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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Pickens County

Honorable Alex Kinlaw, Circuit Court Judge

ALBERT LAVERNE TAYLOR,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000126

APPENDIX

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ATTORNEY FOR PETITIONER

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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 COUNTY OF PICKENS) 2016-GS-39-2322
)
) **ORIGINAL**
)
 STATE OF SOUTH CAROLINA)
) PLAINTIFF)
 vs.) TRANSCRIPT OF RECORD
)
 ALBERT LAVERN TAYLOR)
) DEFENDANT)

January 25, 2018
 Pickens, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, Judge.

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

BAKER CLEVELAND, ESQ.
 Attorney for the State

DOROTHY MANIGUALT, ESQ.
 Attorney for the Defendant

APRIL HERRON
 Official Court Reporter

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There were no exhibits.

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ALBERT TAYLOR-EXAMINATION BY THE COURT

1 THE CLERK: 2016-GS-39-2322, The State vs.
2 Albert Taylor, indicted for murder. 2016-GS-39-2323,
3 pleading to possession of a weapon during the
4 commission of a crime.

5 Raise your right hand please.

6 Albert Taylor, after being duly sworn, testified
7 as follows:

8 EXAMINATION

9 BY THE COURT:

10 Q All right, in the last 24 hours have you had any
11 drugs, alcohol or medication?

12 A No, sir.

13 Q Have you ever been treated for substance abuse
14 or mental illness?

15 A No, sir.

16 There any competency issues, counsel?

17 MS. MANIGAULT: No, sir.

18 BY THE COURT:

19 Q You're up here on two indictments. The first
20 indictment alleges that you did here in Pickens County, on
21 or about February 17, 2016, unlawfully and with malice
22 aforethought, kill Kequan Mitchell Brown by means of
23 shooting Kequan Mitchell Brown and he died as an
24 approximate result thereof. This offense carries 30 years
25 to life in prison. It is a violent offense which impacts

ALBERT TAYLOR-EXAMINATION BY THE COURT

1 parole eligibility. It is a most serious offense. If you
2 get convictions for two or more most serious offenses,
3 you're eligible for life in prison without parole; do you
4 understand?

5 A Yes, sir.

6 Q The next one alleges that you did here in
7 Pickens County, February 17th, 2016, possess or visibly
8 display a firearm during the commission or attempted
9 commission of a violent crime, that is murder. And this
10 carries five years; do you understand that?

11 A Yes, sir.

12 Q Okay. Understanding the nature of the charges
13 and the maximum possible punishment, how do you want to
14 plead?

15 A Plead guilty.

16 Q Is that your free and voluntary decision?

17 A Yes, sir.

18 Q Do you understand that you have an absolute
19 right to a trial by jury where you would be presumed
20 innocent, unless and until The State could prove you
21 guilty beyond any reasonable doubt of each and every
22 element of each offense that you're charged with?

23 A Yes, sir.

24 Q You would have a right to confront and
25 cross-examine the witnesses and the evidence put up

ALBERT TAYLOR-EXAMINATION BY THE COURT

1 against you by The State. You would have a right to
2 compel in court, using the subpoena power of The State,
3 all relevant and competent evidence in your own defense.
4 Or you can remain silent. Your silence cannot be held
5 against you and you can never be compelled to incriminate
6 yourself. Do you understand all those rights?

7 A Yes, sir.

8 Q You want to give up all those rights to enter
9 this plea?

10 A Yes, sir.

11 Q Are you guilty?

12 A Yes, sir.

13 Q Are totally and completely satisfied with the
14 representation of your attorney?

15 A Yes, sir.

16 Q Has she done everything that you think is
17 reasonably necessary to adequately prepare your defense?

18 A Yes, sir.

19 Q And have you met with her as often and as long
20 as you think is necessary?

21 A Yes, sir.

22 Q Do you have any complaints you want to make
23 about the way you've been treated in these cases in any
24 way?

25 A No, sir.

ALBERT TAYLOR-EXAMINATION BY THE COURT

1 Q Do you know what the evidence is The State has
2 against you?

3 A Yes, sir.

4 THE COURT: Okay, listen while they tell me a
5 brief, factual recitation.

6 MR. CLEVELAND: Yes, Your Honor, may it please
7 the court, Baker Cleveland for The State. On the
8 evening of February 17th, 2016, the Defendant, along
9 with Dennis Gibbs, Jarmari Fair and a juvenile, went
10 to Tri-City Lanes in Easley, South Carolina, within
11 Pickens County, for the purpose of Jarmari Fair to
12 fight an individual named Bradley Burrell. The fight
13 had been arranged via messages through social media.
14 Burrell and the defendants had already had one
15 physical encounter earlier that day.

16 All four defendants were armed with firearms.
17 And they had posted a picture of themselves with guns
18 on social media earlier that day as well. There was
19 a crowd awaiting them at the bowling alley, including
20 Burrell and the deceased, Kequan Brown. None of the
21 individuals at the bowling alley were armed, other
22 than the defendants. The defendants presented their
23 guns to the crowd. Jarmari Fair began arguing with
24 Burrell and at some point Kequan Brown joined the
25 argument. That's when Albert Taylor, the Defendant,

1 exited the Defendant's vehicle, walked around the
2 rear of the car and shot Kequan Brown, striking him
3 in the chest. He was pronounced dead at the scene.

4 The four fled, used the juvenile's phone to
5 delete evidence of setting up the fight from their
6 Facebook pages. Hid the weapons in Greenville
7 County, including the murder weapon. And were
8 captured hours later attempting to get gas in
9 Dacusville. A .38 revolver found with the other guns
10 was confirmed to be the murder weapon by SLED
11 analysis.

12 He has no prior record, Your Honor. There is a
13 recommendation in this case of 32 years. We are also
14 dismissing additional charges including burglary,
15 larceny and assault by a mob. The victims are -- the
16 decease's family is present and would like to address
17 The Court at the appropriate time.

18 THE COURT: Okay.

19 Is what he's told me true and accurate?

20 MR. TAYLOR: Yes, sir.

21 THE COURT: Okay.

22 Well, I'll be happy to listen to what they have
23 to tell me.

24 MS. ROBINSON: Yes, Your Honor, my name is
25 Latoya Nica Robinson, I am Kequan's mother. And I

1 would just like to say as a mother, of course, this
2 is a very hurtful and sad day on me. On Wednesday,
3 February 17th of 2016, I had just gotten of work, I
4 was a 911 dispatcher for Greenville County EMS. My
5 son had called and asked me when would I be home.
6 And I told him I would be home in about an hour.
7 Because I was going to Bible study.

8 He said, Okay.

9 I goes on to Bible study. Trying to get
10 encouragement, trying to do right as a mother, try to
11 do right for me in my lie all together. Only to get
12 a call from my cousin, Chelsea Anderson, sitting back
13 there, asking me where was I at. And I told her
14 where I was. And I knew my son was okay because at
15 the time we were living with my grandparents and my
16 grandmother had just passed two months prior. So, he
17 was home with my step grandfather and one of his
18 daughters. So, I knew he was okay.

