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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Fairfield County

Alison Renee Lee, Circuit Court Judge

SHERMAN DEWALT,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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STATE OF SOUTH CAROLINA)

County of Fairfield)

COURT OF GENERAL SESSIONS

03-GS-20-389

03-GS-20-390

THE STATE OF SOUTH CAROLINA)

vs.)

TRANSCRIPT OF RECORD

SHERMAN DEWALT,)

DEFENDANT,)

January 28th, 2008
Columbia, South Carolina

BEFORE:

THE HONORABLE KENNETH G. GOODE, JUDGE.

APPEARANCES:

DOUG BARFIELD, SOLICITOR
Attorney for the State

JACK B. SWERLING, ESQ.
Attorney for the Defendant.

KAREN TRACY
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 THE CLERK: I need you to raise your hand, put your
2 left hand on the Bible.

3 SHERMAN DEWALT, after being duly
4 sworn, testified as follows:

5 MR. BARFIELD: Your Honor, this is case number
6 2003-GS-20-389, the State vs. Sherman Dewalt indicted for
7 the offense of murder, and case number 03-GS-20-390, the
8 State vs. Sherman Dewalt indicted for the offense of
9 burglary in the first degree.

10 Mr. Dewalt is represented by Jack Swerling. I
11 understand from Mr. Swerling that Mr. Dewalt desires to
12 enter pleas of guilt on both of these charges. There are
13 no negotiations or recommendations.

14 We do have a preliminary matter concerning competency
15 to stand trial and criminal responsibility which I will
16 tell you about when you're ready to take that matter up.

17 THE COURT: All right, sir. And is that your
18 understanding of the plea and the lack of any
19 negotiations, Mr. Swerling?

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

21 THE COURT: And you would like to proceed with a
22 Blair hearing --

23 MR. BARFIELD: Yes, sir.

24 THE COURT: -- at this time?

25 MR. BARFIELD: We do need to --

1 THE COURT: Or other matters?

2 MR. BARFIELD: We do need to conduct a Blair hearing.

3 Your Honor, Mr. Dewalt was evaluated for competency
4 to stand trial over two dates, April 13th and May 25th of
5 2005.

6 I have provided the Court a copy of that report which
7 makes -- which reaches the conclusion that Mr. Dewalt does
8 have the capacity -- I mean, the competency to stand
9 trial. Mr. Swerling has a copy of that.

10 At the time that evaluation was done, Mr. Swerling
11 desired that the criminal responsibility evaluation be
12 deferred. To give the Court a short history, the
13 competency to stand trial evaluation report was ordered
14 sealed by the Court, and we had had some change in
15 personnel in our office. By the time we realized that, in
16 fact, was sealed, it took a little bit of doing to get it
17 undone, and everybody found out the results of that at
18 that time.

19 Your Honor, most recently Mr. Dewalt was evaluated
20 for criminal responsibility. That evaluation occurred on
21 December 6th, 2007.

22 I have also handed up to the Court a report of that
23 evaluation, and the findings were positive on that.
24 Mr. Dewalt was found to have the ability to distinguish
25 right from wrong at the time this offense was committed.

1 Mr. Swerling has provided the Court some independent
2 information, which I don't think is inconsistent with what
3 the Department of Mental Health found, and after hearing
4 anything else Mr. Swerling has, I don't think there's any
5 dispute about the findings of the Department of Mental
6 Health, and after any comments or statements by
7 Mr. Swerling, I would ask you to make the requisite
8 findings on the record so that we may go forward with the
9 guilty plea.

10 THE COURT: Thank you, Mr. Solicitor.

11 Mr. Swerling, I'll be happy to hear anything you
12 would like to add to that.

13 MR. SWERLING: Your honor, as you can see from the
14 report that I showed the Solicitor, and I also handed up
15 to the Court, Mr. Dewalt was examined by Dr. Harold
16 Morgan, a forensic psychiatrist, well known to the courts
17 in this state. He also determined that there was no issue
18 about criminal responsibility or competency. He felt he
19 was competent and responsible.

20 THE COURT: And I have reviewed the two reports
21 provided by the State, and I thank both of you gentlemen
22 for providing me with these reports in advance.

23 The one from the South Carolina Department of Mental
24 Health by Michael Berlauto, and that's B-E-R-L-A-U-T-O,
25 the attending psychiatrist. He examined him 1/11 on this

1 year and made the findings as indicated by the Solicitor
2 on the record earlier.

3 The other report provided by the State was Pralap
4 Narayan, M.D. That's N-A-R-A-Y-A-N; forensic
5 psychiatrist, and the reports are consistent with the
6 comments made by the Solicitor.

7 Also, I reviewed materials provided by the defense,
8 Mr. Swerling. Most informative on this particular issue
9 was the report from Dr. Harold C. Morgan, M.D., who is a
10 forensic psychiatrist, and it's dated January 5th, 2008.
11 Let the record reflect that today's date is January 28th
12 of 2008. Also, records of his treatment at the Pinner
13 Clinic in Peak, South Carolina, this information was
14 provided to the Court today but to Mr. Swerling on the
15 18th of last month.

16 Having reviewed these, having the two designated
17 examiners plus the additional information provided by the
18 supporting information, and there is no inconsistencies in
19 any of the reports, I find that the defendant is capable
20 of standing trial and is...

21 (Pause).

22 Of course, the standard that we apply is whether the
23 defendant has...

24 (There was a noise disturbance.)

25 We'll wait on the train to pass us.

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(Pause).

Whether the defendant has the sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding; whether he has a rational, as well as a factual understanding, of the proceedings against him, and that his mental condition is such that he -- whether -- it states that he lacks the capacity to understand.

I find that, according to the report submitted and the statements by counsel both for the State and the defendant, that he is competent to stand trial and understands the proceedings today and is capable of working with and assisting his attorney in his defense.

With that being said, let me ask you, Mr. Dewalt, you know what we're here for today?

THE DEFENDANT: Right.

THE COURT: And -- and what is that?

THE DEFENDANT: Yes, sir.

THE COURT: I said, "Why are we here today?"

THE DEFENDANT: For a trial. I mean for a plea bargain, a plea.

THE COURT: For a plea?

THE DEFENDANT: Yeah.

THE COURT: And you understand that?

THE DEFENDANT: Yeah.

1 THE COURT: You talked --

2 THE DEFENDANT: Yes, sir.

3 THE COURT: -- to Mr. Swerling?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. I find that he is -- anything
6 additionally you'd like to share with the Court on that
7 issue, on your understanding of what we're doing?

8 THE DEFENDANT: No, sir.

9 THE COURT: All right. I find as previously
10 indicated, that he's competent to stand trial and that he
11 understands, and we can proceed with the plea.

12 MR. BARFIELD: And Your Honor, with that said,
13 Mr. Dewalt through Mr. Swerling has indicated that he
14 desires to plead guilty to these two charges without any
15 recommendations or negotiations, and we're ready to go
16 forward with it.

17 THE COURT: And you're Sherman Dewalt?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And you're Mr. Jack Swerling?

20 MR. SWERLING: Yes, sir.

21 THE COURT: Mr. Swerling, have you explained to
22 Mr. Dewalt the charge contained in each of his
23 indictments, the possible punishment, and his
24 Constitutional Rights, including the right to a jury
25 trial?

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MR. SWERLING: Yes, sir.

THE COURT: Let the record reflect that these are both true billed indictments.

In your opinion, Mr. Swerling, does the defendant understand each charge, the punishment, and his rights?

MR. SWERLING: Yes, Your Honor. We've gone over all of those issues. Just so that the record reflects that each of the charges, what the elements are, what the State would have to prove, as well as Mr. Dewalt's rights during the course of a trial, and it's my opinion that he understands that.

THE COURT: And how does he understand -- how does he indicate that he desires to plead to each charge, guilty or not guilty?

MR. SWERLING: Your Honor, he wishes to plead guilty to the charges and accept responsibility for what he did.

THE COURT: And as previously stated on the record -- well, let me ask you this, Mr. Swerling, first: From your investigation of the facts and circumstances of this case, do you feel that the State could produce sufficient evidence to convince a jury of the defendant's guilt beyond a reasonable doubt and that if the defendant were to stand trial on these charges that a conviction would be probable?

MR. SWERLING: Your Honor, that is my opinion. !

1 conveyed that to Mr. Dewall and his family.

2 THE COURT: And we've already covered the Blair
3 issues. He was ordered to submit to a mental examination,
4 and I have ruled on that.

5 Mr. Dewall, before I can accept your pleas of guilty,
6 I must first determine that your pleas are made freely and
7 voluntarily, and therefore, I'll need to ask you a series
8 of questions. If at any time during this questioning you
9 do not understand the questions or the words that I use,
10 please stop me, and I'll be happy to explain them to you.
11 Additionally, you can consult with your attorney,
12 Mr. Swerling, about any matter at any time during this
13 questioning. Do you understand?

14 THE DEFENDANT: Yes.

15 THE COURT: How old are you, sir?

16 THE DEFENDANT: Thirty-nine.

17 THE COURT: And how far did you go in school?

18 THE DEFENDANT: I completed school.

19 THE COURT: Sir?

20 THE DEFENDANT: Twelfth grade.

21 THE COURT: And what type work did you do?

22 THE DEFENDANT: Truck driver.

23 THE COURT: Have you ever been treated for the abuse
24 of alcohol or drugs or for mental illness?

25 THE DEFENDANT: No, sir.

1 THE COURT: Have you taken -- have you taken any
2 medication, drugs or alcohol in the last 24 hours?

3 THE DEFENDANT: No, sir.

4 THE COURT: Are you today aware of anything that
5 would keep you from knowing and understanding what you're
6 doing?

7 THE DEFENDANT: Excuse me?

8 THE COURT: Are you aware of anything that would keep
9 you from understanding what you're doing today?

10 THE DEFENDANT: No, sir.

11 THE COURT: And Mr. Swerling, do you agree with that?

12 MR. SWERLING: I agree with that, Your Honor. He's
13 nervous, but other than that, he's okay.

14 THE COURT: Now, Mr. Dwall, you have heard your
15 attorney tell me that he has explained to you each charge
16 against you, the possible punishment, and your
17 Constitutional Rights and that you understand these
18 things; is that correct?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You're charged in two separate bills of
21 indictment: Indictment 2003-CS-20-389 is an indictment
22 for murder. Your indictment states that you did in
23 Fairfield County on or about July 21 of '03 feloniously,
24 willfully and with malice aforethought murder one Davila
25 Roseboro, to wit, you did shoot her with a pistol, and

1 that Davila Roseboro did die in Fairfield County as a
2 proximate result on or about July 21, 2003. For this, I
3 could sentence you between 30 years and life in prison.
4 Do you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Indictment 2003-GS-20-23--- 20-390, is an
7 indictment for burglary in the first degree. Your
8 indictment states that you did in Fairfield County on or
9 about July 21 of 2003 enter the dwelling of Davila
10 Roseboro located at 187 Chappell Town Road, Winnsboro,
11 South Carolina without consent and with intent to commit a
12 crime in the dwelling, and while effecting entry or while
13 in the dwelling or in immediate flight from the dwelling,
14 that you or another participant in the crime are armed
15 with a deadly weapon, to wit, a gun. For this, I could
16 sentence you to between 15 years and life imprisonment.

17 Do you understand the charge and the possible
18 punishment?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Are you on probation or parole at this
21 time?

22 THE DEFENDANT: No, sir.

23 THE COURT: Do you understand the nature of each
24 charge against you and the range of possible punishments?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Mr. Dewalt, when you plead guilty, you
 2 give up certain important Constitutional Rights. First,
 3 you give up your right to remain silent, that is your
 4 right against self-incrimination, your right to say
 5 nothing at all.

6 You cannot be compelled to testify or to provide
 7 evidence against yourself. Second, you give up your right
 8 to have a jury trial, that is your right to have a jury
 9 decide whether or not you are guilty beyond a reasonable
 10 doubt.

11 The jury would base its decision upon evidence which
 12 the State presents and on any evidence you might wish to
 13 introduce.

14 In a trial, you would be presumed to be innocent, and
 15 the State would have to produce evidence that would
 16 convince all 12 members of the jury that you were guilty
 17 beyond a reasonable doubt.

18 Third, you give up your right to confront and be
 19 confronted by the witnesses against you. That is the
 20 right to see, hear, and cross-examine any witnesses that
 21 may be called against you during the trial and the right
 22 to subpoena and call witnesses in your own behalf. Do you
 23 understand these rights?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand that when you plead

1 guilty, you give up these important Constitutional Rights?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And is that what you wish to do?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand that you will not get a
6 jury trial if you plead guilty?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Understanding the nature of each charge
9 against you, the consequences of the guilty plea, how do
10 you plead to each of these charges, guilty or not guilty?

11 THE DEFENDANT: Guilty.

12 THE COURT: Do you understand that when you plead
13 guilty, you admit the truth of the charge that is made
14 against you?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You may have defenses to the charges
17 against you. I, of course, do not know whether you do or
18 not. Do you understand that if you plead guilty, you
19 waive or give up any defenses that you might have to
20 either of these charges?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You may have given an incriminating
23 statement or statements in these cases. If you plead
24 guilty, do you understand that you waive or give up the
25 right to contest or challenge whether such a statement was

1 freely and voluntarily given in accordance with your
2 Constitutional Rights?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Did you commit each of those offenses?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And there are no plea negotiations. Is
7 that the State's position?

8 MR. BARFIELD: Exactly, yes, sir.

9 THE COURT: Mr. Swerling?

10 MR. SWERLING: That's correct.

11 THE COURT: Mr. Dewalt, has anyone promised you
12 anything or held out any hope of reward to get you to
13 plead guilty?

14 THE DEFENDANT: No, sir.

15 THE COURT: Has anyone threatened you or used force
16 to get you to plead guilty?

17 THE DEFENDANT: No, sir.

18 THE COURT: Have you had enough time to make up your
19 mind as to whether or not you want to plead guilty?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Are you pleading guilty of your own free
22 will and accord?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Are you satisfied with the manner in
25 which your attorney has advised and represented you?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Have you talked with your attorney,
3 Mr. Swerling, as often and for as long as you feel
4 necessary for him to properly represent you?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you need more time to speak with
7 Mr. Swerling?

8 THE DEFENDANT: No, sir.

9 THE COURT: Have you understood your talks with
10 Mr. Swerling?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Has he done everything in your behalf
13 that you feel that he could have or should have done?

14 THE DEFENDANT: Yes; yes, sir.

15 THE COURT: Do you need more time to speak to
16 Mr. Swerling?

17 THE DEFENDANT: No, sir.

18 THE COURT: Are you completely and totally satisfied
19 with Mr. Swerling's services as your attorney?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Mr. Dewalt, have you understood my
22 questions?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Is there anything that you would like to
25 ask me about what we've just been over?

1 THE DEFENDANT: No, sir.

2 THE COURT: Do you understand that you have a right
3 to appeal your guilty plea and the sentence of the Court,
4 and that you or your attorney must do this within ten
5 days?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. Solicitor, I'll be happy to hear a
8 factual basis, please, sir.

9 MR. BARTLETT: And Your Honor, this will be fairly
10 detailed. The incident occurred on July 21, 2003, which I
11 believe was a Monday morning.

12 It occurred during the early morning hours about a
13 quarter till five in the morning. It occurred at 186
14 Chappell Town Road here in Winnsboro, which was the
15 residence of the victim, Davita Roseboro, and her three
16 children.

17 Your Honor, as I understand it, Ms. Roseboro and the
18 defendant had been romantically involved, but that
19 relationship had ended sometime prior to this incident.
20 They had parted ways.

21 The investigation, and specifically information
22 obtained from Ms. Roseboro's children, who were witnesses
23 in this case, indicated that she had some level of fear of
24 Mr. Dewalt, and in fact, on the night and early morning
25 that this occurred, the daughter, who I'll tell you about

1 in a minute, indicated that she and her two brothers were
2 sleeping in the bed with their mother because they all
3 apparently had some fear of -- of harm from Mr. Dewall.

4 Your Honor, the children are Leroy Roseboro, III, who
5 at the time was 12 years old. He is the oldest. The next
6 oldest is Lakoisha, who at the time was ten years old, and
7 then the youngest child, Denzell, who was at the time five
8 years old.

9 As I said a moment ago, all three of the children
10 were in the bed with their mom when this incident
11 occurred.

12 The children are the children of Leroy Roseboro and
13 Davita Roseboro, who had apparently divorced in about
14 2002. The children now live with their dad up in Concord.
15 He is here, and I will speak more to that later. The
16 children did not come, but you will hear their words
17 through their dad later on.

18 Your Honor, based on the statements of the two oldest
19 children, the youngest child was not questioned from the
20 standpoint of getting a statement, but the two oldest
21 children indicated pretty consistently in statements given
22 to the sheriff's office investigators that about a quarter
23 till five that morning they heard a truck pull up in the
24 yard of the house. They heard knocking on the front door.

25 At some point, their mom tried to use the telephone

1 to call the grandmother's house, I think next door or very
2 close by. The phone was not working. I'll tell you more
3 about crime scene investigation in just a little bit, but
4 she was unable to call for help from the telephones that
5 were there at her house.

6 As things progressed, Mr. Dewalt apparently kicked in
7 the -- the front door to the mobile home that they lived
8 in. I'm going to hand up a photograph in a couple of
9 minutes. I'm going to hand up three or four photographs
10 that Mr. Swerling has seen.

11 The first photograph shows a white door with a
12 doorknob, which S.L.E.D. crime scene found to be a fool --
13 footwear impression. It was not sufficient to do anything
14 with, but it's clear that somebody kicked that door near
15 the doorknob.

16 The front door of the mobile home got kicked open.
17 Mr. Dewalt pried -- presented himself into the house.
18 The bedroom door, apparently where Ms. Roseboro and the
19 children were sleeping, was locked.

20 Mr. Dewalt apparently busted open that door. Again,
21 the second photograph is going to be a picture of that
22 door along with the wall behind that door. He apparently
23 kicked it open with such force that it hit the wall inside
24 the door, busted a hole in the sheetrock. Then the next
25 photograph is the lock plate that was found lying in the

1 floor off that door.

2 Your Honor, Mr. Dewalt entered the room where all
3 four were there in the bed. He had a gun in his hand,
4 according to the children.

5 Ms. Roseboro asked Mr. Dewalt why he was there and
6 told him to leave. According to the daughter, he said
7 that he -- he said in response to her that he had told her
8 that he was going to kill her.

9 She told him to leave. He told her to get out of bed
10 a couple of times. She obviously did not get out of the
11 bed, and he shot her with a pistol that he had, which I
12 will again speak more to later.

13 He ran out of the house. Once the children were
14 confident that he had left the scene, and of course, they
15 sat there and watched their mother be shot but -- and
16 certainly were traumatized and fearful, but once they were
17 comfortable that he was gone, they ran next door to the
18 grandmother's house and summoned help.

19 The sheriff's office was called, family members of
20 the victim had gathered at the home, I think were probably
21 there when the sheriff's office arrived.

22 Specifically, Charlestina Banks and James Jeter, who
23 were I think brother and stepsister of the victim, found
24 the victim in her house in the bedroom and apparently not
25 living at that time.

1 Your Honor, S.L.E.D. crime scene was called. Of
2 course, Mr. Dewalt was nowhere to be found immediately,
3 did not remain at the scene.

4 S.L.E.D. crime scene was called to process the scene.
5 The crime scene report confirmed forced entry to the front
6 door with the shoe print that I've spoken about; forced
7 entry through the master bedroom door with the lock plate
8 damaged and the wall behind the door busted open, which
9 are the other two photographs.

10 There's also a photograph in the file which I think
11 is consistent with some tampering of the telephone lines
12 so that the phone would be disabled. I'm going to ask the
13 clerk to hand those up to you and let you examine them.

14 The victim, Your Honor, was found on her back on her
15 bed in the bedroom with her head and upper back hanging
16 over the edge of the bed. She had a quite obvious gunshot
17 wound to the head. There was a nine millimeter fired
18 cartridge casing found under her left leg.

19 Your Honor, some samples were collected there at the
20 scene. Among those was a gunshot residue collection kit
21 from the victim which was processed by the S.L.E.D. Trace
22 Evidence Department which found metals consistent with
23 gunshot residue on the victim's -- on the back of the
24 victim's left hand, which indicates that her hand was in
25 proximity to that gun being fired when it was fired,

1 apparently.

2 Your Honor, an autopsy was done at -- in Newberry.
3 The findings of the autopsy indicate that it was a near
4 range gunshot wound. The entry was in Ms. Roseboro's left
5 nostril.

6 There was no exit wound, and actually the fired
7 bullet was recovered between her skull and her scalp on
8 the backside of her head. There was tattooing on the
9 wound. I don't think there was any stippling on the
10 wound. The cause of death was brain contusion and
11 laceration from -- from the gunshot.

12 Your Honor, S.E.M.D. Firearms Department did some
13 work on this case. They looked at the fired nine
14 millimeter cartridge case that was recovered under
15 Ms. Roseboro's left leg.

16 They also looked at the full metal jacketed bullet
17 which was recovered during the autopsy and found that the
18 bullet was consistent with a nine -- with a nine
19 millimeter bullet.

20 Your Honor, quite frankly, in this case no gun was
21 ever recovered. We do not know where that firearm is.

22 Your Honor, the sheriff's office, of course, had a
23 name immediately upon talking to the children who know
24 Mr. Dewalt from his relationship with their mom. The
25 search was initiated to find Mr. Dewalt.

1 The sheriff's department developed information that a
2 man -- that Mr. Dewalt had connections and family members
3 over in Newberry County, Newberry County.

4 A witness, Fletcher Calvin Walker, was identified and
5 indicated and gave a written statement indicating that
6 some time a little before five o'clock the morning that
7 this occurred, he got a telephone call. The caller
8 identified himself as Sherman, told him that he loved
9 them all, said he messed up, said he shot Vita and said
10 he was sorry.

11 Mr. Walker did not personally see Mr. Dewalt that
12 morning, but believed that Mr. Dewalt was probably talking
13 to him on a cell phone.

14 Later that morning, I'm guessing some time about
15 lunchtime, Mr. Dewalt was arrested over in Newberry County
16 and was taken into custody and brought to the Fairfield
17 County Detention Center where he has been.

18 Your Honor, the defendant has no record of conviction
19 for anything.

20 There are a good number of family members here, and
21 when you'll come back to me after a while, I'll introduce
22 them, and some of them do want to speak.

23 THE COURT: All right. Thank you, Mr. Solicitor.

24 Mr. Dewalt, you heard the Solicitor state the facts
25 that led to your arrest and ultimately to your indictment

1 on each of these charges.

2 Do you agree that the facts stated by the Solicitor
3 are materially accurate and correct?

4 THE DEFENDANT: Some of them aren't, Your Honor.

5 THE COURT: And which do you not agree with?

6 THE DEFENDANT: The kids wasn't in the room, and --
7 and I didn't mess with no telephone.

8 THE COURT: Okay. Other than the telephone call and
9 whether or not the children were or weren't in the room,
10 do you agree with everything else that was said?

11 THE DEFENDANT: Yes.

12 MR. SWERLING: Your Honor, just so you'll know, he is
13 -- he has always said he does not remember the children
14 being in the room. They may have been, but that's not
15 what his recollection is.

16 He always has said he did not do anything with the
17 phone, but he admits the material facts of the case.

18 THE COURT: Well, I find that there -- did I cut you
19 off? I'm sorry.

20 MR. SWERLING: No, sir. No. I just wanted you to
21 know that's been consistent.

22 THE COURT: I find that there is a substantial
23 factual basis for each of the pleas. I find the
24 defendant's decision to plead guilty is freely,
25 voluntarily, knowingly and intelligently made; that he's

1 had the advice and counsel of a very competent attorney
2 with whom he indicates that he is totally satisfied.

