

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Kershaw County

Honorable D. Craig Brown, Circuit Court Judge

CLIFTON COOKE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000316

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW) COURT OF GENERAL SESSIONS
2006-GS-28-00116

State of South Carolina,)
Plaintiff,)
vs.) TRANSCRIPT OF RECORD
Clifton D. Cooke,)
Defendant.)

March 6, 2014
Camden, South Carolina

B E F O R E:

THE HONORABLE R. FERRELL COTHRAN, JR., JUDGE.

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

CURTIS R. HUTCHINSON, ASSISTANT SOLICITOR
Attorney for the Plaintiff

JASON D. KIRINCICH, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter

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I N D E X O F W I T N E S S E S

(WHEREUPON, no witnesses were called during these proceedings.)

E X H I B I T S

(WHEREUPON, no exhibits were introduced during these proceedings.)

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MARCH 6, 2014

MR. HUTCHINSON: Clifton Cooke.

THE CLERK: Would you raise your right hand,
please?

(Defendant complies.)

THE CLERK: Do you swear to tell the truth,
the whole truth, and nothing but the truth, so help
you God?

THE DEFENDANT: Yes, ma'am.

THE CLERK: Thank you.

MR. HUTCHINSON: May it please the Court, Your
Honor?

THE COURT: Yes, sir.

MR. HUTCHINSON: Standing before you is
Clifton Cooke. Originally indicted for murder, he
is here today pleading to voluntary manslaughter
without recommendation or negotiation.

THE COURT: Okay. Mr. Cooke, do you want to
plead guilty?

THE DEFENDANT: Yes, sir.

THE COURT: Have you had enough time to talk
to your lawyer about this?

THE DEFENDANT: Yes, sir.

THE COURT: Are you satisfied with his
representation?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Has anybody promised you anything
3 or threatened you in any way to get you to plead?

4 THE DEFENDANT: No, sir.

5 THE COURT: So are you pleading freely and
6 voluntarily?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand I can give you
9 up to 30 years in prison?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And this is a no parolable
12 offense. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Are you under the influence of
15 alcohol or drugs today?

16 THE DEFENDANT: No, sir.

17 THE COURT: Have you got any mental diseases
18 that would keep you from understanding what you are
19 doing?

20 THE DEFENDANT: No, sir.

21 THE COURT: Have you got any complaints with
22 the Solicitor's Office as far as discovery or any
23 information in this case you don't think they have
24 given you?

25 THE DEFENDANT: No, sir.

1 THE COURT: You have got to speak up.

2 THE DEFENDANT: No, sir.

3 THE COURT: Are you under the influence of
4 alcohol or drugs today?

5 THE DEFENDANT: No, sir.

6 THE COURT: Do you have any mental diseases
7 that would keep you from understanding what you are
8 doing today?

9 THE DEFENDANT: No, sir.

10 THE COURT: In pleading you are giving up your
11 right to remain silent under the Fifth Amendment.
12 Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And you are also giving up your
15 right to a jury trial on these charges and your
16 right to confront witnesses, to cross-examine
17 witnesses, and subpoena witnesses to testify in
18 your behalf. Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And if you went to trial the State
21 would have to prove you guilty of these charges
22 beyond a reasonable doubt to all 12 jurors. Do you
23 understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And you are giving up any appeal

1 that could come out of that trial by pleading
2 guilty today. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And if you want to appeal this
5 guilty plea today you have got to file it, you or
6 your lawyer, with the Clerk of Court within ten
7 days of today's date, but you give it up. Do you
8 understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: The Solicitor is going to tell me
11 about the facts.

12 MR. HUTCHINSON: Thank you, Your Honor.

13 On January 5th, 2002, Troy Keitt was at his
14 mother's house at [REDACTED] Bunker Hill Road in Lugoff,
15 South Carolina.

16 There were family members there as well as
17 others: Troy's wife, Althea; his mother, Tiller
18 Keitt; his sister, Makeitha Hollis; neighbors,
19 Calvin Moore and Cynthia Green; and also several
20 children were there present.

21 At some point in the evening, between 7:00 and
22 8:00 p.m., there was a knock on the door. Althea
23 turned on the porch light and answered the door.
24 And there was a black male there whose identity was
25 not known at the time who asked to speak to Troy

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Keitt.

Troy was in the restroom, but Althea told him to come to the door, and he went outside to speak with the person at the door.

A few moments later Troy Keitt's mother, who was playing cards with a neighbor, also glanced outside to see a black male speaking to Troy Keitt.

Your Honor, all three ladies were there going about their normal business when they heard gunshots. At the time they didn't know if it was gunshots or firecrackers, so they did run outside.

Makeitha ran outside to see two individuals running towards a vehicle, and Troy was sitting on the ground near the front of the yard clutching himself.

Althea also came outside to see two individuals running away from Troy Keitt and also to see Mr. Keitt on the ground clutching himself.

Troy's mother was inside calling 9-1-1 actually after she did hear the shots.

Your Honor, all three heard the victim say that, in response to who shot him, It was Clifton and Weasel. Weasel is a nickname for someone by the name of Talmadge Dixon.

Your Honor, Talmadge Dixon later learned the

1 police were looking for him by a family member. At
2 first -- and he did turn himself in to law
3 enforcement. At first he denied ever being there,
4 but then eventually he gave a statement to law
5 enforcement.

6 According to Talmadge Dixon, he, the
7 Defendant, and another person, that he knew only as
8 Wess or West, decided go to [REDACTED] Bunker Hill Road.
9 According to Mr. Cooke, he knew someone there who
10 had drugs.

11 According to Dixon, all three got into a Honda
12 and went over to [REDACTED] Bunker Hill Road, and Clifton
13 got out of the vehicle by himself -- this is
14 according to Mr. Dixon -- and went to knock on the
15 door and asked for Troy Keitt.

16 Dixon stated that he was in the vehicle and
17 saw Cooke talking to Troy on the step. The
18 Defendant began to argue with Troy and then pulled
19 out a revolver. They wrestled. And at that time
20 the Defendant shot him and continued to shoot him.

21 According to the autopsy, there were seven
22 shots in his back, chest, ankle, knees, and legs.

23 A GSR analysis was done by SLED, and neither
24 Mr. Dixon nor the victim in this case had anything
25 on their hand, indicating they did not have a gun.

1 Your Honor, this case did originally go to
2 trial. The Defendant was found guilty and
3 sentenced to 40 years.

4 He was -- and this case was overturned by
5 Judge Kinard on February 29th, 2012, on a PCR
6 motion, due to another witness that it was claimed
7 that said -- had another recollection of the facts.
8 And that is why we are here today.

9 THE COURT: Okay.

10 MR. HUTCHINSON: And, Your Honor, there are
11 family members here of the victim who would like to
12 address the Court at the appropriate time.

13 THE COURT: Okay. And a revolver was used in
14 this shooting?

15 MR. HUTCHINSON: Yes, Judge.

16 THE COURT: And what caliber? Do you know?

17 THE SOLICITOR: It was a .32, Judge. And if
18 you are wondering about seven -- is that -- you are
19 wondering about seven shots?

20 THE COURT: Yes. Most revolvers only have
21 six. Some have as many as nine. So I was just
22 trying to figure out the caliber.

23 MR. HUTCHINSON: At the original trial there
24 was an indication by law enforcement by someone the
25 State had that there did -- there was such a

1 revolver that existed that would have at least
2 seven shots, Judge.

3 THE COURT: And some have as many as nine,
4 but that isn't a lower caliber, so that is why I
5 was wondering.

6 And this is an Alford plea?

7 MR. KIRINCICH: Yes, sir, Your Honor.

8 THE COURT: Mr. Cooke, you understand that
9 those are the facts that the State would present if
10 this case went to trial? Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And they have offered you a plea
13 to a lesser included offense of murder to
14 manslaughter. Do you want me to accept your plea
15 under North Carolina vs. Alford?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you understand if I accept it
18 it is just like a guilty plea as far as the
19 punishment is concerned and the time I give you,
20 even though you are pleading under Alford. Do you
21 understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. And I find there is a
24 factual basis for your plea; it is freely and
25 voluntarily entered into; and that you have had the

1 advice of competent counsel whom you tell me you
2 are satisfied with. And I will accept your plea.

3 And I'll be glad to hear from the victims.

4 MS. HOLLIS: Hi. I'm Makeitha Keitt Hollis.
5 I am the victim's sister. I was present during the
6 altercation. I am his baby sister.

7 I had -- during the time when my brother was
8 laying on the ground, I asked him who did this to
9 him.

10 And he stated, Clifton Cooke and Weasel.

11 I said, Who shot you?

12 He stated again, Clifton Cooke.

13 I didn't know who Clifton Cooke was, but I
14 constantly kept asking him until he actually passed
15 out.

16 I did CPR on him. And he woke up again. And
17 I asked him again. And I told him to keep talking
18 to me.

19 Our family hasn't been the same. The home is
20 not the same. I mean, he came to my parents' home
21 where we all go on Saturdays and we get together as
22 family.

23 And he came and he shot him cold-blooded.
24 There is something I would never forget. My family
25 won't forget. My children was there. His children

1 was there. So, you know, for anyone to do
2 something like that regardless, it takes a
3 cold-hearted person to actually do that. And shoot
4 him that many times.

5 I was the one that ran out the door because I
6 thought it was firecrackers. But his last words
7 was to me. There is something I won't forget.

8 And I'm asking, I'm pleading -- it is going to
9 happen again if this man is let out -- for the
10 maximum.

11 THE COURT: Thank you, ma'am. Anyone else?

12 MS. EVANS: Yes. I'm Rosetta Evans. I'm
13 Troy's sister as well. I was not there that day.
14 I actually was sick with the flu and strep throat.
15 I remember that day because the snow was clearing.
16 And I had just come from the doctor and diagnosed
17 with the flu.

18 And my brother was a great brother. He was a
19 protector. He loved his family and he loved his
20 children. And he will never get the chance to meet
21 my daughter. She is ten months old. She will
22 never get to know her uncle. He would have loved
23 her so much.

24 We are just hoping that Clifton gets the
25 maximum sentence held by South Carolina law for the

1 damage that he caused to our family.

2 It is hard to understand why someone will
3 disrespect the life -- a human life. It doesn't
4 matter what your disagreement is, no one deserves
5 to be murdered like my brother was. He was shot
6 seven times. It is just unconscionable.

7 And I plead and beg the Court to please give
8 him the maximum sentence allowable.

9 THE COURT: Thank you, ma'am.

10 MS. KEITT: My name is Tiller Keitt. I'm his
11 mother. I was there. When he passed, it took a
12 part of me with him. I ain't been right since he
13 gone. He come to the house every morning and get
14 his grits. And I look for him to come to the door.

15 That is my baby boy. He was a good boy. He
16 been a boy who had respect.

17 I wish -- I'm pleading too that he get the
18 maximum, because if he don't, it going to happen
19 again to somebody else's family.

20 THE COURT: Thank you, ma'am.

21 MS. KEITT: Thank you.

22 THE COURT: Anything else?

23 MR. HUTCHINSON: Judge, just a couple more
24 things I wanted to bring to the Court's attention.

25 Your Honor, after this incident happened, the

1 Defendant did go to New York where he had to be
2 extradited. He was there for two years. He was
3 extradited two years later.

4 Your Honor, his prior record, a simple assault
5 from 1999 from South Carolina; and from New York a
6 criminal possession of a loaded firearm, third
7 degree, in 1999 as well.

8 THE COURT: Okay. Yes, sir?

9 MR. KIRINCICH: Thank you, Your Honor.

10 Your Honor, just to reiterate, Mr. Cooke is
11 entering this as an Alford plea. We understand the
12 statements that the State has made as to what they
13 would present as the facts.

14 And, Your Honor, with all due respect to the
15 Keitt family, because this should not have happened
16 to their brother, I feel like once again the State
17 is leaving out some very important information; and
18 that was the reason that Judge Kinard found that
19 this case should be overturned on post-conviction
20 relief, because in his mind there was exculpatory
21 evidence that the State knew about.

22 The State referenced in their opening
23 statement and in their witness list that they were
24 going to call Gloria Moore and Deputy Rob Evans.
25 Deputy Rob Evans was the responding officer.

1 Gloria Moore is the neighbor that lived across the
2 street from the Keitts. She had known Troy since
3 he was a young man.

4 Your Honor, during the trial, Solicitor John
5 Meadors in his opening said that Gloria Moore would
6 be called. He asked other witnesses about Gloria
7 Moore. When it came time to call her, he decided
8 not to do it.

9 Your Honor, whenever Mr. Cooke was convicted,
10 he filed his appeal, and that was denied at
11 post-conviction relief.

12 Jeremy Thompson hired Dave McDougall, who
13 recently passed. Dave had an opportunity to speak
14 with Ms. Moore. She told him that she had talked
15 with investigators previously, investigators from
16 the Sheriff's Office. She told them that she heard
17 the gunshots while she was inside on the phone.
18 She went outside. When she went outside she saw
19 Troy sitting there holding himself talking with his
20 family.

21 At that point she heard him say, Weasel shot
22 me. She didn't hear anything about Clifton Cooke.

23 She wrote a statement, Your Honor, to four
24 investigators the night this happened. She said
25 she heard him say, I don't believe I'm going to

1 make it. I also heard the victim say the name
2 Weasel. She got on the phone and then called
3 9-1-1.

4 Your Honor, Deputy Rob Evans, the first one on
5 the scene, responded. He took some notes down. He
6 later put those notes into an incident report. His
7 incident report is based on a statement he got from
8 Mr. -- I believe it is Mr. Keitt's wife, Althea
9 Keitt. She stated the victim told her Subject
10 Number 1 shot him.

