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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Marion County

Honorable D. Craig Brown, Circuit Court Judge

JOHNNY RAY WALKER, JR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-000176

APPENDIX

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INDEX

INDEX i

PLEA HEARING TRANSCRIPT (MAY 12, 2017)1

APPLICATION FOR POST-CONVICTION RELIEF26

RETURN.....35

POST-CONVICTION RELIEF HEARING TRANSCRIPT (NOVEMBER 7, 2018)41

ORDER OF DISMISSAL.....82

INDICTMENT.....92

SENTENCE SHEETS94

State of South Carolina)	Court of General Sessions
)	Twelfth Judicial Circuit
County of Marion)	Case No. 2016-GS-33-00249
)	
)	
State of South Carolina,)	
)	
Plaintiff,)	
)	
-vs-)	Transcript of Record
)	
)	
Johnny Ray Walker Jr.,)	
)	
Defendant.)	
)	

May 12, 2017
Marion, South Carolina

B E F O R E:

The Honorable Michael G. Nettles, Judge

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

Kevin Hope, Esquire
Attorney for the Plaintiff

Henry M. Anderson Jr., Esquire
Attorney for the Defendant

Krystal J. Smith
Circuit Court Reporter

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I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
Guilty Plea.....	4
Facts.....	6
Findings and Acceptance of Plea.....	13
Sentence.....	23
Court Reporter Certification.....	25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

COURT REPORTER LEGEND

dashes --	intentional or purposeful interruption or change in thought
ellipses . . .	trailing off
[ph]	phonetically written
[sic]	written as said

1 MAY 12, 2017

2 (WHEREUPON, the proceedings began at 2:48 p.m.)

3 MR. HOPE: Johnny Ray Walker Jr.

4 THE CLERK: Place your left hand on the Bible and raise
5 your right hand. Do you solemnly swear or affirm to tell the
6 truth, the whole truth, and nothing but the truth, so help
7 you God?

8 THE DEFENDANT: Yes, ma'am.

9 THE CLERK: Thank you.

10 THE COURT: Mr. Anderson, do you represent Mr. Walker?

11 MR. ANDERSON: Yes, sir.

12 THE COURT: Have you explained to him the offense of
13 driving under the influence with great bodily injury, the
14 fact that there's a minimum mandatory 30 days, maximum five
15 years and a minimum fine of \$5,100, and felony driving under
16 the influence resulting in death, which is a minimum
17 mandatory one year, maximum 25 years, and a minimum fine of
18 \$10,100, the elements of each of these offenses, potential
19 defenses, and his constitutional rights?

20 MR. ANDERSON: Yes, sir, I have.

21 THE COURT: And how does he wish to plead?

22 MR. ANDERSON: Guilty, Your Honor.

23 THE COURT: Do you agree with his decision to do so?

24 MR. ANDERSON: Yes, sir.

25 THE COURT: Do you feel if called upon to do so the

1 State could prove him guilty beyond a reasonable doubt?

2 MR. ANDERSON: Yes, sir.

3 THE COURT: Does he understand that felony DUI resulting
4 in death is a violent offense that adversely affects his
5 custody status and a most serious offense subject to the
6 three-strike rule?

7 MR. ANDERSON: Yes, sir.

8 THE COURT: Does he understand the collateral
9 consequences of these pleas, how it affects his driver's
10 license, and all of the other collateral consequences?

11 MR. ANDERSON: Yes, sir.

12 THE COURT: And is that true, Mr. Walker?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Are you under the influence of
15 any drugs or alcohol, Mr. Walker?

16 THE DEFENDANT: No, sir.

17 THE COURT: Are you experiencing any kind of physical or
18 mental problem that could prevent you from understanding
19 what's going on here today?

20 THE DEFENDANT: No, sir.

21 THE COURT: All right. Pay very close attention as the
22 State summarizes the facts that bring us here today.

23 MR. HOPE: Thank you, Your Honor. May it please the
24 Court.

25 These charges are the result of a collision which

1 occurred on July 9th of 2015. It occurred on US 378 in the
2 Gresham area of Marion County about 9:30 in the evening.
3 Trooper Barkdoll with the South Carolina Highway Patrol, who
4 is present here with us today, is the primary investigator on
5 that collision.

6 We have here in the courtroom as well the victim of the
7 great bodily injury case, Rayneisha Eaddy, who is sitting in
8 the second row here in the courtroom. And we also have the
9 parents of the deceased victim, Mr. Jerry Lee Norris. They
10 are present in the first row, and the mother of Jerry Lee
11 Norris wishes to address the Court at the appropriate time.

12 THE COURT: Very good.

13 MR. HOPE: Your Honor -- excuse me. Your Honor, as I
14 mentioned, this was a collision on July 9th of 2015 on US 378
15 here in Marion County. It involved a total of three
16 vehicles. First, the defendant was driving a vehicle
17 eastbound headed towards the beach in a '97 Ford Mustang
18 convertible. He had with him in the -- thank you, sir. He
19 had with him in the front passenger seat the deceased victim,
20 Mr. Jerry Lee Norris. And in the rear laying down or passed
21 out was Mr. Christopher Deuvner.

22 In driving the vehicle eastbound towards the beach, Mr.
23 Walker went left of center and was driving in Ms. Eaddy's
24 lane. Ms. Eaddy attempted to swerve left, which was the
25 wrong decision because Mr. Walker swerved right, and they hit

1 very flush in the same lane. The impact was so hard, Your
2 Honor, that the victim, the deceased victim, went through the
3 floorboard. His feet were actually touching the pavement
4 when Trooper Barkdoll arrived.

5 Your Honor, about a moment after that collision, another
6 vehicle, unable to see anything in the roadway, collided with
7 the rear of the Mustang and sent everything into a tailspin.
8 Ms. Eaddy was trapped in her vehicle, and she had serious
9 injuries from the -- multiple fractures from the waist down.
10 Mr. Walker was trapped in the vehicle and, due to the serious
11 trauma to the head and chest region, Mr. Norris was deceased
12 at the scene. Christopher Deuvner, was in the backseat, was
13 ejected, but to our knowledge had no injuries.

14 Due to the multiple injuries, multiple fractures and
15 internal injuries that Mr. Walker suffered, he was airlifted
16 to McLeod in Florence. He was -- he remained there for
17 several weeks, but upon intake, he was observed to have been
18 drinking, and a blood test was conducted to determine what
19 was in his system so that he could be treated and prepped for
20 the surgeries that he would need.

21 At a trial, Your Honor, the State would introduce
22 evidence that his ethanol level at the time was 20/100ths of
23 one percent alcohol per volume or what we know as a .20.

24 Your Honor, as far as a prior record goes, he has none
25 in South Carolina, but he has a fairly lengthy record in

1 North Carolina.

2 In January of 2013, he was charged with and convicted of
3 public disorderly conduct and injury to personal property,
4 for which he served 45 days and was given 24 months of
5 probation.

6 From November of 2012, he was convicted of simple
7 possession of marijuana. From February 1st of 2012, assault
8 on a female. These sentences are unknown, Your Honor.

9 From August 8th of 2008, he was convicted of breaking and
10 entering, larceny, and breaking and entering of a motor
11 vehicle. Also from August but later that month, 2007, he was
12 convicted of larceny and breaking and entering of a motor
13 vehicle. From July of 2007, breaking and entering and
14 larceny. And from November of 2006, trespass, second-degree.

15 But, Your Honor, since these charges came about, he was
16 charged with just at the end of February of 2017 with
17 possession of drug paraphernalia and possession of
18 methamphetamine.

19 THE COURT: All right. The passengers in Mr. Walker's
20 car, what -- tell me the injuries that they received again?

21 MR. HOPE: Your Honor, Christopher Deuvner, who was in
22 the backseat of this Mustang convertible, was ejected.
23 Trooper Barkdoll actually found him sitting on the side of
24 the roadway just watching the investigation. He appeared to
25 have no injuries.

1 THE COURT: Okay.

2 MR. HOPE: Jerry Lee Norris, who was sitting in the
3 front seat, attempted to brace himself just prior to the
4 collision and he went through the floorboard. He had
5 tremendous trauma to his head and chest and was deceased
6 immediately.

7 THE COURT: Okay. And the -- and the subsequent car
8 that came up on to the wreckage of the crash, what were the
9 injuries of that individual?

10 MR. HOPE: They had no injuries, Your Honor. They
11 clipped the rear of the Mustang, which sent everything into a
12 tailspin, but they had no injuries.

13 THE COURT: Okay. All right. What was the blood
14 alcohol level of the deceased person?

15 MR. HOPE: Your Honor, we suspect that due to the -- due
16 to some items that were found and the condition of the
17 vehicle, a cooler that was full of beer that was in the
18 Mustang driven by Mr. Walker, we suspect that all three had
19 consumed alcohol and were on their way to the beach.

20 THE COURT: But there was no -- there was no blood
21 alcohol level taken of the deceased?

22 MR. HOPE: That's correct, Your Honor.

23 THE COURT: Or the individual who was sitting on the
24 side of the road?

25 MR. HOPE: That's correct.

1 THE COURT: All right. All right. Are those facts true
2 and accurate, Mr. Walker?

3 THE DEFENDANT: The third car hit the passenger side of
4 the Mustang. You could tell that by looking at the pictures.

5 There's -- there's been three -- three different reports
6 of how this accident happened and, at first, it wasn't my
7 fault. The second one, it was that -- it was said that I
8 swerved into the other lane and the car went in my lane and I
9 went back in my lane and they went back in their lane and
10 then I apparently swerved back into them.

11 THE COURT: You don't -- is it true that you had had a
12 significant amount to drink that night?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Are you -- with those
15 clarifications about there being some confusion about where
16 the collision actually took place, do you agree that you're
17 guilty of driving under the influence with great bodily
18 injury?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Are you guilty of felony driving under the
21 influence resulting in death?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. You indicated to me that there
24 were some reports that indicated it might not have been your
25 fault. Are you waiving any defense in that regard and

1 pleading guilty before me here today?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Very good. So that's true you understand
4 that any defense that you might have that it was not your
5 fault you're waiving by entering this plea here today? Do
6 you understand that?

7 THE DEFENDANT: I do, but I'd really like to know the
8 truth.

9 THE COURT: Right. Well, now in this process of a
10 guilty plea is probably not the time to be discovering that.
11 My question to you is are you guilty of felony driving under
12 the influence with great bodily injury?

13 THE DEFENDANT: Yes, sir. I'll take the full
14 responsibility. I know better --

15 THE COURT: All right.

16 THE DEFENDANT: -- than to, you know, get behind the
17 wheel drinking.

18 THE COURT: All right. And are you guilty of felony DUI
19 resulting in death? Do you understand that?

20 THE DEFENDANT: (No verbal response.)

21 THE COURT: Is that a yes?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. And you're waiving any defenses
24 by your entering this plea. You understand that, don't you?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. Plea negotiations are negotiated
2 concurrent; is that correct?

3 MR. HOPE: That's correct, Your Honor.

4 THE COURT: Is that your understanding, Mr. Anderson?

5 MR. ANDERSON: Yes, sir.

6 THE COURT: Is that your understanding, Mr. Walker?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Are you satisfied with your
9 lawyer?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Have you understood all your conversations
12 with him?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you need any additional time to confer
15 with him?

16 THE DEFENDANT: I would like to.

17 THE COURT: Okay. We'll stand right here and allow you
18 to do so.

19 THE DEFENDANT: All right.

20 (WHEREUPON, there was a pause in the proceedings, after
21 which the proceedings resumed as follows.)

22 MR. ANDERSON: We're ready, Your Honor.

23 THE COURT: All right. Do you have any complaints
24 against your lawyer?

25 THE DEFENDANT: No, sir.

1 THE COURT: All right. Has he done everything that
2 you've asked him to do?

3 THE DEFENDANT: He's tried his best.

4 THE COURT: All right. Has anybody threatened you,
5 promised you, done anything to you in any way, shape or form
6 in an effort to get you to enter into this plea here today?

7 THE DEFENDANT: No, sir.

8 THE COURT: Has it been your decision to enter this
9 plea?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Are you pleading guilty because you are
12 guilty?

13 THE DEFENDANT: I am. Yes, sir.

14 THE COURT: Have you understood all my questions?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have your answers been truthful?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand that you have 10 days to
19 appeal any decision I might render here today?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Based on your testimony, I find
22 there is a substantial factual basis for your plea. That
23 your decision was freely and voluntarily entered into,
24 knowingly and intelligently, with the consent of competent
25 counsel with whom you say you're satisfied. I'll accept your

1 plea and be glad to hear from you and your lawyer.