3 Each plea of guilty, armed robbery and murder, is
4 accepted.

5 Thank you. I'll be happy to hear from the family
6 members at this time, Mr. Solicitor.

7 MR. BARFIELD: Your Honor, I'm going to identify
8 them, and five of them would like to speak.

9 THE COURT: Excuse me, I think I misstated the
10 charge, as murder and burglary in the first degree.

11 MR. BARFIELD: That's correct.

12 THE COURT: And I find that there is a substantial
13 factual basis for those two charges.

14 MR. BARFIELD: Your Honor, I'm going to call -- there
15 are 11 folks here. Five of them wish to speak. Before we
16 get to the speaking part of it, I'm going to simply call
17 their names and would ask as I call your name, just raise
18 your hand so the judge will see who you are and know who
19 I'm talking about. Mary --

20 THE COURT: Excuse me, Mr. Solicitor.

21 MR. BARFIELD: Yes.

22 THE COURT: If I could, just one second.

23 I want to take a moment and tell you how much the
24 court appreciates your coming today. It's very important
25 to know the support structure and the interest, and I

1 thank each of you for taking time to come today. It's
2 helpful to the Court. Thank you very much.

3 MR. BARFIELD: Your Honor, again, I'm going to call
4 the names. I ask them just to raise their hands, and then
5 I'll call the speakers up one at a time. Mary Banks is
6 the -- Ms. Roseboro's mom. She is over on the second row.
7 Heyward Banks is the stepfather; Victor Jeter is the
8 brother; James Jeter is the brother; Phyllis Jeter is the
9 sister-in-law. [presume y'all are husband and wife?

10 (Nods in the affirmative).

11 Betty Cook is the sister; Tamara Johnson is the
12 sister; Charlestina Banks is the stepsister; James Q.
13 Jeter is the nephew; Bridgett Jones is the sister-in-law,
14 and Carolyn Moore is a close family friend.

15 Your Honor, at this time I would ask just one at a
16 time the folks who were going to speak to come up and
17 stand beside me.

18 First of all, Heyward Banks, if you'll come up.

19 HEYWARD BANKS: I'll be last.

20 MR. BARFIELD: Okay. Thank you.

21 Tamara Johnson.

22 THE COURT: And again, Ms. Johnson, thank you for
23 taking time to be here today.

24 TAMARA JOHNSON: Thank you.

25 Your Honor, my sister Davita was murdered on

1 July 21st, 2003 in her home on Chappell Town Road with a
 2 gunshot to the head in front of her three kids who were in
 3 the bed with her at the time.

4 Davita meant so much to me and our family. She was a
 5 loving, kind and a devoted person. We shared so many
 6 things together. I miss her so much. I miss the talks on
 7 the phone every day that I had with her, the laughs we
 8 shared, the tears that we have shed together. She was not
 9 only my sister. She was my best friend.

10 Davita loved her kids so much, and I hate she had to
 11 leave them that way. She always talked about them growing
 12 up and how she wanted to see them at college, but because
 13 of Dewall, she can't do that.

14 Her kids loved her truly. Her oldest son, Trey,
 15 always told her he would take care of her and that she was
 16 his honey. The kids have suffered a great deal from all
 17 of this. They are now in counseling, and Trey, her oldest
 18 son, hates to come to the hometown of where his mother was
 19 murdered.

20 Myself had to suffer, and is still suffering, from my
 21 sister's death, and now it is even worse because I barely
 22 get a chance to see my nephews and my niece because they
 23 are now in Concord, whom we are accustomed to seeing every
 24 day.

25 It is so hard for me. I try to take one day at a

1 time. There is not a day that has gone by that I have not
2 thought about her. I have shed so many tears since then,
3 but I am dealing with it in my own way with God's grace
4 and mercy.

5 I just feel that it is not fair for Dewalt to get to
6 talk to his sister, but I don't have the opportunity to
7 talk to mine. She is gone because of a senseless act.

8 What he did to my sister was a disgrace, and right
9 now I have a lot of hatred towards him. I just ask that
10 justice be served, and he deserves whatever he gets.

11 Thank you.

12 THE COURT: Thank you, ma'am.

13 MR. BARFIELD: Thank you, ma'am.

14 Charlestina Banks.

15 CHARLESTINA BANKS: Your Honor, I am reading this
16 letter on behalf of my stepmother, Davita's mother, Mary
17 Banks.

18 THE COURT: Ma'am, I thank you for taking the time to
19 be here.

20 CHARLESTINA BANKS: Thank you.

21 These are her words.

22 "Sherman Dewalt murdered my daughter, Davita, one
23 early foggy morning by shooting her for no apparent reason
24 in front of her three kids. The kids are at the age of
25 five, ten, and 11 years.

1 alone, but thanks to God for all that He has done for me
2 along the way. I just pray that justice is served for
3 what he has done to Davita and our family.

4 Sincerely, Ms. Mary Banks."

5 THE COURT: Thank you. Thank you so much.

6 MR. BARFIELD: Carolyn Moore.

7 CAROLYN MOORE: Your Honor, I'm reading this letter
8 on behalf of Davita's family.

9 "Your Honor, we come to you on behalf of Davita
10 Roseboro who is unable to be here with us today due to the
11 brutal attack she was a victim of on December" -- or I'm
12 sorry, "on January 21st, 2003 that took her life.

13 Four years ago Davita was home in bed with her kids
14 when the defendant broke into her home and purposely shot
15 and killed Davita as her three children watched this
16 horrific act being done to their mother.

17 Her murderer, being a man she once loved, a man she
18 exposed her children to, and a man whose children she
19 cherished as if they were her own.

20 On July 21st, 2003 a foggy Monday morning, the
21 defendant burglarized Davita's home. Davita set up
22 blockades throughout her home to protect herself and
23 children from the defendant.

24 You see, Davita had become fearful of her murderer
25 due to past incidents such as the day her murderer tried

1 to show -- to show Davita that she was inferior to him by
2 attempting to force her off of the highway.

3 Thankfully, Davita was able to avoid being harmed by
4 the defendant in this particular incident. Also, Davita
5 had become a victim of physical and mental abuse prior to
6 this day, the same abuse Davita only shared with a few
7 friends due to its severity.

8 On the morning of the murder, Davita's oldest son,
9 Trey, begged him not to shoot his mother. Trey also tried
10 to grab her cell phone nearby to call for help, but the
11 defendant took the phone and made him stand in the corner
12 and threatened his life.

13 Davita also begged the defendant not to commit this
14 crime. She begged for her life, but the defendant showed
15 no remorse.

16 Your Honor, we remind you that all three kids were in
17 bed with Davita as this took place. Davita was a loving,
18 beautiful, and caring person inside and out.

19 The defendant took a mother, sister, aunt, and friend
20 from many people. She is remembered by her smile that she
21 always shared. She loved her family, and she adored her
22 kids very much. They were her life.

23 Davita was a church and family-oriented person. She
24 understood the importance of God's grace and attended
25 church regularly. She was supportive of her kids in

1 different activities that they were involved in.

2 Davita would be the loudest parent cheering for her
3 children when they would participate in different sports
4 and recreational events. From the excitement she showed
5 during these events, she would be hoarse the following
6 day.

7 We can only imagine how her kids feel now being -- we
8 can only imagine how her kids feel now not being able to
9 hear their mother's voice cheering them on.

10 Davita was the center of our life --- of our family.
11 Even though the kids have a father, stepmother,
12 grandparents, aunts and uncles, none of these individuals
13 are their mother.

14 Your Honor, just imagine a 15-year-old teenager
15 hearing her mother calling her name while she is asleep.
16 She runs down the stairs looking for her mother and
17 realizes that it was just a dream and cries herself back
18 to sleep.

19 Can you imagine a five-year-old child being bullied
20 at school and thinks that shooting the other child would
21 be the alternative result to solve this issue?

22 You see how this incident has affected this child's
23 decision making. At one time in his life, he couldn't
24 stand to hear the sound of thunder. It would frighten
25 him.

1 A young boy playing outside draws his attention to
2 the sky as he attempts to spell his deceased mother's name
3 from the clouds. Think about an adolescent constantly
4 reminding his mom how he would protect her before seeing
5 her murdered. Now Trey feels helpless because he thinks
6 that he let his mother down and holds it in his heart.

7 Davita's kids live -- Davita's kids' lives will never
8 be the same. Your Honor, they have been living in fear
9 for the last four years of their lives, and we pray that
10 the defendant will not be able to terrify them again.

11 Our family understands that the defendant's mom may
12 be burdened, and but she has the opportunity to interact
13 with her children. Davita's mother doesn't have that
14 chance. The defendant's kids can tell their dad how
15 they're doing in school. Davita's kids don't have this
16 luxury.

17 His sister and brother have the chance to discuss
18 issues with him, but all Davita's sisters and brothers
19 have are photos that reminds them of Davita's beauty.

20 Your Honor, it is not right what the defendant has
21 done. We need to let men and women know that the State of
22 South Carolina is not going to tolerate domestic violence.

23 Just the other day we saw on the news where a
24 16-year-old girl was stabbed and had to receive 40
25 stitches because she ended an abusive relationship.

1 Your Honor, it is in your hands to help stop these
 2 hinderance (sic) crimes in our state. We trust that you
 3 will give the highest penalty that the law allows for all
 4 of the crimes he has committed, even though that will not
 5 bring back Davita, but Davita's family has become the true
 6 victims due to this crime.

7 Your Honor, we are begging that justice be served.
 8 Take the abusive and heartless people, such as the
 9 defendat, off of our street. You can't take a person's
 10 life because you can't control them.

11 Your Honor, we, the family of Davita Roseboro, leave
 12 justice in your hands and pray that judgment will be
 13 made."

14 Your Honor, I would like to say on behalf of my
 15 family, Carolyn Luis Moore, Marshan Diamond Moore
 16 (phonetic), I have two kids that were raised around
 17 Davita. One of my daughters is a 15 year old that calls
 18 her, refers to her, as "Aunt Davita".

19 I ask you to let these kids know that you just can't
 20 go out and do anything that you please, and that if you
 21 do, consequences will follow. You will have to pay.

22 I'm trying to raise them in a way that they will
 23 become fine young men and women in Fairfield County, and I
 24 ask that you please show them that today by giving a fair
 25 judgment in this case because not only have my friends

1 lost Davita, my children lost Davita, but they have lost
2 their friends, Keisha, Trey, and Fluff (phonetic).

3 They can't go to Ms. Phillis' day care now and be
4 able to play with those kids because they have moved, so I
5 know what it feels like. I know what my children went
6 through when this happened, so I can't even begin to
7 imagine what her children went through.

8 I have a 15 year old that has anger inside so she
9 needs answers for this, so we just ask that you just do
10 what's right in this case today. Thank you.

11 MR. BARFIELD: Thank you, ma'am.

12 THE COURT: Thank you, Ms. Moore.

13 MR. BARFIELD: Are you okay?

14 (Pause).

15 Let me introduce you.

16 Your Honor, this is Leroy [REDACTED] the father of the
17 three children of the victim, Davita Roseboro. They are
18 in his custody, and he's going to tell you about the
19 impact on their lives, and I think he has some information
20 that they have written out for him to read to you.

21 THE COURT: Mr. Roseboro, I thank you very much for
22 coming.

23 LEROY R [REDACTED]: Yes, sir.

24 First, I'm going to read the letters that they have.
25 Denzell was asked to do a report about some memories.

1 (Crying.)

2 (Pause.)

3 MR. BARFIELD: Just take your time. Whenever you're
4 ready. You take all the time you need.

5 THE COURT: That's right. You take all the time you
6 need.

7 Do you need a -- do you want to stand at ease a
8 little bit to compose yourself or...

9 (Pause).

10 LEROY [REDACTED] And this is what he wrote. It was
11 probably about the -- right before the Christmas break.
12 His memory was: "The night that my mommy died, July 21st,
13 2004. We were crying and mad. We went to tell our
14 grandma and granddad. Daughter "T" called the ambulance,
15 and the policeman, but the man was gone, the man Sherman
16 who killed my mom."

17 This is Denzell, which is ten years old. "I want to
18 kill him with a shot line -- shotgun, a baseball bat, and
19 a .22-inch gun.

20 I was about to get the policeman's car and go to
21 Newberry, but I couldn't go take the policeman's car, but
22 one thing, he is -- one thing, he is in jail.

23 This on -- I hope he dies, and I hope that he dies
24 forever, and I won't see him again and not go to his
25 funeral. This is my memory, Denzell Roseboro."

1 And this is Lakeisha Roseboro: "Growing up without
2 my mother has been far -- the highest -- the hardest thing
3 that I had to go -- to do in my life."

4 THE COURT: How old is she now, Mr. Roseboro?

5 LEROY ROSEBORO: She is 15.

6 THE COURT: Excuse me. Go ahead, please, sir.

7 LEROY ROSEBORO: "It's strange when you're around
8 your peers, and they talk about all the things that their
9 mother has done for them.

10 It hurts me because all I can say is what my mother
11 did for me instead of what she's doing for me. I thought
12 I wouldn't be able to move on after this incident, but I
13 learned a valuable lesson, one that has taught me to be
14 careful when choosing people to trust.

15 I say this because I do believe at one point my mom
16 trusted the man who took her life away for no reason
17 whatsoever.

18 So I say to you the one that took away someone that
19 meant so much to me, you are wrong for what you did, and
20 you should know better.

21 I love my mama now, and I always have, but to know
22 that she is in a better place watching down on me and my
23 brothers makes me happy. Sincerely, Lakeisha Roseboro."

24 And this is from Leroy Roseboro, III, and he is 16.
25 "I felt like three-fourths of my life was taken away the

1 morning my mother was killed. From that day to about a
2 year later, that incident stayed on my mind and had me
3 thinking about if only there was something I could have
4 done.

5 As time went by, I realized that there was nothing I
6 could do. Compared to then and now, I have really
7 changed. To help keep that off -- to help keep the
8 incident off my mind, I continue to play basketball. I
9 know my mom would want me to keep playing, so I'm not
10 going to disappoint her. I was just writing to tell
11 everyone."

12 (Crying.)

13 (Pause.)

14 THE COURT: Take all the time you need, Mr. Roseboro.

15 (Pause).

16 LEROY ROSEBORO: He says, "I'm still -- I was just
17 writing to tell everyone that I'm still standing strong.
18 So there's nothing to worry about. As long as I have the
19 rest of my family, I'll be all right."

20 In addition to the children, Denzell is doing fine in
21 school. Every now and then he has his moments where, you
22 know, he misses his mom. You know, I'm watching T.V. and
23 I know when he comes down the stairs, you know, what's
24 wrong.

25 So there's nothing I can do but hold him and take him

1 to counseling, and each time he goes to counseling, he
2 comes back, he's a better person. The letter he wrote was
3 how he felt then, you know.

4 He's doing a whole lot better now because he doesn't
5 really understand, but things are going to come up where
6 he has to go to counseling. Then we sit down. We talk
7 and explain things to him.

8 So I told him, you know, that I respect him for being
9 honest about what he wrote on paper, and that he thought
10 he was going to get in trouble but why should I punish him
11 for being honest?

12 So -- and Lakeisha, she is 15. She is a sophomore in
13 high school. She plays basketball. She is doing
14 excellent, you know. She is an honor student.

15 She says in here she is -- she has her times, too,
16 also, but she is doing wonderful, according to me, but I
17 don't know what's going on inside of her. Only she knows.

18 Finally, Leroy Roseboro, which is the oldest, and at
19 the time he felt like there was something that he could
20 have done, but through counseling and everything, in his
21 letter he said that he realizes there was nothing he could
22 have done.

23 He's a star basketball player at Great Falls. He is
24 in the 11th grade, and he's planning on attending a
25 four-year college his senior year. He's in between a 2.5

1 and 3.0 grade point average. He's taking all college
2 courses in high school.

3 He's hounded as a young man. That's why, you know,
4 he's still standing strong, kind of -- you know, brought
5 tears after what he had to face and deal with by being the
6 oldest, but I say to the Court, you know, I want justice,
7 but I feel, me personally, as long as the kids grow up to
8 be good citizens and it don't affect them in their
9 relationships, I will see justice.

10 When they're doing good, then I'll see justice. It
11 has only affected me when they're not going good. So Your
12 Honor, whatever you have to do for everybody, like was
13 said, it's something that should be addressed and
14 shouldn't go lightly because domestic violence is
15 something that needs to be addressed in the State of South
16 Carolina, and this is the time to start. Thank you.

17 MR. BARFIELD: Thank you.

18 THE COURT: Mr. Roseboro, if I could just make a
19 couple of comments.

20 Do you, and from your comments and observations
21 today, and we had a brief hearing in Chester, it's
22 apparent that I -- I've got three children, and parenting,
23 to me, is a very serious thing.

24 It's abundantly apparent it's a serious thing to you,
25 and it is as equally apparent that you are doing a

1 wonderful job as a parent. I just wanted you to know that
2 I'm happy that the children have a father like you to
3 support them. Unsolicited, but I wanted to share that
4 with you.

5 LEROY ROSEBORO: Okay. Thank you.

6 MR. BARFIELD: Your Honor, Mr. Heyward Banks,
7 Ms. Roseboro's stepfather.

8 HEYWARD BANKS: Good evening, Your Honor, if you hear
9 from my family, you can see and imagine the pain and
10 suffering they have put us through.

11 (Crying.)

12 It's been over four years. I have went through the
13 judicial system. I could almost be a paralegal. I've
14 questioned. I've asked the prosecutor's office what's
15 going on here. I've talk to the Fairfield County
16 Sheriff's Department, the investigation department. They
17 say, "This is an open and shut case. We're ready to go."

18 The man questioned my family, kept hounding them and
19 burdening them was the prolong (sic) of this case. Now, I
20 understood some of the things were complications and all
21 of this.

22 The reason why I'm here now, as I said, my family
23 spoke for me. I'm here now on behalf of my family for
24 criminal domestic violence.

25 Since that happened to my daughter, I've seen and

1 I've heard of other young ladies almost in the same
2 situation, and I urge something to be done.

3 I talked to the solicitor before Mr. Barfield and all
4 the other solicitors, and I asked for the death penalty
5 for Sherman. I asked for the death penalty.

6 The reason why I asked for the death penalty is
7 because South Carolina right now is number seven in the
8 nation with the highest rate of criminal domestic
9 violence.

10 Also, I think from last year to this year, the rate
11 never changed, about one murder, about one, either one
12 down or one up. It hasn't changed but one, so evidently,
13 hasn't too much changed (sic).

14 I know South Carolina needs tougher and stiffer
15 penalty laws on criminal domestic violence, but we must
16 treat criminal domestic violence like you do a drug
17 dealer.

18 You -- there's so many times you're showing them
19 something. You give them something, but when you take a
20 case as Mr. Dewalt did my daughter, Davita, a case like
21 that, I hear about rights, "you have rights". She had a
22 right to live when he shot her right there pointblank. He
23 violated his rights, so he has no right in society to want
24 to have any rights.

25 I understand he is a human being. We are a human

1 society. I understand this, but going back to criminal
2 domestic violence, I wind up having to go to Sistercare.
3 I talked with Deborah Haynes and a lot of other people who
4 wind up an apparent murder victim.

5 We wind up going to the Attorney General's Office
6 trying to get answers and information, and we wind up
7 doing everything we can, but it still didn't answer my
8 family's questions: Why did this take so long?

9 Between all of this time -- every time a holiday came
10 up, like Thanksgiving, Fourth of July, Christmas, my
11 daughter's birthday, I have to take my wife out of town.
12 She can't stay in the house.

13 Even if a cloudy day comes now, somebody has to be in
14 the house with her. She can't stay there by herself now.
15 She always hears her voice. I'm constantly hearing this.
16 I'm always constantly hearing this here.

17 So we're hoping today there will be a closure to our
18 lives that you will give, I would say, the harshest
19 sentence. For me, I'd like to see the death penalty, but
20 you not only send a message to Mr. Dewalt, you're going to
21 send a message out there to the people who want to commit
22 criminal domestic violence that South Carolina is not
23 going to tolerate it.

24 For one thing, we need to make a start right here
25 today to let them know, you know, this here needs to stop.

1 Maybe other states and other counties will take notice of
2 this. Thank you very much.

3 MR. BARFIELD: Thank you, Mr. Banks.

4 THE COURT: Thank you, Mr. Banks.

5 MR. BARFIELD: Your Honor, I believe that's all from
6 the State.

7 THE COURT: Thank you. And to all who came and all
8 who spoke, again please know that I appreciate your being
9 here.

10 Mr. Swerling?

11 MR. SWERLING: If Your Honor please, first of all, I
12 want the family to know that I've had my conversations
13 with Sherman and his family, and their hearts go out to
14 them. It may not seem like much at this point.

15 There's some solace to them, but everything I've been
16 able to know and learn about Davita is that she was a
17 wonderful person.

18 All of Sherman's family who came in contact with her
19 and her children had a wonderful relationship with her,
20 and she was welcomed in all of their family events and
21 participated in all of their family events.

22 As a matter of fact, I have here today -- there's a
23 number of family members and friends, but the people that
24 are standing next to me are Betty Glasgow, his sister,
25 Octavia Kneece, his -- I'm sorry, Octavia Wise, his niece,

1 and Tammy Dewalt, his sister.

2 They were the ones that reiterated and told me all
3 about the relationship that they had, and it was a
4 relationship where they spoke with her on the phone
5 frequently, so it was not just a -- through Sherman, and
6 Sherman brought them over, but they all maintained the
7 friendship together.

8 So in no way are we in any way demeaning the
9 character of Davita, except for a very positive character.

10 Judge, let me just give you a little bit of
11 background on Sherman. He is, as he told you, 39 years of
12 age. He grew up in Prosperity. He went to high school,
13 and he graduated there and started working for a textile
14 plant in Newberry and worked there for 15 years straight.

15 THE COURT: Where was this?

16 MR. SWERLING: In Newberry.

17 THE COURT: All right.

18 MR. SWERLING: He was a doffer and maintained
19 employment there from 1988 until 2002.

20 THE COURT: A corn doffer?

21 THE DEFENDANT: A doffer.

22 THE COURT: Fifteen years?

23 THE DEFENDANT: Yes, sir.

24 MR. SWERLING: So Judge, you'll -- you can see from
25 that that he has a -- had a steady employment history. He

1 was not in any way difficult to deal with, to get along
2 with. He had a very positive work ethic.

3 When he was in high school, he was in love with a
4 young girl named Felicia. The reason I bring this up is
5 so you'll know a little bit about what led to his
6 depression that is documented in Dr. Pinner's reports long
7 before these events took place.

8 Felicia died of a blockage at a very early age,
9 around 19 or 20. That was his high school sweetheart.
10 The family tells me, and they are all here to support
11 that, but that had a dramatic effect on Sherman because he
12 did not know a lot of women, did not know a lot of girls,
13 did not have a lot of relationships with a lot of girls,
14 but the ones that he had relationships with sometimes
15 ended in tragedy, as it did with Felicia.

16 He comes from a family of five sisters and two
17 brothers up in that area. Judge, also from his high
18 school records, you can see from Dr. Morgan's report that
19 he's learning disabled. He has a borderline I.Q.

20 I think it's significant that he was able to maintain
21 employment with the same employer for 15 years and obtain
22 a high school degree with a borderline I.Q. and a learning
23 disability, and then depression had set on later on in
24 life.

25 All of that, I believe, goes toward the man that just

1 stands before you as being a positive person and factor in
2 the community.

3 He has no prior criminal record. He has no history
4 of violence. I'm not disputing -- we're not here to
5 dispute what the family has said. They are hurt, and I
6 would be acting in the same way they are, I assure you, if
7 I was in their position.

8 But I'm not aware of anything in this man's
9 background about violence. That's not -- that's
10 contradicted by everything his family tells me and the
11 fact that he has no criminal history, and that he
12 maintained employment for all of those years with the same
13 employer.

14 THE COURT: Yes, sir.

15 Excuse me just a moment, Mr. Sworling?

16 Sheriff, when I was coming along, the doffer was
17 about the most difficult job in the mills. Is that still
18 the case? I don't know what --

19 THE SHERIFF: Yes, sir.

20 THE COURT: -- changes were made but being a corn
21 doffer, nobody stayed there long.

22 THE SHERIFF: Yes, sir.

23 THE COURT: Is that still the case?

24 THE SHERIFF: That is the case.

25 THE COURT: Excuse me.

1 THE SHERIFF: Yes, sir.

2 THE COURT: I just didn't know if technology had
3 changed that type of job.

4 MR. SWERLING: Judge, he's -- from everything I can
5 determine, he's a hard-working individual. He got married
6 in 1992, and he has had child. He was married for eight
7 years. His child now is 13 years of age. Her name is
8 Shermeece (phonetic).

9 He was divorced from his wife in the year 2000, so
10 again, another one of those relationships ended in a
11 tragedy to him. That is when it appears that he started
12 going to the Pinner Clinic and was diagnosed with
13 depression and was treated with depression, as the records
14 will reflect, not only the Pinner Clinic records but also
15 Dr. Morgan. That's supported by the family, as well.

