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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Pickens County

Honorable Alex Kinlaw, Circuit Court Judge

\_\_\_\_\_  
REBECCA SMOAK,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001607

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

WANDA H. CARTER  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON  
Attorney General

TAYLOR Z. SMITH  
Assistant Attorney General  
Rembert Dennis Building  
1000 Assembly Street, Suite 519  
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA  
COUNTY OF PICKENS

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA, )  
 )  
 PLAINIFF, )  
 )  
 -VS- )  
 )  
 REBECCA SMOAK, )  
 )  
 DEFENDANT. )  
 \_\_\_\_\_ )

2017-GS-39-01313 - 01314

TRANSCRIPT OF RECORD

JULY 25, 2018  
PICKENS, SOUTH CAROLINA

BEFORE:

THE HONORABLE EDWARD W. MILLER

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

BAKER CLEVELAND  
ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

JOHN M. GRAVLEE  
PUBLIC DEFENDER

SUSAN W. HUDGINS  
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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(No Exhibits Were Presented During This Hearing)

1           **MADAME CLERK:** 2017-GS-39-1314, the State versus  
2 Rebecca Barten Smoak, indictment for murder. 2017-GS-39-  
3 1313 indicted for possession of a weapon during the  
4 commission of a crime.

5           Raise your right hand, please. Do you solemnly swear  
6 or affirm the testimony you're about to give in this case  
7 will be the truth, the whole truth and nothing but the truth  
8 so help you God?

9           **MS. SMOAK:** Yes, I do.

10          **MADAME CLERK:** State your full name for the record.

11          **MS. SMOAK:** Rebecca Barten Smoak.

12          **THE COURT:** All right. In the last 24 hours you had  
13 any drugs, alcohol or medication?

14          **MS. SMOAK:** No, sir.

15          **THE COURT:** Have you ever been treated for substance  
16 abuse or mental illness?

17          **MS. SMOAK:** No, sir.

18          **THE COURT:** You're up here on two indictments. The  
19 first indictment alleges that you did here in Pickens  
20 County, September 10, 2016 unlawfully, with malice  
21 aforethought, kill James Brazeal by means of shooting him,  
22 and he died as a result thereof, tendering a plea to  
23 voluntary manslaughter. Carries two to thirty years.

24                 It's a violent offense, which impacts parole  
25 eligibility. It's a most serious offense. And if you get

1 convictions for two or more most serious offenses, you're  
2 eligible for life in prison without parole. Do you  
3 understand?

4 MS. SMOAK: Yes, sir.

5 THE COURT: Next one alleges you did, Pickens County,  
6 September 10, 2016 possess or visibly display a firearm  
7 during a murder. And that's five years. Understand?

8 MS. SMOAK: Yes, sir.

9 THE COURT: How do you want to plead?

10 MS. SMOAK: Guilty.

11 THE COURT: Is that your free and voluntary decision?

12 MS. SMOAK: Yes, sir. But I never intentionally hurt  
13 -- meant to hurt anybody.

14 (Pause)

15 THE COURT: Well, do you understand you have an  
16 absolute right to a trial by a jury where you'd be presumed  
17 innocent unless and until the State could prove you guilty  
18 beyond any reasonable doubt of each and every element of  
19 each offense that you are charged with? You would have the  
20 right to confront and cross examine the witnesses and the  
21 evidence put up against you by the State.

22 You'd have a right to compel in court all relevant and  
23 competent evidence in your own defense or you can remain  
24 silent. Your silence cannot be held against you. And you  
25 can never be compelled to incriminate yourself. You

1 understand all those rights?

2 MS. SMOAK: Yes, sir.

3 THE COURT: You want to give them all up to enter this  
4 plea?

5 (Pause)

6 THE COURT: You don't have to.

7 (Whereupon the Defendant was consulting with her  
8 attorney)

9 MS. SMOAK: Yes, sir.

10 THE COURT: Yes, sir, what?

11 MS. SMOAK: Yes, sir, I give up -- I do accept the  
12 plea.

13 THE COURT: All right. Are you guilty?

14 MS. SMOAK: I never intended to hurt anybody.

15 (Whereupon the Defendant was consulting with her  
16 attorney)

17 THE COURT: You probably need to have a jury trial,  
18 then.

19 MS. SMOAK: I'm sorry?

20 THE COURT: Huh?

21 MS. SMOAK: I'm sorry?

22 MR. GRAVLEE: She's a little deaf in her right ear,  
23 Your Honor, but ...

24 THE COURT: Well, ...

25 (Pause)

1 THE COURT: Do you want a jury trial?

2 MS. SMOAK: What do you think?

3 (Whereupon the Defendant was consulting with her  
4 attorney)

5 THE COURT: Good Lord, we've gotten this far and you're  
6 not sure?

7 MS. SMOAK: I don't know what to do.

8 THE COURT: You don't know what to do?

9 MS. SMOAK: I did not go over there to hurt anybody.

10 THE COURT: I tell you what, we'll just step you aside,  
11 come back to you. You go talk to your lawyer and figure out  
12 what you want to do, okay?