2 But before we do that, I want to hear from the victims.
3 I want to ask the trooper did you have an occasion to speak
4 with the gentleman who was involved in the wreck who was the
5 passenger in Mr. Walker's car? Did you have an occasion to
6 talk with him and determine whether or not he was drinking?

7 THE TROOPER: Mr. Deuvner?

8 THE COURT: Yes.

9 THE TROOPER: The one that was ejected?

10 THE COURT: That's correct.

11 THE TROOPER: When I arrived on the scene, Your Honor, I
12 saw the vehicles, you know, that had just been involved in
13 the collision, and there was a gentleman sitting on the side
14 of the road, just sitting there, and I walked by him and
15 didn't think anything of it. You know, he didn't appear to
16 be hurt or anything like that. He was just sitting there.

17 And I remember there was some fire and rescue. They
18 walked by and asked him what -- you know, what had happened,
19 why is he sitting here, and he said I was in that -- I was in
20 that car. He had been ejected. He don't remember how he got
21 there. You know, he just -- he woke up on the side of the
22 road.

23 THE COURT: Okay.

24 THE TROOPER: And he had been drinking.

25 THE COURT: Okay. Very good. All right. I'll be glad

1 to hear from the -- from the victim's family.

2 Yes. Yes, ma'am, your full name?

3 MS. STEVENS: Donna Lee Stevens.

4 THE COURT: All right. Ms. Stevens, thank you for being
5 here, and I know it's a very difficult time. We have the
6 luxury of time here. Take your time. I want to hear
7 everything that you've got to say.

8 MS. STEVENS: Thank you, sir.

9 THE COURT: You're welcome.

10 MS. STEVENS: I wanted to say that it hurts, and I'm
11 hoping that Mr. Walker will take his sentencing seriously,
12 the time that he has to serve, and when he's done he will
13 take advantage of any opportunities that he's provided in
14 this jail for education and for counseling. To not just sit
15 and regret things that have happened.

16 To move forward in his life and to reach out to other
17 victims that have walked in his shoes and those that have
18 walked in my shoes. They can know his experiences. That
19 other people younger than him to know not to drink and drive.
20 They will learn and grow from this.

21 And for not being afraid for him and his family, and I
22 pray and I forgive him for any fault that he has, and I just
23 hope that he takes this advice.

24 THE COURT: Very good. I know it's a very difficult
25 time, and thank you for being here.

1 MS. STEVENS: Thank you, Your Honor. That's all. Thank
2 you, Your Honor.

3 THE COURT: Very good. Anyone else?

4 MR. HOPE: No, Your Honor.

5 THE COURT: I'll be glad to hear from you, Mr. Anderson.

6 MR. ANDERSON: Judge, I'm sorry we had a little trouble
7 getting through the plea. As you can probably imagine, Your
8 Honor, he's a little bit nervous today. Judge, every time
9 I've met with Johnny, he has broken down and cried about this
10 matter. He's standing beside me crying right now.

11 His dad is here in the courtroom with him. Every time
12 he had court, he came to court with his son. He doesn't --
13 you know, he doesn't support what he did, but he certainly
14 loves his son.

15 Judge, Johnny is 27 years old. He does have a little
16 bit of a record in North Carolina, Your Honor, but no
17 drinking and driving, no nothing like that.

18 Judge, I distinctly remember going out with my friends
19 when I was younger. We were all drinking. It wasn't a
20 question of whether we were drinking. It was always a
21 question of how many have you had, okay, you're probably the
22 best one to drive, you drive us home.

23 The young man that died was one of Johnny's best
24 friends. Since this has happened, Johnny has told me that on
25 many, many, many, many occasions he either has nightmares,

1 wakes up in a sweat, night sweats, severely depressed.

2 The methamphetamine, Your Honor -- he's had I think
3 twelve surgeries as a result of this accident. He'll
4 probably never walk again properly. He can walk, but not
5 like you or I walk.

6 I think he was using the meth for two reasons, Your
7 Honor. One was to try and forget what happened, and one was
8 to help the pain in his foot. As you're probably aware,
9 Judge, anytime you're in a severe accident, of course,
10 they'll give you painkillers and then within a matter of a
11 week or two, you're addicted to painkillers. I don't know
12 what it is about the body that gets addicted so quickly, but
13 that often is what happens.

14 Judge, he said on the way down there they stopped to get
15 more beer. So I think they were drinking the entire way from
16 North Carolina to where this accident happened. They were
17 going to the beach to have just a boys' weekend. I wish and
18 he wishes that we could take it back and they would've
19 started drinking when they got to their motel room and not on
20 the way down, but we can't take that back, Your Honor.

21 Judge, he certainly appreciates the grace and the --
22 well, grace is the best word. The grace that the victims
23 have shown in this case, and he is just so sorry that that
24 happened. If there was anything he could do to take it back,
25 he would.

1 But, Judge, he knows how this is going to affect him as
2 far as time wise, being a violent crime. He knows that his
3 license is going to be suspended even after he gets out of
4 the Department of Corrections.

5 He did spend 11 days in jail after he was arrested, but
6 I think, Your Honor, he was going through surgery after
7 surgery after surgery. So for about five months, he was
8 trying to get healthy enough to come to South Carolina and
9 get to where he could go to jail.

10 But, Your Honor, anytime we've had a court term, he's
11 been here without question. He's driven down here. His dad
12 has taken off work and driven down here with him every single
13 time.

14 The young lady that is over here by his dad -- that's
15 his girlfriend/fiancée. They were in the process of fixing
16 up a trailer --

17 THE DEFENDANT: A house.

18 MR. ANDERSON: -- or a house and hoping to get it ready
19 for getting married later on and raising a family of his own.
20 She has been with him and supported him every step of the
21 way.

22 Judge, you know and I've heard you say it. These crimes
23 -- no one intends for somebody to get hurt. Nobody says,
24 hey, I'm going to go drink a lot of beer tonight and then
25 hopefully I'm going to run into somebody. That's not the way

1 this happens. This is not an intent crime, and Johnny didn't
2 intend for anybody to get hurt. He just, unfortunately, made
3 a bad decision on the way down to Myrtle Beach.

4 But, Judge, he is so, so sorry and if he could take it
5 back, he would. I certainly ask you to listen to his dad and
6 listen to him.

7 Your Honor, as far as the -- he's told me that his
8 friend was drinking with him, just like the young man, Mr.
9 Deuvner, in the back was drinking, but I think his funeral
10 was a few days later and there was no need to -- I mean law
11 enforcement -- I mean it was just one of those things where
12 we don't need to check his blood alcohol level, but he's
13 informed me that he was drinking. They were all drinking.

14 That doesn't diminish it, Your Honor, it certainly does
15 not, but everybody in the car was drinking and they were just
16 going to have a good time and, unfortunately, this happened.

17 Anyway, Your Honor, I would certainly ask you to hear
18 from him.

19 THE COURT: All right. Yes, sir?

20 THE DEFENDANT: Your Honor, I'd just lost my job around
21 this time and I'd just got my back pay from my unemployment.
22 And, well, I went over -- I decided, heck, let's go to the
23 beach and I went over to my buddy Chris's house and I asked
24 him if he wanted to go to the beach, and my buddy Jerry Lee
25 Norris -- we call him Lee. He was walking up the road and I

1 asked him if he wanted to come too because he was sleeping
2 out in the woods at the time. So I figured we could at least
3 have a roof over his head for a weekend, and we just -- we
4 just never made it.

5 I can't -- I can't change what happened, but I can -- I
6 can influence others to not -- to not drink and drive ever.
7 And I've tried, you best believe, and I haven't -- I haven't
8 drank in I don't know how long.

9 And if it takes any -- if it's any consideration, like,
10 at first, I was charged with DWI or DUI and then I was told
11 if I didn't plead guilty to that, then I would be hit with
12 harder charges, which kind of scared me. I didn't know if
13 they was trying to trick me into something. So I went and
14 pleaded not guilty to it. Well, that case was continued,
15 dropped, and then a warrant was put out for my arrest for
16 these charges.

17 But I am guilty, and I should not have been behind that
18 wheel. I should've -- I should've just waited until the next
19 day to go.

20 THE COURT: All right.

21 THE DEFENDANT: But I can't -- if I could change it, you
22 know, I would.

23 THE COURT: I'll be glad to hear from your father.

24 MR. WALKER: He --

25 THE COURT: Yes, sir, your full name?

1 MR. WALKER: My name is Johnny Ray Walker.

2 THE COURT: Senior?

3 MR. WALKER: Yeah. That's not on my license, but yeah.

4 THE COURT: All right.

5 MR. WALKER: He really has had the night sweats and
6 nightmares. The first thing he said when he woke up in the
7 hospital was what happened and are they okay, and that's all
8 he could think about even though he was in the hospital when
9 he woke up.

10 He's been torturing himself with it trying to figure out
11 -- you know, he don't remember anything very well and he's
12 been torturing himself with it ever since then. And then
13 he's also got the constant pain all the time. He can't mow
14 the front yard. He had to quit cutting the grass.

15 I just ask for leniency, however lenient you can be,
16 Your Honor. I appreciate everything.

17 THE COURT: All right. Thank you. Anything else from
18 anybody?

19 MR. HOPE: Just briefly, Your Honor.

20 For clarification, Mr. Walker was initially charged with
21 DUI, first offense. Before the Pee Dee MAIT team could
22 investigate what was two collisions here and give us the
23 positioning and then interview witnesses like Ms. Rayneisha
24 Eaddy, who would tell that he was in her lane and what her
25 actions were, before they could pull the black boxes to each

1 vehicle and determine who was -- who was braking, who was
2 jerking the wheel, and how much, before they could determine
3 that -- we've got a limited amount of time.

4 Officers have a limited amount of time with evidence
5 that's being completed. They knew that they had to charge a
6 DUI but weren't sure where the positioning in the roadway
7 began, and so once MAIT clarified that, the DUI first was
8 dismissed and then they pursued warrants from there.

9 THE COURT: That's neither here nor there really because
10 one of the things for future purposes is if he's charged with
11 DUI and he'd have gone down and paid the fine and forfeited
12 the bond, that would have been it. It would have been double
13 jeopardy. If that's the policy of the Highway Patrol, you
14 probably need to stop that.

15 MR. HOPE: Your Honor, since that time -- and it's been
16 almost 2 years. What Highway Patrol has been making a
17 general practice is the moment that they know that they've
18 got a death or great bodily injury involved, they're getting
19 a search warrant as well. And where we know that we have
20 fault, they're more inclined to charge felony DUI with death
21 or great bodily injury, but they are hesitant because of the
22 ramifications that would also come from charging someone with
23 a 25-year charge.

24 THE COURT: It might be a good idea to investigate it.
25 There's no statute of limitations. In South Carolina, you

1 can wait 25 years and still bring an indictment or a warrant.
2 It would probably be a good idea to investigate it and then
3 do the charging.

4 (WHEREUPON, there was a pause in the proceedings, after
5 which the proceedings resumed as follows.)

6 THE COURT: Might counsel approach the bench for just
7 one moment?

8 (WHEREUPON, a bench conference was held off the record,
9 after which the proceedings resumed as follows.)

10 SENTENCE

11 THE COURT: With regards to felony DUI resulting in
12 death, 2016-GS-33-00249, taking into consideration all the
13 facts and circumstances, the fact that they were all out on
14 sort of a joint venture, but nonetheless, you're charged with
15 the responsibility of your actions when you drive, my
16 sentence is that you be committed to the State Department of
17 Corrections for a period of eight years and payment of a
18 \$10,100 fine.

19 With regard to Indictment 2016-GS-33-00249, driving
20 under the influence with great bodily injury, taking into
21 consideration the fact that you hit someone just driving down
22 the road who was traveling down the road and the disparity in
23 the facts and circumstances, the sentence is that you be
24 committed to the State Department of Corrections for a period
25 of 12 years and payment of a \$5,100 fine.

