, 2018, Applicant served an Amended Return and Motion to Dismiss consenting to the request for a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

This Court had before it the records of the Greenwood County Clerk of Court regarding

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the subject conviction, Applicant's records from the South Carolina Department of Corrections, the plea transcript, records and filings from Applicant's initial post-conviction relief action, affidavit from Laura Saunders, and the current application.

III. Findings of Fact and Conclusions of Law

This Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. §17-27-80 (1985), the Court makes the following findings of fact and conclusions of law:

Failure to Comply with Statute of Limitations

This Court finds Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. With respect to his allegation his guilty plea was involuntary. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes 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."

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Applicant pled guilty on July 16, 2012. Any post-conviction relief action regarding his guilty plea was therefore due to be filed on or before on July 17, 2013. This application was filed on March 27, 2018, well beyond the statutory filing period. Therefore, this Court finds Applicant failed to file this post-conviction application within the statutory time mandated by the Uniform Post-Conviction Procedure Act and therefore this claim must be dismissed.

Successiveness

This Court finds Applicant's claim regarding his guilty plea must be summarily dismissed as successive to Applicant's previous application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised ... in the previous application." Id. at 450. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in

successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

This Court finds Applicant could have raised this claim of an involuntary guilty plea as grounds for relief in his prior post-conviction relief application. Raised now, this claim would have to be supported by sufficient reasons why it could not have been raised in the previous post-conviction relief Application. Applicant has presented no such reason. Therefore this Court finds this claim must be dismissed.

Belated Appeal

This Court finds Applicant's allegation that he is entitled to a belated appellate review of his initial post-conviction relief action due to his prior post-conviction relief attorney's failure to perfect an appeal on his behalf is meritorious. Where a post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of post-conviction relief issues pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). This Court finds Applicant did not knowingly and voluntarily waive his right to appellate review and is therefore entitled to a belated review of the denial of his initial post-conviction relief application.

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IV. Conclusion

All allegations except the belated appeal pursuant to Austin are barred as outside the statute of limitations and successive. Applicant has proven by a preponderance of evidence that he did not knowingly and voluntarily waive the direct appeal of the denial of his first post-conviction relief action. Any grounds for relief that are not specifically addressed in this Order are denied for failure to meet the requisite burden of proof.

IT IS THEREFORE ORDERED THAT:

1. Applicant is granted the right to seek a belated appellate review of case 2013-CP-24-0594 pursuant to Austin v. State; and
2. Within thirty days of service of this Order, counsel for Applicant must file a Notice of Appeal to secure the appropriate appellate review of Applicant's first post-conviction relief action.
3. That Applicant remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 5TH day of November, 2018.



DONALD B. HOCKER
Chief Administrative Judge
Eighth Judicial Circuit

Lauren, South Carolina.

#6

WITNESSES

Nicholas Futch
Greenwood Police Department

WARRANT NUMBER

1829942

True Bill

DJL

Foreman of the Grand Jury.

Date: *1/17/12*

VERDICT

True Bill

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

January Term, 2012

Indictment # 12GS24-*134*

THE STATE

vs.

Adrian Keith Neal

INDICTMENT FOR

MURDER
16-03-0010

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

COUNTY OF GREENWOOD

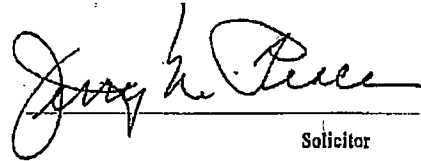
MURDER
16-03-0010

At a Court of General Sessions, convened on the 17th day of January, 2012 the Grand Jurors of Greenwood County present upon their oath:

That Adrian Keith Neal, did in Greenwood County, state aforesaid, on or about the 19th day of September, 2011 willfully, feloniously, and with malice aforethought kill one Kaybreisha Dyeshae Timpson by means of shooting and that the said Kaybreisha Dyeshae Timpson did die in Greenwood County as a proximate result thereof on or about the 19th day of September, 2011, in violation of Section 16-3-10 of the South Carolina Code of Laws, 1976, as amended.

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

ATTEST A TRUE COPY
Chastity Copeland
CHASTITY COPELAND
CCCP AND GS
GREENWOOD COUNTY
S.C.


Solicitor