11 Your Honor, on the incident report, Subject
12 Number 1 is Talmadge Dixon. There is no other
13 indication that Deputy Rob Evans heard from anybody
14 that Clifton Cooke shot Mr. Keitt.

15 This was a case, Your Honor, where they said
16 they had gunshot residue tests on both these
17 individuals, Mr. Keitt and Mr. Dixon, to show that
18 they didn't have any gunshot residue on them.

19 Your Honor, that test was not done on
20 Mr. Dixon immediately. As we all know, those tests
21 are not reliable after a certain amount of time.
22 If somebody changes their clothes, washes their
23 hands, washes their body, other gunshot material
24 washes off.

25 Your Honor, also it was not said today that

1 Mr. Dixon, even though he is named in everybody's
2 statements -- and I'll go ahead and put it out
3 there that Althea Keitt did write a statement; she
4 said, I saw Troy on the ground. Makeitha asked him
5 who did it. He said, Weasel and Clifton.

6 And the statement from Makeitha, who is here
7 today, who indicated she heard him say, Clifton
8 Cooke. He was telling me who shot him. He said,
9 Weasel, Talmadge Dixon, and Clifton. I had him
10 repeat it twice after that. He said, Talmadge
11 Dixon and Clifton. They shot him.

12 Your Honor, Mr. Dixon then in some fashion --
13 and I don't know exactly how it happened, I have
14 never been privy to any conversations that occurred
15 between Mr. Dixon, his attorney, and the
16 Solicitor's Office -- managed to work out a deal
17 after he initially lied to investigators, after he
18 made up a third person that was there who has never
19 been located, he has never been identified, he
20 worked out a deal where he testified at Mr. Cooke's
21 trial that Mr. Cooke was the one who shot him.

22 As part of that deal, Your Honor, Mr. Dixon
23 was later sentenced to time served of just over a
24 year to accessory after the fact. This was
25 somebody who was named in multiple statements as

1 the one that shot Mr. Keitt. And he got time
2 served of a year.

3 Your Honor, I started by saying that what
4 happened to Troy Keitt should not have happened. I
5 think that there was a miscarriage of justice in
6 this case, and I think the Keitt family has every
7 right to be upset with, not necessarily Mr. Cooke,
8 but with the Solicitor's Office in the way
9 Mr. Dixon's case was handled.

10 I can't see any reason that a Prosecutor would
11 make that deal with someone when they have evidence
12 from multiple witnesses that he was the one that
13 shot Mr. Keitt.

14 Your Honor, Mr. Cooke has been in jail 3,454
15 days -- 9 years, 5 months, and 14 days. He was
16 initially taken into custody September of 2004. He
17 made mistakes after this happened. He doesn't deny
18 that he was there. He has testified at his own PCR
19 that he was there, that it was Talmadge Dixon who
20 shot Mr. Keitt.

21 I have talked with Mr. Cooke about it. He
22 realizes that he shouldn't have run.

23 At the time, though, Your Honor, he was a
24 young man. He was scared. He was 23, 24 years old
25 and didn't know what the right thing to do was.

1 Your Honor, he is joined today by a number of
2 family members: Kenyatta Washington, a good
3 friend, girlfriend is here; plus a cousin -- excuse
4 me -- Tasha Stevens, his cousin; Barbara Miles, an
5 aunt; Nita Watkins, a cousin; Anthony Cooke, his
6 brother; and Wayne Garrett, is his father.

7 Your Honor, they have all been very active in
8 checking on Clifton. They are all very concerned
9 about him.

10 I would respectfully disagree with Mr. Keitt's
11 family that if Your Honor was to sentence him to
12 anything less than the max that this is going to
13 happen again.

14 There is -- like I said, there is nothing that
15 I have ever gotten from Mr. Cooke that this is
16 going to happen again or he wasn't remorseful about
17 what happened or the way it was handled.

18 Your Honor, we're standing here before you
19 today. It is a tough place for us to be.
20 Mr. Cooke has pled under Alford. This is a case
21 that he and I both wanted to try. We thought there
22 was a lot of evidence that should have come out the
23 first time. And it is very unfortunate that it
24 didn't. And I'm glad that Judge Kinard ruled the
25 way he did to say that he believed that there was

1 possibly exculpatory evidence to hear not only from
2 Ms. Moore, who specifically was there, but also I'm
3 concerned about the statements that were given to
4 Deputy Evans and why he was not called.

5 Unfortunately, within the last few months,
6 Deputy Evans passed away. He had a heart attack
7 while directing traffic at the Wateree Elementary
8 School.

9 And, unfortunately, as I discussed with
10 Mr. Cooke, two investigators in this case,
11 including Dave McDougall, have passed away. So as
12 time goes on, this case not only gets harder for
13 the State, but it also gets harder for Mr. Cooke.
14 And that is one of the reasons that he is pleading
15 today.

16 Your Honor, again, I talked about it with him
17 a number of times. We believe that Mr. Cooke
18 should have been given the benefit of the accessory
19 after the fact, Your Honor. He knows that that is
20 not what he is pleading to.

21 So, for that reason, Your Honor, I'm going to
22 respectfully ask that you consider a sentence of no
23 more than 15 years. I think that is the
24 appropriate thing to do.

25 But, quite frankly, after discussing the case

1 with Mr. Cooke, going through all the evidence,
2 Your Honor, it is not an easy thing to do because
3 unfortunately we do have a true victim in this case
4 and the victim's family is here. But, Your Honor,
5 Mr. Cooke's family has also not had him around. He
6 has not been available to them. He has not
7 experienced life outside of confinement for the
8 last 9 years, 5 months, and 14 days. So if Your
9 Honor would consider it, I would ask you for a time
10 served sentence.

11 I know Mr. Cooke would like to say something
12 at this time. And his family would like to speak.

13 THE COURT: Yes, sir?

14 THE DEFENDANT: I want to tell the family that
15 I'm sorry, but I did not shoot Troy Keitt. The
16 only reason why I'm pleading guilty to this is
17 because I fear for my life. I feel like I ain't
18 got a chance of winning.

19 THE COURT REPORTER: I'm sorry, I didn't hear
20 you.

21 THE DEFENDANT: Like I ain't got a chance of
22 winning. So that's why I'm going to go ahead and
23 plead guilty. But Talmadge Dixon shot Troy Keitt.
24 And I'm sorry to the Keitt family.

25 And I would just ask you to sentence me to no

1 more than 15 years.

2 MR. COOKE: My name is Anthony Cooke. And
3 Clifton Cooke is my brother. I feel sorry for the
4 Keitt family, but we destroyed too. We need my
5 brother back. I haven't had my brother in almost
6 ten years. And I do feel sorry for the family.

7 And can you please be lenient on my brother,
8 sir? Thank you.

9 THE COURT: Thank you.

10 MS. STEVENS: My name is Tasha Stevens. And
11 I'm Clifton's cousin. I'm currently living in
12 North Carolina. I went to school with the Keitts.
13 And I'm very sorry for what happened to Troy.

14 And I would ask that you be lenient on my
15 cousin. So much of our family members passed away
16 the last few years that he has been here. He has
17 missed family -- he has missed -- all of our
18 grandparents have passed, our aunts and uncles have
19 passed, cousins too.

20 We would ask(crying)...

21 MR. KIRINCICH: Your Honor, one more family
22 member.

23 THE COURT: Okay.

24 MS. MILES: Good afternoon. My name is
25 Barbara Miles. And I just want to stay to the

1 Keitt family, I am so sorry about what happened.
2 And I really don't believe that my nephew killed
3 Troy. And I have known Tiller all my life. We're
4 classmates. And I just want her to know that I
5 love her family, and I'm just so sorry about what
6 happened. But I really don't believe my nephew
7 pulled that trigger.

8 And please have mercy on my nephew.

9 THE COURT: Thank you, ma'am.

10 MR. KIRINCICH: Your Honor, I don't know if I
11 already said it, and if I repeat myself, I
12 apologize.

13 For one thing, I want to put out there for
14 Your Honor to consider and have on the record, we
15 were just told minutes before this plea that Mr.
16 Talmadge Dixon has refused to cooperate with law
17 enforcement further, which, again, it is
18 unfortunate that his case was handled the way it
19 was, but it puts both the State and the Defense in
20 a very bad position going forward. And that is why
21 Mr. Cooke, as he indicated, he doesn't feel like he
22 has a great shot at trial. He already knows what
23 happened one time.

24 And I think we've explained why we have asked
25 for no more than 15 years. And I hope I have laid

1 out a good enough reason for you to consider a time
2 served sentence, Your Honor.

3 Thank you.

4 THE COURT: Okay. The sentence of the Court
5 is you are committed to the State Department of
6 Corrections for a term of 20 years. I am giving
7 you credit for time served.

8 Good luck to you.

9 MR. HUTCHINSON: Thank you, Your Honor.

10 (WHEREUPON, the proceedings were concluded.)

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(END OF TRANSCRIPT)

FILED FOR RECORD

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

MAY 23 AM 11:00
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

IN THE GENERAL SESSIONS COURT
Indictment Number: 2006-GS-28-00116

The State of South Carolina

vs.

Clifton D. Cooke,

Defendant.)

ORDER DENYING MOTION
TO RECONSIDER

On March 6, 2014, Defendant pleaded guilty, pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), to Voluntary Manslaughter. He was sentenced to twenty years in the South Carolina Department of Corrections.

Pursuant to Rule 29(a) of the South Carolina Rules of Criminal Procedure, Defendant, Clifton D. Cooke, requested a hearing for a Motion to Reconsider his sentence imposed on March 6, 2014. After an *in camera* hearing with Defendant's attorney, Jason D. Kirincich and Assistant Solicitor Curtis R. Hutchinson as to what would be presented, the court finds that:

Defendant sought to have his sentence reconsidered based on the State's untimely disclosure that its key witness, the one-time co-defendant of Mr. Cooke, was no longer cooperating with the State in its prosecution of Mr. Cooke. Defendant was informed that his co-defendant would not cooperate in his prosecution minutes before he entered his plea. Being that he was informed before the plea, even if it was only minutes before the plea, Defendant could have taken any number of actions based on the disclosure and I find that the disclosure was not untimely.

Therefore, Defendant's Motion to Reconsider is hereby DENIED.

Manning, South Carolina
May 20, 2014

R. Ferrell Cothran, Jr.
R. Ferrell Cothran, Jr.,
Circuit Court Judge

ATTEST True, Correct & Certified
Copy of Original on File in this
Court
Opheim
Clark of Court Kershaw County

FORM 5

STATE OF SOUTH CAROLINA)
County of Kershaw)
CLIFTON D. COOKE # 320091)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

2015-CP-28-790

v.

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

FILED FOR RECORD
2015 AUG 24 AM 9:36
JOYCE MCGRAW
CLERK OF COURT
KERSHAW COUNTY, S.C.

INSTRUCTIONS - READ CAREFULLY

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

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

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 Walden Correctional Institution

2. Name and location of Court which imposed sentence Kershaw County
General Sessions Camden South Carolina

3. Name(s) of co-defendant(s) (if any) Talmadge Dixon, Jr

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2006-65-28-116 - Voluntary manslaughter
 - (b) _____

ATTEST True, Correct & Certified
Copy of Original on File in this
Court
[Signature]
Clerk of Court Kershaw County

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 6, 2014 - 20 years
 - (b) _____
 - (c) _____

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

- 7. Did you appeal from the judgment of conviction or the imposition of sentence: Yes

- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. Court OF Appeal
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Applicant withdraw Appeal
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. August 3, 2015
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. Dismiss
 - ii. _____
 - iii. _____

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

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 CLERK OF COURT
 KERSHAW COUNTY, S.C.

(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) Brady violation

(c) Involuntary Guilty Plea

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

(a) Failed To investigate / Failed to withdraw guilty Plea

(b) Prosecutor withheld material evidence

(c) Applicant was not aware of the Consequences of his Guilty Plea

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

(a) any petition in a State Court under South Carolina Law? _____

(b) any petition in State or Federal Courts for habeas corpus or post-conviction relief? _____

(c) any petition in the United States Supreme Court for certiorari other than this one if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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JOSE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

JOYCE McDONALD
 CLERK OF COURT
 Kershaw County, S.C.

2015 AUG 24 AM 9:36

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

No

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

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

- (a) Applicant withdraw Appeal
- (b) _____
- (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? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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 JOYCE HINDSON, D.
 CLERK OF COURT
 KERSHAW COUNTY, S.C.

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. Jason D. Kirincich - Kershaw County Public defender
1121 Broad street, Camden, S.C. 29020
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Tiffany L. Butler - Appellate defender - Court of Appeal
P.O. Box 11589 - Columbia, SC. 29211-1589
 - ii. _____
 - iii. _____

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

New Trial

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

No

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2015 AUG 24 AM 9:36
JOYCE McDOWALL
CLERK OF COURT
KERSHAW COUNTY, S.C.

STATE OF SOUTH CAROLINA)
County of Kershaw)

VERIFICATION

I, CLIFTON D. COOKE # 320091, 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.

Clifton D. Cooke

SWORN to and subscribed before me this 17th day of August 2015

Jolanda Roy (L.S.)
Notary Public

My Commission Expires: 1/20/2022

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

I, CLIFTON D. COOKE # 320091, 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.

X Clifton D. Cooke
Applicant

SWORN or affirmed to and subscribed before me this
17th day of August, 2015.