1 Sentences to run concurrent and credit for 11 days.
2 Good luck to you.
3 MR. HOPE: Thank you, Your Honor.
4 (WHEREUPON, the proceedings ended at 3:23 p.m.)
5
6 --- END REQUESTED TRANSCRIPT ---
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STATE OF SOUTH CAROLINA)
)
 COUNTY OF Marion)
)
Johnny Ray Walker Jr. # 372580)
 Plaintiff(s))
)
)
State of South Carolina)
 Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2018 -CP- 33 -261

Submitted By: Johnny Ray Walker Jr.
 Address: 502 Beckman Dr.
MCF Ward 7 C-12T
Columbia, South Carolina

SC Bar #: _____
 Telephone #: _____
 Fax #: _____
 Other: _____
 E-mail: _____

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| <p>Contracts</p> <input type="checkbox"/> Constructions (100)
<input type="checkbox"/> Debt Collection (110)
<input type="checkbox"/> General (130)
<input type="checkbox"/> Breach of Contract (140)
<input type="checkbox"/> Fraud/Bad Faith (150)
<input type="checkbox"/> Failure to Deliver/Warranty (160)
<input type="checkbox"/> Employment Discrim (170)
<input type="checkbox"/> Employment (180)
<input type="checkbox"/> Other (199) _____ | <p>Torts - Professional Malpractice</p> <input type="checkbox"/> Dental Malpractice (200)
<input type="checkbox"/> Legal Malpractice (210)
<input type="checkbox"/> Medical Malpractice (220)
Previous Notice of Intent Case #
20____-NT-_____
<input type="checkbox"/> Notice/ File Med Mal (230)
<input type="checkbox"/> Other (299) _____ | <p>Torts - Personal Injury</p> <input type="checkbox"/> Conversion (310)
<input type="checkbox"/> Motor Vehicle Accident (320)
<input type="checkbox"/> Premises Liability (330)
<input type="checkbox"/> Products Liability (340)
<input type="checkbox"/> Personal Injury (350)
<input type="checkbox"/> Wrongful Death (360)
<input type="checkbox"/> Assault/Battery (370)
<input type="checkbox"/> Slander/Libel (380)
<input type="checkbox"/> Other (399) _____ | <p>Real Property</p> <input type="checkbox"/> Claim & Delivery (400)
<input type="checkbox"/> Condemnation (410)
<input type="checkbox"/> Foreclosure (420)
<input type="checkbox"/> Mechanic's Lien (430)
<input type="checkbox"/> Partition (440)
<input type="checkbox"/> Possession (450)
<input type="checkbox"/> Building Code Violation (460)
<input type="checkbox"/> Other (499) _____ |
| <p>Inmate Petitions</p> <input checked="" type="checkbox"/> PCR (500)
<input type="checkbox"/> Mandamus (520)
<input type="checkbox"/> Habeas Corpus (530)
<input type="checkbox"/> Other (599) _____ | <p>Administrative Law/Relief</p> <input type="checkbox"/> Reinstate Drv. License (800)
<input type="checkbox"/> Judicial Review (810)
<input type="checkbox"/> Relief (820)
<input type="checkbox"/> Permanent Injunction (830)
<input type="checkbox"/> Forfeiture-Petition (840)
<input type="checkbox"/> Forfeiture-Consent Order (850)
<input type="checkbox"/> Other (899) _____ | <p>Judgments/Settlements</p> <input type="checkbox"/> Death Settlement (700)
<input type="checkbox"/> Foreign Judgment (710)
<input type="checkbox"/> Magistrate's Judgment (720)
<input type="checkbox"/> Minor Settlement (730)
<input type="checkbox"/> Transcript Judgment (740)
<input type="checkbox"/> Lis Pendens (750)
<input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)
<input type="checkbox"/> Confession of Judgment (770)
<input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)
<input type="checkbox"/> Other (799) _____ | <p>Appeals</p> <input type="checkbox"/> Arbitration (900)
<input type="checkbox"/> Magistrate-Civil (910)
<input type="checkbox"/> Magistrate-Criminal (920)
<input type="checkbox"/> Municipal (930)
<input type="checkbox"/> Probate Court (940)
<input type="checkbox"/> SCDOT (950)
<input type="checkbox"/> Worker's Comp (960)
<input type="checkbox"/> Zoning Board (970)
<input type="checkbox"/> Public Service Comm. (990)
<input type="checkbox"/> Employment Security Comm (991)
<input type="checkbox"/> Other (999) _____ |
| <p>Special/Complex /Other</p> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Pharmaceuticals (630)
<input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Unfair Trade Practices (640)
<input type="checkbox"/> Medical (620) <input type="checkbox"/> Out-of State Depositions (650)
<input type="checkbox"/> Other (699) _____ <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)
<input type="checkbox"/> Sexual Predator (510) <input type="checkbox"/> Pre-Suit Discovery (670)
<input type="checkbox"/> Permanent Restraining Order (680) | | | |

Submitting Party Signature: _____

Date: 4-3-18

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

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 CLERK OF COURT
 MARION COUNTY
 MARY M. GRAY

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

2018 APR - 9 AM 10:41
 MAHON COUNTY SC
 CHRISTY M GRAY
 CLERK OF COURT
FILED

FORM 5

STATE OF SOUTH CAROLINA)
County of Marion)
Johnny Ray Walker Jr. #372580)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

v.

State of South Carolina)
)
)
)
)

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 Manning Correctional institution
Columbia, South Carolina
2. Name and location of Court which imposed sentence Marion County
Court House in Marion, South Carolina
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) Unknown
(b) _____

2018 APR -9 PM 10:41
MARION COUNTY
CLERK OF COURT
FILED

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Felony DWI involving Death / 8 years violent / sentenced 5/12/2017
 - (b) Felony DWI serious Bodily Harm / 12 years non-violent / 5/12/2017
 - (c) Both Sentences ran Concurrent

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

7. Did you appeal from the judgment of conviction or the imposition of sentence?
No

- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. _____
 - 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) My Lawyer did not reach out to me after I was sentenced and locked up where I had no way of contacting the outside world.
 - (b) _____

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 MARION COUNTY SC
 CHRISTY M GRAY
 CLERK OF COURT

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 CHRISTY M GRAY
 CLERK OF COURT

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

- (a) I feel my Legal Counsel was inadequate.
- (b) There was a conflict of interest with my Lawyer and the
- (c) prosecutor involved in my sentencing.

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

- (a) The evidence and facts of my case where not investigated
- (b) Thouroughly and I was not allowed to view my motion.
- (c) Among other things the Solicitor had a family involvement in my case as well as a friendly history with my attorney.

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

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

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

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

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 MARION COUNTY SC
 CHRISTY M. GRAY
 CLERK OF COURT
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(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?

N/A

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

(a) which grounds have been presented:

- i. *N/A*
- ii. _____
- iii. _____

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

- i. *N/A*
- ii. _____
- iii. _____

2018 APR -9 AM 10:41
 WASHINGTON COUNTY, SD
 CHRISTY H. GRAY
 CLERK OF COURT

FILED

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) My Lawyer is one of the reasons I'm filing my (PCR)
- (b) Until now I haven't had the resources to file my (PCR)
- (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? No trial
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No appeal
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
N/A

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

- (a) the name and address of each attorney who represented you:
 - i. Hank Anderson
Marion County public Defenders office
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. arraignment, plea, sentencing
 - ii. _____
 - iii. _____

2018 APR -9 AM 10:41
 MARION COUNTY SC
 CHRISTY M GRAY
 CLERK OF COURT

FILED

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

I wish to have my case/evidence as well as my sentencing reviewed and reconsidered in hopes this will shed some light on my case there by giving me a reduction of my sentence.

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

No

STATE OF SOUTH CAROLINA)

County of Marion)

VERIFICATION

I, Johnny Ray Walker Jr., 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.

[Signature]

SWORN to and subscribed before me this 4th day of April, 2018.

[Signature] (L.S.)
Notary Public

My Commission Expires: 1/20/2022

FILED
2018 APR -9 AM 10:14
MARION COUNTY SC
CHRISTY M GRAY
CLERK OF COURT

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

I, Johnny Ray Walker Jr. SLDC #372580, 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.

Johnny Ray Walker Jr.
Applicant

SWORN or affirmed to and subscribed before me this

4th day of April, 2018

Gloria Rong
Notary Public

My Commission Expires: 1/29/2022

FILED
2018 APR -9 AM 10:41
MADISON COUNTY SC
CHRISTY M. GRAY
CLERK OF COURT

STATE OF SOUTH CAROLINA)
 COUNTY OF MARION)
)
)
 Johnny Ray Walker, Jr, #372580,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 TWELFTH JUDICIAL CIRCUIT

Case No.: 2018-CP-33-261

RETURN

The State (Respondent), making its Return to the Application for Post-Conviction Relief (PCR) filed April 9, 2018, would respectfully show this Court:

I.

Johnny Ray Walker, Jr. (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marion County Clerk of Court. In May 2016, the Marion County Grand Jury indicted Applicant for felony driving under the influence (DUI) involving death, and felony DUI involving great bodily injury (2016-GS-33-0249). Henry M. Anderson, Esquire, represented Applicant. Assistant Solicitor Kevin M. Hope, Esquire, prosecuted the case. On May 12, 2017, Applicant pleaded guilty as indicted to all charges before the Honorable Michael G. Nettles. Pursuant to a negotiated sentence between Applicant and the State, Judge Nettles sentenced Applicant to imprisonment for concurrent terms of twelve years for felony DUI involving great bodily injury and eight years for felony DUI involving death. Applicant did not appeal his convictions or sentences.

Attached to this Return and incorporated by reference are the records of the Marion County Clerk of Court regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, the plea transcript, and the application. Respondent reserves the right

to amend this Return upon receipt of any relevant materials.

II.

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

1. "Ineffective Assistance of Counsel," in that:
 - a. "I felt my legal counsel was inadequate. The evidence of facts of my case were not investigated thoroughly and I was not allowed to view my motion."
 - b. "There was a conflict of interest with my lawyer and prosecutor involved in my sentencing. Among other things, the solicitor had a family involvement in my case as well as a friendly history my attorney."

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. 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 "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. First, Applicant must prove 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). 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 Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

“An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant’s.” Staggs v. State, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007). The South Carolina Supreme Court has further stated that a conflict of interest occurs when “a defense attorney places himself in a situation inherently conducive to divided loyalties.” Lomax v. State, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008). Until a defendant shows his counsel actively represented conflicting interests, he has not established the constitutional predicate for a claim of ineffective assistance of counsel arising from multiple representation. Langford v. State, 310 S.C. 357, 359, 426 S.E.2d 793, 795 (1993) (citing Cuyler v. Sullivan, 446 U.S. 335, 350 (1980)); see also Burger v. Kemp, 483 U.S. 776, 783 (1987). “The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction.” State v. Gregory, 364 S.C. 150, 152–53, 612 S.E.2d 449, 450 (2005).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, 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 must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR 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 been appointed an attorney, the attorney, and not Applicant, is the only person authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR 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.

V.

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

VI.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel.

{This space intentionally left blank.}

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LINDSEY MCCALLISTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

6/22, 2018

State of South Carolina) In the Court of Common Pleas
County of Florence) Twelfth Judicial Circuit
2018-CP-33-0261

JOHNNY RAY WALKER,)
)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 THE STATE OF SOUTH CAROLINA,)
)
 Defendant.)
)
)
)
 _____)

Florence, South Carolina
November 7, 2018

B E F O R E:

The Honorable D. Craig Brown

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

Mr. Samuel Key, Esquire
Attorney for Plaintiff

Mr. Jonathan D. Waller, Esquire
Attorney for Defendants

LISA S. CARTER
CIRCUIT COURT REPORTER

I N D E X

WITNESSESPAGE

Johnny Walker:

Direct Examination by Mr. Waller

7

Cross-Examination by Mr. Key

26

Henry Anderson:

Direct Examination by Mr. Key

28

Cross-Examination by Mr. Waller

32

Redirect Examination by Mr. Key

36

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>EV.</u>
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(NO EXHIBITS INTRODUCED DURING HEARING)

1 THE COURT: All right. Is the State ready to
2 proceed?

3 MR. KEY: Yes, sir, Your Honor.

4 THE COURT: Call your case.

5 MR. KEY: At this time the State would call the
6 case of Johnny Ray Walker versus the State of South Carolina.
7 Case number 208-CP-33-261. Mr. Walker is presently confined
8 in the South Carolina Department of Corrections pursuant to
9 orders of commitment of the Marion County Clerk of Court. In
10 May of 2016 the Marion County Grand Jury indicted Mr. Walker
11 for felony driving under the influence involving death and
12 felony DUI involving great bodily injury. He was represented
13 by Mr. Hank Anderson. On May 12, 2017, Mr. Walker pled
14 guilty as indicted to all charges before the Honorable
15 Michael Nettles pursuant to a negotiated sentence between Mr.
16 Walker and the State. Judge Nettles sentenced Mr. Walker to
17 imprisonment for concurrent terms of twelve (12) years for
18 felony DUI involving great bodily injury and eight (8) years
19 for felony DUI involving death. Mr. Walker did not appeal
20 his convictions or sentences. In his application for post-
21 conviction relief Mr. Walker alleges that he's been held in
22 custody unlawfully for the following reasons: ineffective
23 assistance of counsel and, specifically, he states that he
24 felt his legal counsel was inadequate of the advice of facts
25 of his case were not investigated thoroughly and I was not

1 allowed to view his motion. He also alleges that there was
2 a conflict of interest with his lawyer and the prosecutor
3 involved in his sentencing. Among other things the solicitor
4 had a family involvement in my case as well as a friendly
5 history with my attorney. He is represented today by Mr.
6 Johnathan Waller.