16 What they told me about Sherman was, as I said, there
17 are five sisters and two brothers, which means there's a
18 lot of children.

19 Sherman was the uncle that everybody loved. He was
20 the life of the party. He was the dancer. He was the one
21 that interacted with the kids. He -- they all had a good
22 time with him.

23 He met Davita Roseboro at a party somewhere in the
24 2000 to 2001 area after he got divorced and after he was
25 being treated. About that same time, he started working

1 for Thomas and Howard. He got a raise and started working
2 as a truck driver, and he did that continuously up until
3 the time he got arrested working as a truck driver.

4 THE COURT: How -- how long was that period of time?

5 MR. SWERLING: Well, you -- it's anywhere between --
6 he got arrested in 2003, so it was -- we're talking about
7 approximately three years, but it was -- he left the
8 Newberry Mill, went in to going to be a truck driver to
9 get -- I think as you said, the job he was at was a
10 difficult job, but he was going to make more money as a
11 truck driver. He also did long hauls and short hauls as a
12 truck driver.

13 He met Davita Roseboro and fell in love with her and
14 with her children.

15 THE COURT: Sounds like she would be an easy lady to
16 love from the comments that we have heard.

17 MR. SWERLING: And he had only positive things to say
18 about her, as well. I mean we're not -- it's not only
19 from the family talking, but it's from him, too.

20 They had a strong relationship, and for a period of
21 time, about a year to a year-and-a-half, they actually
22 lived together.

23 As I told you, he was very close to the children. He
24 helped the children. He got to help the children get to
25 school. He helped in some ways financially when he could

1 when she needed a little extra money.

2 She was being supported. She was working and being
3 supported by Mr. Roseboro, but every once in a while there
4 was a little extra needs, and Mr. Dewall tried to go ahead
5 and help with that. That's, again, documented by the
6 family. They told me that; that they are aware of that,
7 that he helped when he could.

8 He helped her finance a car, and he helped her pay
9 for a car. He loved the children, as well as loving her.
10 He took Davita and the children to his family, all of his
11 family events, and that is, as I said, documented by the
12 family, as well.

13 A couple of weeks before this incident they had an
14 argument and they separated. He moved out. I think in
15 his mind, she may have gotten involved or fell -- or
16 gotten some feelings toward someone else, but that -- that
17 is not an issue because he just -- that was what his
18 feelings were, not that we're documenting that or
19 attempting to document that, but I think that it explains
20 a little bit, again, that he felt there was a loss there
21 again as a result of that and the fact that they
22 separated. So that was the third serious relationship in
23 his life that was ending and terminating.

24 He really cannot explain what happened that night.
25 It contra -- it's contraindicated by his behavior in the

1 past. He went over there. He said to give her some
2 money. Of course, the hours are extremely unusual to go
3 over there and do that.

4 He did admit -- he admits breaking in. He admits
5 shooting her. I think a lot of the events that took place
6 while he was in the house are very cloudy to him, but one
7 thing I do know since the very beginning is he's extremely
8 remorseful about what happened. He has told everybody who
9 he's come in contact with how remorseful he is about what
10 happened.

11 When it became apparent that it was going to be
12 either a plea or a trial after we had the hearing before
13 you in Chester and the date was set, and -- of course, a
14 decision had been made long before that, but Sherman
15 wanted to stand up in front of you and accept
16 responsibility for his actions.

17 He did not want to put the children through a trial.
18 I tell you that, and I tell this group here that's
19 gathered together, that the critical reason for the -- one
20 of the main reasons that Sherman is accepting
21 responsibility here is because he did not want to put the
22 children through any further trauma. He loved them, and
23 he is accepting responsibility for his acts.

24 He knows that the minimum that he will get in this
25 case is 30 years. He knows that, and he is accepting

1 responsibility and admitting his conduct before you and
2 the family and the public.

3 Judge, he -- the three ladies are here. I think they
4 may want to address you briefly, but they can basically --
5 if you have any questions, can document what I've told you
6 about the relationship between Davita, the children,
7 Sherman and their family. I don't think that's in any
8 dispute anyway.

9 THE COURT: Thank you all for coming. If you wish to
10 address the Court, I'll be happy to hear from you.

11 MR. SWERLING: State your name.

12 THE COURT: Please state your name first, and again,
13 I thank you all for being here today.

14 DEFENDANT'S NIECE: Hi. My name is Sharlac
15 (phonetic). I'm Sherman's niece. I know Sherman here is
16 a very hard worker. He never got in any trouble. He
17 loved Davita and her kids. He really did a lot for both
18 of them.

19 I mean, if there's a way -- anything that they wanted
20 or whatever, Sherman was always there for Davita and her
21 kids. I mean, I never had a problem with Davita because I
22 mean, I liked Davita also. Between that relationship, I
23 don't -- you know, I don't have a problem with that. I
24 don't know anything about that. I know he loved her and
25 her kids.

1 THE COURT: Thank you, ma'am.

2 MR. SWERLING: Just identify yourself so the court
3 reporter can hear you.

4 TAMMY DEWALT: Hey, I'm Tammy Dewalt. I'm his
5 sister. Sherman, he -- he's a very hard worker. He
6 always has been. I mean, he's a real back -- he's a real
7 swell good fellow.

8 I mean, if he can help you out, he'll help you.
9 He'll give you the last -- even though he knows he didn't
10 have it to give, Your Honor, he would always help out.
11 Davita, she was a real nice person, too. She brought the
12 kids around with our kids, you know, all the time.

13 You know, we all -- we grew to love her and
14 everything. It was something that just happened. I'm
15 sorry it happened, too. I mean, he really is. He's a
16 loving person. He really is. I'm just sorry that it
17 happened.

18 DEFENDANT'S SISTER: Okay. I'm sorry. I'm Sherman
19 Dewalt's sister.

20 I just want to say that Sherman, he -- he always
21 would help us in things we need, he always did. I've
22 grown to love Davita. She worked hard. She was a single
23 mother.

24 Anytime we have get-togethers like Christmas dinner,
25 Thanksgiving dinner, Davita and her kids were always

1 there. They were always welcome at the house. Me and her
2 had become real close. We would talk on the phone a lot.
3 She had called me one time, and she told me that she
4 wanted me to talk to Sherman.

5 Sherman was working two jobs. He was working at
6 Thomas and Howard, and he was driving for Luther
7 (phonetic) Trucking in the daytime. He was driving the
8 highways at night. He was working two jobs.

9 She was saying that she was scared for him, you know,
10 that he might go to sleep, you know, driving the truck at
11 night. I told her I know how she feels because my husband
12 worked two jobs. He's a truck driver, too. He works two
13 jobs, too, whatever.

14 Davita would call me all the time. You know, we
15 talked. Me and her would talk, you know. I mean, her
16 kids, I loved her kids, too.

17 He was -- he was always good, and he loved Davita. I
18 mean, after this happened, he would call me and cry and
19 say, "I miss Davita." He'd say, "I love her. I can't
20 believe this happened."

21 I understand how this family feels because I lost my
22 daughter, too, at 28 to cancer, and she left two boys, and
23 her baby boy and his daddy took him away from me after she
24 died. It's just like -- there's days that I have bad days
25 and good days, too. I miss my daughter a lot. She was my

1 right hand. Anytime I needed someone, she was there.

2 THE COURT: Thank you.

3 MR. SWERLING: Judge, the only -- the other things I
4 want to tell you is that Mr. Barfield was referring to a
5 Mr. Walker whom Mr. Dewalt called after the events. That
6 was his brother that he called immediately, told him what
7 had happened, and Mr. Dewalt did turn himself in to law
8 enforcement.

9 I think I need to say this, just so the record is
10 pretty clear about this and to answer -- maybe put the
11 family somewhat at ease about the delay in this case. I
12 had two very serious homicide cases in Fairfield County.
13 One that actually was just a little bit older than this,
14 and as Your Honor knows, we tried that case three times in
15 this court.

16 Mr. Barfield got -- he inherited that case from
17 Mr. Justice, and he tried it three different times. It
18 takes an incredible amount of time to prepare cases and to
19 schedule them for trial.

20 This case was no less important, but it was also
21 pending. It was a case of mine, and I'm not trying to --
22 it may be unusual for the defense lawyer to try to offer
23 these explanations, but I think in all fairness, I'm the
24 one that needs to do that.

25 Mr. Justice, who was a dear friend of mine, may his

1 soul rest in peace, these were cases that he wanted to
2 handle himself. He and I had numerous conversations about
3 these two particular cases. These were important to him
4 to prosecute.

5 Mr. Justice got sick, as we all know, and from time
6 to time he thought he was getting better and would be able
7 to return to the courtroom, and the cases were delayed
8 during those periods of times because Mr. Justice was
9 giving these cases that priority, and he wanted to return
10 to the court and try these cases.

11 As we know, over a period of a year or two, his
12 physical condition kept deteriorating, and he passed away.
13 Mr. Barfield inherited this case, as well as many other
14 cases, and the Cook case.

15 There was also some periods of time where there was a
16 question about Mr. Dewalt's competency. You can see from
17 the records that Mr. Morgan gave him, when he was
18 committed to the Columbia Care Center in December of 2003,
19 he was somewhat delusional.

20 He was given an adjustment disorder diagnosis. He
21 was given anti-psychotic medicine and mood stabilizing
22 drugs. That was an issue, as well, with him at this time.

23 All of these were combinations and factors that
24 caused the delay in the case. We understand the angst of
25 the family, but I think they need to understand or at

1 least have an explanation.

2 The other, of course, factor is that my schedule is
3 something that Mr. Barfield from time to time when we
4 spoke had to accommodate me because I was committed to
5 other courts.

6 I just wanted the family to know that. No one was
7 flying to delay justice in this case. Mr. Dewalt is
8 standing up here admitting his guilt, accepting
9 responsibility.

10 We hope that the sentence that's involved in the case
11 that Your Honor would see fit to allow him, at some point,
12 to be able to get out of jail.

13 Even if he got 30 years, he would be in his 60s
14 before he got out, but it would give him an opportunity to
15 spend some years with his family in the later years of his
16 life.

17 Your Honor, we would ask you to consider a sentence
18 in that range which would take into consideration what the
19 family is asking for about criminal domestic violence,
20 sending a message, having a resolution in the case but
21 also give Mr. Dewalt something to look forward to and
22 something that he can, when he gets out, have some time
23 before he passes away, as well.

24 Judge, that's all I have. I think Mr. Dewalt would
25 like to address you very briefly.

1 THE COURT: I'll be happy to hear from you,
2 Mr. Dewalt.

3 THE DEFENDANT: I'd just like to say that I'm sorry.
4 I'm sorry. I know I hurt a lot of people, including my
5 family, and I'm sorry.

6 THE COURT: Anything additionally from the State?

7 MR. BARFIELD: No, sir. I don't believe so. No,
8 sir.

9 THE COURT: Without question, this is one of the most
10 difficult cases that I've been called on to pass sentence.

11 We've got the absolute horrific immediate facts of
12 the case. You walked in -- you didn't walk in. You broke
13 in and killed a person that by everyone's account was an
14 exemplary example of what we should all try to be,
15 including your family's description of her.

16 It would -- it would be simple just to disregard
17 other things and give you a life sentence, but as you have
18 to be punished for these crimes, I don't think that
19 punishment is my only function as a judge.

20 I think my job is to carry out justice. When I say
21 that, I mean, that you had an aberration when this
22 happened, and that's demonstrated by the fact that there
23 has, in your whole life, never been anything else like
24 this.

25 I appreciate, and I think Mr. Roseboro and Mr. Banks

1 and the others appreciate, the fact that the children
2 didn't have to come and re-live what has to be the most
3 terrible moment or moments in their life in a trial. If
4 you had not pled guilty, that would have happened.

5 Your attorney informs me, and I believe, that that is
6 a factor in your pleading guilty. I think it's a
7 mitigating factor, mitigating in the sense that I think
8 that that alone is of such consequence that I shouldn't
9 give you the life sentence.

10 You had mental issues, according to the medical
11 records, especially at the time of the crime, and I'm
12 certainly no psychiatrist. I'm not trained in that area,
13 but from personal life experiences I know that mental
14 issues are not a constant, that they change.

15 Your records, your medical records, that I have
16 reviewed in detail indicate that you have got a
17 long-standing history, not necessarily of mental illness
18 but mental problems, and that your intelligence quotient,
19 your I.Q. a borderline.

20 You have, even prior to this event, been diagnosed as
21 clinically depressed. You have got no criminal record, so
22 my job is to do justice to make certain that the citizens
23 of this state and of the victim's family know that what --
24 the actions that you took are just so far away from
25 accepted that you have to have a very, very -- series of

1 long and very instructive sentence that to others who are
2 prone to domestic violence that they can look to your
3 situation and know that it can't be tolerated.

4 There are no winners in this. Every single
5 individual on both sides loses in situations like this.
6 No one lost the way that Davita Roseboro lost.

7 The sentence of the Court on the burglary (first: 30
8 years; on the murder, life, and I'm suspending that on the
9 service of 30 years and five years' intensive probation
10 and a permanent restraining order for you not to ever go
11 about the family of Davita Roseboro again.

12 Now, this years is a day-for-day sentence, no parole.
13 You will be in jail 30 years. I'm putting you on
14 intensive probation for five years after that, and if you
15 violate the terms of this extensive probation, then you'll
16 go away for life and that means life, forever.

17 I'm trying to give you some credit for a life, a
18 productive life, until this aberration, but I can't not
19 punish you severely for this terrible thing that you did.
20 That's the sentence of the Court.

21 MR. BARFIELD: Thank you, Judge.

22 MR. SWERLING: Thank you, Your Honor.

23 (Whereupon, the proceedings were concluded.)
24
25

FORM 5

STATE OF SOUTH CAROLINA)

County of FAIRFIELD)

SHERMAN DELWA IV #32640D)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS
2008-CP-20-322

2008 SEP 11 P 2:12

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS B 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 Mc Cormick CORR. INST. FI-B-149
386 Redemption way, McCormick, SC 29849
2. Name and location of Court which imposed sentence Fairfield County
Court
3. Name(s) of co-defendant(s) (if any)
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a)	<u>03-GS-20-389</u>	/	<u>A/w G685996</u>
(b)	<u>03-GS-20-390</u>	/	<u>A/w G685997</u>

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) JANUARY 28, 2008

(b) 30 YEARS

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

NO

8. If you answered Ayes@ to (7), list:

(a) the name of each Court to which you appealed:

i. _____

ii. N/A

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. N/A

iii. _____

(c) the date of each such result:

i. _____

ii. N/A

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. N/A

iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) LAWYER NEVER ADVISE ME THAT I COULD

(b) _____

(c) _____

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

- (a) With held information - Abuse of Justice
- (b) IN VOLUNTARY PLEA - Court lack subject jurisdiction
- (c) INEFFECTIVE ASSISTANCE

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

- (a) LAWYER FAIL TO INVESTIGATE CRITICAL PARTS
- (b) SOLICITOR NEVER PRESENTED EVIDENCE OF AUBUS
- (c) LAWYER DIDNT ALLOW ME TO TESTIFY THAT COULD REDUCE TO

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

BETTER INCLUDED

- (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? _____

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

- (a) the specific nature thereof:
 - i. _____
 - ii. N/A
 - iii. _____

iv. _____

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

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

(c) the disposition thereof:

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

N/A

(d) the date of each such disposition:

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

N/A

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

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

N/A

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

NO

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

(a) which grounds have been presented:

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

N/A

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

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

N/A

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) was ^{not} Advise that I could Don't know

(b) the ~~law~~ Law

(c) _____

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

(a) your arraignment and plea? Yes

(b) your trial, if any? _____

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A

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

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

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

i. Jack B Swerling

1702 Main St, Suite 301

ii. Cola, SC 29201

iii. _____

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

i. PLEA

ii. _____

iii. _____

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

Vacated / and re-sentence or trial

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Farfield)

VERIFICATION

I, Sherman Dewalt # 326410, 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.

Sherman Dewalt

SWORN to and subscribed before me this 09 day of September, 2008.

James C. Frank (L.S.)
Notary Public

My Commission Expires: 01-31-2010

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

I, Sherman Dewalt #326410, 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.

Sherman Dewalt
Applicant

SWORN or affirmed to and subscribed before me this
09 day of September, 2008.

Jennifer C Frankl
Notary Public

My Commission Expires: 01/31/2010

DEAR HONORABLE CLERK OF COURT

ENCLOSED IS AN (PCR) APPLICATION
BEING FILED IN THIS COURT COULD YOU
PLEASE CLOCK-STAMP AND SEND AN
RETURN FOR MY FILES. YOUR SUPPORT
& CO-OPERATION IS FULLY APPRECIATED
IN THIS MATTER.

RESPECTFULLY
S/ Sherman Dewalt
Sherman Dewalt 326410
FL-B-149
McCorrick COR. EAST
386 REDEMPTION WAY
McCorrick, SC 29849

AUGUST 29, 2008

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FAIRFIELD)
)
)
)
 Sherman Dewalt, 326400,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTH JUDICIAL CIRCUIT

2008-CP-20-322

RETURN

The Respondent, making its Return to the application for post conviction relief (PCR) filed September 11, 2008, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Fairfield County Clerk of Court. The Applicant was indicted at the October 2003 term of the Fairfield County Grand Jury for Murder (2003-GS-20-389) and Burglary, First Degree (2003-GS-20-390). Jack B. Swerling, Esquire, represented the Applicant. On January 28, 2008, the Applicant pled guilty as indicted. Honorable Kenneth G. Goode sentenced him to confinement for a period of thirty years on the charge of Burglary First and life for the charge of Murder. Judge Goode suspended the life sentence upon the service of thirty years and five years intensive probation. Judge Goode also instituted a permanent restraining order prohibiting the Applicant from going near the victim's family. The Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Fairfield County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any of the above not so attached will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel;
2. Involuntary guilty plea;
3. Failure to investigate;
4. "Withheld information- miscarriage of justice;"
5. "Solicitor never presented evidence of an gun;" and
6. "Lawyer didn't allow me to testify that could reduced to lesser included offense."

III.

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

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

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

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

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

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the

plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MICHELLE J. PARSONS
Assistant Attorney General

By: Michelle J. Parsons
ATTORNEYS FOR RESPONDENT

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

November 18, 2008.

STATE OF SOUTH CAROLINA)	
	)	COURT OF COMMON PLEAS
County of Fairfield	)	2008-CP-20-0322
)	
Sherman Dewalt)	
)	
Applicant,)	
)	
vs.	)	TRANSCRIPT OF RECORD
)	
State of South Carolina)	
)	
Respondent)	

August 25, 2009
 Winnsboro, South Carolina

BEFORE:

THE HONORABLE ROGER M. YOUNG, JUDGE.

APPEARANCES:

CREIGHTON COLEMAN, ESQ.
 Attorney for the Applicant

MICHELLE PARSONS KELLEY,
 Attorney for the State

KAREN AMBROZIAK
 Official Court Reporter

C O N T E N T SWITNESSES:

SHERMAN DEWALT

Direct Examination by Mr. Coleman 3

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JACK SWERLING

Direct Examination by Ms. Kelley 11

Cross-examination by Mr. Coleman 18

EXHIBITS:

(There were no exhibits introduced.)

CERTIFICATE OF REPORTER

22

1 THE COURT: Okay. Let's see. We're here on
2 Sherman Dewalt vs. State of South Carolina,
3 2008-CP-20-0322.

4 All right. You're Mr. Dewalt?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. Mr. Coleman, are you ready?

7 MR. COLEMAN: Yes, sir. We'd call Mr. Dewalt to the
8 stand.

9 THE COURT: All right. Raise your right hand.

10 SHERMAN DEWALT,
11 after being duly sworn, testified as follows:

12 THE COURT: All right. Have a seat. Whenever
13 you're ready.

14 DIRECT EXAMINATION:

15 BY MR. COLEMAN:

16 Q May it please the Court, Your Honor.

17 Your name is Sherman Dewalt; is that correct?

18 A Yes.

19 Q And you were sentenced January 28th, 2008; is that
20 correct?

21 A Yes.

22 Q And you were charged and you pled guilty to murder
23 and also burglary first; is that correct?

24 A Yes.

25 Q And you got 30 years on the burglary and life on the

1 murder; is that correct?

2 A Uh...

3 Q The 30 -- the life was suspended to 30 years?

4 A Yeah, yeah.

5 Q So basically, two 30-year sentences; is that
6 correct?

7 A No, one 30 year.

8 Q Okay. Jack Swerling was your lawyer?

9 A Yes, sir.

10 Q And you filed a Post Conviction Relief; is that
11 correct?

12 A Yes.

13 Q You're saying that he did some things that he
14 shouldn't have done or didn't do some things that you
15 didn't ask him to do; is that correct?

16 A Just one thing.

17 Q Okay. What is that?

18 A I had told him exactly what had happened, and he
19 told me there wasn't no evidence of what I was saying
20 and...

21 Q Well, tell the Court specifically what you're
22 talking about. What did you tell him that -- what are
23 you talking about?

24 A Oh, I would tell him what had happened in the
25 house.

1 Q Okay. Specifically what? About when you kicked the
2 door in, you went in, and what did you see when you got
3 there?

4 A Oh, there was another man in the house.

5 Q Another man in there with your ex-girlfriend?

6 A Yeah.

7 Q Okay. And you told Mr. Swerling that?

8 A Yes, sir.

9 Q And what happened? What did he do or what didn't he
10 do?

11 A Well, he just -- he basically just told me that he
12 was going to be honest with me. He said there wasn't no
13 evidence supporting of what I had said, and I was
14 asking him, you know, I told him the kids wasn't in the
15 bedroom.

16 He told me -- I asked him why was they -- they
17 believing what the kids said over what I said. He said
18 he didn't really know, but he told me there wasn't no
19 evidence of what I was saying.

20 Q Well, let's go back. You said that -- that there was
21 another man in the room --

22 A Right.

23 Q -- sleeping in there with your ex-girlfriend?

24 A Well, he wasn't sleeping. He was standing at the
25 bottom of the bed.

1 Q Okay. And you told Mr. Swerling that; is that
2 correct?

3 A Yes.

4 Q And you thought that you should be entitled to some
5 type of manslaughter --

6 A Yeah, just something...

7 Q -- plea in this and not murder?

8 A Right, yes, sir.

9 Q And the fact that another man was in there with
10 your ex-girlfriend would have put some type of
11 emotion into what you did to allow some sort of
12 negotiated plea to a manslaughter --

13 A Yes.

14 Q -- from murder?

15 A Yes.

16 Q And that wasn't done?

17 A Yes.

18 Q Okay. As it related to the children in the bed,
19 the allegation was at the time that the young lady was
20 shot, that the children were in the bed with her; is
21 that correct?

22 A Yes.

23 Q And you're saying that the children were not in the
24 bed?

25 A No, sir.

1 Q Okay. The other thing that you told me sitting
2 over here was the fact that the children gave a statement
3 to the Fairfield County Sheriff's Department; is that
4 correct?

5 A Right.

6 Q And the person that took the statement was who?

7 A It was the kid's uncle. It was their uncle.

8 Q And what is his name?

9 A Mike Roseborough.

10 Q And -- and what are you saying about the uncle
11 taking the statement from the three children?

12 A I think that is a -- that's conflict of interest,
13 ain't it?

14 Q Well, I'm asking you.

15 A That's what happened.

16 Q You made that complaint to me. Now, what's the
17 basis of your complaint?

18 A I don't think he should -- people related to people
19 like that shouldn't even be -- shouldn't even be taking
20 statements.

21 Q Okay.

22 A That's what I think.

23 Q Okay. Is there anything else?

24 A No.

25 MR. COLEMAN: Okay. That's all I have, Your Honor.

1 THE COURT: Okay. All right. Anything from the
2 State?

3 MS. KELLEY: Yes, Your Honor.

4 CROSS-EXAMINATION:

5 BY MS. KELLEY:

6 Q Good morning, Mr. Dewalt.

7 A Good morning.

8 Q During your guilty plea, you told the judge that
9 you understood the nature of the charges against
10 you?

11 A I don't recall. I might have did. I don't recall.

12 Q I can't hear you.

13 A I might have did. I might have.

14 Q You might have?

15 A Yeah.

16 Q Would you disagree if the record shows that you
17 did?

18 A No, ma'am.

19 Q And you also told the judge that you understood
20 the range of possible punishments?

21 A (Nods in the affirmative.)

22 Q Can you --

23 A Yeah.

24 Q And you told the judge that you understood that
25 you would be waiving your right to a jury by entering a

1 guilty plea?