Yolanda L.
Notary Public

My Commission Expires: 1/20/2022

FILED FOR RECORD
2015 AUG 24 AM 9:36
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF KERSHAW)	DOCKET NO.: 2015-CP-28-790
)	
CLIFTON COOKE,)	
SCDC # 320091)	
Applicant,)	
v.)	AMENDED APPLICATION FOR
)	POST-CONVICTION RELIEF
STATE OF SOUTH CAROLINA,)	
Respondent,)	
)	

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby amended as follows:

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

- (a) Ineffective assistance of counsel for failure to investigate witnesses.
- (b) Ineffective assistance of counsel for failure to inform Applicant regarding witness availability/unavailability and what evidence would actually be offered during a re-trial.
- (c) Ineffective assistance of counsel for failure to request a continuance.
- (d) Ineffective assistance of counsel for failure to fully inform Applicant regarding the full consequences of his plea.
- (e) Ineffective assistance of counsel for failure to file a Motion to withdraw his guilty plea.

Respectfully Submitted,



 Kristy G. Goldberg
 Attorney for Applicant

Columbia, South Carolina


This 17th Day of June, 2016.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF KERSHAW)
)
 CLIFTON COOKE,)
 SCDC # 320091)
 Applicant,)
 v.)
)
 STATE OF SOUTH CAROLINA,)
 Respondent,)
 _____)

IN THE COURT OF COMMON PLEAS
 DOCKET NO.: 2015-CP-28-790

CERTIFICATE OF SERVICE

I certify that on this date I served the Amended Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this application to the Office of the Attorney General via U.S. mail at Post Office Box 11549, Columbia, South Carolina 29211-1549.


 Kristy Goldberg
 Attorney for Defendant

Kristy Goldberg
 Law Office of Kristy Goldberg, LLC.
 1720 Main Street, Suite 303
 Columbia, SC 29201
 803-667-6633
 803-799-4059 (fax)
 kristy@kristygoldberglaw.com

Columbia, South Carolina

This 17th day of June, 2017

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

Clifton D. Cooke, #320091,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2015-CP-28-0790

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on August 24, 2015¹, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Kershaw County. Applicant was first indicted by the April 2006 term of the Court of General Sessions for Kershaw County for murder (2006-GS-28-0116). During 2007 trial, Applicant was represented by Joshua S. Kendrick, Esq., and Theresa N. Johns, Esq. Applicant convicted of murder and sentenced to forty (40) years' imprisonment by the Honorable James R. Barber, III. After the South Carolina Court of Appeals affirmed the conviction and sentence, Applicant filed his first application for PCR on April 26, 2010 (2010-CP-28-0452). On February 29, 2012, the Honorable J. Ernest Kinard, Jr., granted Applicant's first PCR application, vacated the prior conviction and sentence, and remanded the matter to the Kershaw County Court of General Sessions for a new trial.

On March 06, 2014, Applicant pled guilty, pursuant to *Alford*, to voluntary manslaughter before the Honorable R. Ferrell Cothran, Jr. Applicant was represented by Jason Kirincich, Esq. during the plea. Judge Cothran sentenced Applicant to twenty (20) years' imprisonment.

¹ This is Applicant's second PRC application. Applicant filed his first application for PRC on April 26, 2010.

Applicant filed a timely notice of appeal. Tiffany L. Butler Esq., of the Office of Appellate Defense perfected the appeal with the filing of an Anders² brief on January 13, 2015. Applicant subsequently withdrew his appeal and thus, pursuant to Applicant's withdrawal, the South Carolina Court of Appeals dismissed the appeal on August 03, 2015. Remittitur was received by the lower court on August 19, 2015.

Attached herewith and incorporated herein by reference are the records of the Kershaw County Clerk of Court regarding the subject conviction(s), the transcript from Applicant's plea, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

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

1. Ineffective Assistance of Counsel
 - a. "failed to investigate/failed to withdraw guilty plea"
2. Brady Violation
 - a. "Prosecutor withheld material evidence"
3. Involuntary Guilty Plea
 - a. "Applicant was not aware of the consequences of his guilty plea"

III.

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

² Anders v. California, 386 U.S. 738 (1967).

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

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

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

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact

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

IV.

Applicant alleges a Brady/Rule 5 violation; stating that prosecutor withheld material evidence. The Brady disclosure rule requires the prosecution to provide to a defendant any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment. State v. Kennerly, 331 S.C. 442, 452, 503 S.E.2d 214, 220 (Ct. App. 1998) (citing Brady v. Maryland, 373 U.S. 83, 87 (1963)). Favorable evidence includes both exculpatory evidence and evidence which may be used for impeachment. United States v. Bagley, 473 U.S. 667, 676 (1985). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). Respondent submits that Applicant cannot demonstrate a Brady violation, however, the allegation of a Brady violation by the State probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Respondent submits Applicant's third allegation that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may

collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 279 S.C. 264, 305 S.E.2d 247..

VI.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel, Brady violation, and involuntary guilty plea. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. §

IX.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claims of ineffective assistance of counsel, Brady violation, and involuntary guilty plea.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

J. CLAYTON MITCHELL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

11/9, 2015

I N D E X

(PW) - Denotes Plaintiff's Witness
(DW) - Denotes Defense Witness

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<u>(DW) JASON KIRINCICH:</u>	
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E X H I B I T S

(No exhibit submitted)

P R O C E E D I N G S

1
2 THE COURT: Ms. Kinard.

3 MS. KINARD: Thank you, Your Honor. May it please
4 the Court. This is the matter of Clifton Cooke versus the
5 State of South Carolina. It's case number
6 2015-CP-28-0790. This is before the Court on an
7 application for Post Conviction Relief that was filed
8 August 24th, 2015.

9 By way of procedural history, the Applicant is
10 presently confined pursuant to orders of commitment by the
11 Clerk of Court for Kershaw County. He was first indicted
12 at the April 2006 term of the Kershaw County Grand Jury.
13 During a 2007 trial, he was represented by Joshua Kendrick
14 and Teresa Jones. He was convicted of murder and
15 sentenced to 40 years imprisonment by the Honorable James
16 R. Barber, III.

17 After the South Carolina Court of Appeals affirmed
18 his conviction and sentence, he filed his first PCR
19 application on April 26th, 2010. That was case number
20 2010-CP-28-0452. On February 29th, 2012, the Honorable J.
21 Ernest Kinard, Jr. granted his first application, which
22 vacated his prior conviction and sentence and remanded the
23 matter to the Kershaw County Court of General Sessions for
24 a new trial.

25 After that, on March 6th, 2014, the Applicant pled

1 guilty pursuant to Alford versus North Carolina to
2 voluntary manslaughter before the Honorable R. Ferrell
3 Cothran, Jr. He was represented at that plea by Jason
4 Kirincich. Judge Cothran sentenced him to 20 years
5 imprisonment.

6 This plea was timely appealed and on that, he was
7 represented by Tiffany Butler of the Office of Appellate
8 Defense, who perfected the appeal with an Anders brief
9 that was filed January 13th, 2015. He subsequently
10 withdrew his appeal and it was dismissed August 3rd
11 of 2015 with the remittitur being returned August 19th,
12 2016.

13 The State is present and ready to proceed. The
14 Applicant is present and represented by Kristy Goldberg.

15 THE COURT: All right. Ms. Goldberg.

16 MS. GOLDBERG: Thank you, Your Honor. May it please
17 the Court. There should be in your packet an amended
18 application filed June 20th 2016.

19 MS. KINARD: My apologies for not mentioning that.

20 THE COURT: It is not.

21 MS. GOLDBERG: It's not there?

22 THE COURT: It is not.

23 MS. KINARD: My apologies for not including that.

24 THE COURT: All right.

25 MS. GOLDBERG: All right. Your Honor, those are the

1 allegations going forward today. If no further
2 explanation is needed, I'm prepared to call my first
3 witness.

4 THE COURT: Go ahead.

5 MS. GOLDBERG: At this time, I will call Clifton
6 Cooke.

7 THE COURT: Sir, if you'll come around to be sworn.
8 Place your left hand on the bible, raise your right hand.

9 CLIFTON COOKE, after being duly
10 sworn, testified as follows:

11 THE COURT: All right. If you'll have a seat in the
12 witness chair. State your name for the record, spell your
13 last name for my court reporter, please, sir.

14 THE WITNESS: Clifton Cooke.

15 DIRECT EXAMINATION

16 BY MS. GOLDBERG:

17 Q Spell your last name --

18 THE COURT: Hold up just a minute. Slide your chair.
19 Very good. Thank you.

20 Ms. Goldberg, you may proceed.

21 MS. GOLDBERG: Thank you.

22 Q Spell your last name.

23 A C-O-O-K-E.

24 Q All right. Mr. Cooke, some background information,
25 when were you arrested?

1 A September 21st, 2004.

2 Q 2004. Have you been incarcerated constantly since
3 that day?

4 A Yes.

5 Q What was the original charge?

6 A Murder.

7 Q And you originally had a jury trial on that; is that
8 right?

9 A Yes.

10 Q And who is your attorney?

11 A Joshua Kendrick, Teresa Johns.

12 Q What sentence did you receive at the end of that
13 trial?

14 A Forty years.

15 THE COURT: Sir, I need you -- can you speak up a
16 little?

17 THE WITNESS: Forty years.

18 THE COURT: Thank you. If you can speak more clearly
19 for me. Thank you.

20 BY MS. GOLDBERG:

21 Q You then had a PCR granted overturning that
22 conviction, correct?

23 A Yes.

24 Q So you understand the PCR process?

25 A Yes.

1 Q You understand when a PCR is granted that your
2 conviction is overturned in the entirety and you go back
3 to court and start over with your charges. You understand
4 all that?

5 A Yes.

6 Q When did you go back to Kershaw County to face these
7 charges again?

8 A I think it was January 9th, 2013.

9 Q Did -- and you stayed in jail while you were waiting
10 on disposition of these charges again?

11 A Yes.

12 Q Who was your attorney?

13 A Then?

14 Q Uh-huh.

15 A Jason Kirincich.

16 Q Did he represent you the entire time from when you
17 went back to Kershaw until your plea?

18 A Yes.

19 Q Did he assist you in preparing your trial?

20 A No.

21 Q Did he investigate your case?

22 A No.

23 Q What do you think he didn't do?

24 A He didn't do nothing.

25 Q Did you receive a plea offer in this case?

1 A No.

2 Q A plea offer would be either an agreement for a
3 particular sentence or an agreement to a reduced charge if
4 you plead guilty. Did you receive anything like that?

5 A No.

6 Q You went to court on March 6th, 2014?

7 A Yes.

8 Q Now, when you went to court on March 6th, what did
9 you believe you were going to court for?

10 A For a plea.

11 Q For a plea?

12 A Yes.

13 Q And what did you believe you would be pleading to
14 that day?

15 A Fifteen years.

16 Q I'm sorry?

17 A Fifteen years.

18 Q Fifteen years for what charge?

19 A Manslaughter.

20 Q Manslaughter. Voluntary?

21 A Yes.

22 Q Who told you that?

23 A Jason.

24 Q Tell me about that conversation where he told you
25 what was going to be happening in court.

1 A He told me he was going to try to work with me to get
2 me 15 years.

3 Q He said he was going to try to get you 15 years?

4 A Yes. That's why I was asking --

5 Q Go ahead.

6 A That's why I was asking the Court for the 15 years.

7 Q When you talked to Mr. Kirincich about this, was this
8 at the jail or was it that morning?

9 A At the jail.

10 Q At the jail?

11 A At the jail when I was in Sumter County. They had me
12 in Sumter County.

13 Q Okay. So you're incarcerated in Sumter County,
14 Mr. Kirincich comes there to visit you one day, and you
15 discussed this upcoming plea?

16 A Yes.

17 Q Is that right?

18 A Yes.

19 Q Did he tell you it was an agreement for 15 years?

20 A No, he said he would try to get me 15 years.

21 Q But you knew you would be pleading to voluntary
22 manslaughter?

23 A Yes.

24 Q And you were willing to plead guilty -- or plead
25 under Alford that day?

1 A Yes.

2 Q All right. Now, the morning you got to court in
3 Kershaw County, did you speak with your lawyer that
4 morning?

5 A Yes.

6 Q All right. Tell me what you talked about that
7 morning.

8 A He didn't say nothing. He just said he was bringing
9 me up for the plea.

10 Q Talk a little slower.

11 A He told me I was here today for the plea, for a plea.

12 Q Okay. Now, prior to your plea date, did you ever ask
13 him to do an investigation in your case?

14 A I've been asking that from day one.

15 Q What did you want him to do?

16 A To investigate. I wanted to know what was going on
17 with Talmadge Dixon.

18 Q Talmadge Dixon?

19 A Yes.

20 Q Who was Talmadge Dixon?

21 A My codefendant.

22 Q And what did you want Mr. Kirincich to find out?

23 A I wanted to know was he going to come to court to
24 testify against me.

25 Q If he was going to testify against you?

1 A Yes.

2 Q The first trial you had, did Mr. Dixon testify
3 against you?

4 A Yes.

5 Q Was that testimony harmful to your trial?

6 A Yes.

7 Q Did Mr. Kirincich ever to your knowledge reach out to
8 Mr. Dixon and find out if he would testify against you in
9 the second trial?

10 A No, he didn't..

11 Q He didn't --

12 A No.

13 Q He didn't tell you? He didn't find out?

14 A He didn't say nothing. He didn't say nothing.

15 Q The morning of your guilty plea, did you and
16 Mr. Kirincich have any conversations about Talmadge Dixon?

17 A Yes.

18 Q Okay. Tell me what was said.

19 A I had asked him was Talmadge Dixon going to testify
20 against me again. He said yes, so I said, I'm just going
21 to go ahead and plead.