7 THE COURT: Mr. Waller?

8 MR. WALLER: Your Honor, Mr. Walker just informed me
9 that he wishes to make a motion to the court to have me
10 relieved.

11 THE COURT: Mr. Walker, if you'd stand. Raise your
12 right hand. Do you swear to tell the truth, the whole truth,
13 nothing but the truth so help you God?

14 MR. WALKER: Yes, sir.

15 THE COURT: Let me hear from you. Your lawyer says
16 you want him relieved.

17 MR. WALKER: Yes, sir. Well, you see the whole point
18 of this is, um, see he hasn't even showed me my motion of
19 discovery. He came to see me two weeks ago right before this
20 and told me that we was coming to court and told me all it
21 was, was I was coming here to say I'd rather or not I wanted
22 to continue with my PCR or not. Then he sends me a letter
23 that I've got right here they're saying, that I got on
24 November 1st, saying that I'm coming for an evidentiary
25 hearing which means I'm supposed to present evidence to

1 y'all, right?

2 THE COURT: It's your burden. It's your case.

3 MR. WALKER: Okay. So, yes, I need -- I need my Rule
4 5, my motion which has the evidence I'll need to present to
5 y'all and I still haven't got that. So I have filed a motion
6 to get that paperwork. I got it notarized. I've had it sent
7 off. He will be getting a copy and the solicitor's office
8 will be getting a copy. So I need a continuance and he told
9 me he will not give me a continuance. So, therefore, my
10 motion to relieve him if possible, sir.

11 THE COURT: All right. Mr. Waller, you've met with
12 Mr. Walker?

13 MR. WALLER: I have, Your Honor.

14 THE COURT: Are you ready to proceed?

15 MR. WALLER: I am, Your Honor.

16 THE COURT: You have all the information that you
17 believe necessary to proceed with this case?

18 MR. WALLER: I do, Your Honor. I'm not entitled to
19 all the discovery materials that were provided in the
20 criminal case and as the court is aware in a PCR case, but I
21 can get order from the court, I don't have subpoena power or
22 the power to conduct discovery and I didn't think discovery
23 motion was appropriate in this case, Your Honor.

24 THE COURT: So you believe you have enough and ready,
25 prepared to go forward here today?

J. Walker- Direct Examination by Mr. Waller

7

1 MR. WALLER: I do, Your Honor.

2 THE COURT: All right. Mr. Walker, I'm respectfully
3 denying your request to relieve Mr. Waller as your lawyer.
4 We're going to proceed here with your case today. Mr. Waller
5 call your first witness.

6 MR. WALLER: Thank you, Your Honor. I'd call Johnny
7 Ray Walker.

8 THE COURT: All right. I swore him in while he was
9 standing over there. I'll remind you you're still under
10 oath. Take a seat please, sir. State your full name for the
11 record?

12 MR. WALKER: Johnny Ray Walker, Jr.

13 MR. WALLER: Thank you, Your Honor. May it please,
14 the Court?

15 JOHNNY RAY WALKER, JR., first
16 being duly sworn, testified as follows:

17 **Direct Examination by Mr. Waller:**

18 Q. Good morning, Mr. Walker.

19 A. Good morning.

20 Q. All right. Mr. Walker I want to -- where are you from?
21 Where were you living?

22 A. Gastonia -- well, Stanley, North Carolina.

23 Q. Okay. And you were arrested with some criminal charges
24 in South Carolina, is that right?

25 A. Yes, sir.

1 Q. Okay. You hadn't moved to South Carolina, you were just

2 ---

3 A. I was taking a couple buddies to the beach with me.

4 Q. Okay. And you were involved in a traffic accident?

5 A. Yes, sir.

6 Q. Okay. And you were -- what were you arrested for?

7 A. A felony DUI involving great bodily injury and felony
8 DUI involving death.

9 Q. Okay. And so two separate charges?

10 A. Yes, sir.

11 Q. Okay.

12 A. Under the same indictment.

13 Q. Under the same indictment. Were they ---

14 A. Yes.

15 Q. Was the great bodily injury and the death in the same
16 vehicle or how did that work?

17 A. No. See the great bodily injury was what the arrest
18 warrant states was for Ranisha Eddie (sic) which was the
19 driver of the other car ---

20 Q. Okay. So ---

21 A. --- and what you, these indictments that you showed me
22 says that the great bodily injury is for my buddy, Lee, that
23 was in the passenger seat of my Mustang and that died.

24 Q. Okay. So let me make sure so the judge is clear and the
25 judge understands. There was an accident, a car being driven

J. Walker- Direct Examination by Mr. Waller

9

1 by you with another vehicle, is that right?

2 A. Yes, sir.

3 Q. And the woman driving the other vehicle was injured?

4 A. Yes, sir.

5 Q. And then a passenger in your vehicle was killed?

6 A. Yes, sir.

7 Q. Okay. Were there any other passengers in your vehicle?

8 A. Yes, sir.

9 Q. There was?

10 A. Yes, sir.

11 Q. How many other ones?

12 A. There was Chris. There was one other passenger, Chris,
13 in the backseat of my car.

14 Q. Okay. So you and two passengers in your vehicle?

15 A. Yes.

16 Q. Okay. Did the other passengers sustained any injuries?

17 A. Yes. He was thrown out of the car. He was asleep in
18 the backseat and thrown out the car, out the back of the car
19 and I think he had a scar on his four head, bit through his
20 bottom lip and said to have broke his arm.

21 Q. Okay. How about you, did you have any injuries?

22 A. I broke my sternum straight down the middle. Broke all
23 of my right ribs. Punctured my lung, my right lung. Broke
24 both of my legs, my fingers. I broke my hip, my left hip.
25 Broke my right knee cap. Crushed my right heel bone. I

1 think that's about it.

2 Q. I'm going to assume that you were transported to the
3 hospital?

4 A. Yeah.

5 Q. Okay. Is that a yes?

6 A. Yes.

7 Q. Okay. Were -- how long were you in the hospital?

8 A. Almost a month, about twenty something days.

9 Q. Okay. And when you -- when you were released from the
10 hospital, were you just at home? Were you arrested by law
11 enforcement?

12 A. I was never arrested by law enforcement.

13 Q. Okay.

14 A. And I was actually charged with a regular DUI. Later
15 down the road, then, I had to go to court, I think that
16 following October, after the wreck and they, the officer told
17 me if I didn't plead guilty to it, to the charge, that he
18 would drop that charge and then put felony charges on me. So
19 I thought he was up to something and everything, you know,
20 so I, I went in the courtroom and told them 'not guilty'. So
21 he throws the case out and then gives me felony charges and
22 then comes and arrested me the following December after
23 Christmas and so ---

24 Q. Okay.

25 A. So, therefore, I was never under arrest for them to get

J. Walker- Direct Examination by Mr. Waller

11

1 any blood work that they said they had when I was in the
2 hospital ---

3 Q. Okay. Let's ---

4 A. --- if they had no warrant that violates my Fourth and
5 Fifth Amendment of due process.

6 Q. Okay. Let me make sure I'm clear on the time line here.
7 Okay. You were in the hospital in the summer of 2015?

8 A. Yes, sir.

9 Q. Okay.

10 A. July 9, 2015 ---

11 Q. And you were served with ---

12 A. --- when the wreck happened.

13 Q. --- just a ticket for DUI or was it a warrant?

14 A. Just a ticket.

15 Q. Just a ticket, okay. So you're at least in the hospital
16 about twenty days or a month, you said, and you were not
17 arrested for the felony DUI's at that time?

18 A. No, sir.

19 Q. And you had a court appearance in magistrate's court,
20 would that be right?

21 A. Yes, sir. And they was -- it was at the Marion County
22 jail house.

23 Q. Okay.

24 A. And they told me I cannot have a lawyer. I was not able
25 to have a lawyer ---

1 Q. All right.

2 A. --- for this regular DUI since it was ---

3 Q. A low level offense?

4 A. Yeah.

5 Q. Was it in the small little courtroom in the jail house?

6 A. Yeah.

7 Q. All right. And so you pled not guilty at that time, is
8 that right?

9 A. Right. Yes, sir.

10 Q. Okay. And your case didn't get resolved that day, you
11 went on about your business?

12 A. Yes, sir.

13 Q. And sometime later you were served with an indictment or
14 an arrest warrant?

15 A. Well, they just showed up at my fiancé's house. I was--
16 shortly -- like a couple of days short after Christmas and
17 just to arrest me. They arrested me. They took me to Gaston
18 County Jail and then South Carolina come to pick me up.

19 Q. Okay. You arrested -- so that was in 2015 or 2016 that
20 you were arrested?

21 A. It was 2015.

22 Q. Okay. So about six months later?

23 A. Yeah.

24 Q. Okay.

25 A. Yes, sir.

J. Walker- Direct Examination by Mr. Waller

13

1 Q. Who was your attorney on the felony DUI charges?

2 A. Henry Anderson.

3 Q. Okay. How did he come to be your attorney? Did you
4 hire him or was he appointed to represent you?

5 A. He was appointed to represent me.

6 Q. Okay. When -- were you able to make bond and go back to
7 North Carolina or were you in jail down here in South
8 Carolina?

9 A. I made bond.

10 Q. Okay. So I'm not too familiar, how far is Gastonia from
11 Marion?

12 A. About three hours.

13 Q. Okay.

14 A. Yeah, a little over.

15 Q. And were you and Mr. Anderson able to talk about your
16 case at all?

17 A. Not really. I'd just see him when I went to court and
18 see when I went to court he, the week of my trial, he stood
19 up and told the judge that we'd come to an agreement on a
20 plea that I knew nothing about.

21 Q. Okay.

22 A. But then we went downstairs, there's another courtroom
23 in Marion and he told me about the plea and he told me to
24 talk to my dad and we would talk about it more the following
25 Friday of that week. So I did and he told me I needed to

1 come back down here and be prepared to go to court in Marion
2 and to take the plea -- to talk about the plea that following
3 Friday. So I go down there that Friday and he tells me I
4 need to sign this plea of the eight (8) or twelve (12) years.
5 I tell him no, I'm not taking this eight (8) to twelve (12)
6 years. I'll take five (5). I'm not going to take this.
7 And, by the way, where is my motion to discovery? You
8 haven't showed me no evidence and showed me that you even
9 have any blood work and why should I take a guilty plea if
10 you have no evidence? So he throws a bunch of blank disc on
11 the table and says, there's your motion. I said, what's
12 that? I said, I haven't looked at that. He says, I have.

13 Q. Okay. Let me slow you down and let me back you up just
14 a little bit. So how long after he was appointed to
15 represent you until what you were just talking about took
16 place?

17 A. It had been about a year and a half.

18 Q. Okay. So about a year and a half. During that year and
19 a half you said you would see him when you would come to
20 court, did y'all have a chance to meet and go over the
21 discovery in your case before last throw of the disc?

22 A. No. He just -- he just told me that they had some blood
23 work. That's the only thing he's ever told me.

24 Q. Did y'all ever discuss any of the discovery in your
25 case?

J. Walker- Direct Examination by Mr. Waller

15

1 A. No.

2 Q. Did you ever see any copies of any blood work that they
3 may have had?

4 A. No, sir.

5 Q. Did you ever see any copies of what's called a MAIT
6 report or any accident reconstruction they may have had?

7 A. No, sir.

8 Q. Did you ever see any of your hospital records?

9 A. No, sir.

10 Q. Okay. Were you -- your injuries you said before, you
11 able to give a breathalyzer test?

12 A. No, sir.

13 Q. Do you know if blood was drawn from you while you were
14 in the hospital for your treatment?

15 A. That is -- that is patient/physician confidentiality.

16 Q. Okay. Did you and Mr. Anderson ever discuss any blood
17 being drawn while you were in the hospital?

18 A. No. He just told me that they did. That they had, that
19 they had put in for some blood work or to get results for my
20 blood work and that they come back, that my blood alcohol
21 level came back a .20. But they would never show me physical
22 evidence of this.