19 She called and she says, Where are you?

20 And I told her.

21 She said, Because where I am two girls just
22 walked in and said KB's been shot.

23 That's what his friends call him, KB.

24 And I said, There's no way, I just talked to my
25 son. There was no way.

1 And so she said, It was at the bowling alley.

2 So, of course, I'm panicking, I'm telling the
3 young women who I'm with, that I've just been told my
4 son was shot. They said a prayer for me, prayer for
5 my safety as I drove and drove. Because I'm in
6 Greenville, trying to make it to Easley. I'm calling
7 my son phone, I don't get an answer. I called the
8 house and I asked my step grandfather daughter, I
9 said, Where is Kequan?

10 She said, Kequan is in the bed asleep. She said
11 he said he had a headache, he was going to go lay
12 down.

13 I said, Go check now.

14 She goes back there and she says, He was just in
15 here.

16 So all I'm saying is this was not supposed to
17 be. This is one of the very reasons why I did not
18 even want my son to be driving. But yet, he had just
19 got his permit a week before because I was making
20 arrangements for him to start the Adult ED school
21 because of issues that had happened at the high
22 school. But we were on the right track. Things were
23 going -- things were going better for us as a family,
24 as a whole. I was in transition of purchasing our
25 very first home. Only to have to close on it two

1 weeks after my son had been killed.

2 And so, that's all I'm saying is that whoever
3 picked him up that day, it should not have been.
4 They picked him up from his home where he was safe.
5 No, he might not be in the kitchen baking cookies or
6 doing something that he wasn't, you know, be doing at
7 home but he was home. He was home. Somebody went
8 and picked him up and took him to this location to
9 help fight or do whatever was done that night. Only
10 for him to lose his life. That's my only son. My
11 only child. I had to go from helping to save lives
12 to quitting a job and working a job now because I
13 couldn't save his.

14 THE COURT: Thank you, ma'am, I appreciate that.

15 All right. Well, I'm going to accept the plea
16 as being freely and voluntarily and intelligently
17 made with the advice of a very competent attorney
18 with whom he states he's well satisfied.

19 SENTENCING

20 MR. CLEVELAND: Your Honor, I apologize, I
21 believe the decese's father would like to briefly
22 address the Court.

23 THE COURT: Oh, I'm sorry.

24 MR. CLEVELAND: And his cousin, just briefly,
25 Your Honor.

1 THE COURT: Okay. All right.

2 Yes, ma'am.

3 MS. MCGOWAN: My name is Elaine McGowan. I got
4 a call also that night February 17 from my sister.
5 And she aksed to speak to my husband, she wouldn't
6 talk to me.

7 Well, she said, Elaine, put David on the phone.

8 I said, What's going on?

9 She said, Put him on the phone.

10 So, I'm listening up against the phone, you
11 know, the ear. And I hear him say, Kequan been shot.
12 And I fall to my knees and I started praying that my
13 nephew wasn't dead. When I got down to the bowling
14 alley, I see a coroner's truck and I see him laying
15 on the ground covered up in a body bag. The next day
16 I seen this -- and his friends on TV laughing. They
17 were laughing saying, Follow us on Facebook, follow
18 us on Twitter-- [indiscernible] -- well I don't know
19 if you read or know who Luca [ph] Brosey [ph] is --
20 [indiscernible] --

21 But while you doing your prison sentence--

22 THE COURT: Ma'am, ma'am, talk to me.

23 MS. MCGOWAN: While he's doing his prison
24 sentence, I hope he reads the Godfather by Mario
25 Puzo. And he talks about-- [indiscernible] -- the

1 Godfather was even afraid of him because he was so
2 bad. You going to meet a few local prophecies while
3 you're in prison. That 709 days ain't good enough
4 for you. They're not good enough for him. He took a
5 life, he deserve, at least, life himself. That boy
6 was a sweet boy. I don't care what anybody says. He
7 was on his track to getting his life right. I'm not
8 going to remember Kequan laying on that ground, I'm
9 going to remember the sweet little boy that came to
10 my house, came up my step and said, Aunt Elaine, can
11 I go in here and play video games?

12 You took that child's that life. You showed no
13 remorse, not any. I ask that you look at his mom
14 and, at least, apologize to her. That is her only
15 child --

16 THE COURT: Ma'am, ma'am, talk to me --

17 MS. MCGOWAN: That was her only child. Her only
18 child.

19 THE COURT: Okay. All right.

20 MS. MCGOWAN: His mom can go and visit him. His
21 dad can go and visit him. His grandparents, if
22 they're still alive. His mom, his grandma, his dad,
23 we, as a family, have to go visit Kequan at a grave
24 and talk to him. That's all we have left.

25 THE COURT: All right.

1 MS. MCGOWAN: And I wish there was some way that
2 a picture of Kequan can be posted in his cell because
3 his sorry behind can look at it every day --

4 THE COURT: All right.

5 MS. MCGOWAN: And remember the life he took.

6 THE COURT: All right, thank you very much.

7 All right.

8 MR. BROWN: Yes, my name is James Christopher
9 Brown, I'm Kequan's dad. I got sentenced in the same
10 courtroom 2002 for drug trafficking. I was out my
11 son's life for 10 years. I was sentenced to 12
12 years, 85 percent. I wasn't out to be a dad to
13 Kequan. But me and him had a true understanding. I
14 talked to him the night before he was murdered. And
15 all I have to say is I've been through the system, I
16 know how it is. Do I think this is fair? I don't.
17 I really don't. But now I don't get to make up the
18 time I lost with my son. All because someone else
19 took his life away from us. Like I said, I wasn't
20 always there but I loved him. I loved him. And we
21 talked constantly, you know, right before this
22 incident happened. And as his mom said, he was
23 getting his life on track. But now, like she said, I
24 have to go visit my son at the cemetery. I can't
25 spend time with him. That's the only way I can spend

1 time with my son. And do I think this is fair? I
2 don't. But I know how the system is because I been
3 in it. But I just don't think it's right.

4 THE COURT: All right. Well, thank you very
5 much.

6 All right, Ms. Manigault.

7 MS. MANIGAULT: May it please the Court, Your
8 Honor. The State is recommending a sentence of 32
9 years and we're asking The Court to seriously
10 consider accepting that sentence. My client had
11 moved to Easley with his brother. He had been here
12 about a year before this incident happened. The --
13 his last employment was at Subway in Greenville --
14 excuse me, in Easley. And he had worked
15 approximately six months at a Wal-Mart in Easley,
16 also. He has one child, a son. And he is now, what
17 2, 3?