22 Q If you had been told that Mr. Dixon was not going to
23 testify against you, what would you have done with your
24 case?

25 A I would have went to trial.

1 Q You would have had a trial?

2 A Yes.

3 Q Do you think you could have won if he wasn't a
4 witness?

5 A Yes.

6 Q At any point the day of the plea, did you learn
7 something different about Mr. Dixon?

8 A That he wasn't going to testify on me. He wasn't
9 cooperating with the State.

10 Q When did you learn that?

11 A Minutes before the plea.

12 Q Minutes before the plea?

13 A Yes.

14 Q Who told you that?

15 A I heard Jason put it on the record to the judge.

16 Q He said it on the record to the judge?

17 A Yes.

18 Q So was it during the plea?

19 A During the plea, yes.

20 Q It wasn't before the plea?

21 A No.

22 Q He said it to the judge?

23 A Yes.

24 Q He didn't have a separate conversation with you and
25 tell you this?

1 A No, he did not.

2 Q Did he mention when he found that information out?

3 A He put on the record he found out minutes before.

4 Q Now, when you went to court on March 6th, you already
5 testified that you understood you were going to court for
6 a plea that day, correct?

7 A Yes.

8 Q It wasn't a trial date?

9 A No, no.

10 Q If you had decided not to plea that day, do you have
11 any reason to believe you would have had to have gone to
12 trial the same day?

13 A I don't know. I don't know.

14 Q Okay. Were you ever told that if you didn't plea
15 that day that the offer for pleading for voluntary
16 manslaughter would be revoked and that would be gone? Did
17 anyone ever tell you that?

18 A No.

19 Q After the plea, did you ask Mr. Kirincich to do
20 anything?

21 A I asked him to withdraw my guilty plea.

22 Q Did he do that?

23 A No, he filed a motion to reconsider.

24 Q Why did you want him to file a motion to withdraw
25 your plea?

1 A Why? Because Talmadge Dixon was no longer
2 cooperating.

3 Q And?

4 A And I told him I didn't want to plead to it no more.
5 I said if he ain't going to testify against me, I want to
6 go to trial.

7 Q You wanted a trial?

8 A Yes. He told me don't make -- you're going to make
9 the judge mad. I was like, I'm going to make the judge
10 mad?

11 Q What happened with the motion to reconsider?

12 A It was denied.

13 Q Was there a hearing?

14 A Yes.

15 Q There was?

16 A Yes. But they never brought me out. They had me in
17 the holding cell.

18 Q You weren't present for a hearing at any time?

19 A No.

20 Q Did he ever file a motion to withdraw your plea?

21 A No, ma'am.

22 Q Did he file a notice of appeal?

23 A Yes.

24 Q What happened with that?

25 A Notice of appeal on the Court of Appeals?

1 Q Uh-huh.

2 A I withdrew [sic] it.

3 Q Why did you withdraw it?

4 A I just -- I had a better chance with PCR.

5 Q You thought it was a PCR issue?

6 A Yes.

7 Q And do you think that your lawyer fully and
8 accurately advised you regarding the potential
9 consequences of what your plea was going to be?

10 A No, he did not.

11 Q What didn't your lawyer do?

12 A He didn't tell me nothing. He just brought me up.

13 Q What should he have done?

14 A He should have explained it to me, at least.

15 Q Explained what?

16 A What was going on with the case.

17 Q Are you talking about Mr. Dixon?

18 A Dixon, yes.

19 MS. GOLDBERG: No further questions.

20 THE COURT: Ms. Kinard.

21 MS. KINARD: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. KINARD:

24 Q Good morning, Mr. Cooke?

25 A Good morning.

1 Q Do you remember entering your plea? Do you remember
2 being in court when you entered your plea?

3 A Yes, ma'am.

4 Q Do you remember being asked a lot of questions by the
5 judge about the circumstances surrounding your plea?

6 A Yes.

7 Q For example, that you understood you were giving up
8 certain rights?

9 A Yes.

10 Q And you understood what those rights were, your right
11 to remain silent, to confront your accusers and present
12 witnesses and all those things?

13 A Yes.

14 Q Do you remember testifying that you were satisfied
15 with the services of your attorney?

16 A Yes.

17 Q At that time, were you satisfied with the services of
18 your attorney?

19 A Yes, at that time.

20 Q When did you find out that Mr. Dixon wasn't going to
21 testify for the State?

22 A At the end part of the plea.

23 Q Do you recall during the plea Mr. Kirincich telling
24 the Court that he had undergone some investigation on your
25 behalf?

1 A No.

2 MS. KINARD: Your Honor, may I approach the witness?

3 THE COURT: Yes, ma'am.

4 BY MS. KINARD:

5 Q Mr. Cooke, I'm going to show you this and just see if
6 it jogs your memory if that's okay. This is Page 20, Line
7 8.-- or excuse me, Line 9, that paragraph. Would you
8 agree with me that it states in this paragraph he hired
9 two investigators that had passed away?

10 A Yeah, he said they passed away. He said he didn't
11 have a chance to go over anything.

12 Q Moving on to a separate question, Page 20, Line 21
13 through 24, what is Mr. Kirincich asking for there?

14 A Asking for 15 years.

15 Q So he asked for 15 years on your behalf?

16 A Yes.

17 Q Now, you stated you wanted to plead, but you didn't
18 remember receiving any offer or negotiations or
19 recommendation?

20 A (Indicating in the negative.)

21 Q Okay. Why did you decide to plea?

22 A Because he kept telling me you go to trial, Talmadge
23 testify against you, you're going to get life, so I just
24 pled out.

25 Q I'm sorry, that last part?

1 A I just pled out.

2 Q Okay. Did your decision to plea have anything to do
3 with the judge that was available?

4 A No.

5 Q Now, this motion to reconsider, you said that you
6 were not brought into the courtroom; is that correct?

7 A Yes.

8 Q Did you ever see a copy of the order that resulted
9 from that motion?

10 A Yes.

11 Q Do you recall it saying that even if you knew minutes
12 before the plea, you could have taken any number of
13 actions based on the information that Mr. Dixon was going
14 to testify against you?

15 A Yes.

16 Q But you don't feel that was true?

17 A No.

18 MS. KINARD: No further questions. Thank you.

19 THE COURT: Ms. Goldberg?

20 MS. GOLDBERG: Nothing further, Your Honor.

21 THE COURT: Sir, you may step down. Thank you.

22 Call your next witness, please.

23 MS. GOLDBERG: No other witnesses for the Applicant.

24 MS. KINARD: The State calls Jason Kirincich.

25 THE COURT: Sir, if you'll come around to be sworn,

1 please.

2 JASON KIRINCICH, after being duly
3 sworn, testified as follows:

4 THE COURT: All right. Take a seat in the witness
5 stand. State your full name for the record, spell your
6 last, please.

7 THE WITNESS: Jason Kirincich, K-I-R-I-N-C-I-C-H.

8 THE COURT: All right. Ms. Kinard.

9 MS. KINARD: Thank you, Your Honor. May it please
10 the Court.

11 DIRECT EXAMINATION

12 BY MS. KINARD:

13 Q Good morning, Mr. Kirincich. Thank you for being
14 here. I'm going to start with a few background questions.
15 How long have you been practicing criminal law?

16 A 2007.

17 Q How long of that time have you been involved with the
18 Kershaw County Public Defender's Office?

19 A The whole time.

20 Q How did you come to represent Mr. Cooke?

21 A When Mr. Cooke's case was returned to General
22 Sessions in Kershaw County, the public defender's office
23 was appointed in January 2013.

24 Q Do you recall approximately how many times you met
25 with him?

1 A Somewhere between six and ten times, I would say.

2 Q And those would be at various detention facilities?

3 A Yeah, we met when he was brought back to Kershaw
4 County in January. We brought him over to the courthouse.
5 We were going to try to do his bond that week, try to get
6 a new bond set, but it was Judge Barber who was our
7 circuit court judge that week. Mr. Cooke didn't want to
8 go forward with Judge Barber setting his bond as Judge
9 Barber had already sentenced him to 40 years.

10 So I met with him again after that. Some time, I
11 think, in March, we brought him over in front of, if I
12 remember, I think it was Judge Benjamin, who denied bond,
13 told the State to try the case within the calender year.
14 Met with him again at the end of March after that hearing
15 and then he was moved to Sumter, Lee Detention Center in
16 April, I believe.

17 He wrote to me to let me know that he was actually on
18 lockdown there. I got him out of lockdown, went and met
19 with him in June. Met again several times after that.

20 Q When you met with him, even though he had already
21 been through this process with the same charge, did you
22 discuss with him basically what the charge brought, what
23 he was facing, and what the State would have to prove?

24 A Yes. He had a transcript from his trial, and I think
25 the first time I met with him in January, he gave me that

1 transcript. I made a copy of it. Whenever I received the
2 discovery, which he did not have a copy of, that was one
3 of the things he wrote to me about when he was in Sumter
4 Lee. I brought him a copy there. He signed, basically, a
5 receipt for it, that he had received his discovery. We
6 went over every document that I received in this case.

7 Q Did you inform him of his constitutional rights,
8 including that to a jury trial, the right to testify, the
9 right to confront witnesses and the right to call his own
10 witnesses in his defense?

11 A Yes.

12 Q As part of that, did you weigh the pros and cons of a
13 trial versus a plea?

14 A Yes.

15 Q What was his original stance of approaching this
16 charge when it comes to a trial or a plea?

17 A He wanted to try it and with our discussions, we
18 thought we had a pretty good case. Based on the testimony
19 of Ms. Gloria Moore, who testified at his original PCR
20 hearing, we thought we had a pretty good case. It wasn't
21 a slam dunk, by any means, but we wanted to try it.

22 Q What changed? What ended up getting him to plea?

23 A The initial reason for wanting to go to trial is they
24 weren't offering anything. They still wanted to go
25 forward with the murder charge.

1 There were two investigators that were hired for this
2 case and then there was another officer who we thought his
3 testimony would be helpful, Deputy Rob Evans.
4 Unfortunately, Deputy Evans passed away.

5 And then as we went forward with Mr. Cooke being in
6 Sumter Lee, he -- I remember our conversation, he had
7 become more familiar with Judge Cothran since he's in the
8 third circuit, and when the State offered voluntary -- it
9 was straight up, but they offered voluntary. I discussed
10 it with Mr. Cooke while he was at Sumter Lee and he wanted
11 to go ahead and enter a plea to voluntary in front of
12 Judge Cothran.

13 Q In other words, he thought Judge Cothran might be
14 favorable to him regarding sentencing?

15 A Yes. I didn't know Judge Cothran at the time, but I
16 had spoke with members of the Sumter County Public
17 Defender's Office and some private attorneys that
18 practiced there. We discussed -- we, being me and
19 Mr. Cooke, discussed the possibility of a plea. He wanted
20 15 years. Based on his testimony in his prior PCR, our
21 discussion, we thought this was really close to an
22 accessory after the fact kind of case, which 15 would have
23 been fair on.

24 Q Now, when you got to the plea, tell me what happened
25 as far as it relates to Mr. Dixon, any information about

1 that?

2 A Prior to the plea, the solicitor's office contacted
3 me. It was Ms. Cavanaugh, who is here in Richland County,
4 contacted me and let me know that he had charges pending
5 in Richland County that she was prosecuting him on that he
6 was going to be testifying against Mr. Cooke. She let me
7 know that. I don't remember when that was, but he was
8 going to be testifying for the State. The morning of the
9 plea or whatever time the plea was, prior to the plea,
10 Mr. Cooke signed his paperwork. We went over all his
11 trial rights.

12 We then -- we, being myself and Solicitor Curtis
13 Hutchison, had a brief meeting with Judge Cothran. Often
14 before pleas, we'll let the Judge know what kind of plea
15 it is, if there's anything peculiar that's going to be
16 going on the record.

17 At that point, Solicitor Hutchison told me that
18 Talmadge Dixon was not going to be testifying against
19 Mr. Cooke. We left Judge Cothran's office. Mr. Cooke was
20 sitting in our jury box where the detainees sit before
21 their pleas. I told Mr. Cooke that Mr. Dixon was not
22 going to be testifying or had, at least, indicated to the
23 State recently that he would not testify. But we still
24 went forward with the plea.

25 Q So just to clarify, you told him before the actual

1 plea process that Mr. Dixon was no longer going to testify
2 against him?

3 A Yes, I mean, just mere moments before.

4 Q But he still said let's go ahead, I want to plead?

5 A Yes.

6 Q Okay. So he entered his plea. Was that relatively
7 uneventful? To your memory, a pretty straightforward plea
8 entry?

9 A Pretty straightforward.

10 Q And you recall the Judge asking all the necessary
11 questions in colloquy?

12 A I don't recall. I could look at the transcript, but
13 I don't recall.

14 Q That's not an allegation here, but just off the top
15 of your head. What did you ask for at the plea regarding
16 the sentence?

17 A I remember explaining that -- it may have been down
18 to the day that Mr. Cooke had been incarcerated. I
19 remember comparing and contrasting him and Weasel, which
20 is Talmadge Dixon's nickname, that multiple people had
21 named Mr. Dixon as the shooter, multiple witnesses had
22 named him as the shooter and he received a time-served
23 sentence. So comparing or contrasting those two, I asked
24 for 15 years. We thought that was fair. I think I asked
25 for time served and no more than 15 years.