13 MR. GRAVLEE: Thank you, Your Honor.

14 THE COURT: All right.

15 (Whereupon this case stood aside at 10:58 am)

16 (Whereupon this case reconvened at 11:31 am)

17 THE COURT: All right. I believe I was at the point,  
18 Ms. Smoak, where I asked you are you guilty?

19 MS. SMOAK: Yes, sir.

20 THE COURT: Okay. Have I been through -- I've been  
21 through your -- the rights at trial, right?

22 MR. GRAVLEE: Yes, sir, Your Honor.

23 THE COURT: I've been through -- I've recited to you  
24 all your rights at a trial by jury, is that right?

25 MS. SMOAK: Correct.

1           **THE COURT:** All right. Are you satisfied with your  
2 lawyer?

3           **MS. SMOAK:** Yes, sir.

4           **THE COURT:** Do you know what the evidence is the State  
5 has against you?

6           **MS. SMOAK:** Yes, sir.

7           **THE COURT:** All right. Listen while they tell me about  
8 it.

9           **MR. CLEVELAND:** Thank you, Your Honor. May it please  
10 the Court? Baker Cleveland for the State.

11           On September 10th, 2016 the Defendant, Rebecca Smoak,  
12 shot the victim, Jim Scooter Brazeal, in the abdomen with a  
13 .410 shotgun. The victim lived in a tent in the yard next  
14 door to the Defendant's residence. And he was shot while he  
15 was in that tent.

16           The victim called 911, identified the Defendant, but  
17 passed away as a result of the two gunshot wounds after  
18 being transported to the hospital. Police located the  
19 Defendant in her home seemingly intoxicated, located blood  
20 inside the home, which DNA proved was the victim's blood as  
21 well as the .410 shotgun and ammunition that matched the  
22 shell casings found at the scene.

23           There had been an ongoing dispute between the victim  
24 and the Defendant, which led up to the shooting. Those are  
25 the facts, Your Honor.

1           **THE COURT:** Is that true?

2           **MS. SMOAK:** Yes, sir.

3           **THE COURT:** A .410 gauge shotgun in the gut, and you  
4 didn't mean to hurt anybody. Wow. All right. What's her  
5 criminal history?

6           **MR. CLEVELAND:** She has a '97 public disorderly conduct  
7 and DUI and a 2015 DUI, Your Honor.

8           **THE COURT:** All right. What you want to tell me? Oh,

9           ---

10          **MR. GRAVLEE:** Thank you, Your Honor.

11          **THE COURT:** --- this is a negotiated sentence?

12          **MR. GRAVLEE:** Yes, Your Honor.

13          **MR. CLEVELAND:** Yes, sir.

14          **THE COURT:** Tell me what that is.

15          **MR. CLEVELAND:** Negotiations in this case are twenty  
16 years, credit for a hundred and forty-seven (147) days.  
17 There is restitution in the case. I'll leave that in Your  
18 Honor's discretion. I believe she does have some liquidity  
19 that she can satisfy that restitution with. Those are the  
20 recommendations.

21                 She is on a house arrest bond. Part of the negotiation  
22 was waiving the credit for that house arrest bond.

23                 At the appropriate time, the victim's family would like  
24 to address the Court, Your Honor.

25          **THE COURT:** All right. I mean, this is negotiated. I

1 cannot change it. So I will hear very briefly.

2 **MS. ODOM:** Your Honor, four hours before my brother was  
3 killed -- my name is Ann Odom. I'm a sister of the victim.

4 Four hours before my brother was pronounced dead he  
5 told me on the phone that if anything happened to him, Becky  
6 did it. I blew it off that, oh, she's not going to do  
7 anything to you, but I was wrong.

8 She walked over there, went in his tent and not shot --  
9 didn't shoot him but once, but twice. And if I thought for  
10 one minute that she could have done something like that,  
11 maybe we could have prevented his senseless death.

12 We're confused and angry as to why his life was taken  
13 so brutally. His life was priceless to us. He was such a  
14 big help to his sisters, neighbors, niece, nephew and my  
15 brother-in-law where he lived. He was happier than he'd  
16 been in years. He loved his chickens, he loved the outdoors  
17 and he loved his cat, Smokey.

18 Today we hope that we get some closure knowing that she  
19 will begin to pay her consequences for her actions. We miss  
20 him terribly and only wish we could have been with him and  
21 told him how much we loved him and said goodbye, but he had  
22 to die alone.

23 **THE COURT:** All right. Thank you, ma'am.