18 MR. TAYLOR: Two.

19 MS. MANIGAULT: Two years old, Your Honor. The
20 mother of the child lives in Pickens County. He came
21 up from -- he graduated high school, Baldwin Senior
22 High in Baldwin, Florida. Like I said, he moved from
23 Florida to change his environment, for a better life
24 and got involved with these individuals. He's
25 accepted responsibility for which he has done. He

1 has indicated to me that he is sorry, he regrets all
2 this happened. That it should not have happened.
3 But he just wants to apologize to the family and to
4 The Court. I ask him not to turn around to say
5 anything to them. But he wants to apologize, he
6 wants The Court to know that he is deeply regretful
7 and sorry about what has happened. So, we'd ask The
8 Court, if you would, consider accepting the 32 years.

9 THE COURT: All right.

10 What do you want to tell me?

11 MR. TAYLOR: I just want to say I'm sorry,
12 especially to his mother. Because like I said, it
13 was never my intentions to take anyone's life, I
14 never want to take anybody's life. And every day
15 that goes past, I wish that I wouldn't have did that.
16 I wish that it was a different outcome. Like I say,
17 I have a two year old son and I have to think about
18 everyday what if that was my son in that situation.
19 And my son got killed. And I just want her to know
20 that I really am deeply sorry for taking her child's
21 life. And in the future if she can forgive me, if
22 she can please forgive me. If not, honestly I
23 understand why she wouldn't. Like I say, I just want
24 her and her family to know that I really am sorry for
25 taking their child's life.

1 THE COURT: All right. Anything else?

2 MR. CLEVELAND: Nothing further from The State,
3 Your Honor.

4 MS. MANIGAULT: No, Your Honor.

5 THE COURT: All right. Well, you all have my
6 deepest sympathies. And I hope that this will bring
7 some closure, let y'all begin the healing process. I
8 will say that I, just from my perspective, I see
9 these cases for the 10 minutes here in court, the
10 lawyers have worked this case for over two years.
11 And these are good lawyers and I trust their
12 judgment.

13 So, I'm going to give him 32 years on the murder
14 and five years on the weapons case. Thank you.

15 MS. MANIGAULT: Thank you.

16 MR. CLEVELAND: Thank you, Your Honor.

17 (WHEREUPON, the proceedings were concluded.)
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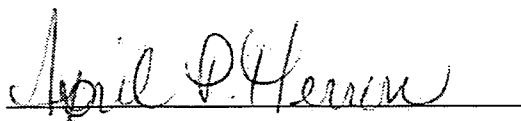
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Pickens County, South Carolina, on the 25th day of January, 2018.

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

September 27, 2018



APRIL P. HERRON, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)
)
 County of PICKENS)
)
 375218 Albert Lovell Taylor)
 Full name and prison number (if any) of Applicant)
)
 v.)
)
 State of South Carolina)
)
)
)

IN THE COURT OF COMMON PLEAS

2018 JUL 12 P 4:

2018-CP-39- 177

CLERK OF COURT
PICKENS COUNTY

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick Correctional
2. Name and location of Court which imposed sentence Pickens County Court house, Pickens, SC
3. Name(s) of co-defendant(s) (if any) Dennis Gibbs, Jamarri Fite, Anthony Campbell
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016-65-39-2322 Murder
 - (b) _____

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) JANUARY 25, 2018 3 1/2 YEARS
 - (b) _____
 - (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty GUILTY
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) _____
 - (b) _____

(c) _____

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

(a) INEFFECTIVE ASSISTANCE OF COUNSEL

(b) _____

(c) _____

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

(a) COUNSEL FAILED TO INFORM CLIENT ABOUT DIRECT APPEAL

(b) COUNSEL FAILED TO REPRESENT CLIENT DUE TO PERCIBILITIES.

(c) _____

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

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

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

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

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

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

- _____
- _____

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

(a) which grounds have been presented:

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

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

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

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

- (a) _____
- (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? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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

- (a) the name and address of each attorney who represented you:
 - i. DOROTHY MONIGOUT
505 E. NORTH ST STE 123, GREENVILLE, SC 29602
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. JANUARY 25, 2018 Guilty Plea Court
 - ii. _____
 - iii. _____

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

VACATE SENTENCE

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

/

STATE OF SOUTH CAROLINA)
County of PICKENS)

VERIFICATION

I, ALBERT LAVERN TAYLOR, 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.

Albert Taylor

SWORN to and subscribed before me this 11 day of June, 2018.

J. A. [Signature] (L.S.)
Notary Public

My Commission Expires: 12.16.2019

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

I, Albert Lavern Taylor, 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.

Albert Taylor
Applicant

SWORN or affirmed to and subscribed before me this
11 day of June, 2018.

J. Franklin
Notary Public

My Commission Expires: 12-16-2019

CLERK OF COURT
2018 JUL 12 P 4:10

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS)	IN THE THIRTEENTH JUDICIAL CIRCUIT
)	
Albert Lavern Taylor, # 375218)	Case No.: 2018-CP-39-0777
)	
Applicant,)	
)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

The State (Respondent), making its Return to the application for Post-Conviction Relief (PCR) filed on July 12, 2018, would respectfully show this Court:

I.

Albert Lavern Taylor (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to the order of commitment of the Pickens County Clerk of Court. In October of 2016 the Pickens County Grand Jury indicted Applicant for murder (2016-GS-39-2322). Dorothy Manigault, Esquire represented Applicant. Baker Cleveland, Esquire of the 13th Circuit Solicitor’s Office prosecuted the case. On January 25, 2018 Applicant plead guilty as indicted before the Honorable Edward W. Miller. Judge Miller sentenced Applicant to imprisonment for thirty-two (32) years with credit for time served for murder. Applicant did not appeal his sentence or conviction.

II.

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

1. Ineffective Assistance of Counsel
 - a. Counsel failed to inform client about direct appeal
 - b. Counsel failed to represent client best to her abilities

Applicant's relief sought is for a vacation of his sentence. Attached to this Return and incorporated by reference are the records of the Pickens County Clerk of Court regarding the subject conviction, guilty plea transcript and Applicant's records from the South Carolina Department of Corrections. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

On the evening of February 17th, 2016, the Applicant, along with Dennis Gibbs, Jarmari Fair and a juvenile, went to Tri-City Lanes in Easley, South Carolina, within Pickens County, for the purpose of Jarmari Fair to fight an individual named Bradley Burrell. The fight had been arranged via messages through social media. Burrell and the defendants had already had one physical encounter earlier that day. All four defendants were armed with firearms and they had posted a picture of themselves with guns on social media earlier that day as well. There was a crowd awaiting them at the bowling alley, including Burrell and the deceased, Kequan Brown. None of the individuals at the bowling alley were armed, other than the defendants. The defendants presented their guns to the crowd. Jarmari Fair began arguing with Burrell and at some point Kequan Brown joined the argument. That's when Applicant, exited the defendant's vehicle, walked around the rear of the car and shot Kequan Brown, striking him in the chest. He was pronounced dead at the scene. The four fled, used the juvenile's phone to delete evidence of setting up the fight from their facebook pages and hid the weapons in Greenville County, including the murder weapon. They were captured hours later attempting to get gas in Dacusville. A .38 revolver found with the other guns was confirmed to be the murder weapon by SLED analysis. (Gp. Tran. p.6-7).