1 MS. KINARD: And if I may point the Court to those
2 areas in the record, Page 18, Lines 14 and 15 is when
3 Mr. Kirincich actually says how many days Mr. Cooke has
4 been incarcerated. I mentioned Page 20 earlier about
5 asking for 20 years. On Page 23, Lines 24 and 25, again
6 asking for 15 years.

7 BY MS. KINARD:

8 Q So what happened after the plea to cause you to file
9 a motion to reconsider?

10 A I don't remember Mr. Cooke asking me to file a motion
11 to withdraw his plea, but we discussed motions that could
12 be filed just to get a straight appeal.

13 I may have made the decision to go with the motion to
14 reconsider based upon the information that we were given
15 just directly before the plea regarding Mr. Dixon not
16 wanting to cooperate.

17 Q And was this motion heard?

18 A We scheduled it. I know Mr. Cooke's family was
19 notified to be in court. They were in court. Judge
20 Cothran was in Kershaw County. Mr. Cooke was brought over
21 from the Department of Corrections and Judge Cothran did
22 not want to have a hearing on it. He decided it based on,
23 I guess, the motion.

24 Q And just to clarify --

25 MS. KINARD: If I may approach, Your Honor, with a

1 copy of the order.

2 THE COURT: Yes, ma'am.

3 Q See if this jogs your memory or if you believe this
4 is incorrect?

5 A Yeah, an in-camera hearing. That would be correct.

6 Q So it was actually an in-camera hearing with you and
7 Assistant Solicitor Hutchison?

8 A Yes.

9 Q And when this order was ruled upon, did you tell
10 Mr. Cooke?

11 A Yes, I told him in the holding cell at the Kershaw
12 County Courthouse. When I received the order, I mailed
13 him a copy of it. I think we had already discussed that
14 he wanted to appeal, so I filed an appeal for him at that
15 time.

16 Q Just to step back one bit, because one of his
17 allegations is a failure to investigate, did you ever
18 receive anything that either of your investigators were
19 able to uncover?

20 A No, we hired Bobby Watkins, who was working with the
21 public defender's office. I don't think he had it very
22 long before he passed away. Then discussing the case with
23 Fielding Pringle, who's our deputy public defender, we
24 decided to hire Dave McDougal, who had actually
25 investigated this case already for the original PCR.

1 Mr. McDougal at the time was excited to get the case. He
2 had already worked on it. He had been able to help
3 Mr. Cooke before mainly with the testimony from Ms. Moore.

4 Q Was there a goal of what kind of information they
5 were trying to obtain or just a general investigation?

6 A It was more about fleshing out some of the witnesses
7 that were there. There were multiple statements given by
8 Mr. Kit, the decedent's family, and then Ms. Moore, who
9 was an uninterested witness, the neighbor across the
10 street gave a different statement, so really, it was
11 important for us to get Ms. Moore's testimony in front of
12 a jury.

13 Q Did you talk to Mr. Cooke about what kind of
14 information these witnesses could provide at trial if you
15 went forward?

16 A Yes, we still had the problem even if Mr. Dixon
17 decided not to cooperate, there were other witnesses, the
18 victim's family that gave statements. I think they spoke
19 at the sentencing that they would still testify against
20 him.

21 Q When you went to -- decided to go forward with the
22 plea, did you discuss with Mr. Cooke that he would lose
23 the ability to challenge any evidence against him?

24 A Yes.

25 Q Did you feel it was necessary to request a

1 continuance based on Mr. Dixon's change of heart, so to
2 speak?

3 A At the time, no. I mean, I remember talking to
4 Mr. Cooke and we still decided to go forward. So at the
5 time, I think we were just ready -- ready to do that.

6 Q And do you feel like he fully understood the
7 consequences of his plea whether they were, you know,
8 constitutional or collateral or anything?

9 A Oh, yeah. I mean, I think he understood everything
10 at the time. I never had any problems talking with
11 Mr. Cooke about the case, about the court system. He's
12 very knowledgeable. He didn't have any problem
13 understanding.

14 Q Is there anything else you'd like the Court to know
15 about your representation of Mr. Cooke?

16 A No, ma'am.

17 MS. KINARD: Thank you. No further questions at this
18 time.

19 THE COURT: Ms. Goldberg.

20 MS. GOLDBERG: Thank you, Your Honor. May it please
21 the Court?

22 THE COURT: Yes, ma'am.

23 CROSS-EXAMINATION

24 BY MS. GOLDBERG:

25 Q All right. Good morning, Mr. Kirincich.

1 A Good morning.

2 Q Let's -- I'd like to back up a little bit just to put
3 a lot of what we've said into context and kind of help the
4 Court a little with understanding this case. Can you give
5 me the general facts of the incident that led to these
6 charges to begin with?

7 A I will try.

8 Q To the best of your ability.

9 A 2002, Troy Kit was killed in front of his -- I
10 believe it's his mother's house, a road off of -- it's
11 parallel to Highway one, but not very far from Highway
12 one. I can't remember the name.

13 After -- well, two people, I believe, they said came
14 to the door to get Mr. Kit. Mr. Kit went outside. The
15 family heard gunshots, came outside. Mr. Kit's sister or
16 wife or both, mother, somebody came outside and said that
17 Troy said, Weasel and Cliff shot me. Weasel is Talmadge
18 Dixon, Cliff is Clifton Cooke. Gloria Moore was neighbor
19 across the street, she heard Mr. Kit say, Weasel shot me.

20 Law enforcement was called. They began looking in
21 the Elgin area for both Mr. Cooke and Mr. Dixon.
22 Mr. Dixon either turned himself in or was found a short
23 time later. They did some gunshot residue. He didn't
24 have anything on his hands, which I think -- I don't know
25 how much it mattered.

1 Mr. Cooke was not found. I don't know if he's from
2 New York or if he had grown up there, but two years later,
3 Mr. Cooke was found in New York, held there for a short
4 time, brought back to Kershaw County and faced the
5 charges.

6 Q There were no actual eyewitnesses to the incident?

7 A No.

8 Q Correct?

9 A Correct.

10 Q The most damaging evidence presented by the State was
11 testimony regarding a dying declaration; is that fair?

12 A That's right.

13 Q Aside from the codefendant's testimony. If the
14 codefendant doesn't testify, the only thing the State has
15 left is the dying declaration; is that fair?

16 A As best I can recall from the evidence, yes.

17 Q And there was actually a dispute as to what was said
18 in the dying declaration; is that right?

19 A That's right.

20 Q All right. You just mentioned in your testimony
21 Gloria Moore?

22 A Yes.

23 Q Did she testify at the original trial?

24 A She did not.

25 Q She testified at the PCR?

1 A Yes.

2 Q So that evidence didn't come out in the first trial?

3 A No.

4 Q Was she the main witness who could dispute what was
5 said in the dying declaration?

6 A Yes.

7 Q Well, her and another officer, correct?

8 A Rob Evans, who had taken some statements, and I think
9 he generated the first report.

10 Q And he didn't testify in the first trial either?

11 A Not that I recall, no.

12 Q That was a PCR -- he was presented at PCR to your
13 memory?

14 A I don't remember if he testified at that point.

15 Q Okay. Did your -- to your knowledge, did any of your
16 investigators reach out to Talmadge Dixon?

17 A As far as I know, no, neither one made any contact
18 with Mr. Dixon.

19 Q Did you personally have any contact with Mr. Dixon?

20 A No.

21 Q How did it come about, this conversation with the
22 solicitor about his involvement?

23 A Our office was -- our Columbia office, Richland
24 County office was representing him. Ms. Cavanaugh, at
25 that point, told us he was going to be testifying for the

1 State, and she asked me and Jen Davis to conflict
2 Mr. Dixon from the public defender's office.

3 Q To conflict it out?

4 A Yes.

5 Q And you were told what about whether his -- about his
6 cooperation level?

7 A That he was cooperating and would be testifying for
8 the State.

9 Q A solicitor from Richland County told you that?

10 A Yes. He had charges pending in Richland County at
11 the time.

12 Q When Mr. Dixon was conflicted out and a new attorney
13 was appointed, did you ever contact that attorney or
14 contact Mr. Dixon through that attorney?

15 A No, that was -- I can only guess the date, but it was
16 late in the process.

17 Q You testified previously that you told Mr. Cooke that
18 Mr. Dixon would not be cooperative minutes before
19 Mr. Cooke's plea?

20 A That's right.

21 Q Is that how you described it?

22 A Yeah.

23 Q Did you ever tell Mr. Cooke that he could have time
24 to think about that new information and decide whether he
25 wanted to plea or not another day, that he could have time

1 to process that?

2 A I remember saying something along the lines of we
3 don't have to go forward with it, but not that he could
4 have even a few minutes to think about it. I don't
5 remember offering him, you know, think about it for five
6 minutes and then I'll give them an answer.

7 Q Did you ever suggest to him that a continuance could
8 be requested based on that new information?

9 A I don't recall, you know, saying a continuance. I
10 said we didn't have to go forward with the plea.

11 Q Did you ever tell him that if he didn't plead today
12 that the offer for voluntary would be taken away?

13 A I don't know that I had that discussion with the
14 solicitor. Everybody was there. The State was -- I don't
15 want to speculate on what they would have done if he
16 hadn't pled.

17 Q You didn't even know if the offer would be taken away
18 or not?

19 A Prior to the offer being made, I think, in February,
20 they had indicated they still wanted to go forward with
21 the murder charge, so I may have assumed something. I
22 don't remember having a discussion with Solicitor
23 Hutchison saying, you know, based on this new information,
24 if he doesn't plead, is the offer off the table. I don't
25 remember asking that.

1 Q The first -- Mr. Cooke's trial, his jury trial, he
2 obviously pled not guilty to that, correct?

3 A Right.

4 Q And then the plea that you assisted him with, he
5 actually pled under North Carolina vs. Alford; is that
6 right?

7 A That's right.

8 Q At no time has he ever admitted shooting the victim
9 in this case; is that fair?

10 A No, he admitted that he was there, testified at his
11 original PCR that he was there and that Mr. Dixon was the
12 one that shot Mr. Kit.

13 Q But not that he was involved --

14 A Right.

15 Q -- in the actual shooting? Why didn't you ask for a
16 continuance in this matter?

17 A Mr. Cooke, again, wanted to plead in front of Judge
18 Cothran. We had discussed it in some detail about what we
19 would do. When I told him that -- whatever -- you know,
20 we can -- he doesn't have to plead right now, I think
21 probably both of us had the mindset that we were going
22 forward with the plea. If we were going to plead in front
23 of Judge Cothran, we thought we could get a favorable
24 sentence of 15 years or less.

25 Q After the plea, were you aware of -- what did

1 Mr. Cooke tell you after the plea? What did he say he
2 wanted you to do and why?

3 A I don't know if he wanted to appeal it right away.
4 We discussed some options about some motions that could be
5 filed. We still, from what I recall, wanted the 15 years,
6 so I filed a motion to reconsider. I don't recall him
7 asking me to withdraw his plea.

8 Q You said you did the motion to reconsider and there
9 was an in-camera hearing?

10 A Yes.

11 Q What was said during the in-camera hearing? What did
12 you say or what was your argument during the in-camera
13 hearing?

14 A I don't remember specifically. I mean, I didn't
15 remember specifically the in-camera hearing until I saw
16 the order.

17 Q And the attorney general, Ms. Kinard, she just
18 refreshed your memory by showing you a copy of that order
19 denying the motion to reconsider, correct?

20 A Right.

21 MS. GOLDBERG: And for the record, I believe that's
22 already in the Court's file within the record on appeal.

23 BY MS. GOLDBERG:

24 Q That order generally speaks to the fact that
25 Mr. Cooke received this information about Talmadge Dixon

1 minutes before the plea. That's the issue that Judge
2 Cothran is addressing; is that correct?

3 A That's correct.

4 Q Whenever Mr. Cooke received that information, that
5 doesn't have anything to do with what sentence he
6 received; is that fair?

7 A That's fair.

8 Q It had everything to do with whether or not Mr. Cooke
9 made an informed decision to have a plea or have a trial;
10 is that accurate?

11 A That's accurate.

12 Q So why didn't you file a motion to withdraw his plea?

13 A I don't have an answer to that.

14 MS. GOLDBERG: No further questions.

15 THE COURT: Ms. Kinard.

16 MS. KINARD: Briefly. Thank you, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. KINARD:

19 Q Ultimately, whose decision was it to enter this plea?

20 A Mr. Cooke's.

21 Q Did you support that decision?

22 A I did.

23 Q And when you said that he didn't have to go forward,
24 do you believe he understood what you meant by that?

25 A Yes.

1 MS. KINARD: No further questions.

2 THE COURT: Ms. Goldberg, anything else?

3 MS. GOLDBERG: No, Your Honor.

4 THE COURT: Mr. Kirincich, you may step down, sir.

5 THE WITNESS: Thank you.

6 MS. KINARD: No further witnesses from the State,
7 Your Honor.

8 THE COURT: All right. Anything by way of argument
9 from the Applicant?

10 MS. GOLDBERG: Briefly, Your Honor. Looking at the
11 amended application, issues A, B and C, I think that's all
12 very clear from the testimony what's going on here.

13 The argument is that, first of all, Mr. Kirincich
14 could have made a more affirmative effort to seek out
15 Mr. Dixon, find out, in fact, what his intention was
16 rather than just relying on the statement of a solicitor
17 in a different county. If he had done that, he may have
18 known -- we know -- it's undisputed here that Mr. Dixon
19 was not going to cooperate in the trial. That's what the
20 actual prosecuting solicitor said to Mr. Kirincich the day
21 of trial. That was on the record, that's not in dispute.
22 The argument is Mr. Kirincich could have known that
23 earlier, but since he did not, Mr. Cooke should have been
24 allowed the opportunity to process that information.