2 A Yeah.

3 Q And you understood that you would be waiving
4 defenses that you might have had at trial?

5 A Yeah.

6 Q And you told the judge that you were waiving your
7 right to challenge any statements?

8 A I guess so.

9 Q And you told the judge that you actually committed
10 each of these offenses?

11 A Yeah.

12 THE COURT: Can you speak up so the court reporter
13 can hear you?

14 THE WITNESS: Oh, all right. Yes, sir.

15 THE COURT: All right.

16 BY MS. KELLEY:

17 Q And you told the judge that no one promised you
18 anything to get you to plead?

19 A Yes, yes.

20 Q And no one threatened you to get you to plead?

21 A No.

22 Q And that you had had enough time to make up your
23 mind as to whether you wanted to plead?

24 A Yeah.

25 Q And that you were pleading guilty of your own free

1 will and accord?

2 A Yeah.

3 Q And that you were satisfied with your attorney?

4 A Yeah.

5 Q And, again, you told the judge you did not need any
6 more time to speak with your attorney?

7 A Right. What?

8 Q And you told the judge that you had understood your
9 talks with your attorney?

10 A Yeah, but at that time, I didn't know the specific
11 things that I know about the law now. I didn't know
12 nothing about the law then.

13 Q We're just talking about what you told the judge.

14 A Yeah, right.

15 Q And you told the judge that you had understood all
16 of your talks with Mr. Swerling?

17 A Yeah.

18 Q Is that a yes?

19 A Yeah.

20 Q And, again, you told the judge you didn't need any
21 more time?

22 A (Nods in the affirmative.)

23 Q You told the judge that you were completely and
24 totally satisfied with your attorney?

25 A (Nods in the affirmative.)

1 THE COURT REPORTER: I'm sorry, could you speak up,
2 please?

3 THE WITNESS: Yeah.

4 BY MS. KELLEY:

5 Q You also told the judge that you understood all of
6 the judge's questions.

7 A Yeah.

8 Q You also told the judge that you didn't have any
9 questions.

10 A Yeah.

11 Q And when the judge asked you if you had
12 substantially agreed with the facts stated, you said
13 for the most part you did?

14 A Yeah, for the most part I did.

15 MS. KELLEY: No more questions.

16 MR. COLEMAN: No, sir.

17 THE COURT: All right. You can step down.

18 Any more witnesses?

19 MR. COLEMAN: No, sir.

20 THE COURT: All right. Anything from the State?

21 MS. KELLEY: Yes, sir, Your Honor. The State
22 calls Jack Swerling.

23 THE COURT: All right. Raise your hand.

24 JACK SWERLING,

25 after being duly sworn, testified as follows:

1 THE COURT: Okay. Go ahead.

2 DIRECT EXAMINATION:

3 BY MS. KELLEY:

4 Q Mr. Swerling, how long have you been practicing
5 law?

6 A Thirty-six years, and I was admitted to the bar in
7 1973.

8 Q And what percentage of your practice is criminal
9 law?

10 A Almost exclusively. Ninety -- I'd say 95 percent.

11 Q Were you appointed or retained on this case?

12 A I was retained to represent Mr. Dewalt. Just as a
13 matter of background, I have handled or tried
14 numerous murder cases. So I'm very familiar with
15 homicide cases at all different levels: Murder,
16 manslaughter, involuntary manslaughter, reckless
17 homicide.

18 Q All right.

19 A That's been a large part of my practice over the
20 years.

21 Q Did you prepare this case for trial?

22 A Yes. First of all, Sherman is an extremely nice
23 individual, and his family is very nice, as well. They
24 were very cooperative, and he was very cooperative.

25 We did have -- I'll just give you a little bit of

1 background, so -- for the record, we had him evaluated.
2 He was evaluated at the State hospital. He was found to
3 be competent.

4 I attended one of those meetings when he was
5 interviewed. We also had him evaluated by Dr. Harold
6 Morgan, who found him competent and criminally
7 responsible.

8 We secured for Dr. Morgan and for purposes of
9 trial records from numerous places that we got
10 from -- information from Sherman, as well as his family.

11 There was a Dr. Long, a Dr. Pinner, a Dr. Ferguson,
12 his school records, his jail records, mental health
13 records, Columbia Care Center records, Lucas Mental
14 Health records and -- yeah, and those were the records.

15 We presented those to Dr. Morgan and also to the
16 state hospital so that they would have that
17 information. There was no question that Sherman had
18 some mental issues, but it didn't rise to any kind of
19 defense in the case.

20 We also investigated the background that he had
21 with this woman. Sherman had had some kind of difficulty.
22 I think his -- there was a trauma in his life. I think
23 he lost his wife or maybe a long-term girlfriend. I'm
24 trying to -- I just can't remember, but it was a very
25 traumatic event to him.

1 We discussed that with the family, and that was one
2 of the influences that was going on in his life. There
3 was a woman who was killed that night had been somebody
4 he had been seeing for a while. They had been living
5 together for a while.

6 I think that there were several children, not
7 between them but children of her own. About a week or
8 two prior to this, they had actually separated. He had
9 moved out. He was pretty despondent about that.

10 My notes reflect that he went over there. He had a
11 gun. He went to the house. He knocked on the -- doing
12 the best -- let me see here. It was in the middle of the
13 night.

14 He went to the -- he still had some things over
15 there, did not know why he had taken a gun. He knocked
16 on the window to talk to her. She did not want him to
17 come in, so he kicked in the door.

18 Of course, he did have a pistol in his possession.
19 That was never denied, and he never -- there was never
20 any denial of the shooting itself.

21 The question was what were the circumstances
22 surrounding the shooting. My records reflect that he
23 did not know where the gun was, so what we looked at is
24 we looked at this case from all different angles to
25 see whether or not we could come up with a manslaughter

1 charge and maybe support a manslaughter charge to a jury.

2 We looked at other possibilities, including the
3 mental defenses. I explained to Sherman the law of
4 murder, the law of manslaughter, the -- and the burglary,
5 of course, the risks that he would be taking to go to
6 trial; that the best that we could do, if he pled guilty,
7 was to allow -- the State was going to allow a plea of
8 murder with a minimum sentence of 30 years. He was
9 looking at 30 years to life.

10 I did not think, under the circumstances,
11 manslaughter was going to be a very good option. Of
12 course, it certainly could have been an option, but
13 that was based on our investigation. All the
14 investigation reveals that the children were in the room
15 and in bed with her when she was shot, which was going
16 to be a very aggravating circumstance.

17 There was no evidence that there was anybody else
18 in the room. He said that there had been, but there was
19 no evidence that anybody had been in the room.

20 So this is one of those cases that, you know, we just
21 laid out for him. I did interview, and my office
22 interviewed, his sister Betty Glasgow, his sister Mary
23 Hutchison, his niece Octavia Wise.

24 Calvin Walker was interviewed by the -- by
25 Dr. Morgan, but he did not want to get -- he did not

1 want to go on the stand. He had nothing to say.

2 Tammy -- Tyrone Robertson, we were told not to call
3 him. That was a nephew; Keisha R. [REDACTED] -- or R. [REDACTED]
4 described his conduct a couple of days before. These
5 are family friends.

6 Tammy Dewalt, his sister. We -- he was staying
7 with her, and we went through the incident, what
8 happened that day, the day before, the history behind
9 him and this lady.

10 We also interviewed Terry Watts, a friend, Ronnie
11 Simpkins, a friend. These were, basically, about
12 everybody that we were given names of, of people to talk
13 about his mental state, his history, his history with
14 this young lady.

15 We tried to -- we tried to go with all of them
16 with the idea of trying to develop a defense, and when
17 it came right down to it, I left the decision up to
18 Sherman. I never make that decision for anybody. It is
19 their choice, and so he opted to plead to murder rather
20 than take a chance of going to trial and getting a much
21 more substantial sentence due to the nature of the case.
22 The woman was shot in bed.

23 Q When he took -- made that decision to plead, did
24 you thoroughly cover with him what he would be
25 waiving by taking a plea rather than going to trial?

1 A Yes. I've been through it many times with many
2 clients, including Sherman Dewalt, and I -- by the way,
3 I did get a card from his family afterwards thanking me
4 for -- thanking me for -- thanking me for my services,
5 that I was wonderful in court. "May you always be
6 blessed. Your services were greatly appreciated. You
7 gave Sherman his dignity back." So I didn't sense that
8 there was any dissatisfaction.

9 What day was the plea?

10 Q January 28th, 2008.

11 A Yes.

12 Q And he was facing 30 to life on the murder charge?

13 A Thirty to life, yes.

14 Q And he received life with probation after 30?

15 A Yeah. He -- it was structured life suspended upon
16 30, which went back because I was not sure what Judge
17 Goode meant by that.

18 We went back and Judge Goode wrote a letter
19 stating that it was his intent that that meant to serve
20 30 years, which is -- the penalty for murder is day for
21 day, 30 years. So we just got that clarified because
22 there seemed to be some dispute about that, what it
23 meant.

24 Q Would you characterize your representation as
25 meeting the standard of reasonable?

1 A Above the standard.

2 MS. KELLEY: Thank you. No more questions.

3 CROSS EXAMINATION:

4 BY MR. COLEMAN:

5 Q A couple of things, Mr. Swerling.

6 A Yes.

7 Q With regard to Mr. Dewalt's statement that another
8 man was in the room, what did your investigation
9 reveal to y'all about that?

10 A We could find no evidence. Sherman did say that.
11 There's no question about that, but we could find no
12 evidence that there was anybody else ever in the
13 house -- or that -- that the children were not in the
14 room, which is another thing that he maintained. There
15 was just nothing to indicate that at all.

16 Q And was the children -- did the children's statement
17 indicate, if you remember, whether or not there was
18 anybody else in the room, another male in the room, do
19 you remember?

20 A I think the statements indicated there was not
21 anybody else.

22 Q Okay.

23 A I have the statements here --

24 Q Okay.

25 A -- if you'd like to see them.

1 Q That's fine.

2 A Clearly, we followed up and tried to find that out.
3 There was just no -- there was no documented evidence or
4 corroboration about what Sherman said. You know, I'm
5 sorry. I just can't create --

6 Q How about with regard to -- did you realize the
7 children had made a statement to Mike Roseborough, who
8 was with the sheriff's department? Do you see that as
9 an issue with regard to anything that should have been
10 raised?

11 A If we tried --

12 Q Which is an uncle.

13 A Okay. Well, if he is the uncle, we would have, of
14 course, at trial made an issue about that.

15 Q Right.

16 A About the way that an uncle might have slanted
17 the statements in favor of the State, but you know,
18 that might have been something. It was certainly
19 something I would have raised at trial, but it was not
20 really anything he could raise prior to trial about
21 something like that.

22 Q Well, he's with the sheriff's department, so he's
23 probably going to do that anyway.

24 A Yeah. He might have had more of a reason, though,
25 because they were his -- they were related. But that's

1 not -- I'm not trying to impugn his integrity. I'm
2 just saying that as a matter of cross-examination when
3 you try to go into something like that, I certainly
4 would have pursued that line of questioning.

5 MR. COLEMAN: Right. No further questions, Your
6 Honor.

7 THE COURT: Any redirect?

8 MS. KELLEY: No, Your Honor.

9 THE COURT: Okay. You can step down. Thank you.

10 THE WITNESS: All right.

11 THE COURT: Do you have any other witnesses?

12 MS. KELLEY: No, Your Honor.

13 THE COURT: Do you have anything further?

14 MR. COLEMAN: No, sir.

15 THE COURT: All right. Well, Mr. Dewalt, you've
16 got the burden of proving that your lawyer was
17 ineffective. By that, you have to show that his
18 conduct or prosecution in the case, your defense, fell
19 below the standards of a lawyer, a reasonable lawyer in
20 his position.

21 You know, I don't see where you met that. He says
22 he looked into what you had to tell him and there was
23 nothing to corroborate your story that would have
24 enabled you to get a manslaughter defense, which is
25 basically what you were aiming for.

1 You got the minimum that you could have gotten for
2 murder. So that's about as good as you can get. You
3 pled guilty and told the judge you were satisfied with
4 his representation.

5 So I find that you haven't met your burden of proof
6 on your application so it's denied. I'm going to have
7 to State prepare an order within 30 days.

8 All right. Good luck to you.

9 MS. KELLEY: Thank you.

10 MR. COLEMAN: Thank you, Judge.

11 THE COURT: Okay.

12 (Whereupon, the proceedings were concluded.)

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STATE OF SOUTH CAROLINA)

COUNTY OF FAIRFIELD)

Sherman Dewalt, 326400,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

2008-CP-20-322

**ORDER OF DISMISSAL
WITH PREJUDICE**

2009 OCT 19 A 10:20
FAIRFIELD COUNTY
CLERK OF COURT
JERRY JO BECKHART

I. PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed September 11, 2008. An evidentiary hearing into the matter was convened on August 25, 2009, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Creighton Coleman, Esquire. Michelle Parsons Kelley of the South Carolina Attorney General's Office represented the State. This Court had before it the application, the respondent's return, the guilty plea transcript, the records of the Spartanburg County Clerk of Court, the Applicant's appellate records, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Fairfield County Clerk of Court. The Applicant was indicted at the October 2003 term of the Fairfield County Grand Jury for Murder (2003-GS-20-389) and Burglary, First Degree (2003-GS-20-390). Jack B. Swerling, Esquire, represented the Applicant. On January 28, 2008, the Applicant pled guilty as indicted. The Honorable Kenneth

G. Goode sentenced him to confinement for a period of thirty years on the charge of Burglary First and life for the charge of Murder. Judge Goode suspended the life sentence upon the service of thirty years and five years intensive probation. Judge Goode also instituted a permanent restraining order prohibiting the Applicant from going near the victim's family. The Applicant did not appeal his guilty plea or sentence.

II. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR EVIDENTIARY HEARING

At the PCR evidentiary hearing, the Applicant testified his attorney was ineffective. The Applicant claimed his attorney failed to get a voluntary manslaughter charge. The Applicant further claimed he told his attorney there were no children at the time of the murder as claimed by the surviving victims. Rather, the Applicant claimed another man was in the room at the time of the murder, but his attorney told him there was no evidence to support his story.

On cross-examination, the Applicant admitted he told the plea judge he was satisfied with his attorney. The Applicant further admitted telling the plea judge no one promised him anything or threatened him to plead and his plea was of his own free will. The Applicant also admitted he told the plea court he was actually guilty and that he agreed with the facts presented by the solicitor.

Jack Swerling ("Counsel"), the Applicant's also guilty plea counsel, also testified at the PCR hearing. Counsel testified the Applicant retained his representation. Counsel testified he has thirty-six years of criminal law experience and had handled numerous murder cases.

Counsel testified he was prepared to take this case to trial. He had the Applicant evaluated, but the Applicant was found competent and criminal responsible. Counsel

investigated all of the Applicants prior medical records, school records, and jail records. The records revealed the Applicant had some mental issues, but they did not rise to the level required for a mental illness defense.

Counsel interviewed all witnesses provided to him and tried to develop a defense. Counsel felt the facts did not support a manslaughter charge.

Counsel explained to the Applicant the risk of trial. The Applicant murdered a woman in her bed while three children were in the room. Counsel explained all the evidence showed the three children were in the bed with the victim and another man had not been present, contrary to the Applicant's story. Counsel testified the Applicant opted to plea. The Applicant received a sentence of life suspended upon the service of thirty years. Counsel got a letter to clarify the exact meaning of the sentence.

III. APPLICABLE LAW

Ineffective Assistance of Counsel

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

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

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

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

Involuntary Guilty Plea

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid

reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. § 17-27-80 (1985), this Court makes the following findings of fact based upon all of the probative evidence presented.

The Applicant alleged Counsel was ineffective and failed secure a voluntary manslaughter charge. The Applicant had the burden to prove his entitlement to such a charge and failed to do so. The Applicant also alleged his Counsel was ineffective where Counsel informed him the evidence did not support the Applicant's version of the story. Counsel testified he investigated the Applicant's account and found no evidence to support the presence of another man in the room rather than the children. This Court finds Counsel's testimony to be credible. This Court also finds the Applicant's testimony was not credible. As a result, this Court denies and dismisses both of these allegations.

In addition, this Court finds the Applicant voluntarily waived his rights and entered a guilty plea. This Court finds the record conclusively demonstrates the trial judge informed Applicant of the maximum penalty of each of his charges, informed him of his right to remain silent, informed him of his right to a jury trial and other associated jury trial rights. The record

also indicates the Applicant waived these rights. The Applicant also affirmed no one promised him anything, threatened him, or mistreated him in order to coerce a plea. Applicant also stated that he was pleading guilty freely and voluntarily. The Applicant further informed the court he was satisfied with the services of his lawyer.

This Court further finds that Applicant has failed to carry his burden of proving that his guilty plea was not freely and voluntarily entered. The overwhelming evidence in the record and presented through the testimony of the witnesses at the hearing reflects that the plea was knowingly and voluntarily entered. The Applicant showed no reason why he should be allowed to depart from the truth of the statements he made during his guilty plea hearing. This Court finds the Applicant's testimony at the PCR hearing lacked credibility. Therefore, this Court finds that Applicant's guilty plea was freely and voluntarily entered and denies and dismisses this allegation.

This Court finds that any and all other allegations raised at the hearing or in the application are without merit.

Therefore, this Court finds that the Applicant failed to carry his burden to show that trial counsel's representation fell below the standard of professional reasonableness for a criminal defense attorney in this regard. Rather, testimony reveals Counsel's representation met and exceeded the reasonableness required in Strickland v. Washington; Cherry v. State. The Court finds that the Applicant cannot satisfy either requirement of the Strickland test.

V. CONCLUSION

Based on all the foregoing, this Court finds and concludes that this application for post conviction relief must be denied and dismissed with prejudice. All other allegations or claims

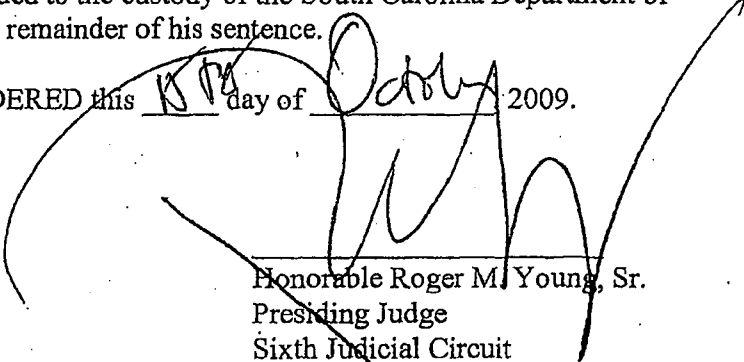
that were raised or could have been raised in this application are hereby dismissed with prejudice.

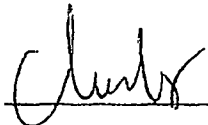
This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post conviction relief is denied and dismissed with prejudice.
2. The Applicant is remanded to the custody of the South Carolina Department of Corrections to serve the remainder of his sentence.

AND IT IS SO ORDERED this 15th day of October, 2009.


 Honorable Roger M. Young, Sr.
 Presiding Judge
 Sixth Judicial Circuit


 _____, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

Sherman Dewalt, 32640
Petitioner

VS

The State

Respondent

IN THE COURT OF COMMON PLEAS
Case # 2008-CP-20-322

NOTICE AND MOTION
FOR

60 (b) MOTION

2011 MAR - 8 P 12:51
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

NOW COMES the above named Petitioner who moves this Hon. court in the above entitled matter pursuant to S.C.R.C.P. - Rule 60(b) (1) MISTAKE and (3) FRAUD, to relieve Petitioner from and or set aside the final judgment of his P.C.R proceeding in the above entitled case.

PROCEDURAL HISTORY

The Petitioner is presently confined in SCDC/ McCormick Corr. Inst. pursuant to orders of commitment of the Fairfield Co. Clerk of Court. The Petitioner was indicted at the October 2003 term of the Fairfield Co. Grand Jury for Murder (2003-GS-20-389) and Burglary, first degree (2003-GS-20-390) Jack B. Swerling represented the Petitioner On Jan 28, 08 the Petitioner pled guilty as indicted.

The Hon. Kenneth G. Goode sentenced him to confinement for a period of thirty years on the charge of Burglary first and life for the charge of Murder. Judge Goode suspended the life sentence upon the service of thirty years and five years intensive probation. Judge Goode also instituted a permanent restraining order prohibiting the Petitioner from going near the victim's family. The Petitioner did not appeal his guilty plea or sentence. Petitioner filed his application for Post-Conviction Relief Sept. 11, 2008. An evidentiary hearing into the matter was convened on Aug. 25, 2009. at the Fairfield County Courthouse. The Petitioner was present at the hearing and was represented by Creighton Coleman, Michelle Parsons Kelly of the S.C. Atty. Gen's Office represented the State. The Hon. Roger M. Young, Sr. denied and dismissed Petitioner's P.C.R. Oct. 15, 2009 (Which Petitioner rec'd Feb. 3, 2011 from the Clerk of Court see attached letter) P.C.R. counsel, Coleman never appealed Petitioner's P.C.R. as Petitioner requested.

This 60 (b) motion follows

FRAUD ARGUMENT (1)

(1) The Petitioner asserts that his trial atty: Jack B. Swerling committed extrinsic fraud upon the court when he testified at Petitioner's P.C.R hearing that he had interviewed all witnesses provided to him and tried to develop a defense SEE: Ex A pg 3

~~And that he had also investigated Petitioner's account and found no evidence to support the presence of another man in the room, rather than the children SEE: Ex A pg. 5~~

(1) Here, Petitioner rec'd counsel Swerling files upon his case Jan 26, 2011 SEE Ex B letter from counsel date Oct 12, 2010

Also Petitioner just rec'd his order of dismissal from the Fairfield Clerk of Court Feb. 3, 2011 SEE Ex C

(2) Upon Petitioner reviewing counsel's files, he notice that there was no interview or investigator reports even had been done by counsel to show he had:

(1) Interviewed or investigated the children who had alleged that they was in the bed when Petitioner entered the bed room and shot their mother SEE: Ex. D and E

- (2) Here, the children statements are pretty much the same, which is odd given the fact that their uncle "Mike Roseboro" who is a police officer took part in the children statements and witness their statements.
- (3) Further, the Petitioner asserts Charlestine Banks who was the victims "Davita Roseboro" step-sister, and James Seter who was the victims brother was inside the residence whom had contaminated the crime scene SEE: Ex. F
- (4) Also there was #3 E.M.S. workers and other officers who had entered the crime scene, before SLED arrived to secure and process the crime scene. SEE: Ex. G. pg 1 and Ex. F
- (5) Moreover, Petitioner asserts that there was no interview/ investigator reports that counsel had question the children/family and or friends about Davita Roseboro having another man in her home on the night before or during this incident, where male adult clothes and shoes where inside her closet SEE: Ex G pg 2
- (3) Here the Petitioner asserts, looking at the police investigation note of the diagram of the bed and persons in it. See Ex. H There was No way the incident happen the way the children statements alleged. Also SEE: Ex. F. and G pg 2
How/why was casing found beneath the victim's left leg.

- (4) Here, there was no reported blood on "any" of the children or their clothes. But as noted in Ex. G pg 2 there was skull fragments/brain matter on her "victim's" shirt (right shoulder) and on a pillow on the right side of the bed.
- (5) Further SEE: Ex I pg 2 of 5 of DR Sexton and DR. Ross report. How could the victim have "a powder tattooing pattern around the wound," if the incident happen the way the children alleged.
- (6) Moreover, SEE: Ex. J. "How was gunshot residue found on the back of the victim's left hand.
- (7) Although, counsel testified that he had thirty-six years of criminal law experience and had handled numerous murder cases, counsel knew that he was committing extrinsic fraud when he had not and can not show, that he had interviewed all witnesses or investigated Petitioner's account of the incident as argued above and below.
- (8) Counsel first extrinsic frauded me and the court when he had Petitioner mentally evaluated, when Petitioner never alleged that he was not criminal responsible for the ACCIDENT. which everybody made out to be a murder charge from day one.
- (9) Here, Petitioner was always competent and he did not intend to put up a competent/mental ill defense. This was counsel's fraud "smoke screen" to confuse and mislead Petitioner's family; the court and

Petitioner,

(10) Here, Petitioner argues that he had maintain from day one that after he kicked in the bed room door, that this other man jumped him from behide and upon straggling with this other man, the victim, Davita Roseboro came to intervene and the gun went off accidentally hitting her, when this happen the other man ran from the home. Which Petitioner picked Ms. Roseboro up - speaking to her but she did not answer. Thus, Petitioner laid her on the bed and also left.