IV.

Respondent submits Applicant's allegation of ineffective assistance of counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the proceeding "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test.

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

V.

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

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI.

Each and every allegation contained within the application not expressly admitted,

qualified, or explained in this Return is hereby denied.

VII.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

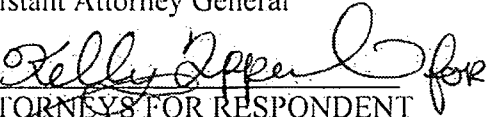
Respectfully submitted,

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By:  for DHM
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October 23, 2018

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)
)
)
)
 ALBERT LAVERN TAYLOR, 375218)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

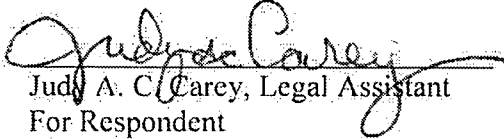
2018-CP-39-0777

AFFIDAVIT OF SERVICE BY MAIL

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

Don A. Thompson, Esquire
107 Smithwood Court
Simpsonville, SC 29681

DATED this 23rd day of October, 2018.


 Judy A. C. Carey, Legal Assistant
 For Respondent

I N D E X

(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

Page No.

(AW) ALBERT LAVERN TAYLOR:

Direct Examination by Mr. Thompson.....4
Cross-Examination by Ms. Gregory.....11

(RW) DOROTHY A. MANIGAULT:

Direct Examination by Mr. Thompson.....14
Cross-Examination by Ms. Gregory.....19

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

1
2 MS. GREGORY: Your Honor, before you is Albert Taylor.
3 In October of 2016, Mr. Taylor was indicted by the Pickens
4 County Grand Jury for murder and possession of a weapon
5 during the commission of a crime. On January 25th, 2018,
6 Mr. Taylor appeared before Judge Miller and pled guilty as
7 indicted. Pursuant to a recommendation by the State,
8 Mr. Taylor was sentenced to 32 years for murder, and a
9 concurrent sentence of five years for the weapon charge.

10 Mr. Taylor did not appeal his conviction or his
11 sentence. He did file a timely post-conviction relief
12 application on July 12th, 2018, alleging ineffective --
13 ineffective assistance of Counsel because Counsel failed
14 to inform him of his right to a direct appeal and failed
15 to represent him to the best of her abilities.

16 Mr. Taylor is present today and represented by
17 Mr. Thompson.

18 THE COURT: All right. Mr. Thompson.

19 MR. THOMPSON: Good morning, Judge.

20 THE COURT: All right.

21 MR. THOMPSON: Simply to simplify things, I think the
22 issues that Mr. Taylor wants to go forward on are the
23 issues of whether or not he was advised of the issues of
24 voluntary manslaughter, self-defense, and then the direct
25 appeal after his plea.

1 THE COURT: So those two issues?

2 MR. THOMPSON: Those -- there are, actually, three,
3 voluntary manslaughter, self-defense, and --

4 THE COURT: All right. So are you ready to proceed?

5 MR. THOMPSON: I'm ready, yes, sir.

6 THE COURT: All right. You can call your first
7 witness.

8 MR. THOMPSON: I would call Mr. Taylor.

9 THE COURT: All right. Mr. Taylor, you want to come
10 on around?

11 THE CLERK: Raise your right hand.

12 WHEREUPON,

13 ALBERT LAVERN TAYLOR,
14 after first having been duly sworn, testified as follows:

15 THE CLERK: State your full name for the record.

16 THE WITNESS: Albert Lavern Taylor.

17 MR. THOMPSON: May it please the Court, Your Honor.

18 THE COURT: Yes.

19 DIRECT EXAMINATION

20 BY MR. THOMPSON:

21 Q Mr. Taylor, where are you at now?

22 A McCormick Correctional Institution.

23 Q Okay. And to save time, you were convicted of -- or
24 you pled guilty to a charge of murder?

25 A Yes, sir.

1 Q And a charge of possession of a weapon during a
2 violent crime; is that correct?

3 A Yes, sir.

4 Q You received a 32-year sentence on the murder, and
5 five years concurrent on the weapons charge?

6 A Yes, sir.

7 MR. THOMPSON: Okay. With the permission of the
8 Solicitor [sic], I'm going to do a little bit of leading
9 questioning to get to the point, if that's okay.

10 MS. GREGORY: That's totally fine.

11 MR. THOMPSON: Okay.

12 THE COURT: No. The solicitor -- the solicitor is
13 not in here.

14 MR. THOMPSON: I'm sorry. The Attorney General.

15 THE COURT: We've got -- we've got the Attorney
16 General's Office in here today. That fine group ain't in
17 here today.

18 MR. THOMPSON: I'm just used to practicing criminal
19 law and calling them solicitors.

20 THE COURT: All right. Go ahead.

21 BY MR. THOMPSON:

22 Q Mr. Taylor, this incident arose out of an incident in
23 Pickens County; is that correct?

24 A Yes, sir.

25 Q And it was an incident where you and three other

1 people were going to the bowling alley over there and
2 there was going to be an altercation with another group of
3 individuals; is that correct?

4 A Yes, sir.

5 Q And it came about over the Internet; is that correct,
6 the -- the setting up the fight?

7 A I mean, that's what I was told. I don't know if it
8 directly --

9 Q You weren't involved in that?

10 A No, sir.

11 Q But you were in the car that went over there?

12 A Yes, sir.

13 Q Okay. When you got there, another individual got out
14 and an altercation began; is that correct?

15 A Yes, sir.

16 Q During that altercation, you shot a person; is that
17 correct?

18 A Yes, sir.

19 Q Okay. That person died?

20 A Yes, sir.

21 Q Okay. You admitted to that shooting; is that
22 correct?

23 A Yes, sir.

24 Q And your three co-defendants gave statements against
25 you; is that correct?

1 A Yes, sir.

2 Q Okay. Did you have an attorney in this matter?

3 A Yes, sir.

4 Q And who was that attorney?

5 A Ms. Dorothy Manigault.

6 Q Okay. Was she appointed or did you hire her?

7 A She was appointed.

8 Q Now, did you meet with Ms. Manigault to discuss this
9 case?

10 A Yes, sir.

11 Q Do you recall how many times you met with her?

12 A To my knowledge, roughly guessing, probably about
13 four or five times.

14 Q Okay. Were you in jail this whole time or did you
15 make bond?

16 A I was in jail the whole time.

17 Q Okay. So from the time of your arrest until your
18 guilty plea, you never -- never were out of jail?

19 A Yes, sir.

20 Q Okay. Did Ms. Manigault discuss voluntary
21 manslaughter with you?

22 A No, sir.

23 Q Okay. Did she discuss self-defense with you in this
24 matter?

25 A No, sir.

1 Q Okay. What made you plead guilty?

2 A Really, I just wanted to hurry up and get it over
3 with. And I had, like, other statements that were going
4 against me. So I just thought it was best that I plead
5 guilty.