25 The State really only had two pieces of evidence in

1 this case against him. One was this codefendant and the
2 other was the dying declaration, which it had already come
3 out at the first PCR hearing that there could have been a
4 challenge to it that wasn't presented. That was
5 sufficient enough to have his whole case overturned. So
6 now that it's overturned, if we find out the one other
7 piece of evidence, the codefendant isn't going to testify,
8 that makes a huge difference in the likelihood he may have
9 been convicted at trial, in the second trial. So the
10 argument is Mr. Kirincich should have asked for a
11 continuance. He should have allowed Mr. Cooke the ability
12 to process and think about that major change in his case.

13 Subsection D on the amended application, I'm just
14 going to stand on the record for that, but then subsection
15 E, I think is important because the proper avenue to have
16 dealt with this after the plea would have been a motion to
17 withdraw the guilty plea. I will note that Judge Cothran
18 accepted Mr. Cooke's guilty plea on Page 11 of the
19 transcript. And this information about Talmadge Dixon
20 didn't come out until Page 23, so it was after the plea
21 was accepted.

22 There is a case, Roland vs. State, 384 South Carolina
23 409, where a PCR Applicant is suggesting that their lawyer
24 should have filed a motion to withdraw based on a
25 competency issue that was questionable the day of the

1 plea. The court found that when a motion to withdraw is
2 not filed, it is prejudicial to an Applicant because a
3 judge can't use discretion unless the attorney makes the
4 motion, and then the motion is therefore appealable as to
5 the voluntariness of the plea that day.

6 Then that particular case does say that the remedy is
7 not to remand completely, but to remand to the point of
8 the plea where the motion to withdraw -- basically, to
9 remand for a motion to withdraw and then present it to the
10 court again. Just for Your Honor's procedural
11 information, that is what that case says.

12 It does kind of come to the same issues as this PCR
13 is, so the same thing is kind of requested either way.
14 The issue is just that Mr. Cooke did not find this
15 information out until -- if you take Mr. Cooke's testimony
16 as credible, during the plea, if you take Mr. Kirincich's
17 testimony as credible, minutes before the plea. He should
18 have -- and because he was not able to understand that
19 information fully, he wasn't able to make an intelligent
20 decision of whether or not to give up his trial rights or
21 actually plead guilty.

22 THE COURT: Ms. Kinard.

23 MS. KINARD: Thank you, Your Honor.

24 Mr. Kirincich presented very credible testimony that
25 it was Mr. Cooke's decision to plead. It had been his

1 decision to plead for awhile. He even decided he wanted
2 to plea in front of Judge Cothran.

3 Obviously, Mr. Cooke had had a lot of time based on
4 his first trial, his incarceration and while preparing for
5 this case to realize that Mr. Dixon's testimony was the
6 turning point that could have helped or hurt whether it
7 was presented or not. And when this fact was presented to
8 him, whether it was minutes before or during -- and it was
9 found by Judge Cothran that this was before his plea, he
10 knew this information, he had the opportunity and the
11 ability to make a decision regarding his plea as
12 Mr. Dixon's potential testimony weighed on that.

13 For that reason, the State believes it does not
14 matter -- excuse me, that we should rely on Judge
15 Cothran's ruling that Mr. Cooke was aware of this
16 information, as well as Mr. Kirincich's testimony that Mr.
17 Cooke was aware of this information and there was no need
18 for a continuance in order to process whether Mr. Dixon
19 would testify or not. This is obviously going to be part
20 of his case and Mr. Cooke wanted to continue and plead.

21 Regarding the other allegations that were presented,
22 Mr. Kirincich testified investigators were hired. The
23 investigators may not have presented much, but they were
24 also focused, it seemed, on Mr. Dixon's testimony and that
25 was easily decided and presented afterward.

1 Mr. Kirincich testified that he fully reviewed what
2 would happen with Mr. Dixon's testimony, with any other
3 witnesses, any potential -- whether it was Gloria Moore or
4 Rob Evans or any of the family members that were present,
5 what they would be able to present during a retrial should
6 that happen.

7 Regarding the motion to withdraw his guilty plea
8 and/or the motion for reconsideration of the sentence, the
9 State feels that Mr. Kirincich made a very reasonable
10 decision in what to do and how to handle that. When
11 Mr. Cooke presented issues or questions after the plea,
12 Mr. Kirincich made a professional decision that was within
13 the real of ordinary practice that he should file a motion
14 to reconsider other than a motion to withdraw. Whether
15 the case law speaks to that or not, I have not been able
16 to review that case.

17 Regardless, all of the decisions Mr. Kirincich made
18 were within the scope of professional reasonableness.
19 They were certainly in Mr. Cooke's best interest. They
20 followed his desires and he represented his client to the
21 best of his ability. Therefore, the State maintains that
22 Mr. Kirincich practiced in a way that was not deficient,
23 it was not prejudicial to Mr. Cooke. And for that reason,
24 any relief Mr. Cooke is seeking should be denied.

25 THE COURT: Based on what I've heard today, I'm going

1 to respectfully deny this motion for Post Conviction
2 Relief. As the law requires, the Defendant has to inquire
3 -- has to first establish that counsel's performance was
4 deficient. In other words, that his performance of
5 counsel failed to render effective assistance under the
6 prevailing professional norms. This Court does not find
7 that counsel failed to render -- or in other words, the
8 Court finds counsel did render effective assistance under
9 prevailing professional norms based on the evidence and
10 testimony that's been presented here. And the Court
11 today, assuming for arguments' sake that Defendant or
12 Applicant proved the first prong under Strickland, the
13 Court does not find that there was any prejudice to the
14 Defendant. The Defendant and/or Applicant testified
15 himself that he was fully aware that Mr. Dixon would not
16 testify prior to entering this plea.

17 The Court further finds the Defendant entered his
18 plea freely and voluntarily, knowingly and intelligently.
19 Therefore, the Court respectfully denies his request for
20 relief as it relates to each of his assertions in his
21 amended application and application for relief.

22 Ms. Kinard, if you'll get me an order to that effect,
23 please.

24 MS. KINARD: Yes, Your Honor. Thank you.
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, PENNY M. JOHNSON, Official Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the hearing of the captioned case, relative to appeal, in Court of Common Pleas for Richland County, South Carolina, on the 14th day of July, 2016.

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

January 29, 2018

Penny M. Johnson
Penny M. Johnson
Official Court Reporter

APP. #1 87

**MEMORANDUM
ATTORNEY/CLIENT ONLY**

To: Clifton Cooke File
From: Carlisle McNair
Date: January 16, 2007
Re: Interview: Gloria Moore
 ██████████ Bunker Hill Rd.
 Elgin, SC 803-438-0949

On January 16, 2007, I spoke to Gloria Moore. Mrs. Moore lives across the street from ██████████ Bunker Hill Rd., the Keitt's residence and the scene of the shooting incident on January 5, 2002. Mrs. Moore advised she heard more than three(3) shots and described the sound she heard as, "poppoppoppoppoppop, like a pack of firecrackers going off." Mrs. Moore advised she did not see the color or make of vehicle that sped away after the shooting because of darkness. Advised she saw the headlights of the vehicle as it left the scene. Advised she has no idea what type vehicle it was. Advised she heard Makeihi, Troy Keitt's sister, ask Troy where he was shot and she heard Troy answer, "all over." Advised she also heard Troy tell his mother, "I don't believe I'm going to make it." Advised she heard Makeihi ask Troy who shot him and Troy responded, Weasel." Mrs. Moore advised Talmadge Dixon's nickname is "Weasel", Mrs. Moore advised she never heard Troy mention Clifton Cooke's name. Advised she didn't hear Clifton Cooke's name until later that day. Advised she went to school with Clifton's mother and as far as she knew Clifton lived in New York. Advised she doesn't know anyone named "West".

Mrs. Moore works for the IRS.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF KERSHAW)
)
 Clifton Cooke, #320091,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

28

Case No. 2015-CP-~~40~~-0790

ORDER OF DISMISSAL

JANET C. HASTY
 CLERK OF COURT
 KERSHAW COUNTY, S.C.

2019 FEB 21 PM 1:15

FOR RECORD

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 24, 2015. Applicant filed an Amended PCR Application dated June 17, 2016. Respondent made a Return on November 9, 2015. The Court convened an evidentiary hearing into the matter on July 14, 2016, at the Richland County Courthouse. Applicant was present at the hearing and represented by Kristy Goldberg, Esquire. Jessica E. Kinard, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant's guilty plea counsel, the Applicant and Assistant Public Defender Jason Kirincich, Esquire testified. The Court had before it a copy of the plea transcript, the records of the Kershaw County Clerk of Court regarding the subject convictions, Applicant's appellate records, Applicant's records from the South Carolina Department of Corrections, the pleadings, and the Return. The Court entered an oral order dismissing the application, as amended and requested a proposed order from the Respondent. The Respondent, through Deputy Attorney General Donald Zelenka provided this Court and opposing counsel a proposed order due to the fact Ms. Kinard was no longer a member of the Attorney General's Office. After receipt, this Court enters the following order.

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TEST True, Correct & Certified
 Copy of Original on File in this
 Court
 Janet C. Hasty
 Clerk of Court Kershaw County

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Kershaw County Clerk of Court. In April 2006, the Kershaw County Grand Jury indicted Applicant for murder (2006-GS-28-0116). Joshua Kendrick, Esquire, ("Counsel") and Theresa N. Johns, Esquire represented Applicant. On February 13-14, 2007, Applicant proceeded to trial before the Honorable James R. Barber, III and a jury. The jury found Applicant guilty as indicted. Judge Barber sentenced Applicant to imprisonment for a term of forty years.

Applicant filed a timely notice of appeal. Joseph L. Savitz, III, of the Office of Appellate Defense, perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on November 19, 2009. State v. Cooke, 2009-UP-556 (S.C. Ct. App. filed November 19, 2009). The State filed a Petition for Writ of Certiorari to the South Carolina Supreme Court, but subsequently moved to withdraw its notice of appeal in the matter. The motion was granted by the Supreme Court on December 5, 2012. The Remittitur was returned to the lower court on December 27, 2012.

Applicant filed his first PCR Application on April 26, 2010 (2010-CP-28-0452). The State made its Return on May 10, 2010. An evidentiary hearing was convened on the matter on January 9, 2012 before the Honorable J. Ernest Kinard, Jr. The Applicant was present and was represented by Jeremy A. Thompson, Esquire. The State was represented by Assistant Attorney General Brian T. Petrano. February 29, 2012, Judge Kinard granted Applicant's PCR Application on the grounds of ineffective assistance of counsel, vacated Applicant's conviction

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and sentence for murder, and remanded the case to the Kershaw County Court of General Sessions for a new trial.

The Plea Proceeding before this Court

On March 6, 2014, Applicant pleaded guilty, pursuant to Alford, to the lesser included offense of voluntary manslaughter before the Honorable R. Ferrell Cothran, Jr. Applicant was represented by Assistant Public Defender Jason Kirincich, Esquire. Assistant Solicitor Curtis R. Hutchinson, Esquire prosecuted the case. Judge Cothran sentenced Applicant to twenty years of imprisonment.

A motion for reconsideration of the sentence based upon the alleged untimely disclosure that prior state witness Talmadge Dixon was not cooperating with the state was made. On March 14, 2014, Judge Cothran denied the order on May 20, 2014. See Record on Appeal, p. 31-32.

The Appeal from the Guilty Plea

Applicant filed a timely notice of appeal. Tiffany L. Butler, Esquire, of the Office of Appellate Defense, perfected the appeal. Applicant subsequently withdrew his appeal, and thus, pursuant to Applicant's withdrawal, the South Carolina Court of Appeals dismissed the appeal on August 3, 2015. State v. Cooke, Appellate Case No. 2014-001175 (S.C. Ct. App. filed August 3, 2015). The Remittitur was returned to the lower court on August 19, 2015.

II. ALLEGATIONS

In his initial application, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

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- a. "failed to investigate/failed to withdraw guilty plea"
- 2. Brady Violation
 - a. "Prosecutor withheld material evidence"
- 3. Involuntary Guilty Plea
 - a. "Applicant was not aware of the consequences of his guilty plea"

In his amended application made by his counsel on June 17, 2016, he alleged the following:

- 1. "Ineffective Assistance of Counsel"
 - a. "Failure to investigate witnesses"
 - b. "Failure to inform Applicant regarding witness availability/unavailability and what evidence would actually be offered during a re-trial."
 - c. "Failure to request a continuance."
 - d. "Failure to fully inform Applicant regarding the full consequences of his plea."
 - e. "Failure to file a Motion to withdraw his guilty plea."

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe the witness who testified at the hearing, and to closely pass upon his credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

A. Evidence Adduced at Plea

On March 6, 2014, after the grant of post-conviction relief on the murder charge, the Applicant appeared before Judge Cothran and entered a guilty plea pursuant to North Carolina v Alford, 400 U.S. 25 (1970) to the lesser offense of voluntary manslaughter without recommendation or negotiation. Plea Tr. p. 3. In the factual basis of the guilty plea, Assistant Solicitor Curtis Hutchinson set forth the following:

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On January 5th, 2002, Troy Keitt was at his mother's house at _____ in Lugoff, South Carolina. There were family members there as well as others: Troy's wife, Althea; his mother, Tiller Keitt; his sister, Makeitha Hollis; neighbors, Calvin Moore and Cynthia Green; and also several children were there present.