(11) Although, counsel told Petitioner not to mention this to the judge As he argued at his P.C.R hearing and noted in his Tr.p 24 See Ex. K Tr.p 24 L2 - L12

(12) Although, the Petitioner's version of the events/ incident was noted differed significantly from the police records upon his mental evaluation
SEE: Ex L pg 5/6 and Ex M pg 2

(13) Further, Counsel, Sussending did not investigate the biased opinions of Dr. Joel S. Sexton

and Dr. Janice E. Ross in classifying the death as a homicide — in showing favor to the police and prosecutors undue influence on their findings, by sharing theories and reports of the crime and information about the Petitioner and the alleged victim. Which clearly lead the Dr.^s to tailor their opinions to fit the theory of law enforcement officials rather than the facts of counsel's investigation or the objectives of neutral medical-legal investigation to find "the truth"

(14) Here, the STATE started off with a bad goal in mind — just about, and from the children — it is easy to get through only looking at signs that point to that preconceived notion to how the death occurred, Counsel did not investigate, which steered the STATE's investigation in a desired direction that the Petitioner murdered the victim and counsel just followed right along and did not do nothing to protect Petitioner from pleading to a crime he did not commit.

(15) Although, Petitioner testified at his P.C.R hearing that counsel failed to get a voluntary manslaughter. Here, Petitioner believed voluntary manslaughter meant INvoluntary manslaughter when one

accidentally kill someone. This happen because counsel never explain the difference to the Petitioner between Murder, Voluntary manslaughter and involuntary manslaughter, as recommended by the evaluation DR. SEE: Ex. Lpg 7 Also see Exp. N Trip 46 L 17- L 19 Petitioner has a learning disable.

(16) The Petitioner asserts that counsel Swerling's actions as an officer of the court, subvert any chance Petitioner had of having this claim of innocence rightfully adjudicated by not interviewing and in all witnesses and Petitioner's account of the incident, can only be review as knowingly, willful and deliberate intent to defraud the court and Petitioner. Which did indeed harm the Petitioner and the integrity of the judicial process by denying Petitioner of DUE PROCESS Which is owed to every person seeking it. See: Chewing v Ford motor Co. 579 SE2d 605,

This extrinsic fraud not only denied Petitioner his burden of proving his trial counsel "Jack B. Swerling" failed to render effective assistance of counsel See: Stuckland v Washington Also see Ray v Ray 647 SE2d 237; Frasier v State 570 SE2d at 174 and Bannister v State 509 SE2d 807. It denied him to show that his guilty plea was not intelligently and voluntarily entered.

FRAUD ARGUMENT (2)

(1) The Petitioner strongly contend that his guilty plea was not intelligently and voluntarily made due the the above many mention errors, and as argued at his P-C-R hearing.

Petitioner had never been in contact with the criminal justice system before see: Ex. O
Tr. p 47 L 3. Also see Ex. L pg 7

Which Petitioner relied whole heartedly on the guiding hand of counsel, when counsel knew Petitioner had a learning disable. See: Tr. p 46 L 12-19; Ex. N Also see Ex L pg 7.
Thus, Petitioner was like a child without his mother, left without the guiding hand of counsel

(2) Here, counsel perjured Petitioner in leading him into a guilty plea, which tantamount to deficient legal representation in violation of the 6th and 14th Amend. to clearly established laws to the Fed., U.S. and S.C. Const. See: Strickland v Washington 484 U.S. 52

(3) Further, the Petitioner has shown that there was a reasonable probability that, but for counsel's extrinsic fraud, but he would not have pled guilty and would have insisted on going to trial Hill v Lockhart 106 S.Ct. 366. Which Petitioner always wanted to and was under the impression until the day

of his plea SEE: Ex. P1 and P2.

- (4) The Petitioner strongly contends that extrinsic fraud upon the court is an affront to the administration of justice and a litigant like the Petitioner who has been defrauded need not establish pre-judice. Because counsel, Swerling is not beyond fraud and extrinsic fraud, as above stated and EX. 5 shows, which calls into question our judicial checks and balances process, as counsel is an officer of the court see: Perry v Heirs at Law of Gadsden 590 SE2d 502. Also see Chewning Id.

MISTAKE ARGUMENT (1)

- (1) Based on the foregoing arguments the P.C.R judge made a mistake in its findings, that Petitioner's plea was freely and voluntarily entered. And, that counsel's representation met and exceeded the reasonableness required in Strickland Id. and Cherry v State 386 SE2d 624 and the Petitioner did not satisfy either requirement of the Strickland test. The Petitioner further argue that this mistake calls into question the integrity of the judiciary and erodes public confidence in the fairness of our system of justice / the P.C.R Act and the civil process

Betty Beckham
Clerk of Court
P.O. Drawer 299
Winnsboro, SC 29180

Date: 3-1-11

2011 MAR -8 P 12:58
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

Re: signed pg of 60 (b) motion

Dear Hon. Clerk Beckham

Please find enclosed my "signed" page
of my 60 (b) motion. I mistakenly sent you
the un-sign copy.

Would you be so kind as to return me
back a filed copy of this pg / 60 (b) motion
and a copy of my 15 (b) motion so I can
serve the Respondant in this matter

Thank you I remain
cc: Personal file

Sincerely
Sherman Dewalt

See: S.C.R.C.P. - Rule 71.1 etc., and S.C. Code Ann
17-27-10 etc.,

CONCLUSION

Accordingly, based on the foregoing arguments, Ex. ^S this motion raising claims of mistake, and fraud-extrinsic fraud is proper which entitles the Petitioner to present further testimony and arguments regarding said claims. And, Petitioner is entitled to be relieve from and or set aside the final judgment of his P.C.R proceeding of Aug 25, 2009 / Denied Oct 15, 2009 (which he recid Feb. 3, 2011 - see Ex. C), alone with any other relief this court deems just and fair.

McCormick, SC
 Date: 2-17-11

Respectfully Submitted
Sherman Dewalt
 Petitioner

Sherman Dewalt # 326400
 McC. Corr. Inst./Unit 3
 386 Redemption Way
 McCormick, SC 29899

See: S.C.R.C.P. - Rule 71.1 etc., and S.C. Code Ann
17-27-10 etc.,

CONCLUSION

Accordingly, based on the foregoing arguments, Ex. ^S this motion raising claims of mistake, and fraud-extrinsic fraud is proper which entitles the Petitioner to present further testimony and arguments regarding said claims. And, Petitioner is entitled to be relieve from and or set aside the final judgment of his P.C.R proceeding of Aug 25, 2009 / Denied Oct 15, 2009 (which he recid Feb. 3, 2011 - see Ex. C), alone with any other relief this court deems just and fair.

Respectfully Submitted

/ _____
 Petitioner

Sherman Dewalt # 326410

McCormick Inst./Unit 3

386 Redemption Way

McCormick, SC 29899

McCormick, SC

Date: _____

FAIRFIELD COUNTY SHERIFF'S OFFICE Ex-D

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

Page 1 of 1

PERSONALLY appeared before me LEROY R
who after first being duly sworn deposes and says: "My name is LEROY
WINDSWORD S.C. Mv address is [REDACTED]
I am years old. I completed the grade in school and I CAN' CANNOT read and write.

I have been advised that I have the right to remain silent and that anything I say can and will be used against me in a Court of Law. I have been advised that I have the right to talk to a lawyer and have him present when I am being questioned. I have been advised that if I cannot afford a lawyer, that the state will appoint one to represent me without cost. I have been advised that at anytime during the questioning, if there is any particular question that I do not want to answer, that I do not have to do so. I have been advised that I can terminate the questioning at any time by saying that I do not wish to answer anymore questions. I understand these rights, and I make the following statement."

Myself AND my Brother 5 years old AND
my sister LAKECIA 10 years old were in the bed
with my mother. I heard A TRUCK PULL UP
outside. Then I heard someone knocking on
the front door. My mother woke up and got
the phone and tried to call my Grand mother.
My mother could not call because the phone
would not work. About this time Sherman
kicked the bed room door in. Sherman is my
mother's ex boy friend. His name is Sherman
Dewalt.

Sherman told my mother to get out of the
bed. He then told her to get out of the
bed again, when she did not get out of
the bed, Sherman then shot my mother with
some type of pistol. Sherman then ran
out the door of the bed room. I told
my sister that we needed to go to my
Grand mother's house. We waited until
Sherman left and we went to my Grand
mother's house. When we got to my Grand
mother's house my sister LAKECIA told my
Grand mother that Sherman had shot my mother.

I make this statement in the presence of Sgt. D. J. Adesoro / Sgt. Mike Roseboro
I make this statement of my own free will and accord, without reward or hope of reward. I have not been mistreated or threatened in any way. All of the above is the truth, the whole truth, and nothing but the truth, so help me God.

Sworn to and subscribed to before me
This Day of , 19

Leroy R
Affiant
[Signature]
Witness
Mike Roseboro
Witness

NOTARY PUBLIC FOR SOUTH CAROLINA
My commission Expires

This is to certify that I have read the above statement consisting of pages and have been given a copy of the same as of the day of , 19

Ex-E

FAIRFIELD COUNTY SHERIFF'S OFFICE

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

Page 1 of 1

PERSONALLY appeared before me Lakecia B
who after first being duly sworn deposes and says: "My name is WINNIE BOND Sr My address is _____

I am _____ years old. I completed the 5th grade in school and I CAN NOT read and write.

I have been advised that I have the right to remain silent and that anything I say can and will be used against me in a Court of Law. I have been advised that I have the right to talk to a lawyer and have him present when I am being questioned. I have been advised that if I cannot afford a lawyer, that the state will appoint one to represent me without cost. I have been advised that at anytime during the questioning, if there is any particular question that I do not want to answer, that I do not have to do so. I have been advised that I can terminate the questioning at any time by saying that I do not wish to answer anymore questions. I understand these rights, and I make the following statement."

Myself And my two Brothers, were in the bed with my mother, we were all in the same bed because my mother was scared of Sherman Sherman is my mother's Ex Boyfriend, Sherman's last name is Dewalt.

This morning around 4:45 Am Sherman broke open my mother's Bedroom door. Sherman was holding a gun in his hand. He told my mother to get up. My mother said "Sherman why are you here. you need to leave me alone." Sherman then pulled the gun from behind his back and pointed it at my mother and said "I told you that I was going to kill you." Sherman then shot my mother. Sherman then ran out of the room. Myself and my two Brothers then left and went to my Grandmother's house.

While Sherman was at the bedroom door my mother tried to call my Grandmother. However the phone would not work. My mother said he had cut the phone lines.

I make this statement in the presence of Inv. D.J Anderson / Inv. Mike Roseboro
I make this statement of my own free will and accord, without reward or hope of reward. I have not been mistreated or threatened in any way. All of the above is the truth, the whole truth, and nothing but the truth, so help me God.

Sworn to and subscribed to before me
This _____ Day of _____, 19 _____

Lakecia B
Affiant
[Signature]
Witness
Michael Rostre
Witness

NOTARY PUBLIC FOR SOUTH CAROLINA
My commission Expires _____

This is to certify that I have read the above statement consisting of _____ pages and have been given a copy of the same as of the _____ day of _____, 19 _____

Dewalt. Sherman 23

FAIRFIELD COUNTY SHERIFF'S OFFICE WORK PRODUCT
CASE SYNOPSIS

CASE NUMBER: 03-5420
WARRANT NUMBER: G-685996 & G-685997
OFFENSE DATE: 07-21-03
SUBJECT: Sherman Dewalt
VICTIM: Davita Roseboro
WITNESSES: Leroy, Denzel, & Lakecia R [REDACTED]
CHARGE: Murder & Burglary 1st
OFFICER: Anderson
ITEMS SEIZED: N/A

E-X-F

On July 21, 2003 at approximately 4:56 am responding officers did respond to [REDACTED] located in Fairfield County on a report of a gun shot victim. Upon arrival responding officers met with the complainant Charlestine Banks who stated that her step-sister Davita Roseboro had been shot in the head by Sherman Dewalt. Responding officers did observe the victim's body Davita Roseboro's body lying across the bed with half her body hanging off the bed bleeding from the head. EMS was notified and when they arrived they advised responding officers to contact the coroner. According to a witness inside the residence he was awoken due to loud banging on the front door. It appeared that the subject Sherman Dewalt did gain entry into the residence by forcing the front door open. Chief Deputy Lewis, Captain Gill, Lt. Padgett, and Investigator Anderson were notified of the incident. Responding officers did secure the crime scene until Sled Crime Scene Investigators were on scene. The subject Sherman Dewalt was located and arrested in Newberry County and was transported to the Fairfield County Detention Center.

When the responding officers arrived the victim's Davita Roseboro step-sister Charlestine Banks, and brother James Jeter were inside the residence. EMS workers Eddie Harmon, Todd Wright, and Gina Vecchione did enter the crime scene. Sergeant Ginyard, Officer Dove, and Officer did also enter the crime scene.

WOULD YOU THE DEPUTY LIKE TO BE PRESENT ON THE PLEA DATE?
YES X NO

PLEA OFFER NOTES
N/A

5/19

Laboratory Case No: L0307602
Agency: Fairfield SO
County: Fairfield



Ex G pg. 1

SLED FORENSIC SERVICES
LATENT PRINT AND CRIME SCENE DEPARTMENT

CRIME SCENE NOTES	PAGE
-------------------	------

07/21/03. 0600 HRS RECEIVED A REQUEST FOR CRIME SCENE RESPONSE FROM CHIEF DEPUTY KEITH LEWIS IN REFERENCE TO A HOMICIDE INVESTIGATION.

0740 HRS. ARRIVED WITH S/A J. LEATHERMAN TO A SECURED SCENE WITH BARRIER TAPE IN PLACE AT [REDACTED]. BRIEFED AT THE SCENE BY CHIEF LEWIS, CPT ERIC GILL, AND INV. DONNIE ANDERSON. ASSISTANT CORONER BARKLEY RAMSEY WAS ALSO PRESENT.

BACKGROUND

CPT. GILL STATED THAT HIS OFFICE RECEIVED AN EMERGENCY 911 CALL DURING THE EARLY MORNING HOURS OF 7/21/03 (0430 - 0500) IN REFERENCE TO A SHOOTING INCIDENT. WITNESSES STATED THAT SHERMAN DEWALT FORCIBLY ENTERED THE INCIDENT LOCATION AND SHOT DAVITA ROSEBORO WHILE SHE WAS IN BED WITH HER CHILDREN. DEWALT WAS KNOWN BY THE CHILDREN AS BEING ROSEBORO'S EX-BOYFRIEND. ROSEBORO AND DEWALT HAD BEEN HAVING DOMESTIC PROBLEMS AND HAD BEEN SEPARATED FOR ABOUT TWO WEEKS. ROSEBORO'S CHILDREN WERE SLEEPING IN HER BED BECAUSE SHE FEARED FOR HER SAFETY. DEWALT DEPARTED FROM INCIDENT LOCATION PRIOR TO OFFICERS ARRIVING AND WAS AT-LARGE.

SCENE

A SEARCH WARRANT FOR THE RESIDENCE WAS OBTAINED PRIOR TO I/O ENTRY INTO THE RESIDENCE. FIRST RESPONDERS AND EMS PERSONNEL HAD ENTERED THE RESIDENCE TO CLEAR IT FOR SUSPECT(S) AND TO RENDER FIRST AID.

THE SCENE WAS PHOTOGRAPHED BY S/A LEATHERMAN. THERE WERE POLAROID CAMERAS AND PHOTOGRAPHS IN THE MASTER BEDROOM THAT WERE TAKEN BY DEPUTIES.

THE FRONT DOOR AND MASTER BEDROOM DOOR HAD LIKELY BEEN FORCIBLY ENTERED. THERE WAS A PARTIAL OUTLINE OF A SHOE / BOOT PRINT ON THE FRONT DOOR. THE IMPRESSION WAS PHOTOGRAPHED FOR DOCUMENTATION BUT WAS OF NO VALUE FOR EXAMINATION AND COMPARISON. THE BEDROOM DOOR LOCK PLATE WAS DAMAGED AND THE INTERIOR DOORKNOB CAUSED

Laboratory Case No: L0307602
Agency: Fairfield SO
County: Fairfield

Ex G pg 2

DAMAGE TO THE BEDROOM WALL WHEN IT WAS FORCIBLY ENTERED.

OTHERWISE, THE RESIDENCE WAS VERY CLEAN AND ORDERLY. MONEY WAS PRESENT ON A BEDROOM DRESSER. JEWELRY WAS PRESENT ON A BATHROOM COUNTER. INSIDE THE MASTER BEDROOM CLOSET WERE CLOTHES AND SHOES THAT APPEARED TO BELONG TO AN ADULT MALE.

THE SHOOTING INCIDENT WAS LIMITED TO THE MASTER BEDROOM. ROSEBORO WAS FOUND ON HER BED, LAYING ON HER BACK, WITH HER HEAD AND UPPER CHEST AREA PAST THE EDGE OF HER BED. SHE HAD SUSTAINED A GUNSHOT WOUND TO HER HEAD WITH NO EXIT WOUND. SKULL FRAGMENTS AND / OR BRAIN MATTER WAS PRESENT ON HER SHIRT (RIGHT SHOULDER) AND ON A PILLOW ON THE RIGHT SIDE OF THE BED. A FIRED AMMUNITION CASING WAS RECOVERED FROM BENEATH HER LEFT LEG.

A DOOR THAT SEPARATED THE BEDROOM FROM THE MASTER BATH HAD A HOLE THAT WAS PHOTOGRAPHED AND SEARCHED FOR A AMMUNITION PROJECTILE WITH NEGATIVE RESULTS.

POST MORTEM PRINTS AND GSR KIT WAS COLLECTED FROM ROSEBORO BY GANTT. BLOODSWABS WERE COLLECTED FROM ROSEBORO. HER BODY WAS REMOVED BY FAIRFIELD EMS AT 1010 HRS. AND WAS TRANSPORTED TO NEWBERRY COUNTY MORGUE FOR AUTOPSY EXAMINATION AT 1400 HRS. LOCALS TO ATTEND AUTOPSY. DONNIE ANDERSON WAS BRIEFED IN REFERENCE TO FINDINGS. HE ADVISED THAT DEWALT TURNED HIMSELF OVER TO NEWBERRY CSO AND THAT THE VEHICLE HE WAS DRIVING WAS LOCATED AT 87 JOHNNY DEWALT DR, PROSPERITY, SC. I/O WAS ADVISED THAT A SEARCH WARRANT WAS BEING SECURED AND I/O WAS REQUESTED TO ASSIST IN THE SEARCH OF THE RESIDENCE AND DEWALT'S VEHICLE.

1033 HRS. DEPARTED INCIDENT LOCATION AND WENT TO [REDACTED] TO ASSIST IN SEARCHING THE RESIDENCE AND DEWALT'S VEHICLE. MET WITH NEWBERRY COUNTY LT. WESLEY BOLAND AND DEPUTY FRANKIE WILBANKS. PHOTOGRAPHED BY LEATHERMAN. NO PROBATIVE EVIDENCE WAS COLLECTED FROM THE SEARCH. DEWALT'S VEHICLE WAS TOWED TO FAIRFIELD IMPOUND LOT.

1215 HRS. MET WITH CHIEF LEWIS AT CSO. RECEIVED A GSR KIT COLLECTED FROM DEWALT BY FRAZIER CRAIG. I/O ADVISED LEWIS THAT NO WEAPON WAS LOCATED DURING THE INVESTIGATION. SECURING A SET OF MAJOR

Laboratory Case No: L0307602
Agency: Fairfield SO
County: Fairfield

Ex. G pg 3

CASE PRINTS FROM DEWALT WOULD BE NECESSARY PRIOR TO I/O
RETURNING TO HEADQUARTERS.


S/A BRUCE S. GANTT, JR.

State of South Carolina
Solicitor, Sixth Judicial Circuit



CHESTER/FAIRFIELD
LANCASTER
DOUGLAS A. BARFIELD, JR., SOLICITOR

Ex. I

September 28, 2007

Jack B. Swerling, Esquire
1720 Main Street, Suite 301
Columbia, South Carolina 29201

RE: State v. Sherman DeWalt
#03-GS-20-389 Murder
#03-GS-20-390 Burglary 1st

Dear Jack:

Enclosed is a copy of the autopsy report for the above referenced case which I received a couple of days ago from Newberry Pathology Associates. Thank you.

Sincerely,


Douglas A. Barfield, Jr.

Enclosure

RECEIVED OCT 01 2007

Davita Roseboro

Report by: J.S. Sexton, M.D. *JS*
J.E. Ross, M.D. *JER*

CASE HISTORY

Ex. I

This 31-year old black female was allegedly shot by her boyfriend while she was in bed with her three children. The boyfriend had broken into the house previously. This occurred around 4:50 AM on 07/21/03.

The body was brought to these prosectors for autopsy.

EXTERNAL EXAMINATION: The body is that of a 5' 3", approximately 145 pound black female who arrives wearing a shortsleeved red T-shirt and a pair of red, blue and orange striped shorts. She is also wearing a tan bikini style pair of underwear. There is a scrunchie and a rubberband in her hair that has been pulled into a ponytail.

Examination of the head reveals dark-brown hair that measures up to 12 inches in length and is a ponytail. The decedent has brown eyes with no petechiae. Natural teeth are present without injury. There is blood coming from the nose and mouth. There is a gunshot wound that will be described later. There are no obvious scars noted on the face or neck. There are no injuries noted on the neck.

Examination of the chest and abdomen reveals a well healed vertical lower laparotomy scar. There are no injuries noted.

Examination of the legs reveals two EKG leads (one on each side) and well healed small scars on both knees.

Examination of the arms reveals silver colored nail polish and no acute injuries or significant scars noted on the hands and arms.

Examination of the back is clear of any injuries.

GUNSHOT WOUND: There is a near range gunshot wound that enters the left nostril creating an abraded edge of the upper and inferior aspect of the nostril. There is a powder tattooing pattern around the wound that is 5 inches in the horizontal plane and 4 inches in the vertical plane. The bullet passes to the rear, to the right and very slightly upward. It passes through the right cerebellar hemisphere and comes close to the pons. It passes out through the skull but is found between the skull and the scalp. It is a copper jacketed round nosed bullet that is markedly deformed. There appears to be some faint lands and grooves present on it. There is hemorrhage and contusion along the missile tract. There is no soot around the entrance wound. There is no charring of the entrance wound.

AUTOPSY NO: FA03-4

Page of 5

Davita Roseboro

Report by: J.S. Sexton, M.D.
J.E. Ross, M.D. ↙

CASE SUMMARY

Ex. I

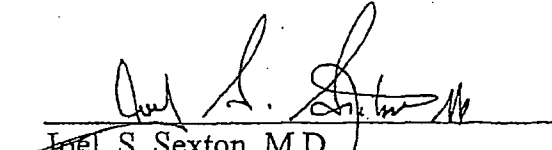
This autopsy was done upon the request of and after due authorization of the Fairfield County Coroner in the Newberry County Hospital Autopsy Room on 07/21/03 at approximately 2:00 PM.

Postmortem examination and autopsy of the body of Davita Roseboro, 31-year old black female that she had a near range, fatal, penetrating, medium caliber gunshot wound of the left nostril with laceration / contusion of the base of the brain.

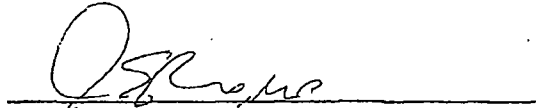
Multiple gross and microscopic sections of the heart, liver, lungs, kidneys, brain and other tissues confirmed the above mentioned diagnoses and failed to reveal any illness or disease.

This report is rendered in the absence of a toxicological analysis. If a positive analysis is submitted to this prosector, an amended opinion may be issued.