23 Q. Okay. Did you ever see any search warrant for law
24 enforcement to get any of that blood?

25 A. No, sir.

1 Q. Do you know if it was tested by the hospital or tested
2 by law enforcement?

3 A. I do not know.

4 Q. Do you know if it was drawn for your medical treatment
5 or if it was drawn for investigative purposes in this case?

6 A. I -- I -- you told me two weeks ago that ---

7 Q. Hold on ---

8 A. --- how they would've got it ---

9 Q. Hold on, Mr. Walker, I need you to just answer my
10 question. Do you know, when you were being represented by
11 Mr. Anderson, whether your blood was drawn to treat your
12 injuries or ---

13 A. They never told me who drew it.

14 Q. Okay. Did y'all ever discuss any of those things?

15 A. No, sir.

16 Q. Okay. Did you give a statement in this case to law
17 enforcement?

18 A. No, sir.

19 Q. Okay. Did the other surviving passenger in your vehicle
20 give a statement to law enforcement?

21 A. Not that I'm -- I'm not sure. I've heard that he did
22 but I've never seen ---

23 Q. Okay.

24 A. --- such a thing.

25 Q. Mr. Walker, did you give Mr. Anderson -- did you tell

J. Walker- Direct Examination by Mr. Waller

17

1 Ms. Anderson you wanted to go to trial?

2 A. If he would showed me the motion and everything -- but
3 he told me if I took it to trial we would go to trial that
4 following week that they had the jury, they would be picked
5 out and everything, that we would go to trial the following
6 week and it would be in front of a judge who had their kid
7 killed by a drunk driver so I wouldn't have much of a chance
8 so I would get twenty-five (25) years.

9 Q. Okay. So why, tell the judge why you went from wanting
10 a trial to what changed for you to ultimately to plead
11 guilty?

12 A. The fact that I would get twenty-five (25) years if I
13 tried to fight for not guilty.

14 Q. Okay. Did you think that Mr. Anderson was prepared to
15 go to trial?

16 A. Now that I look back, no.

17 Q. Okay. Were you able to understand the evidence that the
18 State had against you?

19 A. No, sir.

20 Q. Were you able to help Mr. Anderson to prepare for your
21 defense?

22 A. No, sir.

23 Q. Did you know anything about the actual wreck?

24 A. I -- I don't remember the impact.

25 Q. Well, let me ask you this, did you and Mr. Anderson ever

1 talk about the wreck?

2 A. Yes. Well, see I didn't really -- it took me forever to
3 really actually look back and remember kind of what happened
4 and stuff. But at the time -- at the time I could remember
5 nothing. Because after the wreck, I mean, my friend just
6 died and

7 Q. Yes, sir, I understand. I understand. In the year and
8 a half that Mr. Anderson represented you, did you ever
9 provide him with any information about the wreck that was
10 different than what law enforcement said happened?

11 A. No, sir.

12 Q. Did you ask him to conduct an investigation as to how
13 the wreck took place for y'all's defense so you could show
14 that it was different than what law enforcement said it was?

15 A. He told me that these black boxes said this and
16 everything. But see I was shown the first, the first
17 original incident report showed that the wreck was the other
18 driver's fault. And then also they came out after, after
19 they said they had an investigation of what these black boxes
20 said that was under the driver seats of the cars, they come
21 out saying that the wreck was my fault and that I crossed
22 over in this woman's lane. She crossed over in my lane and
23 then I went back into my lane and hit her.

24 Q. Okay. So the State's theory in the case was that
25 crossed over the centerline into, into her lane, she was

J. Walker- Direct Examination by Mr. Waller

19

1 coming towards you, is that right?

2 A. Yes, sir.

3 Q. And that she -- after you crossed over, she crossed over
4 the other way?

5 A. Yeah, like ---

6 Q. She was trying to pass you on the left?

7 A. Yeah.

8 Q. Okay.

9 A. She was trying -- I was in my lane on the right, she was
10 in her lane. They're saying that I went over into her lane
11 on the left and then she went on her left, yeah ---

12 Q. So she went left too to try to miss you ---

13 A. Yeah ---

14 Q. --- and you went back is what they're saying ---

15 A. And that's what they're saying is I went back.

16 Q. Okay.

17 A. But then that week of my trial when he tried to get me
18 to sign this plea he shows me another way saying how this
19 wreck -- All right, they're saying the wreck happened this
20 way, which both cars was going 55 mph. Both cars crossed the
21 double yellow lines at the same time. That the only
22 difference was, was I was drinking. So I threw it -- so I
23 gave it back to him, I said there ain't no way. There's no
24 way that could happen. You're telling me -- y'all saying --
25 y'all was saying this is how it happened after y'all

1 investigated all of this. But now you're saying that it was
2 both of the driver's fault but the only difference was, was
3 I was drinking so that just makes the wreck my fault.

4 Q. Okay. What was Mr. Anderson's response to that?

5 A. Okay. We'll go back to this one then. He goes back to
6 the original words to it's completely my fault where I
7 crossed over in the lane.

8 Q. Okay. So y'all had some confusion as to what was ---

9 A. How the wreck actually happened.

10 Q. How the wreck actually happened, okay. I'm going to ask
11 you again, Mr. Walker, what changed and why did you
12 ultimately plead guilty?

13 A. Because he kept telling me if I fought it that I would
14 get twenty-five (25) years.

15 Q. Did y'all discuss the fact that by pleading guilty you
16 will be waiving your right to a jury trial?

17 A. He didn't discuss none of that stuff with me. He just
18 kept telling me I would get twenty-five (25) years and we
19 would be going to jury trial the following week.

20 Q. Okay.

21 A. He never really discussed any rights with me or what
22 taking a violent plea would be, like, anything about the
23 eighty-five, sixty-five percent. When they told me I got
24 twelve (12) years, I thought I got twelve (12) years until I
25 got to prison and then everybody else explain this to me.

J. Walker- Direct Examination by Mr. Waller

21

1 Q. Okay. Did you -- some of the other rights and I'm going
2 to go through these one by one with you, did y'all talk
3 about, about by pleading guilty you're waiving your right to
4 remain silent?

5 A. No.

6 Q. Did you talk about that you are waiving the right to
7 challenge the State's evidence against you?

8 A. No, sir.

9 Q. Did you talk about the right that by pleading guilty
10 you're waiving the right to confront any witnesses the State
11 might have?

12 A. No, sir.

13 MR. WALLER: I beg the Court's indulgence?

14 THE COURT: All right.

15 Q. Mr. Walker, you said that you were originally charged
16 with a, just a regular run-of-the-mill driving under the
17 influence, would that have been a first offense, do you know?

18 A. Yes, sir.

19 Q. Okay. Did you have a chance to talk to Mr. Anderson
20 about the fact that you had been previously charged with just
21 a regular DUI?

22 A. Yes. And I asked him about the double jeopardy thing
23 and they said since I did not plead guilty to that DUI that,
24 therefore, doesn't put me under the double jeopardy law.

25 Q. Did you, while you were represented by Mr. Anderson and

1 you were approximately three hours away, did y'all have an
2 opportunity to talk on the phone at all?

3 A. No, sir. The only time I've ever talked to him on the
4 phone was when he told me I needed to come back to court the
5 Friday of my trial.

6 Q. Okay. The arrest warrant for you, you said after the
7 investigation you were deemed to have caused the accident the
8 accident, did y'all ever discuss the investigation?

9 A. No. How I figured out about what the black boxes said
10 and everything was by my buddy's stepdad told me when I was
11 at, the other passenger or that was in my car, Chris Domner
12 (sic), when I was at his house my buddy, Jerry Lee Norris's
13 stepdad, came and talked to me and he told me that they had
14 a report saying that I was doing 79 ---

15 MR. KEY: Objection, Your Honor.

16 A. I was doing seventy ---

17 THE COURT: Hold on. Hold on.

18 MR. KEY: I believe this is all hearsay.

19 THE COURT: I don't disagree with you but I'm going
20 to allow him to answer the question.

21 MR. KEY: Yes, sir.

22 Q. Continue Mr. Walker.

23 A. But he told me that they said that the black boxes and
24 stuff that Hank was telling him about that I was doing 79 mph
25 and the other woman, the woman was going 81 mph.

1 Q. Let me stop you right there and let me ask you this way.
2 When Mr. Anderson gave you the discs, how long before -- how
3 long was that before your trial was supposed to take place?

4 A. He never -- he never gave me anything. He just threw
5 the discs on the table and that was right before we walked
6 into the courtroom.

7 Q. Okay.

8 A. And said there's your motion.

9 Q. Okay. So did you have an opportunity to review those?

10 A. No, sir.

11 Q. Okay. Since that day have you had a chance to -- have
12 you become aware of what some of those discs might have said,
13 some of the reports and things like that?

14 A. No, sir.

15 Q. Okay. Just were talking about the black box, you became
16 aware of some of the information provided from those?

17 A. Yeah. They stated in my transcripts.

18 Q. Okay.

19 A. And they was talking about the black box and everything
20 but they never showed me, he could never showed me this
21 evidence that the black boxes actually said this and that's
22 another reason why I was asking for my motion.

23 Q. Okay. The year and a half that he represented you prior
24 to your plea, did you ever request for a copy of your
25 discovery materials?

1 A. No, sir.

2 Q. Okay. Since that time, since your conviction, have you
3 requested a copy of that?

4 A. Yes, sir. See, I've actually wrote a letter to the
5 solicitor's office before I knew how I was supposed to go
6 about this, now. Okay. I just wrote them a regular letter.
7 Wrote the solicitor's office asking for my Rule 5 and I wrote
8 Hank, Henry Anderson, a regular letter asking could he send
9 me my motion for discovery. Well, I never got a response.
10 Okay. So now I've actually been doing, ever since you come
11 to see me two weeks ago I started getting into the law
12 library and doing a little research and that's when I found
13 out about sending, about filing a motion to get my motion for
14 discovery and my Rule 5.

15 Q. Okay. So you have requested it since then from Mr.
16 Anderson but you got no response?

17 A. Yes, sir.

18 Q. Okay. Mr. Walker, I think I've asked you all the
19 questions that I have for you. Is there anything that you
20 think I've left out or neglected to ask and the judge needs
21 to be aware of Mr. Anderson's representation of you, not the
22 facts of the case, but his representation of you.

23 A. Okay. See the thing is I'm not here to get my case
24 overturned or anything, okay. When me and Mr. Anderson was
25 talking and everything about taking this plea and everything

1 when he threw them discs on the table before I was going into
2 court, the prosecutor which they say his name is Kevin Hope,
3 came into the room where we was talking and stuck his head in
4 and said, you know what I think this is going to go better
5 than I thought. The family is not against him. They just
6 want him to take this time to better himself and everything
7 and not just ---

8 Q. Mr. Walker, let me stop you ---

9 A. They told me I would get five (5) years.

10 Q. Okay. Mr. Walker, let me ---

11 A. And so Henry slid this paper -- I said, okay I'll take
12 five (5) years and he slid the paper to me to sign and
13 tricked me into signing that eight (8) year to twelve (12)
14 year plea.

15 Q. Mr. Walker, let me ask you this, as far as, not about
16 sentencing, but as far as the conviction you actually pled
17 guilty, not the sentence you received ---

18 A. Yeah.

19 Q. --- is there anything else that led you to plead guilty,
20 just testified a few minutes ago that you wanted to go to
21 trial, what changed and why did you plea, not the sentence
22 you got, but why did you enter a plea of guilty to these
23 charges? What changed?

24 A. I took -- because he told me I would -- the prosecutor
25 told me I would get five (5) years.

1 Q. Okay. Is there anything else about Mr. Anderson's
2 representation that you need to let the judge know about?

3 A. I just -- when I tried, it's not in the transcript --
4 when I was in court and the judge asked me how do I plea, I
5 pled guilty. So I tried to tell the judge, Your Honor, I've
6 been shown three different ways how this wreck happened and
7 Henry told me, "Johnny, I told you we're pleading guilty,
8 we're pleading all the way guilty," and I just shut up and
9 said guilty.