At some point in the evening, between 7:00 and 8:00 p.m., there was a knock on the door. Althea turned on the porch light and answered the door. And there was a black male there whose identity was not known at the time who asked to speak to Troy Keitt.

Troy was in the restroom, but Althea told him to come to the door, and he went outside to speak with the person at the door.

A few moments later Troy Keitt's mother, who was playing cards with a neighbor, also glanced outside to see a black male speaking to Troy Keitt.

Your Honor, all three ladies were there going about their normal business when they heard gunshots. At the time they didn't know if it was gunshots or firecrackers, so they did run outside.

Makeitha ran outside to see two individuals running towards a vehicle, and Troy was sitting on the ground near the front of the yard clutching himself.

Althea also came outside to see two individuals running away from Troy Keitt and also to see Mr. Keitt on the ground clutching himself.

Troy's mother was inside calling 9-1-1 actually after she did hear the shots.

Your Honor, all three heard the victim say that, in response to who shot him, it was Clifton and Weasel. Weasel is a nickname for someone by the name of Talmadge Dixon.

Your Honor, Talmadge Dixon later learned the police were looking for him by a family member. At first -- and he did turn himself in to law enforcement. At first he denied ever being there, but then eventually he gave a statement to law enforcement.

According to Talmadge Dixon, he, the Defendant, and another person, that he knew only as Wess or West, decided go to _____. According to Mr. Cooke, he knew someone there who had drugs. According to Dixon, all three got into a Honda and went over to _____, and Clifton got out of the vehicle by himself -- this is according to Mr. Dixon -- and went to knock on the door and asked for Troy Keitt. Dixon stated that he was in the vehicle and saw Cooke talking to Troy on the step. The Defendant began to argue with Troy and then pulled out a revolver. They wrestled. And at that time the Defendant shot him and continued to shoot him.

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According to the autopsy, there were seven shots in his back, chest, ankle, knees, and legs. A GSR analysis was done by SLED, and neither Mr. Dixon nor the victim in this case had anything on their hand, indicating they did not have a gun.

Your Honor, this case did originally go to trial. The Defendant was found guilty and sentenced to 40 years. He was -- and this case was overturned by Judge Kinard on February 29th, 2012, on a PCR motion, due to another witness that it was claimed that said -- had another recollection of the facts.

Plea Tr. p. 6-9. The state responded to the court's inquiry that a .32 revolver was used.

The plea court accepted the plea to manslaughter under Alford.

The victim's sister Makeitha Keitt Hollis, confirmed the declaration made by the victim repeated that Clifton Cooke shot him and Weasel, and she repeatedly asked him who Cooke was until he passed out because she did not know him. Plea Tr.p. 11. She asked for the maximum sentence. Plea Tr.p. 12. Rosetta Evans, the victim's sister admitted that she was not at the incident, and described his family and their love while requesting the maximum sentence. Plea Tr. p. 12-13. Tiller Keitt, the victim's mother also requested the maximum. Id., at 13.

The State further noted that the Applicant had fled to New York where he was there two years and extradited two years later. Plea Tr.p. 14. The Applicant's prior record was a 1999 simple assault and a 1999 criminal possession of a loaded weapon from New York. Plea Tr.p. 14.

Defense counsel Kirincich asserted that the State left out in its factual basis that the earlier PCR on the murder trial was granted because of an exculpatory evidence issue. He asserted that at the past trial the State had represented that it would call Gloria Moore to testify, but after some testimony that he did not call Moore, although he asked other witnesses about her. Plea Tr.p.15. After the trial, investigator Dave MacDougall (then

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deceased) was hired by prior PCR counsel and spoke with Ms. Moore who he stated told him she had spoken with the investigators from the Sheriff's office and told them when she went to the scene after she heard gunshots and she overheard the victim speaking with the family and she heard him say Weasel shot him, but did not say anything about Clifton Cooke. Plea Tr.p. 15-16. Counsel stated that Deputy Rob Evans took notes after his response to the scene and in an incident report and indicated he learned that Talmadge Dixon identified in the report was subject 1 had shot the victim from the victim's wife Althea Keitt, and no reference that Evans heard anyone say that Cooke shot the victim. Id. Counsel questioned the use of negative GSR tests on the victim and Dixon because it was not done on Dixon immediately. Id. However, counsel acknowledge that when Ms. Keitt wrote her statement, she did state that the victim told Makeitha that Wesel and Clifton did it. Plea Tr.p. 17. Similarly in Makeitha's statement she responded that the victim stated Weasel, Talmadge Dixon, and Clifton shot him. Plea Tr.p. 17.

Counsel stated that Dixon worked out a deal after initially lying about the incident about a third party, and testified at the trial that Cooke shot him and was sentenced to time served for accessory after the fact. Plea Tr.p. 17-18. Counsel complained that all Dixon got was one year in jail, even though he was named as a shooter in many statements..

He asserted that the victim's family should be upset with the Solicitor's office on how Mr. Dixon's case was handled by the Solicitor's office. Plea Tr. p. 18. Counsel could not understand how the State made that deal with the statements. He stated that Cooke had already served 9 years, 5 months and 14 days at that time. Although Cooke did not deny that he was

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there and testified in his PCR action that he was there, counsel stated it was actually Dixon who shot Keitt. Plea Tr.p. 18.

Counsel stated that he had talked with Cooke who realizes that he should not have run. Counsel stated that at the time of the incident, Applicant was young and scared. Counsel noted that family members and friends were present in support of the Applicant, including Kenyatta Washington, a friend, his girlfriend, Tasha Stevens, Barbara Miles, Nita Watkins, his brother Anthony Cooke and his father Wayne Garrett. Plea Tr.p. 19. He felt that Cooke was remorseful about what happened. Id.

Counsel stated that this was a case that he wanted to try because of the statements from Ms. Moore and Deputy Evans who has since passed away. Further, counsel noted two investigators in the case, including Dave MacDougall also had passed away. Counsel stated that this made the defense case harder. He states that he thinks that Applicant should have been given the same opportunity for an accessory after the fact, though he knows he is not pleading to that crime. Counsel requested no more than a 15 year sentence. Plea Tr.p. 20, l. 21-24. He asked for a time served sentence.

The Applicant told the court in his allocution that he was sorry but that he did not shoot the victim. "The only reason why I'm pleading guilty to this is because I fear for my life. I feel like I ain't got a chance of winning." He stated that Talmadge Dixon shot the victim. He expressed remorse to the family of Keitt. He asked to be sentenced to no more than 15 years. Plea Tr. p. 21-22. His brother Anthony asked Judge Cothran to be lenient. Tasha Stevens asked

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for leniency. Ms. Miles expressed remorse to the victim's family and that she did not believe her nephew killed Troy. Plea Tr.p. 23.

Counsel stated that minutes before the plea that Dixon had refused to cooperate with law enforcement, which put both parties in a difficult situation. Plea Tr.p. 23-24. He admitted that Applicant was aware that he did not have a good shot at trial because what had happened the first time. He asserted this supported their request for time served and 15 years.

Judge Cothran sentenced the Applicant to 20 years with credit for time served. Plea Tr.p. 24.

B. Summary of PCR Testimony

During the post-conviction relief hearing, Clifton Cooke testified that he was arrested for murder on September 21, 2004. (PCR Tr. 6). He had a jury trial where he was represented by Josh Kendrick and Theresa Johns. (PCR Tr. 6). He received a 40 year sentence for murder but it was vacated when his first PCR was granted. Id.

He was sent back to Kershaw around January 9, 2013 and stayed in jail until the plea. (PCR Tr. 7). He was represented in that proceeding by Jason Kirincich.

Contrary to counsel's testimony, Applicant testified that Kirincich did not investigate his case or prepare for trial. Applicant declared: "he didn't do nothing." (PCR Tr.7). He denied receiving any plea offer. (PCR Tr. 7-8).

Applicant testified that he went to court on March 6 for a plea to 15 years for voluntary manslaughter. (PCR Tr. 8). He claimed that prior to the plea his counsel told him that he was going to try to work with me to get 15 years. (PCR 9, l. 1-2). He stated counsel told him this at the Sumter jail. Applicant denied that counsel told him that there was an agreement for 15 years,

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but said "he would try to get me 15 years." (PCR Tr. 9). Applicant said he was willing to plead under Alford that day. (PCR Tr. 10).

Applicant stated he met with counsel in Kershaw the morning of the plea. He said he had asked him to investigate the case from day one because he wanted to know what was going on with his co-defendant Talmadge Dixon and whether he was going to testify against him again. (PCR Tr. 10). However, he claimed his lawyer never reached out to Dixon to find out.

On the morning of the plea, Applicant claimed that his counsel told him that Dixon was going to testify against him and Applicant told him "I'm just going to go ahead and plead." He claimed that if his counsel told him that Dixon was not going to testify, he would have gone to trial. (PCR Tr. 11). He claimed he would have won if he was not a witness, (PCR Tr. 12).

Applicant testified that he learned "minutes before the plea" that Dixon was not going to testify against him. He claimed he learned it when counsel put it on the record to the judge during the plea. (PCR Tr. 12). He denied having a separate conversation with counsel about it before the plea. (PCR Tr. 13). He claimed his counsel learned it minutes before the plea as he stated on the record. (PCR Tr. 13).

Applicant stated that he went to court that day for a plea and knew it was not a trial date, but claimed he did not know if he decided not to plead that he would have gone to trial. Further, he claimed he did not know if he did not plead that his offer for manslaughter would be revoked. (PCR Tr. 13).

Applicant claimed after the plea, he asked counsel to withdraw the plea, but counsel filed a motion to reconsider instead. (PCR Tr. 13). He claimed he wanted to do this because he had learned that Dixon was not cooperating and not testifying against him. (PCR Tr. 14).

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Applicant stated the motion to reconsider was denied. He stated that they never brought him out for a hearing on his motion that was denied. (PCR Tr. 14).

Applicant stated he filed an appeal, but then withdrew it because he thought he would have a better chance in a PCR. (PCR Tr. 15). He stated his lawyer did not adequately advise him about the consequences of what his plea was going to be. He claimed his lawyer should have told him what was going on with Dixon. (PCR Tr. 15).

On cross-examination, Cooke confirmed that he told the court he understood his rights and was satisfied with counsel. (PCR Tr. 16). He stated he just learned that Dixon wasn't going to testify for the State until the end of the plea. (PCR Tr. 16, l. 20-22). He claimed that although two investigators on his case had passed away, counsel had said he didn't have a chance to go over anything. (PCR Tr. 17). Applicant stated that his counsel asked for 15 years on his behalf. He claimed he had not reviewed any offers or recommendations. He stated he pled guilty because counsel kept telling him [if] you go to trial, Talmadge would testify against you, you're going to get life, "so I just plead out." (PCR Tr. 17).

Cooke denied that the decision to plead guilty had anything to do with the judge that was available. (PCR Tr. 18). Applicant reviewed that the Order denying the motion for reconsideration and confirmed what it said that he could have taken any number of actions based upon information about Dixon testifying. (PCR Tr. 18).

Plea counsel Jason Kirincich testified that he had been practicing with the Kershaw County Public Defender's Office since 2007. He stated he began to represent Cooke when his case was returned to General Sessions when he was appointed in January 2013. (PCR Tr. 19). He stated he met with Applicant between 6 to 10 times at various detention centers and the

courthouse.

Counsel stated that when he met with him that Applicant already had his trial transcript which he gave counsel at the first meeting in January 2013. He stated he received discovery from the State and brought a copy to Applicant which Cooke signed a receipt. "We went over every document that I received in this case. (PCR Tr. 21, l. 4-6).

Counsel stated that he weighed the pros and cons of a trial versus a guilty plea. PCR Tr. 21. He stated that they originally wanted a trial because they had thought they had a pretty good case based upon Ms. Gloria Moore's testimony at the PCR proceeding. However, he admitted that it "wasn't a "slam dunk. By any means." PCR Tr. 21, l. 17-21.

Counsel testified that this changed because initially the State was not offering anything and still wanted to proceed on the murder charge. He noted that there were two investigators and another officer, Deputy Evans, that he thought would have been helpful in the case that were no longer available. However, Deputy Evans had died. PCR Tr. 22. Counsel stated that Cooke had become more familiar with Judge Cothran's history while he was in the Sumter-Lee Detention Center. When the State offered voluntary manslaughter straight-up, Cooke advised counsel that he wanted to plead guilty in front of Judge Cothran. Counsel stated that he did not know Judge Cothran at the time, but had learned about him from members of the Sumter Public Defenders Office and private counsel. Counsel discussed with Cooke the possibility of the plea and that Applicant wanted 15 years. Counsel opined that based upon his testimony during the earlier PCR case, they thought this case was "really close to an accessory after the fact" case and that a 15 year sentence would be fair. PCR Tr. 22.

Counsel stated that prior to the plea Ms. Cavanaugh of the Solicitor's Office in Richland

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County contacted him and advised him that he also had charges there and that Dixon was going to be testifying against Cooke. PCR Tr. 23, l. 2-11.

On the morning of the Kershaw plea, the Applicant signed his paperwork and counsel went over his trial rights with him. PCR 23. Counsel and Assistant Solicitor Hutchison had a brief meeting with Judge Cothran to let him know about the plea before it was taken. At that point, Solicitor Hutchison advised him that Dixon was not going to be testifying against Cooke. PCR TR. 23, l. 17-19. Counsel stated that he went over to Cooke who was in the jury box and told him that Dixon would not be testifying against him according to the State. However, he made the decision to go forward with the plea. PCR Tr. 23, l. 21- p. 24, l. 5.