It is therefore the opinion of these prosectors, in light of the history as stated in this protocol and the postmortem and autopsy findings, that the decedent died as the result of brain contusion and laceration due to gunshot wound of the head (left nostril). It is further my opinion, that this death is best classified as homicide.



Joel S. Sexton, M.D.
Forensic Pathologist



Janice E. Ross, M.D.
Forensic Pathologist

JSS/JER:ajg
07/23/03

NEWBERRY PATHOLOGY ASSOCIATES, P.A.
 185 Executive Drive, P. O. Box 839
 Newberry, S. C. 29108
 Phone: (803) 276-0201
 1-888-446-9898
 Fax: (803) 276-0208

NECROPSY REPORT: FA 03-413
 NAME: DAVITA ROSEBORO
 TYPE OF AUTOPSY: Complete

Ex I

AGE: 31 RACE: BLACK SEX: FEMALE SS# [REDACTED] D.O.B. [REDACTED]

PROSECTOR: JOEL S. SEXTON, M. D. AND JANICE E. ROSS, M.D.

COUNTY: FAIRFIELD

INJURED on 07/21/03 at 4:50 AM DIED on 07/21/03 at 4:50 AM

AUTOPSIED on 07/21/03 at 2:00 PM

FINAL NECROPSY DIAGNOSIS:

NEAR RANGE, FATAL, PENETRATING, MEDIUM CALIBER GUNSHOT
 WOUND OF THE LEFT NOSTRIL WITH LACERATION /CONTUSION
 OF THE BASE OF THE BRAIN

MANNER OF DEATH: HOMICIDE

PROBABLE CAUSE AND MECHANISM OF DEATH

INTERVAL

BRAIN CONTUSION AND LACERATION

- MINUTES

DUE TO: GUNSHOT WOUND OF THE HEAD (LEFT NOSTRIL) - MINUTES

SOUTH CAROLINA LAW ENFORCEMENT DIVISION FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

Ex. J pg 1 of 2

TRACE EVIDENCE DEPARTMENT

Investigator Donnie Anderson
Fairfield County Sheriff's Office
P.O. Box 387
Winnsboro, SC 29180

August 21, 2003
SLED Lab No: L03-07602
Your Case No: Not Listed
Incident Date: 07/21/03
(S) Dewalt, Sherman
(V) Roseboro, Davita

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Item 4: One GSR kit from Davita Roseboro

RESULTS:

In the samples submitted in the kit labeled "Davita Roseborough", metals consistent with gunshot residue were found on the back of the left hand.

Item 5: One GSR kit from Sherman Dewalt

RESULTS:

In the samples submitted in the kit labeled "Sherman Dewalt", no analysis performed. The samples were collected beyond the six hour time frame in which probative evidence would be found.



Ex. J

Item 16: Powder particles from face

RESULTS:

No gunpowder particles were found.

These examinations were conducted by Special Agent Ila N. Simmons, Forensic Trace Evidence examiner with this Division.

Ila N. Simmons

Ila N. Simmons
Special Agent

9-2-03

Date

INS/cem

cc: Coroner Joseph Silvia
Joel Sexton



Ex.K

24

1 on each of these charges.

2 Do you agree that the facts stated by the Solicitor
3 are materially accurate and correct?

4 THE DEFENDANT: Some of them aren't, Your Honor.

5 THE COURT: And which do you not agree with?

6 THE DEFENDANT: The kids wasn't in the room, and --
7 and I didn't mess with no telephone.

8 THE COURT: Okay. Other than the telephone call and
9 whether or not the children were or weren't in the room,
10 do you agree with everything else that was said?

11 THE DEFENDANT: Yes.

12 MR. SWERLING: Your Honor, just so you'll know, he is
13 -- he has always said he does not remember the children
14 being in the room. They may have been, but that's not
15 what his recollection is.

16 He always has said he did not do anything with the
17 phone, but he admits the material facts of the case.

18 THE COURT: Well, I find that there -- did I cut you
19 off? I'm sorry.

20 MR. SWERLING: No, sir. No. I just wanted you to
21 know that's been consistent.

22 THE COURT: I find that there is a substantial
23 factual basis for each of the pleas. I find the
24 defendant's decision to plead guilty is freely,
25 voluntarily, knowingly and intelligently made; that he's

E x L

EVALUATION SERVICE OF FORENSIC DIVISION

DATE OF EVALUATION: December 6, 2007

PRESIDING: Michael Ferlauto, M.D.

SECOND EXAMINER: Randi Pickens, LISW-CP

OTHERS PRESENT: Jessica Floyd, Third Year Medical Student
Natalie March, Fourth Year Medical Student

DIAGNOSES: **AXIS I:** Adjustment Disorder, by history
 Major Depressive Disorder with Psychotic Features, by history
 Mathematics Disorder
 Reading Disorder

AXIS II: No Diagnosis

AXIS III: Noninsulin Dependent Diabetes Mellitus

CRIMINAL RESPONSIBILITY: Yes

CAPACITY TO CONFORM: Yes

DISPOSITION: Mr. Dewalt was returned to the Fairfield County Detention Center.

STATEMENT OF NONCONFIDENTIALITY: Mr. Dewalt struggled to read an information sheet explaining the purpose of today's evaluation and the limits of confidentiality. After reading the form to him, he expressed an understanding that this was a court ordered evaluation and that a report will be sent to his attorney, the solicitor, and the judge. He understood that he was not required to answer our questions. He elected to proceed with the evaluation after we verified that his attorney would not be able to attend.

IDENTIFYING INFORMATION: Mr. Dewalt is a 39-year-old African American male seen at the Forensic Evaluation Center pursuant to a court order from the Fairfield County Court of General Sessions. The order requests an evaluation of his criminal responsibility pursuant to S.C. Code §17-24-10 (1976) and if responsible, his capacity to conform his conduct to the requirements of the law. He is currently charged with Murder and Burglary, first degree.

SOURCES OF INFORMATION:

1. Fairfield County Court of General Sessions order for an evaluation of criminal responsibility.

RECEIVED JAN 16 2008

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DEWALT, SHERMAN
1005-9311

OUTPATIENT EVALUATION

E.x.L

2. Newberry Pathology Associates necropsy report.
3. Indictments for Murder and Burglary, first degree.
4. Arrest warrants #G-685996 for Murder and #G-685997 for Burglary, first degree.
5. Booking report.
6. Case synopsis #03-5420.
7. Incident report by Officer Dove.
8. Fairfield County Emergency Management Department tape release form.
9. SLED Forensic Services crime scene notes.
10. Voluntary statements by Leroy [REDACTED] (one undated and the other dated January 24, 2005).
11. Voluntary statements by Lakisha R. [REDACTED] (one undated and the other dated January 24, 2005).
12. Voluntary statement by Fletcher Walker dated July 21, 2003.
13. Search warrants and supporting documents.
14. SLED evidence inventory and lab report.
15. Fairfield County Court of General Sessions order denying bond dated October 23, 2003.
16. National Crime Information Center (NCIC) report for the defendant.
17. Franklin County Mental Health Center records dated December 18, 2003 - February 1, 2007.
18. Columbia Care Center records dated December 18, 2003 - January 23, 2004.
19. Forensic psychiatric report by Pratap Narayan, M.D. dated May 25, 2005.
20. Newberry County Schools student record for the defendant.
21. Clinic notes by John Ferguson, M.D. dated August 15, 1995 - July 22, 2003.
22. Social history gathered from Betty Glasco (defendant's sister) in 2003 by Carol David, LISW-CP.
23. Social history gathered from Betty Glasco in 2005 by Randi Pickens, LISW-CP.
24. Forensic psychiatric interview with the defendant on December 6, 2007.
25. Letter from Lt. Theresa Lawson of Fairfield County Detention Center dated December 5, 2007.
26. Letter from Lt. Mary Anne Phillips of Fairfield County Sheriff's Office dated December 11, 2007.
27. Letter from the defendant's attorney, Jack Swerling, dated December 12, 2007.
28. Telephone interviews on January 2, 2008 with the defendant's siblings, Fletcher Walker and Betty Glascoe.
29. Telephone interviews on January 7, 2008 with Charlestine Banks (original complainant and step-sister of the victim) and Mary Banks (victim's mother).
30. Telephone interview on January 7, 2008 with the defendant's former employer at Newberry Trucking.

Attempts were also made to reach the defendant's mother and another sister, Tammy Dewalt.

PERSONAL HISTORY: Mr. Dewalt was raised by his biological parents in Newberry County, South Carolina. He has five sisters and two brothers. He reported that his childhood was "alright." He specifically denied a history of abuse or neglect. He also denied major disciplinary problems at

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DEWALT, SHERMAN
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OUTPATIENT EVALUATION

Ex. L

As mentioned, Mr. Dewalt's school records indicate that he attended resource classes for Math and English. Although complete psychoeducational testing results were not available, his performance on an achievement test in 1986 suggests that he performed below grade level on reading comprehension and mathematics. During our interview, he struggled to read the lengthy information sheet which explains the purpose of our evaluation, but he had no difficulty understanding it when it was read to him. He struggled with simple financial calculations. With the information available, Mr. Dewalt qualifies for diagnoses of Mathematics and Reading Disorder.

MENTAL STATUS EXAM: Ms. Dewalt was dressed in detention center clothing. He was clam and cooperative throughout the interview. There was nothing unusual about his appearance or hygiene. He maintained reasonable eye contact. He responded somewhat slowly to questions, but otherwise his speech was normal in volume. He described his mood as "alright." His affect, or externally observed mood, was restricted in range. His thought processing was logical and coherent. He denied suicidal or homicidal ideation. He also denied psychotic symptoms. No delusional material was presented. He did not appear to be responding to internal stimuli.

Mr. Dewalt was alert and oriented to the year, month, date, day, city, and state. He could not remember the year he was divorced, but otherwise his memory for remote events appeared intact. He registered three words to short-term memory, but could only recall one after a brief delay. He remembered the second one easily after being provided a clue. His fund of knowledge was slightly below average. He was generally attentive to the interview, but occasionally needed repetition of questions. He was able to spell *world* forward but struggled to spell it backward. He also struggled with a simple financial calculation. He was able to identify the number of quarters, dimes, nickels and pennies in \$1.00. He identified the number of stars on the flag. He provided abstract interpretation of a common proverb and a rational comparison of paired objects.

SCREENING OF COMPETENCY TO STAND TRIAL: Mr. Dewalt readily identified his legal charges. He was able to describe their meaning in his own words. He recognized that his charges were both felonies and therefore quite serious. He identified pertinent courtroom personnel and appropriately described the adversarial position of his attorney and the solicitor. He provided a reasonable desired outcome for his trial. In conclusion, there was no indication that Mr. Dewalt lacked a rational or factual understanding of the proceedings against him or an ability to work with his attorney in the preparation of a defense.

CONCLUSION REGARDING CRIMINAL RESPONSIBILITY: Mr. Dewalt admitted that he went to the victim's house, at her request, the morning of the alleged incident. He said no one answered the door so he knocked on the window. Although his version of subsequent events differed significantly from police records, his explanation was nevertheless not bizarre. None of his statements implied behavior driven by psychosis or other psychiatric symptoms. He specifically denied that there was anything unusual about the day of the incident or his relationship with the alleged victim. He denied auditory or visual hallucinations that day or in the days leading up to it. He also denied recent stressful events or feelings of depression. In fact, he indicated that things were

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DEWALT, SHERMAN
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OUTPATIENT EVALUATION

Ex. L

going relatively well for him at the time. Although his sister, Betty Glascoe, reported that her brother was "not himself" the day before, when asked to elaborate, she could only say that he was not eating or talking much. She admitted that his behavior prior to that day was relatively normal. Telephone interviews with other individuals who interacted with Mr. Dewalt in the weeks leading up to the incident failed to uncover any behaviors indicative of mental instability. Although there is no specific description of Mr. Dewalt's behavior in the available police records, it is worth noting that there is no indication of any bizarre behavior on his part during the alleged incident.

In addition to the evidence that Mr. Dewalt was not mentally ill at the time of the alleged crime, collateral sources suggest that he would not have lacked the capacity to distinguish moral or legal right from moral or legal wrong on the incident date. His brother, Fletcher Walker, indicated in his police statement that Mr. Dewalt called him after the incident and said, "I messed up. I shot Vetta." Mr. Walker further reported that his brother kept saying that he was sorry. Such remorseful comments strongly suggest that Mr. Dewalt was aware that his earlier act was morally wrong. Police records also indicate that Mr. Dewalt turned himself in to a local sheriff's office later that morning. This suggests that he was aware that he had committed an illegal act. Both of the victim's children reported to police that their mother attempted to call for help when someone started banging on the door. Lakecia Roseboro's statement indicates that her mother said, "He has done cut the phone line." Lt. Phillips of Fairfield County Sheriff's Office informed us by letter that the victim's phone junction box appeared damaged with the wires pulled out. If, in fact, the perpetrator disabled the victim's phone, the implication is that he hoped to prevent the victim from calling for help. This further suggests that he was aware of the legal wrongfulness of his subsequent act.

In conclusion, the available information suggests that Mr. Dewalt was not suffering from a major mental illness at the time of the alleged crime. Without evidence of such a mental illness, there is little reason to believe that, at the time of the alleged incident, he lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong. Even if we were to assume that he was depressed and hearing a voice telling him to kill himself in the weeks leading up to the incident, the available information fails to link these symptoms to the alleged crime or imply that his ability to make important legal and moral distinctions would have been significantly impaired.

CONCLUSION REGARDING CAPACITY TO CONFORM: As stated earlier, Mr. Dewalt provided a rational explanation for his actions on the incident date. Although his version of events does not correspond with police records, there is no indication from his statements that his behavior was driven by symptoms of mental illness. He specifically denied experiencing auditory hallucinations that day. He also denied ever receiving psychotic commands to harm the alleged victim. In summary, it is our opinion that Mr. Dewalt did not suffer from a mental disease or defect at the time of the alleged incident which would have resulted in a lack of sufficient capacity to conform his conduct to the requirements of the law.

KJC

DEWALT, SHERMAN
1005-9311
OUTPATIENT EVALUATION

HAROLD C. MORGAN, M.D.
CONSULTANT IN GENERAL AND FORENSIC PSYCHIATRY

3 Legare Lane
~~1116 BLANDING STREET SUITE 201A~~
COLUMBIA, SOUTH CAROLINA 29204

TELEPHONE
(803) 256-0500
FAX (803) 771-7679

738-0805

January 5, 2008

Ex. M pg 1 of 2

Jack B. Swerling, Esq.
1720 Main Street
Columbia, South Carolina 29201

RE: Sherman Dewalt

Dear Mr. Swerling:

On the basis of my examination of Mr. Dewalt on December 27, 2007 and review of all the medical and legal records that you provided, it is my conclusion that he is presently competent to stand trial and that he was criminally responsible at the time of the alleged crime on July 21, 2003. A summary of my examination follows.

Mr. Dewalt's school records indicate that at age 14 he was considered to be Learning Disabled. He completed high school with a Certificate. He worked in textile mill for several years then went to school to learn to drive a truck and has been doing that for the past few years. The medical records do not reveal a history of major psychiatric problems but his family reports episodes of depression related to the loss of significant others. In January 2000 he was given anti-anxiety and antidepressant medication for a short time after his wife left.

No significant emotional symptoms were identified when he was admitted to Fairfield Detention Center shortly after the homicide, but a few months later he was talking of suicide. He was referred to the local mental health center and, on December 28, 2003, committed to the Columbia Care Center. He was discharged on January 23, 2004 with a diagnosis of Adjustment Disorder with depressed mood, Borderline IQ and Diabetes. He was given several medications while there, including anti-psychotic and mood stabilizing drugs. Since his discharge from the hospital he has been treated at the local mental health center. According to the nurse at the Detention Center he is currently taking Lithium Carbonate 600 mgm a day (a mood stabilizer), Risperdal 2 mgm (antipsychotic) and Remeron 30 mgm, (antidepressant), both at bedtime, and Metformin 2000 mgm a day (for diabetes).

I examined Mr. Dewalt at the Fairfield County Detention Center after speaking with the nurse who provided a list of his current medications. She observed that he had not shown signs of acute distress since his return. Mr. Dewalt was adequately oriented in all spheres, his memory was intact, he knew the nature of the charges against him and how those originated and that he could receive a lengthy sentence, possibly life, if found guilty. He was able give a simple but adequate explanation of courtroom

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Ex. M pg 2 of 2

Dewalt, p2

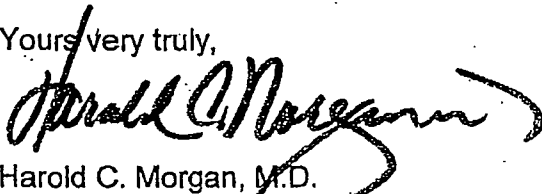
procedures and personnel. He understood the basic aspects of plea bargaining and described a good working relationship with his attorney. Since he has both a factual and rational understanding of the charges against him and is able to rationally assist his attorney, it is my conclusion that he is presently competent to stand trial.

When asked to explain what happened Mr. Dewalt said that the victim had asked him for money but when he brought it she would not let him in so he "got mad and kicked the door in." He says the shooting was accidental and that he left immediately but later turned himself in to the authorities.. He is vague about hearing voices at the time but he says that he has heard voices off and on over the years. His description of the event does not have the flavor of psychotic disturbance of thought processes.

Even though the medical records show that Mr. Dewalt has significant mental problems, his own description of the homicide and the medical record strongly suggest that his psychiatric impairment at the time did not rise to the level of insanity. He understood that his behavior was legally and morally wrong, therefore, I believe that he was criminally responsible for his behavior.

I hope that this information will be useful; if you have questions please contact m.

Yours very truly,



Harold C. Morgan, M.D.
Diplomate, American Board of Psychiatry and Neurology
Diplomate, American Board of Forensic Psychiatry
Clinical Professor Psychiatry
University of South Carolina School of Medicine

HCM:me

PSYCHIATRIC CONSULTANTS, P. A.

116 BLANDING STREET, SUITE 2-A
COLUMBIA, SOUTH CAROLINA 29204

3 Legarie Lane

1 was not in any way difficult to deal with, to get along
2 with. He had a very positive work ethic.

3 When he was in high school, he was in love with a
4 young girl named Felicia. The reason I bring this up is
5 so you'll know a little bit about what led to his
6 depression that is documented in Dr. Pinner's reports long
7 before these events took place.

8 Felicia died of a blockage at a very early age,
9 around 19 or 20. That was his high school sweetheart.
10 The family tells me, and they are all here to support
11 that, but that had a dramatic effect on Sherman because he
12 did not know a lot of women, did not know a lot of girls,
13 did not have a lot of relationships with a lot of girls,
14 but the ones that he had relationships with sometimes
15 ended in tragedy, as it did with Felicia.

16 He comes from a family of five sisters and two
17 brothers up in that area. Judge, also from his high
18 school records, you can see from Dr. Morgan's report that
19 he's learning disabled. He has a borderline I.Q.

20 I think it's significant that he was able to maintain
21 employment with the same employer for 15 years and obtain
22 a high school degree with a borderline I.Q. and a learning
23 disability, and then depression had set on later on in
24 life.

25 All of that, I believe, goes toward the man that just

Ex. 0

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1 stands before you as being a positive person and factor in
2 the community.

3 He has no prior criminal record. He has no history
4 of violence. I'm not disputing -- we're not here to
5 dispute what the family has said. They are hurt, and I
6 would be acting in the same way they are, I assure you, if
7 I was in their position.

8 But I'm not aware of anything in this man's
9 background about violence. That's not -- that's
10 contradicted by everything his family tells me and the
11 fact that he has no criminal history, and that he
12 maintained employment for all of those years with the same
13 employer.

14 THE COURT: Yes, sir.

15 Excuse me just a moment, Mr. Swerling.

16 Sheriff, when I was coming along, the doffer was
17 about the most difficult job in the mills. Is that still
18 the case? I don't know what --

19 THE SHERIFF: Yes, sir.

20 THE COURT: -- changes were made but being a corn
21 doffer, nobody stayed there long.

22 THE SHERIFF: Yes, sir.

23 THE COURT: Is that still the case?

24 THE SHERIFF: That is the case.

25 THE COURT: Excuse me.

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

Sherman Dewalt # 326410

Applicant

VS

the State

Respondent

IN THE COURT OF COMMON PLEAS
Case # 2008 - CP - 20 - 322

NOTICE AND MOTION OF
15 (b); AMENDMENT TO
CONFORM TO THE EVIDENCE

2011 MAR - 8 P 12:58
FAIRFIELD COUNTY
CLERK OF COURT
PETTY, JOE PETERSON

NOW COMES the above named Applicant pro-se, (Which Applicant does not have counsel upon his case anymore) who moves this Hon. court in the above entitled matter pursuant to S.C.R.C.P. - Rule 15 (b).

ARGUMENT'S

(1) The Applicant never rec'd a final judgment in the above case from counsel nor counsel's notice of appeal in this matter, as he requested. SEE: Ex "C" Clerk of Court Letter.

The final judgment of this court was rec'd by Applicant Feb 3, 2011. MR. Dewalt, "Applicant", hearing was held Aug 25, 2009. He made a number of allegations regarding ineffective assistance of trial counsel, including his guilty plea was not freely and or voluntarily entered.

(2) The Applicant testified that his attorney failed to get a voluntary manslaughter charge SEE: Ex. A pg 2

- (3) Counsel testified in part: he tried to develop a defense..... and the court noted Counsel felt the facts did not support a manslaughter charge SEE Ex. A pg 3
- (4) Applicant submit in support of his 15 (b) motion, Ex. L pg 7. and Ex. N Tr.p 46 L17- L19, and argue, he believed voluntary manslaughter meant IN voluntary manslaughter, when one accidentally kill someone. This happen because counsel never explain the difference to the Applicant between Murder, Voluntary manslaughter and IN Voluntary manslaughter, as recommended by the evaluation DR, even when counsel knew Applicant had a learning disable.
- (5) The Applicant further testified a his P.C.R hearing that he told his atty: there were no children at the time of the murder as claimed by the surviving victims. Rather, the Applicant claimed another man was in the room at the time of the murder, but his atty: told him there was no evidence to support his story. SEE: Ex A pg 2 and pg 5
- (6) Counsel testified in part; he interviewed all witnesses provided to him SEE: Ex. A. pg 3 And, that he had investigated the Applicant's account and found no evidence to support the presence of another man in the room rather than the children. SEE: Ex A pg 5.

(7) Applicant submit in support of his 15 (b) motion Ex. B Applicant rec'd counsel files upon his case Jan 26, 2011/ letter dated Oct 12, 2010., and argue; upon reviewing the files, Applicant notice that there was NO interview or investigator reports to show counsel had:

(A) Interviewed or investigated the children who had alleged that they was in the bed when Applicant entered the bed room and shot their mother SEE: Ex. D and E.

Here, the children statements are pretty much the same which is odd, given the fact that their uncle "Mike Rosebore" who is a police officer took part in the children statements and witness their statements.

(B) Further See Ex. F where the victims step-sister Charlestine Banks and James Jeter who was the victims brother was inside the residence whom had contaminated the crime scene.

(C) Also see Ex G pg 1 and Ex. F where there was #3 E.M.S. workers and other officers who had entered the crime scene before SLED arrived to secure and process the crime scene.

(D) Applicant further argues, that counsel never interview/ investigate or question the children/family/friends etc about Davita Roseboro having another man in her home prior to this incident, where male adult clothes and shoes where inside her closet SEE: Ex. G pg 2

(E) SEE: Ex. H looking at the police investigation note. there was NO way the incident happen the way the children statements alleged.

(1) How/why was the casing found beneath the victims left leg

(2) there was no reported blood on "any" of the children or their clothes SEE: Ex. G pg 2.
"Skull Fragments -----"

(3) Now, looking at Ex I pg 2 & 5 of DR. Sexton / DR. Ross report.

How could the victim have a powder tattooing.... if the incident happen the way the children alleged

(4) SEE: Ex J How was gunshot residue found on the back of the victim's left hand

(8) Here, the Applicant strongly argues that he had maintain from day one that after he kicked in the bed room door. that this other man jumped him from behind and upon struggling with this other man, the victim came to intervene

and the gun went off accidentally hitting her. When this happened the other man ran from the home. Which Applicant picked Ms. Roseboro up - speaking to her but she did not answer. Thus, Applicant laid her on the bed and also left.