6 Q Well, and you had -- you had admitted to it; is that
7 correct?

8 A Yes, sir.

9 Q You admitted to the shooting?

10 A Yes, sir.

11 Q Okay. How did you find out about the 32-year guilty
12 plea?

13 A Ms. Manigault.

14 Q Did she come to you and tell you she'd worked out a
15 plea for you?

16 A Yes, sir.

17 Q Okay. And what was that plea?

18 A 32 years.

19 Q Okay. Did she tell you what you were possibly
20 facing?

21 A She said I could get -- I could be facing life.

22 Q Okay. You could be facing life, she told you that?

23 A Yes, sir.

24 Q All right. And she told you she'd worked out a
25 32-year plea?

1 A Yes, sir.

2 Q Okay. Did she ever, at that point in time, tell you
3 about voluntary manslaughter?

4 A No, sir.

5 Q Or self-defense?

6 A No, sir.

7 Q Did she tell you that she had tried to get the State
8 to agree to a plea of lesser --

9 A When I -- when I -- I had asked her about it -- asked
10 her if she would talk to the Solicitor about 30 years.
11 And she said when she talked to the Solicitor, the
12 Solicitor denied it.

13 Q Okay. So you knew that the murder carried 30 years
14 to life?

15 A Yes, sir.

16 Q Okay. And you talked with Ms. Manigault about trying
17 to get the 30 years?

18 A Yes, sir.

19 Q You entered a guilty plea; is that correct?

20 A Yes, sir.

21 Q And you accepted the 32 years?

22 A Yes, sir.

23 Q Did Ms. Manigault ever discuss with you a direct
24 appeal?

25 A No, sir.

1 Q Did you know you had a right to appeal?

2 A No, sir.

3 Q Okay. Had Ms. Manigault discussed voluntary
4 manslaughter with you and given you the option of either
5 pleading guilty to the murder that you pled guilty to or
6 going to trial, would you have gone to trial?

7 A Yes, sir.

8 Q You understand that the jury may have still found you
9 guilty of murder; is that correct?

10 A Yes, sir.

11 Q Had she discussed self-defense with you, would that
12 have affected whether you pled guilty or went to trial?

13 A Yes, sir.

14 Q And which way -- what would you have done?

15 A I would have went to trial.

16 Q Okay. You and I've discussed this case, haven't we?

17 A Yes, sir.

18 Q And you understand that if you were to be successful
19 today, it simply starts over?

20 A Yes, sir.

21 Q Do you know what evidence they have against you?

22 A Yes, sir.

23 Q Do you understand that they could still present that
24 evidence? Is that correct?

25 A Yes, sir.

1 Q Do you understand that you could still be convicted
2 of murder?

3 A Yes, sir.

4 Q And do you understand that on -- if you were
5 convicted of murder again, you'd be back to facing
6 30 years to life?

7 A Yes, sir.

8 Q You could get a life sentence, as opposed to this
9 32-year sentence you now have?

10 A Yes, sir.

11 Q Do you still want to take that chance?

12 A Yes, sir.

13 Q Okay. And just -- just to make things clear. Had
14 you been advised of voluntary and self-defense, you would
15 have gone to trial?

16 A Yes, sir.

17 MR. THOMPSON: Thank you.

18 Answer any questions the Attorney General may have,
19 please.

20 THE COURT: Yes, ma'am. Cross-examination.

21 MS. GREGORY: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. GREGORY:

24 Q Good morning, Mr. Taylor.

25 A Good morning.

1 Q How many times did you say you met with your Counsel
2 prior to your plea?

3 A Four or five times.

4 Q Four or five times. Do you recall reviewing the
5 discovery, all the State's evidence, and so forth that was
6 given to her? Do you recall going over -- over that with
7 her?

8 A Yes, sir [sic].

9 Q Do you recall waiving your Constitutional rights
10 during your guilty plea?

11 A Yes, sir [sic].

12 Q Do you recall the Judge explaining the possible
13 sentence to you prior to your guilty plea?

14 A Yes, ma'am.

15 Q Do you recall telling the Judge you wanted to plead
16 guilty?

17 A Yes, ma'am.

18 Q And do you want -- do you recall telling the Judge
19 you were pleading guilty because you were, in fact,
20 guilty?

21 A Yes, ma'am.

22 Q And agreeing with the State's recitation of the facts
23 as they would have presented them at trial, do you recall
24 agreeing with those?

25 A Yes, ma'am.

1 Q Do you recall telling the Judge you were totally and
2 completely satisfied with the representation of your
3 attorney?

4 A Yes, ma'am.

5 Q Do you recall telling the Judge your attorney had
6 done everything you had asked and that you thought was
7 reasonably necessary and adequate to prepare an adequate
8 defense?

9 A Yes, ma'am.

10 Q Do you recall telling the Judge that you met with
11 your attorney as often as -- and as long as you felt was
12 necessary in your case?

13 A Yes, ma'am.

14 Q And do you recall apologizing to the victim's family?

15 A Yes, ma'am.

16 MS. GREGORY: No further questions, Your Honor.

17 THE COURT: All right.

18 MR. THOMPSON: No redirect.

19 THE COURT: All right.

20 MS. GREGORY: We would call Ms. Manigault.

21 THE CLERK: Place your left hand on the Bible and
22 raise your right hand.

23 WHEREUPON,

24 DOROTHY A. MANIGAULT,

25 after first having been duly affirmed, testified as follows:

DIRECT EXAMINATION

1
2 BY MS. GREGORY:

3 Q Good morning, Ms. Manigault.

4 Sorry about my voice.

5 How long have you been practicing law?

6 A Oh, good grief, over 30 years.

7 Q And how much of that has been in criminal law?

8 A Probably 30 years.

9 Q How did you come to present Mr. Taylor?

10 A I was assigned 608 to represent him.

11 Q And how long did you represent him prior to the
12 guilty plea? Was it from arrest?

13 A From the time of his arrest until the guilty plea.

14 Q Okay. And how many times did you -- did you meet
15 with Mr. Taylor?

16 A I met with him well over eight times, three of those
17 times were to review DVD's and CD's from the case.

18 Q From the --

19 A And the other times was to go through the voluminous
20 discovery, paper discovery.

21 Q Okay. So you filed a Rule 5 and Brady motions in
22 this case?

23 A Yes.

24 Q Okay. Did he seem to understand the discovery that
25 you went over with him?

1 A Yes.

2 Q And what were the facts of the case?

3 A The facts of the case was my client with other
4 co-defendants, I believe three, had arranged a fight at a
5 bowling alley, to meet some other people there. My client
6 went in the car with three others. Two or three of the
7 other guys got out of the car and incited an argument with
8 one guy. And then the argument continued.

9 So my client, Mr. Taylor, got out of the car, went
10 around the car, and shot the deceased.

11 Q Okay. And were -- his version of the facts that he
12 told you, were they different than what the State would
13 have presented?

14 A His version of the facts is -- in the beginning is he
15 wasn't the shooter. All right. And then as we continued
16 with representation, his version of the facts is that the
17 other guys had guns. There were guns. And he just shot
18 because he thought they were going to shoot him.