10 Q. Okay. So you still have issues, you still didn't
11 understand how the wreck actually happened and you've never
12 been shown how the State intended to prove the wreck actually
13 happened?

14 A. Yes, sir.

15 MR. WALLER: Please answer any questions Mr. Key has
16 for you.

17 THE COURT: Cross-examination?

18 **Cross-Examination by Mr. Key:**

19 Q. Mr. Walker, do you remember being sworn in at your
20 guilty plea hearing?

21 A. Yes, sir.

22 Q. You do, okay. Do you remember Judge Nettles explaining
23 to you your rights if you were to go to trial?

24 A. I can't really say I can. I know in my transcript that
25 he asked me all these questions.

H. Anderson- Direct Examination by Mr. Key

27

1 Q. He did ask you these questions?

2 A. Yes.

3 Q. Okay. And you answered, yes, sir, that you understood?

4 A. Yes, sir.

5 Q. Do you remember Judge Nettles asking you if you were
6 guilty?

7 A. Yes, sir.

8 Q. How did you respond?

9 A. Guilty. And then he went on asking the prosecutor's
10 questions and then he asked me again whether I was guilty
11 again.

12 Q. And how did you respond to then?

13 A. Guilty.

14 Q. Do you remember -- do you remember Judge Nettles asking
15 you if you were driving under the influence that night?

16 A. Yes, sir.

17 Q. Okay. And how did you respond?

18 A. Yes.

19 Q. Yes, okay.

20 A. Because I had taken a guilty plea.

21 Q. Do you ---

22 MR. KEY: No further questions.

23 THE COURT: Any redirect?

24 MR. WALLER: Nothing further, Your Honor.

25 THE COURT: Sir, you may step down. Thank you. I'm

1 going to stand down just a minute. You gonna call Mr.
2 Anderson?

3 MR. WALLER: I was going to Mr. ---

4 THE COURT: Okay. I'm gonna stand down just a second.

5 MR. WALLER: Thank you, Your Honor.

6 MR. KEY: Thank you.

7 (Whereupon, the court took a short break)

8 THE COURT: Thank you. Be seated please. I
9 apologize. I had to return a phone call. It took longer than
10 expected. Is the State ready to proceed?

11 MR. KEY: Yes, sir, Your Honor.

12 THE COURT: Mr. Waller?

13 MR. WALLER: Yes, sir, Your Honor. Anything else from
14 you, Mr. Waller?

15 MR. WALLER: Nothing further.

16 THE COURT: All right. Mr. Key, you're recognized.

17 MR. KEY: Sir, at this time the State would call
18 Mr. Hank Anderson.

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

21 MR. ANDERSON: I do.

22 THE COURT: Mr. Key?

23 HANK ANDERSON, first being
24 duly sworn, testified as follows:

25 Direct Examination by Mr. Key:

H. Anderson- Direct Examination by Mr. Key

29

1 Q. Good morning, Mr. Anderson, how are you doing?

2 A. Doing fine. Thank you.

3 Q. Thank you for being here. Mr. Anderson, were you
4 appointed or retained to represent Mr. Walker?

5 A. I was appointed to represent Mr. Walker.

6 Q. And do you -- did you receive any discovery from the
7 State in this case?

8 A. Yes, sir, I did.

9 Q. And were you able to review that discovery?

10 A. Yes, sir.

11 Q. Can you recall what the discovery in this case was?

12 A. Yes, sir. There was a disc from the MAIT Team and we
13 printed it off. I reviewed it and then we printed it off and
14 I reviewed it after we printed it. I like to see stuff in
15 black-and-white rather than on a computer.

16 Q. And you went over that discovery with Mr. Walker?

17 A. Yes, sir.

18 Q. Did you -- did you enter into a plea negotiations for
19 Mr. Walker?

20 A. Yes, sir, I did.

21 Q. Do you recall what the plea offers work?

22 A. Originally, the State was having a very hard time
23 connecting the dots on the chain of custody for the blood
24 case. I actually have several emails between Mr. Hope and
25 Sonny Barnes, who was legal counsel from McLeod's. And at

1 first Sonny said, you know, I don't think we can find it. At
2 that time, I was pushing Kevin Hope hard to try and get a
3 plea worked out because I knew I had him at a disadvantage.
4 I couldn't never get it done. Later Kevin Hope, the
5 prosecutor, indicated to me that the young man who that was
6 deceased, his family was pretty bent out of shape. They were
7 very aggravated with Mr. Walker. And so I wasn't real sure
8 what was going to happen at that point in time. The best
9 thing that Kevin would do, by Kevin, I mean, Mr. Hope, was
10 recommending concurrent and let me pick the judge.

11 Q. And did you convey the plea offer to Mr. Walker?

12 A. Yes, sir.

13 Q. Did you advise him to take the plea offer?

14 A. Eventually, we got put on the trial roster and it was
15 either enter a plea or go to trial. Usually the trial roster
16 falls apart. Maybe one case will go or maybe two cases will
17 go but, eventually, it falls apart and with Mr. Hope needing
18 certain doctors there and nurses and highway patrolmen, I
19 mean, if we hadn't entered a plea the first week, we were
20 definitely going to try it the second week.

21 Q. Did you -- were you prepared to go to trial in this
22 case?

23 A. Yes, sir.

24 Q. Did you and Mr. Walker discuss any defenses that you
25 would've or any defenses you would have used at trial?

H. Anderson- Direct Examination by Mr. Key

31

1 A. We really didn't discuss defenses. He and I talked
2 about the case a few times. With him living in North
3 Carolina usually I was able to get him excused. I met with
4 him in, I think, March of 2016 and we talked about it. Then
5 we met again in July of '16. Then we met in May of '17 and
6 he and I talked on the phone a few times. I gave him my
7 office number in Florence and he called me in Florence I
8 think three or four times and we talked about the case a
9 couple of times over the phone.

10 Q. Yes, sir. So did you have enough time to speak with Mr.
11 Walker to prepare for trial?

12 A. Yes, sir.

13 Q. Did you discuss with Mr. Walker all of his
14 constitutional rights or what the State would have to prove
15 if he went to trial?

16 A. Yes, sir.

17 Q. Okay. Did you discuss the collateral consequences if he
18 had gone to trial?

19 A. Yes, sir.

20 Q. And you discussed -- I'm sorry, I just asked that. Did
21 Mr. Walker ever bring up an issue of double jeopardy with
22 you?

23 A. I think he may have mentioned it to me in 2016. The
24 problem was we didn't get appointed to him until after, long
25 after that had already happened.

1 Q. Yes, sir. Now, did Mr. Walker want to go to trial or
2 did he want to take a plea?

3 A. My phone records from Florence indicate that he called
4 me and said if he could get five (5) years he would take a
5 plea.

6 Q. Was five (5) years ever offered?

7 A. No, sir.

8 Q. And if five (5) years was offered, would you have
9 conveyed that to Mr. Walker?

10 A. Yes, sir. I would've strongly urge that he take it if
11 it would've been offered.

12 MR. KEY: No further questions. Thank you.

13 THE COURT: Mr. Waller?

14 MR. WALLER: Thank you, Your Honor. May it please,
15 the Court?

16 **Cross-Examination by Mr. Waller:**

17 Q. Mr. Anderson, you talked about the State had some chain
18 of custody issues?

19 A. Yes, sir.

20 Q. What do you -- what were the issues?

21 A. The email that I have from Kevin Hope was to Sonny
22 Barnes and Kevin actually sent it to me in my Florence office
23 but I forwarded to Molly and the response was from Sonny
24 Barnes and it said, "Kevin, our medical records department
25 brought me your subpoena that you issued in the above matter

H. Anderson- Cross-Examination by Mr. Waller

33

1 and asked me to respond to them your subpoena and request a
2 chain of custody of lab work done for the defendant.
3 Unfortunately, we do not track chain of custody for medical
4 testing. Specimens are handled by multiple people and are
5 sometimes even sent through a tube system. As such we do not
6 have any documents responsive to your subpoena." And when I
7 got that in October of 2016 that's when I started trying to
8 get Mr. Hope to work something out because without that he
9 did not have much of a case.

10 Q. Okay. What was the resolution to that issue?

11 A. Kevin is a lot smarter than I am. He went to McLeod's
12 and met with various people and eventually was able to get
13 everyone that he needed to get that blood into custody.

14 Q. Okay. Do you know ---

15 A. I mean, excuse me, into evidence.

16 Q. Okay. Do you know if a search warrant was ever issued
17 for that blood?

18 A. No, sir, it was not.

19 Q. Do you know if the blood was ever, was drawn for medical
20 purposes or for investigative purposes?

21 A. It was drawn for medical purposes is my understanding.

22 Q. Did you do any research as to the difference?

23 A. Yes, sir.

24 Q. Okay. And what were your conclusions, I guess?

25 A. My conclusion was that they would've been able to get it

1 in if they could have gotten the various people there.

2 Q. Okay. Did you do any research as to the differences in
3 the testing of someone that may be tested by law enforcement
4 versus tested for medical purposes?

5 A. Yes, sir.

6 Q. Did you have a chance to discuss all that with Mr.
7 Walker?

8 A. I did not discuss with him everything that I did but I
9 did tell him that I thought they could get it into evidence.

10 Q. Okay. Did anything about his blood alcohol level --
11 would the differences in the testing procedures make enough
12 difference to bring him below threshold?

13 A. No, sir.

14 Q. Mr. Walker testified about three different or multiple
15 different theories of the way the accident happened, were
16 there more than one accident reconstructions or theories in
17 the way the crash took place?

18 A. My review of the notes was that it just happened one
19 way.

20 Q. Okay. Did you and Mr. Walker ever discuss his version
21 of the events to potentially develop a different theory of
22 defense?

23 A. He -- my recollection was he didn't remember exactly how
24 the accident happened. He thought he had overcorrected. But
25 he was adamant that, you know, the lady hit him in his lane

H. Anderson- Cross-Examination by Mr. Waller

35

1 and we went over the MAIT report and I said, you know,
2 according to this report she wasn't in your lane.

3 Q. Okay. Did you and Mr. Walker ever discuss potentially
4 retaining an expert in accident reconstruction?

5 A. No, sir, we did not.

6 Q. Did you have any questions as to the accuracy of the
7 MAIT report?

8 A. I did not. I knew a few of the officers on the MAIT
9 team and I reached out to them and discussed it with them and
10 I, it is my understanding they did everything that was
11 supposed to do.

12 Q. Okay. Mr. Walker pled approximately a week before he
13 was scheduled to go to trial?

14 A. Yes, sir.

15 Q. Where were you in your preparations for trial? Had you
16 fully prepared or did you have enough time to prepare had you
17 needed to go to trial?

18 A. I would've spent the rest of the weekend getting ready.
19 I would've prepared cross-examination for the MAIT Team and
20 I probably would've worked on an opening statement. Other
21 than that, we were prepared to go.

22 MR. WALLER: I beg the Court's indulgence please?

23 THE COURT: Yes, sir.

24 MR. WALLER: Thank you, Mr. Anderson. No further
25 questions.

1 THE COURT: Any redirect?

2 MR. KEY: Briefly, Your Honor.

3 THE COURT: All right.

4 **Redirect Examination by Mr. Key:**

5 Q. Mr. Anderson, did you see any need for an accident
6 reconstruction expert?

7 A. I mean, accident reconstruction experts are helpful. I
8 have found that MAIT does a very good job. Those guys are
9 very highly trained. I've been in trial with them before.
10 I've used them before for my purposes and I've also seen them
11 in civil trials before testifying. At this point in time
12 based on what I saw I did not see the need for an accident
13 reconstruction expert.

14 Q. Mr. Waller asked you about the chain of custody?

15 A. Yes, sir.

16 Q. Did you come up with -- were you prepared to defend
17 against the chain of custody if you had gone to trial?

18 A. I mean, I would've argued against it, yes, sir.

19 Q. Okay. Ultimately, do you believe you would've been
20 successful?

21 A. I don't think so.

22 MR. KEY: No further questions, Your Honor.

23 THE COURT: Re-cross?

24 MR. WALLER: Nothing further, Your Honor.

25 THE COURT: Sir, you may step down. Thank you. All

1 right. Anything by way of argument, Mr. Waller?