Although counsel told Applicant not to mention this to the judge.... As he argued at his P.C.R. hearing
SEE: Ex. K. Trp 24 L2 - L12.

- (9) Although counsel testified that he had thirty-six years of criminal law experience and had handled numerous murder cases - But he failed to interview/investigate any the above and below facts.
- (10) And, counsel further testified that he had Applicant mentally evaluate, but they (the records) did not rise to the level required for a mental illness defense.
- (11) Here, Applicant never alleged that he was not criminal responsible for the ACCIDENT. And, he did not intend to put up a mental illness defense. This was counsel's "Smoke screen" to confuse and mislead Applicant, his family and the court SEE: Ex L pg 5 & 6 and

Ex. M pg 2 . My version of the incident had always been differed from the police records Id. Ex.

- (12) Here, Applicant always wanted to go to trial and which he was under the impression that he was until the day of his plea SEE: Ex P1 and P2
- (13) Applicant had never been in contact with the criminal justice system before SEE: Ex. O Tr-p 47 L3
Also see Ex. L pg 7 Which he relied whole heartedly on the guiding hand of counsel. But Applicant was left without the guiding hand of counsel, thus, Applicant was like a child without his mother SEE: Ex. N. Also see Ex. O, Ex L pg 7 Thus, Applicant guilty plea was not freely or voluntarily made, and would have insisted on going to trial. if it wasn't for counsel many errors.

CONCLUSION

For the foregoing reasons, the Applicant 15 (b) motion should be granted in whole and "all" evidence submitted to the records of his P.C.R.

Date: 2-17-11

Respectfully Submitted
Sherman Dewalt
 Applicant

PROOF OF SERVICE

I, Sherman Dewalt certify that I have served my Summons; Notice/motion for 15(b) motion/Ex^s, motion to proceed in forma pauper upon the below person. By depositing the above said in Me^e Corr. Inst. mail room on this 17 day of Feb 2011 to be deposited in the U.S. mail with postage prepaid.

s/ Sherman Dewalt
Applicant

The Hon. Clerk of Court
Betty Beckham
P.O. Drawer 299
Winnsboro, SC 29180

2011 MAR - 8 P 12: 58
FAIRFIELD COUNTY
CLERK OF COURT
PATTI S. BECKHAM

Law Offices of
Jack B. Swerling Ex-P 1

1720 Main Street, Suite 301
Columbia, South Carolina 29201

Telephone 803-765-2626
Fax 803-799-4059

October 4, 2004

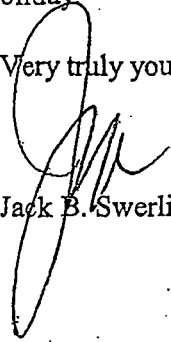
Sherman DeWalt
c/o Fairfield Detention Center
10 Faith Lane
Winnsboro, South Carolina 29180

Dear Sherman:

I received your letter today. Right now I am trying a federal death penalty case which is expected to last until sometime in October.

Your case is not ready for trial yet, but we are doing our best to get it ready. Even if there is a plea, you will not be getting our for the holiday.

Very truly yours,


Jack B. Swerling

JBS:lhb

*Law Offices of
Jack B. Swerling*

EX-P2

*1720 Main Street, Suite 301
Columbia, South Carolina 29201*

*Telephone 803-765-2626
Fax 803-799-4059*

August 15, 2007

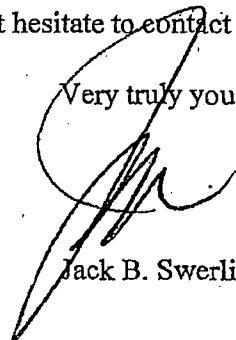
Sherman Dewalt
c/o Fairfield County Detention Center
10 Faith Lane
Winnsboro, South Carolina 29180

Dear Sherman:

This is to advise that your trial has been scheduled to begin on **Monday, December 3, 2007** at the Fairfield County Courthouse, 101 South Congress Street, Winnsboro, South Carolina.

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

Very truly yours,



Jack B. Swerling

JBS:lhb

Copy to:

Betty Glasgow
Post Office Box 425
Prosperity, South Carolina 29127

STATE OF SOUTH CAROLINA

County of FAIRFIELD

2011 APR -8 A 10:26

In the Court of Common Pleas

Sherman Dewalt # 326410
Full name and prison number (if any) of Applicant,

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

2011-CP-20-152

vs.

State of South Carolina
Name of Respondent.

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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention McCormick Corr. Inst. 386 Redemption Way McCormick
S.C. 29899

2. Name and location of Court which imposed sentence Fairfield Court of Gen Sessions

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

- (a) Murder 2003-GS-20-389
- (b) Burglary 1st degree 2003-GS-20-390
- (c) _____

4. The date upon which sentence was imposed and the terms of the sentence:

- (a) Jan 28, 2008 - life suspended upon the service of thirty years and five
year intensive probation - plus restraining order.
- (b) Jan 28, 2008 thirty (30) years.

INEFFECTIVE ASSISTANCE OF PCR COUNSEL

Applicant filed his FIRST application for P.C.R. Sept 11, 2008 which an evidentiary hearing into the matter was convened on Aug 25, 2009 in the above said court. The Applicant was present at the hearing and testified upon his own behalf and was represented by counsel Creighton Coleman. The S.C. Atty. Gen's office was represented by Michelle Parsons Kelly, which Applicant's plea counsel, Jack B. Swerling testified upon the State's behalf.

Here the Applicant found out Feb 3, 2011 by way of the Fairfield Clerk of Court (SEE letter enclosed) that Applicant's first P.C.R. had been dismissed between Oct 15-19, 2009. And, no notice of appeal regarding Applicant's first P.C.R. was not filed as he requested counsel to do so.

A matter of fact, counsel, Coleman has refused to answer Applicant back regarding this appeal matter, since Applicant found out Feb 3, 2011 that he did not have an appeal, pending from his first P.C.R. hearing.

The Applicant strongly contends that he did not freely and or voluntarily waive his RIGHT to appeal his

first P.C.R. Thus, Applicant further strongly argue that the one year statute of limitations per. S.C. Code Ann 17-27-45 (a) should not apply to his case SEE: Austin vs. State 409 SE2d 395 Also see: Odom v State 523 SE2d 753; Wilson v State 559 SE2d 581 and Bullis v State 675 SE2d 734.

Moreover, Applicant further argue that the state LAW expressly authorizes the RIGHT to seek appellate review of the denial of his first P.C.R see: S.C. Code Ann 17-27-100; Austin Id. Because Austin appeals are belated appeals intended to correct unjust procedural defects, as in Applicant's case

VIOLATION OF THE 14th AMEND per. FED., U.S. and S.C Const.

Applicant reargue as argued above under these violations "denial of due process" to appeal from his first P.C.R hearing

CONCLUSIONS

Based on the foregoing arguments the Applicant is entitle to a new P.C.R hearing to present further testimony entitling him to an Austin review.

Date: 4-7-11

Respectfully Submitted
Sherman Dewalt

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? YES
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? N/A
- (d) any other petitions, motions or applications in this or any other Court? YES

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. P.C.R
 - ii. 60 (b) motion
 - iii. 15 (b) motion
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. The court of Common Pleas - Fairfield Co.
 - ii. " " " " " "
 - iii. " " " " " "
 - iv. _____
- (c) the disposition thereof:
 - i. Denied
 - ii. pending
 - iii. pending
 - iv. _____
- (d) the date of each such disposition:
 - i. Oct 15, 2009
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. Order of dismissal with prejudice - same date above
 - ii. _____
 - iii. _____
 - iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. SEE 10 (a) Applicant could not have raised these issues before now because they are upon his first P.C.R. counsel / due process right regarding said matter.

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

- i. _____ N _____
- ii. _____ | _____
- iii. _____ A _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) See 14 above
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? NONE
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NONE
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES "NONE COUNSEL - PRO-SE"

17. If you answered "yes" to one or more parts of (16), list:

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

- i. Jack B Swerling, Esq
1720 Main St. Suite 301 Colg SC 29201
- ii. Creighton Coleman, Esq
P.O. BOX 1006 Winnsboro, SC 29180
- iii. _____

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

- i. Plea and Sentencing
- ii. P-C-R
- iii. _____

18. State clearly the relief you seek in filing this application.

New P.C.R hearing / an appeal and any other relief the court deems that Applicant is entitled to

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

NO

Betty Beckhan
Clerk of Court, Fairfield Co.
P.O. Drawer 299
Winnsboro, SC 29180

2011 APR -8 A 10: 26

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

Date: 4-7-11

Re: New P.C.R

Dear Hon. Clerk, Beckhan

Please find enclosed for filing my new
P.C.R. Would you be so kind as to send
me back a filed copy.

Thanking you in advance, I am

cc: Personal file

Sincerely
Sherman Dewalt

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FAIRFIELD)
)
 Sherman Dewalt, #326400,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTH JUDICIAL CIRCUIT

2008-CP-20-322

**RETURN TO APPLICANT'S PRO SE
 60(b) & 15(b) MOTIONS**

The State, by and through undersigned counsel, making Return to Sherman Dewalt's *pro se* Rule 60(b) and 15(b) Motions, filed March 8, 2011, in a joint document, would respectfully show:

1. The Applicant, Sherman Dewalt, pled guilty to burglary – 1st degree and murder on January 28, 2008. He was sentenced to confinement for murder to life suspended upon service of thirty years to five years of intensive probation and thirty years for burglary – 1st degree. The Applicant did not appeal his conviction or sentence.

2. Applicant thereafter filed an application for post-conviction relief on September 11, 2008. An evidentiary hearing was held before the Honorable Roger M. Young, Sr. on August 25, 2009. Judge Young denied the application by written Order dated October 15, 2009.

3. Respondent submits that Applicant's Motions should be denied. Applicant's Motions were not timely filed. The Order of Dismissal in this case was signed October 15, 2009, and filed and served on all parties on October 19, 2009. Applicant was required to file his 60(b) Motion within a year of the entry of judgment. Applicant filed this motion on March 8, 2011, almost five months past the one year deadline. Therefore, this Motion should be dismissed.

4. Respondent submits that this Motion should also be denied because the Applicant has

failed to meet his burden of presenting evidence that proves the facts essential to entitle him to relief. The movant in a Rule 60(b), SCRPC, motion has the burden of presenting evidence, usually provided by affidavits, proving the facts essential to entitle him to relief. Bowers v. Bowers, 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991). Applicant alleges that he should be relieved from this judgment because Counsel committed fraud when he testified at the PCR hearing that he had interviewed all witnesses and investigated a defense. Applicant further alleges that Counsel committed fraud when he had Applicant evaluated as to mental competency, when Applicant always accepted responsibility, but asserted it was an accident. Applicant also reargues his claims that his guilty plea was not voluntarily entered. Applicant then alleges that he should be relieved from this judgment because of mistake, in that Judge Young made a mistake in finding that his plea was freely and voluntarily entered. However, he offers no evidence, other than his own assertions regarding Counsel's alleged fraud and the court's mistake, to support his claims. Applicant provides no affidavits in support of his claims.

4. Respondent submits that this Motion should also be denied because relief under Rule 60(b), SCRPC, also requires the existence of a meritorious defense. See Mitchell Supply Co. v. Gaffney, 297 S.C. 160, 375 S.E.2d 321 (Ct. App. 1988). Applicant offers no evidence of the existence of a meritorious defense, but simply reasserts claims that were raised during his previous PCR hearing.

5. Respondent also submits that Applicant's 15(b) Motion should be denied. Rule 15(b), SCRPC, requires all issues raised during trial by express or implied consent of the parties, to be treated as if they had been raised in the pleadings, and an amendment to the pleadings to be provided if necessary. Respondent submits that this Motion is not proper or applicable in the case at hand, as a final decision has been filed in Applicant's case. Applicant appears to be alleging that he believes

the Order of Dismissal should conform to the evidence he claims to have received from Counsel's file following his PCR hearing. However, it is incumbent upon an Applicant to file a timely motion, pursuant to Rule 59(e), SCRPC, to alter or amend judgment, if he feels that there was an issue or facts before that court which were not ruled upon. Therefore, Respondent submits that this Motion should be denied.

WHEREFORE, having made Return to the *pro se* Motions, the State requests that the Motions be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

BY: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

May 17, 2011.

STATE OF SOUTH CAROLINA)
COUNTY OF FAIRFIELD)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Sherman Dewalt,)
)
Applicant,)

2008-CP-20-0322

v.)

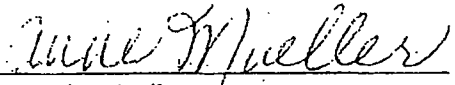
CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,)
)
Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Respondent's Return to Applicant's *Pro Se* 60)b and 15(b) in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Creighton B. Coleman, Esquire
Coleman & Tolen, LLC
P.O. Box 1006
Winnsboro, South Carolina 29180

Sherman Dewalt, SCDC No. 326400
McCormick Correctional Institution
386 Redemption Way
McCormick, South Carolina 29899



Anne A. Mueller
Legal Assistant for the Respondent

DATED this 17th day of November, 2011.

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Sherman Dewalt, #326400,

2011 JUN -2) A 10: 35

2008-CP-20-322

Applicant,

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

vs.

ORDER

State of South Carolina,

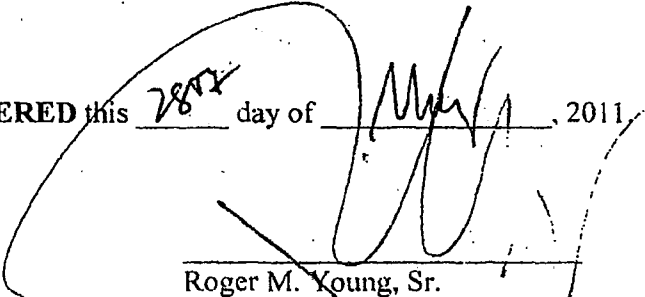
Respondent.

This matter comes before the Court by way of Applicant's documents including 60(b) and 15(b) Motions. The Respondent made its Return to these Motions on May 17, 2011.

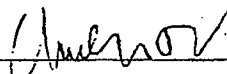
This Court is not persuaded to set aside its orders or judgment. This Court finds that Applicant's Motions were not timely filed and failed to include the requisite affidavits. Regardless, this Court concludes that Petitioner's motion is wholly without merit. This Court's previous Orders of Dismissal fully comport with the requirements of Rule 52(a), SCRPC. This Court further finds that oral argument would not aid in the consideration of this motion.

Based on the above reasons, this Court finds that Petitioner's motion must be denied and dismissed with prejudice.

AND IT IS SO ORDERED this 28th day of June, 2011



Roger M. Young, Sr.
Presiding Judge
Sixth Judicial Circuit

 South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

Sherman Dewalt # 326410

Applicant

vs

The State

Respondent

IN THE COURT OF COMMON PLEAS
Case # 2008-CP-20-322

NOTICE AND MOTION
FOR

REHEARING PER. SERC.P
RULE 59(a) and 59(e)

NOW COMES the above named Applicant who moves this Hon. Court in the above entitled matter.

The Applicant received a signed copy of Judge, Roger M. Young, SR. order of dismissal 6-6-11 regarding his 60(b) and 15(b) motions. Which was signed by Judge Young, SR. 5-28-11

ARGUMENT

The Applicant would direct this court's attention to the following specific matters that was not addressed as required by 17-27-80 and the below cited case laws McCray v State 408 SE2d 24; Pruitt v State 423 SE2d 127; Bryson v State 443 SE2d 500; Marler v State 653 SE2d 266

The Applicant argues that the Judge's order did not "fully" address his return to Respondent's order or his return to Respondent's return to his 60(b) and 15(b) motions, regarding the "timely" application of such said motions SEE: Chewning 579 SE2d 605 "NO TIME limit" The Applicant re-argue as he argued in his return and 60(b) and 15(b) motions.

The Applicant contends that the Judge's order did not address whether Applicant's guilty plea was made freely or voluntarily, as argued in his 60(b) and 15(b) motion - wherefore, Applicant re-argue as he did in his return and 60(b) and 15(b) motions.

The Applicant contends that the Judge's order did not "fully" address, whether Applicant had met and proved his facts, alone with Ex. ⁵ that he is entitled to the relief he seeks - both in his 60(b), and 15(b) motions. The Applicant re-argue as he argued in his return and 60(b) and 15(b) motions.

The Applicant contends that the Judge's order did not address whether Applicant's 15(b) motion was

proper and applicable in his case, even though he had gotten a final decision in his case. The Applicant re-argue as he argued in his return, and 60(b) and 15(b) motion

The Applicant further argues to properly preserve these issues for appellate review, that he is entitled to a ruling upon EACH issue(s)/motion(s).

In Master v State 653 SE2d 266 the SC. Supreme Court made it clear that a P.C.R Judge must make specific findings of fact and state expressly the conclusions of LAW relating to EACH issue Also see Bryson v State 493 SE2d 500; Pruitt v State 423 SE2d 127; McCray v State 408 SE2d 24

The Applicant further argues that he is entitled to each ruling on all issues/motions, even if his motion are pro-se and independent actions

For the foregoing reasons, the Applicant respectfully requests this Hon. Court to direct the entry of a new judgment per. 59(a)(2) and per. 59(c) to alter and amend its order of dismissal, granting Applicant the relief he seeks, both in his 60(b) and 15(b) motions.

Date 6-7-11

S/ Sherman Dewalt

PROOF OF SERVICE

I, Sherman Dewalt certify that I have served my 59(e) motion upon the below person. By placing the above said in MS Corr. Inst. mail room on this 7 day of June 2011, to be placed in the U.S. mail with postage prepaid.

The Hon. Clerk of Ct.
 Betty Beckham
 P.O. Drawer #299
 Winnsboro, SC 29180

A/A Gen.
 Suzanne A. White
 P.O. Box 11549
 Cdq SC 29211

SWORN to and subscribed before me this
07 day of June 2011

Sherman Dewalt

JC Franklin
 Notary Public

My Commission Expires: 12/16/2019

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2011 JUL 13 4 11:56
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BEECHAM

Sherman Dewalt, #326400,
Applicant,

2008-CP-20-322

vs.

State of South Carolina,
Respondent.

ORDER

This matter comes before the Court by way of Applicant's document captioned, "Notice and Motion for Rehearing Per SCRCF 59(a) and 59(e)." The Respondent made its Return to this response on July 9, 2011.

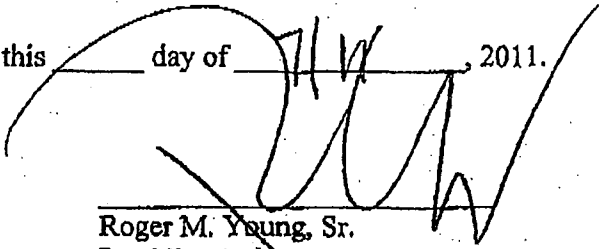
The Order of Dismissal in this matter was signed by me on October 15, 2009. Applicant then filed a Motion for Relief from Judgment pursuant to Rules 60(b) and 15(b), SCRCF. That Motion was dismissed as untimely by written Order dated May 28, 2011.

In so much as Applicant is seeking to alter or amend the original Order of Dismissal in this case, this Court finds that the Applicant's Motion is untimely. Furthermore, this Court finds that Applicant's Motion failed to properly present grounds for relief, or bring to the attention of this Court, specific matters in need of alteration or amendment in the Order denying Applicant's 60(b) and 15(b) Motions. See Rule 7(b)(1), SCRCF(stating that an application to the court for an order shall be made by motion and shall state the grounds and relief sought with particularity). Applicant made no specific allegation of any issue that the Court failed to address properly in the Order denying his Motions, other than disagreeing with the decision of the court and reiterating previous arguments raised and ruled upon at Applicant's PCR hearing.

Based upon careful reconsideration of all the evidence in this case and upon full

consideration of Applicant's Motion, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid in the reconsideration of the original judgment. Therefore, this Court finds that the Order denying Applicant's 60(b) and 15(b) Motions, which was signed on May 28, 2011, shall stand as it was written.

AND IT IS SO ORDERED this _____ day of July, 2011.



Roger M. Young, Sr.
Presiding Judge
Seventh Judicial Circuit

Charley, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

IN THE COURT OF COMMON PLEAS

2008-CP-20-322

Sherman Dewalt #326400
vs Applicant

APPLICANT'S RETURN
TO RESPONDENT'S
RETURN TO APPLICANT'S
MOTION TO ALTER OR
AMEND

The State

Respondent

FAIRFIELD COUNTY
CLERK OF COURT
BETTY J. BRICKHAM

JUL 15 2011

NOW COMES the above named Applicant who moves
this Hon Court in the above entitled matter

the Applicant contends that his 59(e) motion
is solely to and on Judge Young Order denying his
60(b) and 15(b) motions. The Applicant further
argue that his 59(e) motion "is proper" and should
not be dismissed, as argued in his 59(e) motion.

Moreover, Applicant's 60(b) and 15(b) motions are
independent actions to his prior P.C.R thus the
Respondent arguments on Applicant's prior P.C.R itself
is misplaced, "statute of limitations," no time bar see: Chewning 599
SE2d 605.

(WHEREFORE: as Applicant argue in this return and his
59(e) motion the Respondent's return to should
denied, and Applicant 59(e) motion granted.

DATE: 7-15-11

— Respectfully submitted

Sherman Dewalt

PROOF OF SERVICE

I, Sherman Dewalt have served the below persons, my return to the State's return to my 59(c) motion. By placing the above said in the MC Corr. Inst. mail room on this 15 day of July 2011, to be placed in the U.S mail with postage prepaid.

✓ The Hon Clerk of Ct.

Ms. Beckham

P.O. Drawer #299

Winnaboro, SC 29180

A/A Gen

Suzanna A. White

P.O. Box 11549

Cda SC 29211

Sherman Dewalt

2011 JUL 18 P 2:11
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTH JUDICIAL CIRCUIT
COUNTY OF FAIRFIELD)	
)	
Sherman Dewalt, #326410,	)	2011-CP-20-0152
)	
Applicant,)	
)	
v.	)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
_____)		

The Respondent (the State), making its Return to the application for Post-Conviction Relief (PCR) filed April 8, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Fairfield County Clerk of Court. The Applicant was indicted at the October 2003 term of the Fairfield County Grand Jury for murder (2003-GS-20-389) and burglary – 1st degree (2003-GS-20-390). Jack B. Swerling, Esquire, represented the Applicant. On January 28, 2008, the Applicant pled guilty as indicted. The Honorable Kenneth G. Goode sentenced him to confinement for a period of thirty years on the charge of burglary – 1st degree and life for the charge of murder. Judge Goode suspended the life sentence upon the service of thirty years and five years intensive probation. Judge Goode also instituted a permanent restraining order prohibiting the Applicant from going near the victim’s family. The Applicant did not appeal his guilty plea or sentence.

2008-CP-20-322

The Applicant then filed an application for post-conviction relief on September 11, 2008. The Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel;
2. Involuntary guilty plea;
3. Failure to investigate;
4. "Withheld information- miscarriage of justice;"
5. "Solicitor never presented evidence of an gun;" and
6. "Lawyer didn't allow me to testify that could reduced to lesser included offense."

An evidentiary hearing was held before the Honorable Roger M. Young, Sr. on August 25, 2009. The Applicant was present and was represented by Creighton Coleman, Esquire. Michelle Parsons Kelley of the South Carolina Attorney General's Office represented the State. Judge Young denied the application by written Order dated October 15, 2009. The Applicant did not appeal the denial of his application.

The Applicant filed a *pro se* Motion for Rehearing pursuant to Rule 60(b) and Rule 15(b) on March 8, 2011. The Respondent filed its Return and Motion to Dismiss on May 17, 2011. Judge Young dismissed these Motions by written Order dated May 28, 2011. Applicant then filed a *pro se* Motion for Rehearing pursuant to Rule 59(a) and Rule 59(e) on June 10, 2011. The Respondent filed its Return and Motion to Dismiss on July 9, 2011. The Order of Dismissal dismissing the Applicant's Motion to Alter or Amend was signed on July 11, 2011, and filed with the Fairfield Clerk of Court's office on July 13, 2011. The Applicant then filed a document captioned, "Applicant's Return to Respondent's Return To Applicant's Motion to Alter or Amend," on July 18, 2011.

Attached herewith and incorporated herein by reference are the records of the Fairfield County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the records from the Applicants first PCR application.

II.