19 Q Based on --

20 A Shoot them.

21 Q I'm sorry.

22 A I'm sorry.

23 Q I -- I couldn't hear you. I was talking --

24 A That he was going to -- that the other group was
25 going to shoot them.

1 Q Okay. And did you investigate his version of the
2 facts in the case?

3 A Yes. The police officers, and the Solicitor's
4 rendition, and two co-defendants gave statements that were
5 totally opposite to what my client said.

6 Q And would they have testified against him at trial?

7 A Yes. They would have testified against him. I
8 informed my client that they would testify against him. I
9 even brought their statements that were provided.
10 Mr. Taylor got furious and says, why's everybody turning
11 on him. It's not fair. But he was aware that they would
12 testify.

13 Q Did he give you any potential leads or witnesses to
14 verify his version of the facts that you could have
15 investigated?

16 A No. The only potential witnesses would have been his
17 co-defendants, who turned state's evidence on him. He did
18 not give me any other names for witnesses or alibi otherwise.

19 Q Okay. And he's -- as you heard him allege, he
20 thought self-defense was a viable defense here. Did you
21 find that to be true?

22 A As a matter of fact, we discussed self-defense.

23 Q Okay.

24 A He brought up self-defense several times. And as we
25 went through the discovery, he realized that self-defense

1 was not going to cut it. Because his co-defendants would
2 state that they left him sitting in the car. And he got
3 out of the car, came around the back of the car, and shot
4 the guy.

5 Q Okay. And what about the voluntary manslaughter?
6 Did you attempt to get him --

7 A Yes.

8 Q -- a plea?

9 A I always attempt to get voluntary manslaughter on
10 murder charges. I asked the Solicitor several times. And
11 he, essentially, laughed in my face. He, actually,
12 laughed that I would ask for that. And that was Baker
13 Cleveland.

14 Q Okay. And did you communicate that to your client?

15 A Yes.

16 Q Okay. Did you review Mr. Taylor's Constitutional
17 rights with him prior to pleading guilty?

18 A Yes.

19 Q Other than -- were there any plea offers from the
20 State? He pled straight up; is that correct?

21 A No. He -- there was a plea offer. The first plea
22 offer was 30 years --

23 Q 30 years. Okay.

24 A -- when the Solicitor denied voluntary manslaughter.
25 I went to him with that. The Solicitor left it open for

1 two months only. And I went back and forth to discuss
2 that with Mr. Taylor probably three or four times --

3 Q Okay.

4 A -- at the Pickens County jail. And he just said I
5 should do better than 30 years. And when that time
6 elapsed, the Solicitor withdrew the 30 years. So I went
7 back to try to renegotiate a plea. And the Solicitor said
8 he would do 32.

9 Q Okay. And did you believe the 32-year plea deal was
10 in his best interest?

11 A Yes.

12 Q Whose decision was it to plead guilty?

13 A His.

14 Q Did he ever indicate to you that he wanted to go to
15 trial and pursue trial once he started down the plea
16 negotiation road?

17 A No. Because he even lagged -- procrastinated on the
18 32 years.

19 Q Okay.

20 A So I had to beg the Solicitor to get that back on the
21 table. Because he was adamant that he did not want to go
22 to trial.

23 Q Okay. If he had wanted to proceed to trial, would
24 you have taken this case to trial?

25 A Yes.

1 Q Did he ever ask you to appeal his case?

2 A No.

3 Q Did you see any meritorious grounds --

4 A None.

5 Q -- that were to be appealed?

6 A None.

7 Q So no -- he would not have been successful even in
8 appealing his case?

9 A No. He -- he called me after he was shipped to SCDC
10 a few times. He did not mention it. The only thing he
11 wanted was another copy of his discovery. So I just
12 packed the file up and sent him the entire file, including
13 DVD's and CD's, to the legal counsel for SCDC so that he
14 could have it available for him.

15 Q Okay. And at no time did he ask you for an --

16 A No.

17 Q -- appeal during this conversation?

18 A No.

19 MS. GREGORY: No further questions, Your Honor.

20 THE COURT: All right.

21 MR. THOMPSON: Just a couple, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. THOMPSON:

24 Q You -- Ms. Manigault, you say that you talked to the
25 Solicitor about trying to get a voluntary?

1 A Yes.

2 Q Okay. Did you ever talk with Mr. Taylor about the
3 elements of voluntary and the right that he -- the fact he
4 had a right to go to trial and try to get a voluntary
5 charge?

6 A Yes.

7 Q Okay. And he turned that down?

8 A Yes. He did not want a trial.

9 Q Okay. He didn't want a trial. But I guess my
10 question is, did you talk with him about voluntary enough
11 to where he understood that he could go to trial and the
12 Judge might charge voluntary, it might not?

13 I'll be honest with you. I've investigated this
14 case, too. And I think I would probably have given the
15 same advice you've given. But it's not our choice, it's
16 his. Do you understand that?

17 A That's correct.

18 Q And I -- I just want to make sure. Did you make
19 certain that he understood he could go to trial and try to
20 get voluntary?

21 A He understood very well. You know, as you may well
22 be aware of, our clients do research on their own in jail.

23 Q Right.

24 A So he understood very well when I explained to him
25 the self-defense, the voluntary charge that he wanted to

1 get. There was absolutely no way that the Solicitor was
2 going to give us voluntary, period. And I believe that if
3 we had gone to trial, he would not have gotten voluntary.

4 Q Okay. And you -- you're certain he understood that?

5 A Yes.

6 MR. THOMPSON: Okay. Thank you.

7 THE COURT: All right. I don't have any questions.
8 Anything else?

9 MS. GREGORY: No, sir, Your Honor.

10 THE COURT: All right. You can step down.
11 Anything from the State?

12 MS. GREGORY: No, sir, Your Honor.

13 THE COURT: Yes.

14 MR. THOMPSON: Your Honor, we would simply stand on
15 our client's testimony. As -- as Ms. Manigault says, she
16 felt that this was the best plea. And I -- I'll be honest
17 with you. You heard me question Mr. Taylor about does he
18 understand if he wins this, he may be looking at a life
19 sentence.

20 But it's his choice as to whether he wants to go to
21 trial. He testified that he was not advised of the
22 elements and the fact that he could go to trial to try to
23 get a voluntary charge.

24 So we simply stand on his testimony.

25 THE COURT: All right. Thank you, sir.

1 When I look at the transcript, I think what's --
2 what's important is -- is the colloquy between the Court
3 and the Defendant. And I'll just cite a couple of them in
4 the record.

5 The Court asked him, Do you understand that you have
6 an absolute right to a trial by jury where you would be
7 presumed innocent, unless and until the State could prove
8 you guilty beyond a reasonable doubt of each and -- of
9 each and every element of each offense that you're charged
10 with?

11 His response was, Yes, sir.

12 Then I go to the other portion of the transcript
13 where it said -- where the Court asked him, Are you
14 completely -- totally and completely satisfied with the
15 representation of your attorney?