2 MR. WALLER: Briefly, Your Honor. Your Honor, Mr.
3 Walker testified that he was unaware of the issues, I guess,
4 the discovery in his case and the State's theory. Some of
5 that may have been caused by the three-hour, you know,
6 distance from where he lived to where his counsel was. Your
7 Honor, for whatever reason he was unable to view and
8 understand the evidence the State had against him. It is
9 clear from the transcript as well and the testimony by both
10 witnesses here today that Mr. Walker has some confusion as to
11 the cause of the actual accident. Your Honor, Mr. Walker
12 testified that he wanted to go to trial and felt that Mr.
13 Anderson wasn't prepared to go to trial and that's what
14 ultimately led to his plea. Your Honor, based on all of
15 those things I would ask the court to consider the arguments
16 made today and transcript and grant Mr. Walker's application
17 for post-conviction relief.

18 THE COURT: Mr. Key, anything in response?

19 MR. KEY: Briefly, Your Honor. Mr. Anderson
20 testified that, I believe, that the strategy -- not - he did
21 not see a need for an accident reconstruction expert in this
22 case. He testified there was never a five (5) year offer. He
23 testified that he conveyed all plea offers to Mr. Walker and
24 that he spoke with Mr. Walker on the phone and was prepared
25 to go to trial and would've been ready for trial if it had

1 gotten to that point and that's all.

2 THE COURT: All right. To establish the claim of
3 ineffective assistance of counsel the applicant must show
4 one, counsel failed to render reasonably effective assistance
5 under prevailing professional norms and; two, the deficient
6 performance prejudiced the applicant's case. When a
7 defendant pleads guilty on the advice of counsel an applicant
8 may collaterally attack the plea only by showing that one,
9 counsel was ineffective and; two, there is a reasonable
10 probability that but for counsel's errors the defendant would
11 not have pled guilty. Based upon the testimony that's been
12 presented here today I do not find that applicant has proven
13 his case. One, that counsel was reasonably ineffective under
14 prevailing professional norms or that any deficient
15 performance prejudice the applicant's case.

16 Furthermore, the court finds that counsel, does not find
17 that counsel was ineffective nor that there is a reasonable
18 probability that but for counsel's errors the defendant would
19 not have pled guilty. In fact, it was testified that he did
20 not wish to have his case overturned.

21 Furthermore, the applicant testified that he knew of no
22 information different than what law enforcement said
23 happened. He did testify that there was an initial confusion
24 over how the wreck happened. Indicated that he was told that
25 if he went to trial he would get twenty-five (25) years and

1 there was certainly a possibility based upon the charges that
2 he was facing.

3 Furthermore, based upon the testimony of Mr. Anderson
4 and he recognized the initial difficulties that the State had
5 in connecting the dots, so to speak, in the chain of custody
6 as it relates to the blood alcohol content. That he had
7 pushed and tried to get this case disposed of in some way
8 shape or form prior to the State being able to "connect the
9 dots". However, as each of you lawyers know in large part
10 the State, the State determines when a case is going to be
11 called to trial not defense counsel.

12 Furthermore, Mr. Anderson testified that he reviewed all
13 the discovery provided by the State. Had multiple
14 discussions either in person or by telephone with the
15 defendant. That even though the defendant pled guilty a week
16 before he was scheduled to go to trial Mr. Anderson was not
17 at that point completely prepared to go to trial. He
18 testified that he had sufficient time the rest of that week
19 and through the weekend that would've given him ample
20 opportunity to adequately and prepare to go to trial.

21 Based upon what I stated on the record and, furthermore,
22 and supported by the testimony in the record, the court is
23 respectfully denying the defendant's request for post-
24 conviction relief.

25 Mr. Key, if you would get me an order to that effect and

1 circulate it to Mr. Waller.

2 MR. WALLER: Thank you, Your Honor.

3 MR. KEY: Yes, sir.

4 (CONCLUSION OF HEARING HELD ON NOVEMBER 7, 2018)

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CERTIFICATE

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3 I, the undersigned Lisa S. Carter, Official Court
4 Reporter for the Fourth Judicial Circuit of the State of
5 South Carolina, do hereby certify that the foregoing is
6 a true, accurate, and complete excerpt of transcript of
7 record of all the proceedings had and evidence
8 introduced in the hearing of the captioned cause,
9 relative to appeal, in the Twelfth Circuit Court for
10 Florence County, South Carolina, on the 7th day of
11 November, 2018.

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

14
15
16 *Lisa S. Carter*

17 Lisa Carter

18 Circuit Court Reporter

19 May 2, 2019
20
21
22

STATE OF SOUTH CAROLINA)
 COUNTY OF MARION)
)
 Johnny Ray Walker Jr., # 372580,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 IN THE TWELFTH JUDICIAL CIRCUIT

Case No.: 2018-CP-33-0261

ORDER OF DISMISSAL

FILED
 2019 JAN -7 PM 12:08
 MARION COUNTY SC
 CHRISTOPHER A. WALKER
 CLERK OF COURT

The matter before the Court is an action for post-conviction relief (PCR) commenced by Johnny Ray Walker Jr. April 9, 2018. In his PCR application, Walker alleged ineffective assistance of counsel and attacked the knowing and voluntary nature of his guilty plea. Specifically, he alleged plea counsel was ineffective for: (1) failure to investigate; (2) failure to provide discovery materials; and (3) having a conflict of interest.

The Court held an evidentiary hearing on November 7, 2018. During the hearing, the issue of whether plea counsel was ineffective for failure to communicate arose. The Court finds Walker's allegations to be without merit and concludes plea counsel was not ineffective. Therefore, the Court denies relief and dismisses this action with prejudice.

I. FACTS & PROCEDURAL HISTORY

Johnny Ray Walker Jr. is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marion County Clerk of Court. Walker was indicted in May 2016 for felony driving under the influence (DUI) involving death, and felony DUI involving great bodily injury (2016-GS-33-0249). Walker's charges stem from a traffic accident that occurred July 9, 2015. (Tr. 6-9).

Walker was driving a Ford Mustang convertible to Myrtle Beach for the weekend. (Tr. 6). The Mustang's top was down. (Tr. 7). Two friends accompanied Walker—Jerry Lee Norris in the

*DCA
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front seat, and Christopher Deuvner in the back seat. (Tr. 6). Walker was driving drunk. (Tr. 10). His passengers were also drunk. (Tr. 9). Walker swerved into oncoming traffic and hit another car head-on. Rayneisha Eaddy was driving the other car. (Tr. 6-7). A third car subsequently rear-ended the Mustang, sending all cars involved in different directions. (Tr. 7). As a result of the collision: Deuvner was ejected from the backseat and landed in an adjacent field unharmed; Eaddy and Walker suffered severe injuries; and Norris died on impact. (Tr. 7-9). The third vehicle's occupants were unharmed. (Tr. 9). Walker was charged with felony DUI involving death, and felony DUI involving great bodily injury.

Plea Hearing

Walker pled guilty May 12, 2017, as indicted, before Judge Michael G. Nettles (plea court). Henry M. Anderson (plea counsel) represented Walker. After the State recited the factual basis for the plea, the plea court asked Walker if the facts were true. (Tr. 10). Walker responded:

The third car hit the passenger side of the Mustang. You could tell that by looking at the pictures. There's - - there's been three - - three different reports of how this accident happened and, at first, it wasn't my fault. The second one, it was that - - it was said that I swerved into the other lane and the car went in my lane and I went back in my lane and they went back in their lane and then I apparently swerved back into them.

(Tr. 10). The plea court then asked:

- Q: [I]s it true that you had had a significant amount to drink that night?
 A: Yes, sir.
 Q: All right. Are you - - with those clarifications about there being some confusion about where the collision actually took place, do you agree that you're guilty of driving under the influence with great bodily injury?
 A: Yes, sir.
 Q: Are you guilty of felony driving under the influence resulting in death?
 A: Yes, sir.

(Tr. 10). Walker then affirmed he was waiving any defense regarding the incident by pleading

²
 P. 209

2018-CP-33-0261

guilty, and he stated, "I'll take the full responsibility. I know better[.]" (Tr. 10-11). Thereafter, the plea court accepted Walker's guilty plea. (Tr. 13-14).

The plea court sentenced Walker, as negotiated, to concurrent terms of imprisonment of twelve years for felony DUI involving great bodily injury, and eight years for felony DUI involving death. Walker did not appeal.

Walker commenced this PCR action on April 9, 2018. In his PCR application, Walker alleged ineffective assistance of counsel and attacked the knowing and voluntary nature of his guilty plea. Specifically, he alleged plea counsel was ineffective for: (1) failure to thoroughly investigate the case; (2) failure to allow Walker to review the discovery materials; and (3) having a conflict of interest with the solicitor prosecuting the case. The Court held an evidentiary hearing on these issues November 7, 2018. Walker was present at the hearing, and represented by Jonathan Walker. Assistant Attorney General Samuel Key represented the State.

PCR Hearing

At the outset of the hearing, Walker moved for PCR counsel to be relieved, and requested for another attorney to be appointed to represent him. Walker was placed under oath for a colloquy. After the colloquy, the Court denied the motion to relieve PCR counsel, and the hearing proceeded on the merits. Walker and plea counsel testified at the hearing.

Walker testified he was arrested for felony DUI involving death because his passenger died, and felony DUI involving great bodily injury because of the injuries sustained by the driver of the other car. Walker stated that because of the injuries he sustained during the accident, he was in the hospital for an extensive period of time. Walker stated he was arrested after he was released from the hospital, but was released on bond shortly thereafter. Walker stated plea counsel was appointed to represent him on the felony DUI charges. Walker stated he only saw plea counsel on the days he appeared in court. Walker stated the only information plea counsel provided regarding the case was

*3 Dec
p. 377*

2018-CP-33-0261

that the Solicitor's Office had requested blood work from the hospital.

Walker testified that he spoke with plea counsel the week before the case was scheduled for trial. Walker stated that during this discussion plea counsel told him, if he was convicted at trial, he would get the maximum sentence of twenty-five years. Walker stated that after this discussion, he asked plea counsel to enter into plea negotiations. Walker stated he met with plea counsel the day of his guilty plea, and asked plea counsel to show him the discovery materials. He stated plea counsel reacted to this question by tossing some disks on a table and stating "there's your discovery." Walker stated that during this meeting, right before his guilty plea, the solicitor entered the room and offered a five year plea deal. Walker stated he ultimately pled guilty because he did not feel plea counsel was prepared for trial, and because of the solicitor's representation that he would get five years for pleading guilty.

Finally, Walker stated that he did not want his case overturned. Walker stated he did not want a new plea offer, or to go to trial. Walker stated he could not remember how the accident occurred, and he wanted to be able to review all of the discovery materials to see if he caused his friend's death. On cross, Walker recalled being placed under oath at the plea hearing. He also recalled the plea court's colloquy. Walker recalled waiving his constitutional rights and any defenses by pleading guilty.

Plea counsel testified that he was appointed to represent Walker. Plea counsel's notes reflected he met with Walker in March and July of 2016, and again in May of 2017. Plea counsel also stated that he spoke with Walker over the phone three or four times to discuss the case. Plea counsel explained he did not meet with Walker face-to-face often because Walker was released on bond and lived in North Carolina. Plea counsel testified that he received discovery materials in the case, and part of discovery was an accident reconstruction report on disks. He stated that he printed off the contents of the disks, and reviewed the discovery materials with Walker. Plea counsel also

⁴ DCB
p. 479

2018-CP-33-0261

stated that Walker could not recall the events leading up to the crash. Plea counsel stated that during one phone conversation, Walker informed him to enter into plea negotiations with the State. Plea counsel stated Walker told him he would plead to a five year offer.

Plea counsel stated that at first, the State was having difficulty establishing the chain-of-custody for the blood work from the hospital, but was not willing to offer five years. Plea counsel stated that he started pushing the solicitor hard for a deal because of the chain-of-custody issue, but could not get a deal done. Plea counsel stated he was told the best deal the State could offer was to allow plea counsel to pick the plea judge, and the State would recommend the sentences to run concurrent. Plea counsel stated he told Walker it was either accept the State's offer or proceed to trial the following week. Plea counsel did not remember whether a five year plea offer was ever made, but he stated that if the State had offered five years, he would have urged Walker to take it.

Plea counsel testified he had sufficient time to prepare for trial. He stated that although he was not fully prepped when the offer was made, he would have been ready for trial when the case was called.