Counsel stated that his client then entered the plea and it went pretty straightforward. Counsel recalled contrasting in sentencing the Applicant and Dixon and declared he was the shooter and named by witnesses as the shooter and that Dixon had received time-served. Counsel asked for time served and no more than 15 years. PCR TR. 24. See Plea Tr. 18, 20, 23.

Counsel stated he filed a motion to reconsider after the plea to get an appeal. He stated that motion was scheduled and his family was in court, but it was denied after an in-camera hearing. PCR TR. 26. ROA 32. He stated he told Applicant of the decision in the holding cell where he had been brought. He subsequently filed an appeal. Id.

Counsel stated that in preparing for trial that he had hired Bobby Watkins who worked with the Public Defender's Office. He passed away shortly after. At that point, after discussing the case with Public Defender Fielding Pringle, he hired David MacDougall who had investigated the case during the first PCR action. He stated that MacDougall was excited to get the case and had been able then to get the testimony from Ms. Moore. He stated the goal was to

flesh out the witnesses who were there given the multiple statements given by Keitt's family and that Moore had given a different statement as a neutral witness. He thought it was important to get Moore's testimony again to a jury. Id.

Counsel testified that even if Dixon decided not to cooperate that they still had problems because of other witnesses and the family's statements. He recalled that they still spoke at sentencing about those statements. PCR Tr. 27. Counsel confirmed that he had advised his client that if they went forward with the plea he would lose his ability to challenge any evidence against him. Id.

Counsel stated that he did not see a need to seek a continuance after he learned of Dixon's change of heart. He stated he spoke with Applicant and they still decided to go forward and that they were ready to do that. PCR Tr. 28. Counsel opined that the Applicant fully understood everything at the time concerning the consequences of the plea. PCR Tr. 28.

On cross-examination, counsel initially summarized the factual basis of the case, including the statements made by the witnesses. He noted that after the incident, Dixon was found a short time later or turned himself in. As to the fact that GSR was not found on his hands, counsel opined that it did not matter. He noted that Cooke was not immediately found but was later located in New York and then was brought back to Kershaw. PCR Tr. 30.

Counsel opined that the most damaging evidence against Applicant was the dying declaration, aside from the codefendant's testimony. PCR Tr. 30. He confirmed that Gloria Moore had not testified at the first trial, but only during the first PCR proceeding. Id. He opined that she would have been the main witness to dispute the substance of the dying declaration. PCR TR. 31. He noted that Deputy Rob Evans had written the original report, but that he had

died.

Counsel could not recall if either of his investigators had reached out to Talmadge Dixon and that he did not have contact with Dixon. PCR Tr. 31. Concerning his involvement, counsel stated his Richland Public Defenders office was initially involved on those Richland charges and advised that they were advised by the Solicitors Office of the intent to prosecute him and asked me and Jen Davis to conflict Dixon's case out of the office. He was told that Dixon was cooperating with the state at that time. After a new attorney was appointed for Dixon, he did not contact him.

Counsel confirmed that he told Cooke that he did not have to go forward with the plea at that time after he learned that Dixon was not cooperating with the State. Counsel stated that since the plea went forward, he did not have a discussion on whether the plea offer would have been taken away. PCR Tr. 33.

Counsel confirmed that the plea was entered under Alford. He stated that his client admitted being there, but did not admit that he was the shooter, instead asserting that Dixon was the shooter as he had testified at the first PCR hearing.

Counsel confirmed that he did not ask for a continuance because Cooke wanted to plead guilty in front of Judge Cothran. He stated that they had discussed in detail what to do when he told him that he did not have to plead. He noted that they decided if they plead in front of Judge Cothran that we could get a favorable sentence of 15 years or less. PCR Tr. 34.

After the plea, Applicant and counsel discussed some motions to make and counsel decided on the motion to reconsider. PCR Tr. 35. Counsel noted that the motion was based upon the disclosure that Dixon was not cooperating prior to the plea. PCR 35-36.

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Counsel stated that he supported the decision to plead guilty. Counsel further opined that Cooke understood that he did not have to go forward with the plea at that time. PCR Tr. 36.

C. Ineffective Assistance of Plea Counsel

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

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the

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proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. To establish the prejudice prong of the Strickland test, a habeas petitioner who pled guilty must show “that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59 (1985).

A plea of guilty is considered by the court to be a solemn judicial admission that the charges against the defendant are true. The defendant may not later argue that his plea was invalid except in extremely limited circumstances, Blackledge v. Allison, 431 U.S. 63 (1977) (explaining that in a very limited number of cases the court will allow a defendant's challenge to his plea on the basis that the plea was "the product of such factors as misunderstanding, duress, or misrepresentation by others," though the allegations must be concrete and specific). “The accuracy and truth of an accused’s statements at a Rule 11 proceeding in which his guilty plea is accepted are ‘conclusively’ established by that proceeding unless and until he makes some reasonable allegation why this should not be so.” Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975).

Failure to Investigate Witnesses

In his first allegation, Applicant alleges that he failed to investigate witnesses. At the PCR hearing, this issue was limited to plea counsel’s failure to investigate Talmadge Dixon prior to the plea. The record reveals that counsel was aware that Dixon had testified against the Applicant at the trial and was informed of his intent to testify against Applicant in the new trial through the Solicitor’s office. The likelihood of that event occurring again was

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revealed when the State asserted that the Public Defender's Office was advised of this and asked to conflict Mr. Dixon's cases from the office.

The Applicant has failed to show deficient performance by his failure to further investigate. Counsel had Dixon's sworn testimony at trial and made aware of his intent to testify again. It was not until immediately prior to the plea, the counsel as well as Applicant learned that Dixon was no longer cooperating. This Court finds that based upon counsel's discussion with the Applicant about Dixon's apparent change in his cooperation with the State, that Applicant decided to still go forward with the plea and sentencing before Judge Cothran. This was based upon counsel and the Applicant's research concerning Judge Cothran as well as his practice in the area.

In addition, Applicant has failed to show Strickland prejudice. With regard to the second prong of Strickland, a petitioner "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694. However, to prevail on a claim of ineffective assistance of counsel in connection with a guilty plea, the Strickland test is "somewhat different." Burket v. Angelone, 208 F.3d 172, 189 (4th Cir. 2000). To establish the prejudice prong of the Strickland test, a habeas petitioner who pled guilty must show "that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Id.* (quoting Hill v. Lockhart, 474 U.S. 52, 59 (1985)) (discussing the Strickland v. Washington standard to establish ineffectiveness of counsel in the context of a guilty plea). This Court must find that he has failed in his burden of proof. Counsel credibly testified that he advised Applicant

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that Dixon was not cooperating with the State prior to the entry of the plea and that he decided to go forward. He has failed in his burden of proof.

Failure to Inform Applicant Regarding Witness Availability

In his second allegation, he contends that counsel failed to inform Applicant of the availability of a witness. Apparently, this also concerns Dixon. This Court finds as a fact that counsel advised Applicant upon his own knowledge prior to the plea that Dixon was not cooperating. This Court further finds that this occurred before the entry of the plea consistent with counsel's credible testimony. He has failed in his burden of proof. Further, the testimony by Dixon from the initial trial may have been available under South Carolina Rule of Evidence Rule 804(b)(1). His allegations are without merit.

Failure to Request a Continuance

In his third allegation, he contends that counsel failed to request a continuance to allow him more time to reconsider the impact of the information about Dixon. This Court finds, consistent with counsel's testimony, that Applicant was advised that he did not need to go forward with the guilty plea after he was advised that Dixon was not cooperating. The Applicant indicated to counsel that he still wanted to proceed with the plea before Judge Cothran. Counsel did not see any basis for a continuance at that time. This was not deficient performance. Further, there has been no Strickland prejudice shown by the failure to request a continuance when the Applicant desired to plead before the judge at that time.

Failure to Inform Applicant of the Consequences of His Guilty Plea

In his fourth specification he contends that counsel failed to advise him of the consequences of the plea. The record reveals that the State and victim's family requested the

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maximum sentence for voluntary manslaughter and the Applicant and his counsel sought a sentence of time served or 15 years or less for voluntary manslaughter. The record reveals that this was a straight up plea with no negotiations or recommendations for sentence by the State in advance of the plea. Plea Tr. p. 3. He confirmed to the plea judge that he was aware that he could receive 30 years in prison without parole. Plea Tr. 4. Counsel testified that he advised his client of the consequences of the plea. Further, the applicant had already faced a trial and received a forty year sentence that was vacated. There is no showing that he was promised any sentence by the State. Further, there is no evidence that counsel misadvised Applicant. Counsel had a hope that he could convince the Court to limit the sentence to 15 years or less. However, this hope did not create deficient performance on his part. Similarly, prejudice is not shown. Although the Applicant may seek to second guess that decision he made in hindsight, this does not allow for the vacation of a free and voluntary plea and sentence within the statutory mandates. A disappointed hope or expectation of leniency- so long as it is not wrongfully induced by the government- does not justify withdrawal of a guilty plea nor afford occasion for invalidating it. United States v. Taylor, 303 F.2d 165, 168 (4th Cir. 1962); Vanater v. Boles, 377 F.2d 898, 900 (4th Cir. 1967). His allegation must be denied.

Failure to File a Motion to Withdraw Applicant's Guilty Plea

In his final specification, he claims that counsel's failure to file a motion to withdraw the plea. Counsel credibly testified that he made a motion to reconsider the sentence to apparently create an issue on appeal. However, the Applicant has failed to show that counsel was deficient in failing to move to withdraw the plea. As noted previously, the plea was entered under Alford

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and there was no negotiated sentence. The sentence of 20 years was within the court's discretion for voluntary manslaughter which carried 30 years. S.C. Code Section 16-3-50.

The withdrawal of a guilty plea is generally within the sound discretion of the trial judge. State v. Riddle, 278 S.C. 148, 150, 292 S.E.2d 795, 796 (1982). An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law. State v. Bickham, 381 S.C. 143, 147, 672 S.E.2d 105, 107 (2009). The Applicant's reliance on Rolen v. State, 384 S.C. 409, 414-15, 683 S.E.2d 471, 474 (2009) is misplaced. In Rolen, the Court determined that the responses during the plea indicated that the Applicant wanted to withdraw his plea by claiming that he should not have pled guilty and similar comment at the plea. Here, there were no similar comments by the Applicant when entering his plea under Alford. Instead, he confirmed that he wanted the plea accepted under Alford, (Plea Tr. p. 10). The Applicant also confirmed his reason for pleading guilty under Alford. Plea Tr. 21-22.

Here the Applicant has failed to show circumstances where his counsel was under a Sixth Amendment duty to seek to withdraw the plea. Neither deficient performance nor prejudice has been shown. This Court notes that the denial of the motion to reconsider the sentence further speaks to the lack of prejudice concerning the motion to withdraw by failing to show had the motion been made there is a reasonable likelihood that Judge Cothran would have granted the motion.

D. Brady Violation

Applicant alleges in his initial application a Brady/Rule 5 violation, stating that the prosecutor withheld material evidence. The Brady disclosure rule requires the prosecution to provide a defendant any evidence in the prosecution's possession that may be favorable to the

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accused and material to guilt or punishment. State v. Kennerly, 331 S.C. 442, 452, 503 S.E.2d 214, 220 (Ct. App. 1998) (citing Brady v. Maryland, 373 U.S. 83, 87 (1963)). Favorable evidence includes both exculpatory evidence and evidence which may be used for impeachment. United States v. Bagley, 473 U.S. 667, 676 (1985). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). This Court finds that Applicant did not demonstrate a Brady violation. To the contrary, it shows that the State revealed that witness Dixon was no longer cooperating with the State, not that there was any exculpatory or mitigating evidence. Further, the testimony by Dixon from the initial trial may have been available under South Carolina Rule of Evidence Rule 804(b)(1) under the exception to the hearsay rule for former testimony.

E. Involuntary Guilty Plea

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

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advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

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

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conveyed at the plea hearing.” Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

This Court finds that the record fully supports the knowing and voluntary nature of Applicant’s plea. As stated above, the record reveals that the pleas was freely and voluntarily entered with a full understanding of the consequences of the plea upon effective assistance of counsel. The plea court made inquiry of the Applicant’s desire to plead guilty. Plea Tr. 3. He confirmed he had adequate time to speak with his lawyer. His lawyer credibly testified that he had met with him at least 6 times, went over the trial transcript and discovery with him page by page. The Applicant advised the plea judge that he understood each of his trial rights that he was waiving, as well as the fact that he could receive 30 years in prison. Plea Tr. p. 4 - 6. In his plea in mitigation, he confirmed his desire to plead guilty and request leniency from the Court. Plea TR. 21-22. This free- standing allegation must be dismissed.

IV. 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. 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

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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 must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 11 day of February, 2019.



THE HONORABLE R.D. CRAIG BROWN
Presiding Judge
Fifth Judicial Circuit



, South Carolina

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WITNESSES


Tisdale, KCSD

ARREST WARRANT NUMBER

G649621

ACTION OF GRAND JURY

TRUE BILL



Foreperson of Grand Jury

Date: _____

VERDICT

Foreperson of Petit Jury

Date: _____

DOCKET NO. 2006-GS-28-0116

The State of South Carolina

County of Kershaw

COURT OF GENERAL SESSIONS

April TERM 2006

THE STATE

vs.

Clifton Delane Cooke

Indictment for

MURDER

SC Code: 16-3-10

CDR Code:0116

Class FEL/EXM(V)

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

Defendant

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

Defendant

Witness:

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

FILED FOR RECORDED
2006 APR 25 AM 10:45
CLERK OF COURT
KERSHAW COUNTY, S.C.