16 His answer was, Yes, sir.

17 The Court, also, went on to ask, Has she done
18 everything that you think is reasonably necessary to
19 adequately prepare for your defense?

20 His answer was, Yes, sir.

21 And then the Court asked him, And have you met with
22 her as often and as long as you think is necessary?

23 His answer was, Yes, sir.

24 The Court, also, asked him, Do you have any
25 complaints you want to make about the way you've been

1 treated in this case in any way?

2 And he said, No, sir.

3 And the next question the Court asked him, Well, do
4 you know what the evidence is that the State has against
5 you?

6 He indicated, Yes, sir.

7 Those questions in and of itself convinces this Court
8 that if you follow the dictates of the Strickland case
9 that -- and his allegation against the -- Counsel at the
10 time was ineffective assistance of Counsel, I'm not
11 convinced at all -- as a matter of fact, I think based
12 upon what I've observed in the transcript and what I've
13 seen in the record and, also, hearing the testimony of
14 Counsel, as well as his testimony, I do not find anything
15 that would make me deviate from the standards set forth in
16 Strickland.

17 And based upon that, I find that his application for
18 post-conviction relief should be denied.

19 MR. THOMPSON: Thank you, Your Honor.

20 THE COURT: And I would ask you to prepare an order.

21 MS. GREGORY: Yes, sir.

22 *****END OF TRANSCRIPT OF RECORD*****
23
24
25

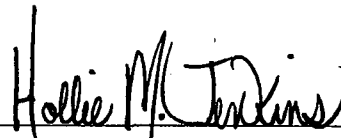
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth 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 captioned case, relative to appeal, in the Court of Common Pleas for Pickens County, South Carolina, on the 17th day of December, 2018.

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

April 1, 2019



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA)
 COUNTY OF PICKENS)
)
 Albert Lavern Taylor, #375218,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE THIRTEENTH JUDICIAL CIRCUIT

2018-CP-39-0777

ORDER OF DISMISSAL

CLERK OF COURT
 PICKENS COUNTY, SC
 2019 JAN 11 P 3:48

This matter comes before the Court by way of an application for post-conviction relief filed on July 12, 2018, by Albert Taylor (“Applicant”). The State (“Respondent”) filed a Return on October 31, 2018, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on December 17, 2018, at the Greenville County Courthouse. Applicant was present at the hearing and represented by Don Thompson, Esquire. Assistant Attorney General Janell H. Gregory of the South Carolina Attorney General’s Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. Applicant’s plea counsel, Dorothy Manigault, Esquire (“Counsel”), also testified at the hearing. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application.

I. PROCEDURAL HISTORY

The records before this Court establish Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court’s order of commitment. During the October 2016 term, the Pickens County Grand Jury indicted Applicant for murder (2016-GS-39-2322). Counsel represented Applicant. Assistant Solicitor Baker Cleveland of the Thirteenth Circuit Solicitor’s Office prosecuted the case.

On January 25, 2018, Applicant appeared with Counsel before the Honorable Edward W. Miller and pled guilty as indicted. Based on a recommendation from the State, Judge Miller sentenced Applicant to imprisonment for thirty-two years. Applicant did not appeal his guilty plea or sentence.

II. SUMMARY OF FACTS

On February 17, 2016, Applicant and his two co-defendants went to the Tri-City Lanes in Easley. The purpose of the trip was for one of the co-defendants to fight another juvenile, Bradley Burrell ("Burrell"). The fight had been arranged through messages on social media. Applicant and his co-defendants all had firearms, which they had posted pictures of on social media earlier that day. Upon arrival at the bowling alley, a crowd gathered in anticipation of the fight including Burrell and his friend, Kequan Brown ("Victim"). No one else at the bowling alley was armed that night other than Applicant and his co-defendants. At some point, the co-defendants presented their firearms to the crowd while Applicant remained in the vehicle. Burrell and one of the co-defendants began to argue and, once Victim became involved, Applicant exited the vehicle. Applicant walked around the rear of the vehicle and shot Victim in the chest. Victim was pronounced dead at the scene. Applicant and his co-defendants fled the scene and used a cell phone to delete the social media messages setting up the fight. They also hid their weapons, including the murder weapon, in Greenville County. Applicant and the co-defendants were arrested just hours later attempting to get gas in Dacusville. The weapons recovered by law enforcement included a .38 revolver, which was confirmed to be the murder weapon by SLED analysis. (GP Tr. 6-7.)

III. ALLEGATIONS RAISED

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

- I. Ineffective Assistance of Counsel:
 - a. Counsel failed to inform client about direct appeal;
 - b. Counsel failed to represent client to the best of her abilities.

An evidentiary hearing was held on December 17, 2018, Applicant informed this Court he intended to proceed on the following grounds for relief:

- I. Ineffective Assistance of Counsel
 - a. Counsel failed to file a direct appeal on Applicant's behalf;
 - b. Counsel failed to advise Applicant on issues regarding voluntary manslaughter and self-defense.

IV. TESTIMONY FROM POST-CONVICTION RELIEF HEARING

Applicant's Testimony

Applicant testified on his own behalf during the post-conviction relief hearing. Applicant testified the incident occurred in Pickens County at a bowling alley. Applicant testified the fight was arranged over social media, but he was not involved in setting it up. Applicant testified after the altercation began, he shot Victim who died as a result of his injuries. Applicant testified his three co-defendants gave statements against him after they were arrested. Applicant testified Counsel was appointed to represent him on his charge and he met with her four or five times. Applicant testified he was in jail the whole time prior to his guilty plea. Applicant testified Counsel did not discuss voluntary manslaughter or self-defense with him. Applicant testified he entered a guilty plea to hurry up and get his case over with. Applicant testified he admitted to the shooting and received thirty-two years. Applicant testified Counsel told him he could face life in prison. Applicant testified he asked Counsel to see if the State would allow him to plead guilty to a lesser offense. Applicant testified his Counsel told him the State would not agree to a lesser offense.

Applicant testified Counsel did not discuss his right to appeal his guilty plea. Applicant testified he knows a jury could still find him guilty of murder. Applicant testified he discussed getting a new trial with his PCR Counsel, Don Thompson, and understands he could get life in prison if he were to receive a new trial. Applicant testified he would like to take that chance.

On cross-examination, Applicant testified he reviewed discovery with Counsel and recalled waiving his constitutional rights. Applicant testified he recalled telling the plea judge he wanted to plead guilty and he was pleading guilty because he was guilty. Applicant testified he recalled telling the plea judge he was satisfied with Counsel and she had done everything he felt necessary to adequately prepare his defense. Applicant testified he recalled telling the plea judge that he had enough time to meet with Counsel prior to his plea.