On cross, plea counsel was asked about the chain-of-custody issue. Plea counsel stated he was not sure if the State would get the bloodwork into evidence, but he understood that the State would offer the bloodwork as a record taken for medical purposes. Plea counsel stated he believed the State could have gotten the bloodwork into evidence. Finally, plea counsel stated he did not see a need for an accident reconstruction expert, and that he would have been prepared if the case had gone to trial.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The issue before the Court is whether Walker's guilty plea was the result of ineffective assistance of counsel. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant

5 Dec
p. 599

2018-CP-33-0261

sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). “The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985).

In the context of a guilty plea, a defendant who entered a plea on the advice of counsel may only attack the voluntary and intelligent nature of the plea. *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). To prove prejudice, the applicant must show a reasonable probability he would not have pled guilty and would have insisted on going to trial absent plea counsel's alleged deficiency. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

As an initial matter, Walker failed to show he was prejudiced by any alleged deficiency. At the PCR hearing, Walker never testified he would not have pled guilty. On the contrary, Walker testified that he did not want his convictions overturned, did not want a new plea deal, and did not want a trial. The Court finds this testimony by Walker to be credible. As such, the Court must deny relief and dismiss the action with prejudice because a grant of relief is not the remedy Walker seeks. However, the Court will address the merits of all of Walker's allegations of ineffective assistance of counsel as recently ordered by our Supreme Court. See *Robin Gray Reese v. State*, S.C. Sup. Ct. Order dated Oct. 18, 2018 (Shearouse Adv. Sh. No. 42 at 9).

The Court finds Walker pled guilty pursuant to the advice of plea counsel. This finding is based on the testimony presented at the PCR hearing; therefore, the issue before the Court is whether the plea was knowingly and voluntarily entered. See *Roscoe*, 345 S.C. at 20, 546 S.E.2d at 419.

In his PCR application, Walker asserted plea counsel was ineffective for: failure to investigate, failure to show him the discovery materials, and having a conflict of interest. Walker presented no evidence to support his conflict of interest claim; therefore, the Court denies relief and

⁶ DCB
P. 899

2018-CP-33-0261

dismisses this allegation with prejudice. However, testimony presented at the PCR hearing did raise the issue of whether plea counsel was ineffective for failure to communicate all plea offers. Because this issue arose during the hearing, the Court addresses the issue accordingly.

The Court will first address whether plea counsel was ineffective for failure to investigate. To establish counsel failed to adequately prepare for trial, the applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. *Jackson v. State*, 329 S.C. 345, 495 S.E.2d 768 (1998).

Walker asserts plea counsel was deficient because if plea counsel had properly investigated the case, he would have discovered the need to secure an expert witness in accident reconstruction. Walker claimed he pled guilty because he did not think plea counsel was ready for trial. The Court finds plea counsel was not deficient for failure to investigate.

As mentioned above, plea counsel stated he would have been prepared for trial. Plea counsel further articulated a reasonable strategy that he was prepared to employ had the case proceeded to trial. Plea counsel stated he did not see a need for an accident reconstruction expert. Plea counsel is a veteran criminal defense attorney who is contracted as a part-time public defender. The Court finds it credible that plea counsel would have been ready for trial, and reasonable that plea counsel would not need an expert in accident reconstruction to be prepared. Plea counsel articulated he was prepared to attack the chain-of-custody of the blood work report taken from the hospital. The Court finds this strategy reasonable. The Court concludes plea counsel was not deficient for failing to secure an accident reconstruction expert. Plea counsel properly investigated the case, and Walker failed to show prejudice; therefore, plea counsel was not ineffective for failure to investigate.

Next, the Court addresses whether plea counsel was ineffective for failure to provide Walker discovery. The proper measure of performance is whether the attorney provided representation

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P-779 7

within the range of competence required in criminal cases. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

Walker asserts plea counsel was deficient for failure to provide him with discovery. As summarized above, Walker testified that plea counsel never reviewed discovery with him, and only met with him when he would appear in court. Plea counsel testified that he received the discovery materials as usual, in pieces as the State's case progressed, and reviewed the discovery materials with Walker upon receipt. Plea counsel stated he received the accident reconstruction reports on disks, and printed the reports off of the disks to review with Walker. Plea counsel stated he reviewed the reports with Walker either in person, or over the phone. The Court finds plea counsel credible on this issue. While plea counsel may not have given Walker copies of all the discovery materials, plea counsel reviewed all the materials with Walker. This practice is reasonable under prevailing professional norms. Plea counsel credibly stated he reviewed all discovery with Walker, therefore he was not deficient. Plea counsel was not ineffective for failure to provide discovery.

Finally, the Court addresses whether plea counsel was ineffective for failure to communicate. Generally, plea counsel must convey all offers made by the State. *Davie v. State*, 381 S.C. 601, 610-11, 675 S.E.2d 416, 421 (2009) (abrogated on other grounds by *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018) (clarifying the proper standard of review in PCR cases, and listing all cases that previously applied the incorrect standard of review)). However, the applicant must provide some evidence, even self-serving testimony, to establish prejudice. *Id.* at 613-14, 675 S.E.2d at 422-23.

Walker claimed the solicitor prosecuting the case conveyed a five year plea offer immediately before the plea hearing. Plea counsel had no recollection of a five year offer ever being made; however, plea counsel stated that had a five year deal been offered, he would have strongly urged Walker to take the deal. The Court finds Walker is not credible on this issue. The Court finds it

PCB
p. 877

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2018-CP-33-0261

credible that had a five year offer actually been made, plea counsel would have conveyed the offer to Walker. Based on the testimony presented at trial, the Court finds a five year plea offer was never made; therefore, plea counsel was not deficient for failure to communicate the five year plea offer. The Court concludes plea counsel was not ineffective for failure to communicate.

III. CONCLUSION

The Court finds plea counsel's representation was neither deficient nor prejudicial. Walker pled guilty pursuant to the advice of plea counsel, and counsel reasonably investigated the case before so advising. Walker knew the meaning and consequences of pleading guilty to the charges, and was advised of all plea offers. Walker failed to show he was prejudiced by any alleged deficiency, as he admitted at the hearing he did not wish for his conviction to be overturned. **THEREFORE**, the Court denies relief and dismisses the action with prejudice.



D. CRAIG BROWN
Presiding Judge
Twelfth Judicial Circuit

Florence, South Carolina

Jan
December 4, 2018.

9 DCB
P 499

STATE OF SOUTH CAROLINA
COUNTY OF MARION
IN THE COURT OF COMMON PLEAS

JHNNY WALKER, JR., #372580,

Applicant,

v.

STATE OF SOUTH CAROLINA,


Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Order of Dismissal has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Jonathan D. Waller
Waller Law Group, LLC
1116 Blanding Street
Suite 2B
Columbia, South Carolina 29201

This 31st day of January, 2019.


Carmen Nord
Legal Assistant for Respondent

SWORN to before me this 31st day of January, 2019.


Notary Public for South Carolina
My Commission Expires: 5/10/2025

WITNESSES

J. T. Barkdoll S C Highway Patrol

Kevin M. Hope

ARREST WARRANT NUMBER

2015A3310100569 2015A3310100570

ACTION OF GRAND JURY

TRUE BILL

Carutha Williams
Foreperson of Grand Jury
Date: 5.3.16

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-33-00249

The State of South Carolina

County of

MARION

COURT OF GENERAL SESSIONS

MAY TERM 2016

THE STATE

vs.

JOHNNY RAY WALKER JR

Indictment for

FELONY DUI INVOLVING DEATH, AND
FELONY DUI INVOLVING
GREAT BODILY INJURY

FILED
2016 MAY -5 PM 3:24

STATE OF SOUTH CAROLINA)
)
 COUNTY OF MARION)

INDICTMENT FOR
 FELONY DUI INVOLVING DEATH, AND
 FELONY DUI INVOLVING
 GREAT BODILY INJURY

At a Court of General Sessions, convened on MAY 5, 2016 the Grand Jurors of MARION County present upon their oath:

COUNT ONE- FELONY DUI INVOLVING DEATH, AND

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

That JOHNNY RAY WALKER JR did in MARION COUNTY on or about July 9, 2015 drive a motor vehicle while under the influence of alcohol, drugs, or a combination of both, and did an act forbidden by law and/or neglected a duty imposed by law in the driving of the vehicle, which act or neglect proximately caused the death of JERRY NORRIS in violation of Section 56-05-2945(A)(2), S. C. Code of Laws, 1976, as amended.

COUNT TWO- FELONY DUI INVOLVING GREAT BODILY INJURY

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

That JOHNNY RAY WALKER JR did in MARION COUNTY, on or about July 9, 2015, drive a motor vehicle while under the influence of alcohol, drugs, or a combination of both, and did an act forbidden by law and/or neglected a duty imposed by law in the driving of the vehicle, which act or neglect proximately caused great bodily injury to JERRY NORRIS in violation of Section 56-05-2945(A)(1), S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
 TWELFTH CIRCUIT SOLICITOR

Max fine of not less than \$5100.00 nor more than \$10,100.00 and mandatory imprisonment for not less than 30 days nor more than 15 years.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Marion
STATE VS.

Johnny Ray Walker Jr

AKA:

Race: Sex: Age: 27

DOB: SS#:

Address:

City, State, Zip: Stanley, NC 28164

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: DUI / Felony driving under the influence, great bodily injury results

INDICTMENT/CASE#: 2016-GS-33-00249

A/W#: 2015A3310100570

Date of Offense: 7/9/2015

S.C. Code § : 56-05-2945(A)(1)

CDR Code #: 0406

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 56-05-2945(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0406
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45 w/minor 1st or Lewd Act

The charge is: As Indicted. Lesser Included Offense. Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: Without Negotiations or Recommendation. Negotiated Sentence, Recommendation by the State. Negotiated Concurrent

ATTEST: Hope, Kevin M. SC Bar# 80366 Defendant
[Signature] Attorney for Defendant
[Signature] SC Bar# 064280

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 12 months or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ 5100.00; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

CONCURRENT or CONSECUTIVE to sentence on: 5-12-17
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 11 days

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

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

2017 MAY 12 PM 4:08

*Fine:		\$ 5,100.00
§ 14-1-206 (Assessments 107.5 %)		\$ 5,482.50
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ 100.00
§ 56-5-2995 (DUI Assessment)	\$12	\$ 12.00
§ 56-1-286 (DUI Breath Test)	\$25	\$ 25.00
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 325.34
TOTAL		\$ 11,169.84

Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk: Christy M. Gray
Court Reporter: Krystal Smith
SCCA/217 (07/2016)

Presiding Judge: [Signature]
Judge Code: 2140
Sentence Date: 5-12-17

Mandatory fine of not less than \$10,100** nor more than \$25,100** and mandatory imprisonment for not less than one year nor more than 25 years 95

STATE OF SOUTH CAROLINA)
COUNTY OF Marion)
STATE VS.)
Johnny Ray Walker Jr)
AKA:)
Race: Sex: Age: 27)
DOB: SS#:)
Address:)
City, State, Zip: Stanley, NC 28164)
DL#: SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016-GS-33-00249
A/W#: 2015A3310100569
Date of Offense: 7/9/2015
S.C. Code §: 56-05-2945(A)(2)
CDR Code #: 0395

SENTENCE SHEET

*CDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []
In disposition of the said indictment comes now the Defendant who was
TO: DUI / Felony driving under the influence, death results

[] CONVICTED OF or [X] PLEADS

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

The charge is: [X] As Indicted, [] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury. (defendant's initials) Negotiated
The plea is: [] Without Negotiations or Recommendation, [X] Negotiated Sentence, [] Recommendation by the State. Government

ATTEST: Hope, Kevin M. 80366 SC Bar# Defendant Attorney for Defendant 064280 SC Bar#

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [] County Detention Center,
for a determinate term of 8 days/months/years or [] under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ 10,100.00; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

[X] CONCURRENT or [] CONSECUTIVE to sentence on: 5-12-17
[] The Defendant is to be given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied
by the State Department of Corrections. 11 days

[] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code 617-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
[] Set by SCDPPPS

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

Recipient:

Table with 2 columns: Description and Amount. Includes items like *Fine: \$10,100.00, § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 61.6 (Public Def/Probation) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$636.59.

TOTAL \$21,856.09

Clerk of Court/ Deputy Clerk Christy M. Gray
Court Reporter: Krystal Smith
SCCA/217 (07/2016)

[] Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.
Presiding Judge Michael Pittler
Judge Code: 2140
Sentence Date: 5-12-17

FILED
2016 MAY 12 PM 4:09