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

1. Ineffective assistance of PCR counsel, in that;
 - a. Counsel failed to file an appeal following the denial of Applicant's previous PCR application, and
2. Violation of the 14th Amendment per Fed, US, and SC Constitution, in that;
 - a. Applicant was denied due process rights because he was denied the right to appeal the denial of his first PCR application.

III.

Respondent interprets both claims as claims that the Applicant seeks a belated appeal of the denial of his prior PCR application. Respondent submits that this is a successive application. Successive applications are disfavored and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981). However, the Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. The Respondent lacks sufficient information to admit or deny this allegation. The Respondent requests an evidentiary hearing on this ground for relief. Sharper, Id.; Austin, Id.

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of whether the Applicant was denied a right to appeal. Each and every allegation contained

within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that a hearing be held.

Respectfully submitted,

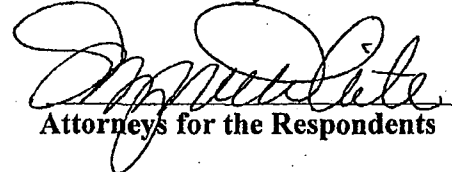
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOT
Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By:



Attorneys for the Respondents

Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

November 28, 2011.

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
)	
County of Fairfield	)	2011-CP-20-0152
)	
Sherman DeWalt)	
)	
)	
vs.	)	TRANSCRIPT OF RECORD
)	
State of South Carolina)	
)	
)	

February 27th, 2012
Lancaster, South Carolina

BEFORE:

THE HONORABLE ALISON RENEE LEE, JUDGE.

APPEARANCES:

ERNEST SPONG, ESQ.
Attorney for the Applicant

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Attorney for the Respondent

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Official Court Reporter

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EXHIBITS

NO.	DESCRIPTION	MARKED/ADMITTED
A-1	Letter	8

P R O C E E D I N G S

THE COURT: We're here on docket number 2011-CP-20-0152, Sherman DeWalt versus the State of South Carolina. The applicant is represented by Ernest Spong the III, is that correct?

MR. SPONG: That's correct, Your Honor.

THE COURT: And the state is represented by Suzanne White. We're here on a postconviction relief application that was filed by Mr. DeWalt. I'll ask Ms. White to give us the background information, and we'll turn it over to you, Mr. Spong.

MS. WHITE: Thank you, Your Honor. Mr. DeWalt filed this application April 8 of 2011. He's currently confined in the Department of Corrections for a charge from October 2003 for murder and burglary first degree. He was represented by Jack Swerling and pled guilty on January 28th, 2008. Was sentenced to 30 years on the charge of burglary first degree and life for murder. The life sentence was suspended upon the service of 30 years and five years of intensive probation. There was also a permanent restraining order instituted. At the time, there was no guilty -- excuse me, no appeal from the guilty plea.

In September of 2008, he filed a PCR alleging various

1 claims of ineffective assistance of counsel, involuntary
2 guilty plea, failure to investigate, and several other
3 things. And a hearing was held before the Honorable Roger
4 Young in August of 2009. He was present and -- applicant
5 was, and was represented by Creighton Coleman at that
6 time. And Judge Young denied Mr. DeWalt's application
7 October 15th, 2009 by written order, and there was no
8 appeal filed.

9 Applicant filed a pro se motion for rehearing on
10 essentially a 60(b) and Rule 15(b) motion, 2011; the
11 respondent has been responding to those. Those were
12 dismissed. There was another 59(e), 59(a), and 59(e)
13 motion filed. Those were dismissed as well. He then
14 filed another return, and then this application was also
15 filed alleging that counsel failed to appeal the denial of
16 his previous PCR application. And those are the only
17 allegations that he's raised at that point Your Honor. So
18 I'll turn it over to Mr. Spong at this time.

19 THE COURT: Mr. Spong?

20 MR. SPONG: Your Honor, I would call Mr. DeWalt to
21 the stand at this time.

22 THE COURT: Step forward please, sir, to be sworn.

23 SHERMAN DEWALT, after being duly sworn,
24 testified as follows:

25

1 THE COURT: State your full name for us.

2 THE PLAINTIFF: Sherman DeWalt.

3 THE COURT: You don't have to talk right on top of
4 it.

5 THE PLAINTIFF: Oh.

6 THE COURT: Just speak up.

7 MR. SPONG: May it please the court.

8 THE COURT: Yes, sir.

9 DIRECT EXAMINATION

10 BY MR. SPONG .

11 Q. Mr. DeWalt, you've filed your first application for
12 PCR back in September of 2008; is that correct?

13 A. Yes, sir.

14 Q. Okay. And you had a evidentiary hearing on that
15 application in August of 2009; is that correct?

16 A. Yes, sir.

17 Q. And for that hearing you were appointed Mr. Coleman
18 to represent you for that PCR hearing; is that correct?

19 A. Yes, sir.

20 Q. Can you tell us when was the first time you met
21 Mr. Coleman about this hearing?

22 A. I met Mr. Coleman that morning. We talked briefly.

23 Q. When you say "morning," the morning of the hearing?

24 A. The morning of the hearing. Yes, sir. We talked
25 briefly, eight or nine minutes or so.

SHERMAN DeWALT - DIRECT EXAMINATION BY MR. SPONG

- 1 Q. Okay. Y'all talked about your PCR?
- 2 A. Yes, sir.
- 3 Q. And then you had your hearing?
- 4 A. Yes, sir.
- 5 Q. Did the judge rule on your hearing at that time?
- 6 A. Yeah. He --he denied it.
- 7 Q. After the hearing, or at any point really, did you
- 8 have any discussions with Mr. Coleman about appealing that
- 9 PCR?
- 10 A. Yeah, I had -- I had told him before he denied it, I
- 11 asked him if he ruled against me, I would want him to file
- 12 an appeal for me.
- 13 Q. And you're saying you told him that the day that you
- 14 had your hearing?
- 15 A. Yes, sir. We talked about it.
- 16 Q. Okay. Then what happens next? Is there --
- 17 A. I wrote -- I didn't hear anything for a while, and I
- 18 wrote Mr. Coleman a letter, and I didn't get no response
- 19 back from him.
- 20 Q. You wrote that letter from where? McCormick?
- 21 A. McCormick.
- 22 Q. You don't have a copy of that letter?
- 23 A. No, sir.
- 24 Q. But you did write a letter to Mr. Coleman?
- 25 A. Yes, sir.

SHERMAN DeWALT - DIRECT EXAMINATION BY MR. SPONG

- 1 Q. And what was that letter about?
- 2 A. About the appeal. I was asking him about the appeal
3 and all.
- 4 Q. Okay. And do you have any idea when that would have
5 been, if the hearing was in August of 2009 when that
6 letter would have been approximately?
- 7 A. I think a month or a month and a half had passed, I
8 think, before I wrote the letter. I didn't hear nothing.
9 I was looking to hear something from him, but I didn't
10 hear nothing. So that's why I did that.
- 11 Q. That's why you wrote the letter.
- 12 A. That's why I wrote the letter.
- 13 Q. Okay. Did you get a response to that?
- 14 A. No, sir.
- 15 Q. Did you ever get a response?
- 16 A. No, sir. That's when I wrote to the Clerk of the
17 Court.
- 18 Q. Okay. But I just want to be clear about this.
- 19 A. No, sir.
- 20 Q. From the time you had your PCR hearing, that was the
21 only time that you had any conversation or meeting with
22 Mr. Coleman?
- 23 A. Yes, sir.
- 24 Q. Any communication whatsoever?
- 25 A. Right.

SHERMAN DeWALT - DIRECT EXAMINATION BY MR. SPONG

1 Q. Okay. Now how did you find out that you had lost
2 your PCR and that your appeal time had expired?

3 A. I wrote the Clerk of the Court that letter I gave
4 you. I wrote them, and they sent that back to me letting
5 me know I didn't have no appeal pending or nothing.

6 Q. Hang on a second. I'm going to hand you a document
7 and ask you to identify it, if you would.

8 A. Yes, sir. That's the letter I got back from the
9 Clerk of the Court.

10 Q. Okay. Can you speak up and say that?

11 A. Yes, sir. That's the letter I got from the Clerk of
12 the Court.

13 Q. That was in response to the letter you wrote?

14 A. That was in response to the letter I wrote them.

15 MR. SPONG: It's already got marked on here Exhibit

16 C. Your Honor, I would offer this in as testimony.

17 MS. WHITE: Without objection.

18 THE COURT: Without objection, we'll mark that as
19 Applicant's 1.

20 (Applicant's Exhibit Number 1 was marked and admitted.)

21 BY MR. SPONG:

22 Q Just to kind of backtrack a little bit, that's when
23 you found out your initial PCR had been denied and your
24 appeal period had run, expired?

25 A. Yes, sir. Well, I just want to say with all due

SHERMAN DeWALT - DIRECT EXAMINATION BY MR. SPONG

1 respect to Mr. Coleman, I just think he just forgot to do
2 the appeal for me.

3 Q. So this isn't anything personal?

4 A. No, sir. Not at all.

5 Q. Right.

6 A. Yeah.

7 Q. And you're here today to ask this court to give you a
8 belated appeal.

9 A. Yes, sir. That's all I want.

10 Q. Of your initial PCR?

11 A. Yes, sir.

12 MR. SPONG: Okay. Your Honor, that's all we have.

13 THE COURT: Ms. White?

14 MS. WHITE: Just briefly, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. WHITE

17 Q. Mr. DeWalt, you said that you filed that letter --
18 your hearing was in August of 2009, wasn't it?

19 A. Yes, ma'am.

20 Q. Okay. And you said Judge Young denied it on that
21 date; is that right?

22 A. I said that, but I thought about it. I don't know if
23 he denied it that day or not. I know I didn't get the
24 letter of dismissal until later.

25 Q. Okay. And would it be accurate --

SHERMAN DeWALT - CROSS-EXAMINATION BY MS. WHITE

1 MS. WHITE: -- and I believe, Your Honor, there
2 should be a packet of previous PCR materials in the
3 packet.

4 BY MS. WHITE

5 Q. But does it sound right if maybe he did a brief
6 order, and then the Attorney General's office submitted an
7 order maybe around October of 2009 that was a more formal
8 order dismissing the case? Does that date sound a little
9 closer to the time October of 2009 after the hearing in
10 August of 2009? Or do you just not remember when he --

11 A. Be honest with you, I don't remember.

12 Q. Okay. All right. Did you get the order of dismissal
13 denying -- I mean, you said you knew he denied your case.
14 Was that because he told you in the courtroom, or did you
15 get the order of dismissal?

16 A. No, I didn't get an order of dismissal until later.
17 I was thinking that because of what Mr. Coleman was
18 telling me about, you know, my appeal -- about my PCR.

19 Q. Okay. So you -- you're saying that you knew he
20 denied it but you didn't know -- you didn't actually see
21 the order?

22 A. No, I didn't -- I didn't actually see the order.

23 Q. Okay. But you -- the letter that you got up there is
24 in 2011; is that right?

25 A. Yes, ma'am.

SHERMAN DeWALT - CROSS-EXAMINATION BY MS. WHITE

1 Q. So did you write -- you didn't ask anybody about it
2 for a little over a year, year and a half?

3 A. I didn't ask nobody. I was expecting, you know,
4 appellate counsel or something to write me, but nobody
5 never wrote me, so that's why I wrote the Clerk of the
6 Court.

7 Q. And you never got any response back, you said, from
8 Mr. Coleman from any letter --

9 A. No, ma'am.

10 Q. -- that you had written him?

11 A. No, ma'am.

12 Q. And you had never heard from anybody in a year and a
13 half?

14 A. No, ma'am.

15 Q. So that's when you finally wrote somebody?

16 A. Yes, ma'am.

17 Q. And asked about it?

18 A. I wrote the Clerk of the Court, and that's what she
19 sent me back right there.

20 Q. Okay. All right. That's all I have at this time,
21 Your Honor.

22 MR. SPONG: Briefly Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. SPONG

25 Q. Mr. DeWalt, is it your position that the reason you

SHERMAN DeWALT -- REDIRECT EXAMINATION BY MR. SPONG

1 didn't do anything was because you thought you had already
2 given Mr. Coleman instructions to appeal?

3 A. Yes, sir.

4 MR. SPONG: That's all, Your Honor.

5 THE COURT: You may step down. Thank you.

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Anything further, Mr. Spong?

8 MR. SPONG: Your Honor, I'd like to call Mr. Coleman
9 to the stand.

10 THE COURT: Yes, sir.

11 CREIGHTON COLEMAN, after being duly sworn,
12 testified as follows:

13 THE COURT: Just state your full name for the record,
14 please.

15 THE WITNESS: Creighton Coleman.

16 DIRECT EXAMINATION

17 BY MR. SPONG

18 Q. Do you recall this PCR hearing from August of 2009?

19 A. I do, a little bit of it, and I read some of the
20 material. Some of the stuff in there said this thing
21 happened up in Spartanburg, that the PCR hearing was in
22 Spartanburg. But as I recall it, it was in Fairfield
23 before Judge Young.

24 Q. Okay.

25 A. So I do remember that, and I do remember the PCR was

CREIGHTON COLEMAN -- DIRECT EXAMINATION BY MR. SPONG

1 on Jack Swerling, and Mr. DeWalt, you know, he pled guilty
2 to murder and burglary.

3 Q. All right. Is it fair to say that most of your
4 recollection today is based on review of the record?

5 A. Pretty much, yeah.

6 Q. Okay. Do you have a recollection of a conversation
7 with Mr. DeWalt after the PCR in August of 2009 either
8 way? Do you have any recollection of a conversation with
9 him after the PCR?

10 A. No.

11 Q. So you just don't have a recollection?

12 A. Correct. I mean, that happened --

13 Q. 2009?

14 A. Yeah. So three years ago.

15 Q. So as far as you taking the stand and saying under
16 oath one way or the other whether or not you had a
17 conversation about the appeal or not, you're just not in a
18 position to say; is that correct?

19 A. Correct.

20 Q. Do you have any knowledge or recollection of a letter
21 sent from Mr. DeWalt at any time subsequent to that?

22 A. No.

23 Q. Okay. Just no recollection?

24 A. No.

25 Q. Okay. Do you have any other recollection or

CREIGHTON COLEMAN -- DIRECT EXAMINATION BY MR. SPONG

1 information relating to his appeal of that PCR?

2 A. No.

3 Q. Okay.

4 MR. SPONG: That's all I have, Your Honor.

5 THE COURT: Ms. White?

6 MS. WHITE: Thank you.

7 CROSS-EXAMINATION

8 BY MS. WHITE

9 Q. Mr. Coleman, you said you had a chance to review your
10 file. In your file on this case, was there a letter from
11 Mr. DeWalt asking you about an appeal or asking you --

12 A. I didn't see one.

13 Q. Okay. Have you handled -- was this your only PCR
14 you're ever handled?

15 A. No.

16 Q. Do you know -- do you have a standard practice when
17 it comes to what -- filing an appeal in a PCR or filing an
18 appeal in a normal case that you do?

19 A. Right. I mean, you know, if a client asks me to do
20 it, I do it.

21 Q. Okay. Do you generally discuss that with folks? I
22 guess it depends on the situation, but how do you
23 generally handle that? Is it before the case happens? Do
24 you talk about what happens if it gets denied or dismissed
25 or they rule against your favor?

CREIGHTON COLEMAN - CROSS-EXAMINATION BY MS. WHITE

1 A. I generally just leave that to the client, see what
2 he says. I think in this case, if I'm not mistaken, Judge
3 Young took this under advisement. He did not rule from
4 the bench.

5 Q. Okay. And in this case, you said you don't have any
6 records from that, that you could find any letters or
7 anything. From your experience, had Mr. DeWalt asked you
8 specifically to file an appeal, would you have filed an
9 appeal on his behalf?

10 A. Yes.

11 Q. Okay.

12 MS. WHITE: Your Honor, I think that's all the
13 questions I have at this time.

14 MR. SPONG: Nothing further, Your Honor.

15 THE COURT: You may step down. Thank you.

16 THE WITNESS: Thank you.

17 THE COURT: Anything further, Mr. Spong?

18 MR. SPONG: Just some argument, Your Honor.

19 THE COURT: Yes, sir.

20 MR. SPONG: Your Honor, from the combined testimony
21 of both the witnesses here, it seems apparent that there
22 was a PCR hearing, that was not an immediate ruling on
23 that, the order came out sometime afterwards, and I think
24 I would like to argue to the Court that -- I certainly
25 appreciate Mr. Coleman's frankness, but there's no

1 affirmative testimony to contradict what my client is
2 saying. And there's nothing apparently in Mr. Coleman's
3 file to indicate that he took any steps to prepare that
4 appeal. No notice of appeal was filed, and there's no
5 record saying that it was discussed or waived or anything.
6 It's just sort of absent. And that my client has a right
7 to have his PCR reviewed, and there's no evidence that he
8 waived that right. You know, his own evidence, he says he
9 didn't waive that right; in fact, he was asserting it, and
10 there's really not much to contradict that.

11 So I would -- we would ask the Court to grant -- for
12 whatever it's worth -- Mr. DeWalt a belated appeal of this
13 matter.

14 THE COURT: Ms. White?

15 MS. WHITE: Thank you, Your Honor. Obviously, we
16 would argue in this case that it's not like the appeal --
17 a direct appeal from a trial where counsel has a
18 affirmative duty to file an appeal automatically, and even
19 in a guilty plea situation where they have to look at the
20 issues and determine whether or not a reasonable
21 probability exists that a person would want to appeal this
22 or there's extraordinary circumstances. And so obviously
23 we would argue that Mr. Coleman indicated, as he would in
24 his standard practice, that had his client asked for an
25 appeal, he would have filed one, but that he has no

1 records to indicate that he received any kind of letter or
2 anything.

3 The order of dismissal is filed several months after
4 the hearing, and obviously there's no record until almost
5 a year and a half later from Mr. DeWalt asking the Clerk
6 of the Court about records as to whether or not he
7 actually had an appeal going. So we would argue that
8 there was no actual evidence that he asked for an appeal
9 other than his testimony today, and that he's had the
10 time, you know, to be able to file the claim and pursue
11 that, and that there's no evidence that there was any
12 error in the PCR anyway, and that the appeal had really no
13 merit. But that would be our argument today.

14 MR. SPONG: May I comment, Your Honor?

15 THE COURT: Yes, sir.

16 MR. SPONG: It seems to be equally important that
17 there's no evidence that that order was sent to my client,
18 I don't believe. If I'm mistaken, I apologize, but I
19 don't think there's any evidence that the final ruling was
20 ever sent to my client. And, of course, until there's a
21 ruling, he can't do anything. He did learn about it, but
22 he had to learn about it on his own efforts.

23 THE COURT: Could I see the exhibit?

24 With respect to Mr. DeWalt's application for
25 postconviction relief, my review of the record does, in

1 fact, indicate that the sole issue in this case is whether
2 or not there should have been an appeal filed. We heard
3 the applicant's testimony that he had discussed that with
4 Mr. Coleman prior to his PCR. We've heard Mr. Coleman's
5 testimony that he does not recall whether that matter was
6 specifically discussed or not. His testimony is, however,
7 that if it's requested that he would, in fact, file an
8 appeal. I guess in support of the applicant's testimony,
9 there is at least the Applicant Exhibit Number 1, which is
10 a letter that was sent by him to the Clerk of the Court
11 from Fairfield County asking for the State's final order
12 of dismissal. Says, "My PCR attorney, Creighton Coleman,
13 notice of appeal in this matter and two PCR forms." It
14 indicates that it was received in the clerk's office on
15 February the 2nd of 2011, and at the bottom was typed,
16 "Enclosed is a copy of your dismissal filed on October the
17 19th, 2009. There is not a notice of appeal in your
18 file."

19 And in light of the fact that there is no affirmative
20 testimony that disputes the Applicant's request, and under
21 the case law Ace (phonetic) and its progeny, I believe
22 that the whole purpose of PCR is to have one complete bite
23 at the apple, as the language states, and that includes
24 any appeal from PCR, at least the opportunity for appeal
25 from PCR. It does not appear that copies were sent of

1 the -- the record doesn't seem to indicate that copies
2 were sent directly to him or any information was directly
3 indicated discussing -- from Mr. Coleman's office
4 discussing his right to have an appeal if he so chose and
5 even describing that the appeal would be limited in
6 nature.

7 In light of the information that's presently before
8 me, I'll give Mr. DeWalt the benefit of the doubt and
9 grant the request for belated appeal. I'll ask the --
10 Mr. Spong if you'll prepare the order, citing the
11 appropriate case law and send a copy, of course, to the
12 State and you can send it to me in electronic format.
13 I'll review it and make any additions or corrections to it
14 and then make sure that it's filed with the Clerk's office
15 and copies sent to you.

16 MR. SPONG: Thank you, Your Honor.

17 MS. WHITE: Thank you, Your Honor.

18 (Whereupon, the proceedings were concluded.)
19
20
21
22
23
24
25

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the testimony, evidence and legal arguments of counsel. Pursuant to S.C. Code Ann. § 17-27-80 (1985), the Court makes the following findings of fact and conclusions of law:

State law expressly authorizes the right to seek appellate review of the denial of post-conviction relief. See S.C. Code Ann. § 17-27-100 (Rev. 2003). In the absence of an intelligent waiver by the applicant, counsel must advise the applicant of his appellate rights or comply with the procedure required by Anders v. California, Id. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of post-conviction relief issues pursuant to Austin v. State. See King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992).

Applicant testified that he advised his attorney to appeal the PCR denial at the hearing. He received the written Order in October of 2009 and believed it was being appealed pursuant to his request. His PCR attorney testified that it was his practice to file an appeal upon a request but could not with certainty testify or document that he had specifically advised Applicant of his right to appeal. Applicant's testimony was essentially unchallenged.

The Court affirmatively finds that the Applicant did not knowingly and voluntarily waive his right to appellate review. The Court concludes that the Applicant is entitled to a belated review of the denial of his first application. The Applicant's lack of a direct appeal can be remedied by a petition for belated review pursuant to Austin v. State, supra.

CONCLUSION

Pursuant to Austin v. State, supra, the Court finds that the Applicant did not knowingly and voluntarily waived his right to directly appeal the denial of his first post-conviction relief application. Applicant abandoned any grounds for relief that are not specifically addressed in this Order and those allegations if any are deemed denied by the Applicant's failure to meet his burden of proof.

IT IS THEREFORE ORDERED:


1. That the Applicant is granted a belated appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Within thirty (30) days of the service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate

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review of the Applicant's first post-conviction relief action. Counsel and the Applicant are directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and South Carolina Appellate Court Rule 243(g) for the appropriate procedure for a belated appeal;

2. The Applicant is remanded to the custody of the Respondent for the completion of his sentence.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge, Sixth Judicial Circuit

Columbia, South Carolina
April 11, 2012

WITNESSES

Officer: Keith Lewis
Agency: Fairfield County Sheriff's Office

WARRANT NUMBERS

G685996 (DOA 07/21/2003)

ACTION OF GRAND JURY

TRUE BILL 10-14-03 20

Nancy M. Williams
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date

DOCKET NO. 2003-GS-20-389

The State of South Carolina
County of Fairfield

COURT OF GENERAL SESSIONS

OCTOBER TERM 2003

THE STATE

vs.

Sherman Dewalt *fill*

CDR CODE 116

Indictment for
§16-03-0010, 0020

MURDER

I, Betty Jo Beckham, Clerk of Court,
Fairfield County, South Carolina, do
hereby certify this is a true copy of
the original on file in this office.

9/15/08 *Betty Jo Beckham*
Clerk of Court

ORIGINAL

STATE OF SOUTH CAROLINA)
 County of Fairfield)
)
)
)
)
)

INDICTMENT FOR
 §16-03-0010, 0020
 MURDER

At a Court of General Sessions, convened in October 2003 the Grand Jurors of Fairfield County present upon their oath:

That Sherman Dewalt did in Fairfield County on or about July 21, 2003, feloniously, willfully and with malice aforethought murder one Davita Roseborough, to wit: did shoot her with pistol, and that Davita Roseborough did die in Fairfield County as a proximate result on or about July 21, 2003. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

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

DOCKET NO. 2003-GS-20-389

Solicitor

I, Betty Jo Beckham, Clerk of Court, Fairfield County, South Carolina, do hereby certify this is a true copy of the original on file in this office.

9/15/08 *Betty Jo Beckham*
 Clerk of Court