Counsel's Testimony

Counsel also testified at the post-conviction relief hearing. Counsel testified she has been practicing law for thirty years and all of that time has been spent in criminal law. Counsel testified she was appointed to represent Applicant and represented him since the time of his arrest. Counsel testified she met with Applicant at least eight times. Counsel testified the facts of the case were that Applicant and his co-defendants arranged a fight at a bowling alley through social media. Counsel testified Applicant went to the bowling alley with his three co-defendants. Counsel testified at some point during the altercation at the bowling alley, Applicant got out of the vehicle and shot Victim who died as a result of his injuries.

Counsel testified she filed Rule 5 and Brady motions and reviewed discovery with Applicant. Counsel testified Applicant claimed he was not the shooter at first, and then he told her other people there had guns and were going to shoot him and his co-defendants. Counsel testified she did investigate Applicant's case. Counsel testified Applicant's co-defendants had provided

statements against Applicant to law enforcement and were going to testify against him at trial. Counsel testified Applicant brought up self-defense, but she did not see that as a viable defense based on the statements from the co-defendants. Counsel testified she attempted to get a plea of voluntary manslaughter for Applicant, but when she asked the State they "laughed at her." Counsel testified the State offered Applicant a thirty year plea deal and kept it open for two months. Counsel testified she talked to Applicant about the plea offer three or four times and Applicant stated he wanted a better offer. Counsel testified, after the initial plea offer had expired, Applicant finally agreed to a plea offer of thirty-two years.

Counsel testified she reviewed Applicant's constitutional rights with him prior to his guilty plea. Counsel testified she believes it was in Applicant's best interest to plead guilty. Counsel testified Applicant was adamant he did not want a trial. Counsel testified she would have taken his case to trial if Applicant had elected to proceed to trial. Counsel testified Applicant never asked Counsel to appeal his guilty plea. Counsel testified she did not see any meritorious grounds to appeal Applicant's plea.

On cross-examination, Counsel testified she did attempt to get the State to offer Applicant a voluntary manslaughter plea deal, but they refused. Counsel testified she told Applicant that at trial the judge could possibly give the jury a voluntary manslaughter charge, but Applicant was adamant that he did not want a trial. Counsel testified Applicant understood very well that at trial he could have gotten a voluntary manslaughter charge for the jury to consider.

V. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove

that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 300 S.C. 115. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 300 S.C. 115. With respect to guilty plea counsel, the applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

VI. FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court viewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the plea transcript, and Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the

attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

This Court finds Applicant has failed to meet his burden of proving he is entitled to post-conviction relief on any of his allegations of ineffective assistance of counsel. Applicant has failed to prove both deficiency on the part of Counsel and any prejudice therefrom. Moreover, this Court notes the record reflects the knowing and voluntary nature of Applicant's guilty plea. Furthermore, after observing the witnesses and passing on their credibility, this court finds Counsel's testimony to be credible. By contrast, this Court finds Applicant's testimony lacks credibility.

Counsel failed to file a direct appeal on Applicant's behalf

Applicant alleges Counsel was ineffective for failing to file an appeal. Through post-conviction relief, an applicant can assert he is entitled to a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), by asserting his counsel failed to file a direct appeal on his behalf when requested. When the question is whether counsel was ineffective in failing to file a direct appeal from a conviction and sentence, the United States Supreme Court has held that counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470 (2000). There is no constitutional obligation necessitating plea counsel inform a criminal defendant of his right to appeal following a guilty plea. Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995); See also Simuel v. State, 390 S.C. 267, 270 n. 1, 701 S.E.2d 738, 739 n. 1 (2010) (reaffirming the standard attorneys shall meet for appealing from

guilty pleas following the United States Supreme Court decision of Roe v. Flores-Ortega, 528 U.S. 470, (2000)).


This Court finds credible Counsel's testimony that Applicant did not ask her to file an appeal. This Court also finds credible Counsel's testimony that she did not see any meritorious grounds to appeal Applicant's guilty plea. This Court finds Counsel was not deficient in failing to appeal Applicant's guilty plea as Applicant has failed to show either condition under Roe existed. Therefore, Applicant has failed to meet his burden and this allegation must be denied and dismissed with prejudice.

Counsel failed to advise Applicant on issues regarding voluntary manslaughter and self-defense

Applicant alleges Counsel was constitutionally ineffective for failing to advise him on issues regarding voluntary manslaughter and self-defense. Applicant testified Counsel did not discuss voluntary manslaughter or self-defense with him during her representation. According to Counsel's testimony, Applicant's story changed a couple of times during her representation and at one point he claimed self-defense. Once Applicant's co-defendants provided statements to law enforcement regarding Applicant's involvement, self-defense was no longer a viable defense for Applicant. Additionally, Counsel testified she attempted to obtain a plea offer for voluntary manslaughter on Applicant's behalf, however, the State would not allow Applicant to plead to a lesser offense. Counsel testified she told Applicant if he proceeded to trial he could request a jury charge for voluntary manslaughter, but Applicant was adamant that he did not want to go to trial.

This Court finds credible Counsel's testimony that she did discuss self-defense with Applicant, but that was not a viable defense given the statements made by his co-defendants to law enforcement. This Court finds credible Counsel's testimony that she attempted to obtain a plea offer from the State for voluntary manslaughter. This Court also finds credible Counsel's

testimony that she discussed with Applicant the possibility of getting a jury charge of voluntary manslaughter at trial, however, Applicant did not want to proceed to trial. Applicant has failed to establish how Counsel was deficient in her representation as Counsel did discuss both self-defense and voluntary manslaughter with Applicant. Further, Applicant has failed to establish any resulting prejudice from Counsel's alleged deficiency, especially since this Court finds credible Counsel's testimony that Applicant did not want to proceed to trial. Therefore, this allegation must be denied and dismissed with prejudice.



Page 9 of 10

VII. 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 days from post-conviction relief counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 13th day of January, 2019.

C. Kelly, South Carolina

[Signature]
 ALEX KINLAW
 Presiding Judge
 Eighth Judicial Circuit
 CLERK OF COURT
 2019 JAN 11 P 3:49
 13th

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on **OCT 11 2016** the Grand Jurors of Pickens

County present upon their oath:

That ALBERT LAVERN TAYLOR did in Pickens County, on or about the 17th day of February, 2016, unlawfully and with malice aforethought kill KEJUAN MITCHELL BROWN by means of shooting KEJUAN MITCHELL BROWN, and that KEJUAN MITCHELL BROWN died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

Certified Copy
Harold P. Walker
Clerk of Court
Pickens County, SC
Dated *July 2018* *ms*

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

[Signature]
SOLICITOR BAR # 66112

WITNESSES

A.R. Greer

Easley Police Department

2/18/2016

ARREST WARRANT NUMBER

2016A3920400246

ACTION OF GRAND JURY

TRUE BILL

OCT 11 2016

David Jy
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-39-^{WDR} 2322

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

OCT 11 2016

TERM 2016

THE STATE

vs.

ALBERT LAVERN TAYLOR

Indictment for

0116

MURDER

VIOLATION § 16-03-0010, 0020

Certified Copy

Harold P. Walker

Clerk of Court MB

Pickens County, SC

Dated *2016 July*