24 **MS. HENDERSON:** Your Honor, my name's Arlene Henderson.  
25 I'm a sister of the victim.

1 My brother died a violent and senseless death. I  
2 cannot imagine what he thought when she shot him and to see  
3 her reload to be shot again. I'm pretty sure he was napping  
4 at the time. So he lived long enough to call 911 and to  
5 tell the paramedics who shot him.

6 At the hospital we weren't allowed to see him as far as  
7 telling him goodbye or that we loved him. My brother would  
8 never hurt anyone physically. He was always helping  
9 someone. He was our last living brother and there are only  
10 three sisters left.

11 I have had nightmares, sleepless nights. I went to a  
12 counselor for up to eight visits provided by my work. It  
13 was over a year before I could even go into Walmart because  
14 all the people shopping there. It is so hard to be in a  
15 store, pass things he liked or needed that we could get him.

16 We were unable to donate his organs, the ones that  
17 could be used, because of the damage caused by the pellets  
18 from the shotgun.

19 Your Honor, I hope you sentence her to meet what a  
20 murderer should get. We've only got our memories, grief and  
21 loss left. We will never forget our brother. We loved him  
22 dearly.

23 **THE COURT:** All right. Thank you. Anything?

24 **MR. GRAVLEE:** Yes, sir, Your Honor. May it please the  
25 Court? Ms. Smoak is 59. She's single. She got a

1 bachelor's degree in education from Lander in '81. She has  
2 no kids. She's been disabled since 2013, has some pretty  
3 serious health issues, respiratory disease, fibromyalgia,  
4 neuropathy and she's deaf in her right ear.

5 She worked her whole life. She bought that house, you  
6 know, several -- about twelve years ago, something like  
7 that. And I think Jimmy moved in around four or five years  
8 ago. He was living in the woods before that.

9 And she felt sorry for him. She started helping him  
10 out. She would take him to the store as well, bought him  
11 groceries and stuff like that. So there's a relationship  
12 that she tried to help out. And she was ---

13 **THE COURT:** Well, look, this is a negotiated sentence.

14 **MR. GRAVLEE:** Yes, sir, Your Honor.

15 **THE COURT:** Either I accept the plea or I don't.

16 **MR. GRAVLEE:** Yes, sir, Your Honor.

17 **THE COURT:** Do you want me to accept it?

18 **MR. GRAVLEE:** I do, absolutely, Your Honor.

19 **THE COURT:** Okay. Well, ---

20 **MR. GRAVLEE:** Ms. Smoak just wanted me to share some  
21 details of the -- basically the case with you so the Court  
22 would know what had happened here.

23 **THE COURT:** Well, what else do you want to tell me?

24 **MR. GRAVLEE:** Your Honor, basically the tension just  
25 began to escalate in the summer of 2016. She had called

1 Pickens County to come out. I know Deputy Jackson had come  
2 out at one point to witness what was going on. Because no  
3 crimes were being committed, he couldn't do anything about  
4 it.

5 There was an assault between them with the charge  
6 before that and things escalated. And she felt like she was  
7 being harassed in her home.

8 She ended up putting up an eight foot privacy fence a  
9 few weeks, I think, before this incident happened. She  
10 would turn on her lights in the morning and he would be  
11 hollering over there for cigarettes and beer and for her to  
12 take him to the store.

13 She's very apologetic for what has taken place. As she  
14 was saying, she didn't intend that this was going to be the  
15 outcome, but acknowledges that this wasn't the best,  
16 obviously, situation -- how to handle this situation, Your  
17 Honor.

18 We would ask that you would go along with this  
19 negotiated sentence. And I think that's basically about it  
20 for Ms. Smoak.

21 **THE COURT:** Okay. Twenty years and five years,  
22 concurrent, restitution pursuant to the order. Good luck.

23 **MR. CLEVELAND:** Thank you, Your Honor.

24 **MR. GRAVLEE:** Thank you, Your Honor.

25 (Hearing Ended at 11:38 am)

1

(End of Requested Transcript of Record)

## Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Pickens County, South Carolina, on the 25th day of July 2018.

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

November 19, 2018

A handwritten signature in cursive script that reads "Susan W. Hudgins". The signature is written in dark ink and is positioned above a horizontal line.

Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF )  
 )  
**REBECCA SMOAK, 377159** )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )

IN THE COURT OF COMMON PLEAS

2018-CP-39-01/22

APPLICATION FOR

POST-CONVICTION RELIEF

CLERK OF COURT  
 PICKENS COUNTY  
 GREENWOOD, S.C.  
 OCT 18 AM 11:14

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LEATH CORRECTIONAL INSTITUTION, GREENWOOD, S.C.
2. Name and location of Court which imposed sentence PICKENS COUNTY GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2016A 391010 1038
  - (b) ~~7-25-18 20 YEARS / VIOLENT; CREDITED 147 DAYS IN COUNTY DETENTION~~
  - (c) ---
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) 7-25-18 20 YEARS / VIOLENT; CREDITED 147 DAYS IN COUNTY DETENTION
  - (b) ---

- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty  \_\_\_\_\_
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) I DID NOT EVEN KNOW THERE WAS AN APPEAL PROCESS. MY LAWYER NEVER TOLD ME ABOUT AN APPEAL PROCESS. I FOUND OUT ABOUT THE PROCESS
- (b) AND THEN IT WAS TOO LATE TO APPEAL.
- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) I FEEL MY LAWYER WAS INCOMPETANT. HE DID NOT REPRESENT ME
- (b) I ALSO FEEL LIKE PICKENS COUNTY LAW ENFORCEMENT
- (c) \_\_\_\_\_

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

- (a) My LAWYER ONLY MET WITH ME 3 TIMES. THE LAST TIME
- (b) I DID EVERYTHING BY PROTOCOL TRYING TO RESOLVE MY
- (c) \_\_\_\_\_

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

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

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

(a) the specific nature thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

1.(a) AS HE SHOULD HAVE. HE WAS VAGUE AND DID NOT SUPPLY ME WITH COMPLETE AND CONCRETE INFORMATION REGARDING MY DUEA OFFER. I WENT INTO COURT UNPREPARED AND CONFUSED. HE ALSO NEVER MENTIONED TO ME AN APPEAL PROCESS. HE WAS RELOCATING TO GREENVILLE COUNTY PUBLIC DEFENDER'S OFFICE AT THE TIME OF MY COURT DATE AND I FEEL THIS TOOK PRECEDENCE OVER MY CASE. MY CASE WAS THE ONLY ONE HE HAD LEFT IN PIRKENS COUNTY.

2.(b) DID NOT DO THEIR JOB, TO SERVE AND PROTECT. I CALLED THE SHERIFF'S OFFICE MULTIPLE TIMES AND THEY DID NOT RESPOND.

3.(a) WAS FLUSTERED. I DID MY BEST TO TRY TO UNDERSTAND WHAT I WAS BEING TOLD; BUT I FOUND IT ALL QUITE CONFUSING + FEEL I WAS NOT GIVEN ALL THE INFORMATION I NEEDED TO MAKE PROPER DECISIONS. I HAVE NEVER BEEN THROUGH THESE TYPES OF COURT PROCEEDINGS BEFORE.

(b) PROBLEM. I CONTACTED BOB STEWART, BUILDING CODE, I PERSONALLY WENT TO THE SHERIFF'S OFFICE, WAS NOT ALLOWED TO SPEAK DIRECTLY TO THE SHERIFF, I TALKED TO JUDGE BAKER AT MAGISTRATE'S COURT, I HAD A SHERIFF'S DEPUTY AT MY HOUSE ON THREE DIFFERENT OCCASIONS, AND I CALLED LAW ENFORCEMENT THE DAY BEFORE AND THE DAY OF THE INCIDENT.

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

No

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

(a) which grounds have been presented:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? N/A
- (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? No

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

- (a) the name and address of each attorney who represented you:
  - i. MAX GRAVELY - PICKENS COUNTY PUBLIC DEFENDER'S OFFICE  
PICKENS Co. COURT HOUSE, PICKENS, SC
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. BOND HEARING
  - ii. ARRAIGNMENT AND PLEA
  - iii. SENTENCING

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

I WOULD LIKE TO SPEAK WITH A NEW LAWYER ABOUT MY CASE

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

No

9. (a) TO SEE IF A RE-TRIAL WOULD BE TO MY BEST INTEREST. IF NOT, I WOULD LIKE TO REQUEST A RECONSIDERATION OF SENTENCE LENGTH. I DO NOT FEEL LIKE I AM GUILTY OF THE ORE AND ONLY PLEA DEAL OFFERED TO ME.

STATE OF SOUTH CAROLINA )  
 )  
County of )

VERIFICATION

I, , 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.

Rebecca Smock

SWORN to and subscribed before me this 15  
day of October, 2018

Sandra S. Dodson (L.S.)  
Notary Public

My Commission Expires: 10-30-2018

2018 OCT 18 AM 14  
CLERK OF COURT  
SOUTH CAROLINA

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

I, \_\_\_\_\_, 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.

Rebecca Arnold  
Applicant

SWORN or affirmed to and subscribed before me this  
15 day of October, 2018.

Sandra S. Dodson  
Notary Public

My Commission Expires: 10-30-2019

2018 OCT 18 A P M  
CLERK OF COURT  
CLAY COUNTY  
MARIETTA, GA

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
	)	
Rebecca Smoak, #377159,	)	Case No.: 2018-CP-39-01122
	)	
Applicant,	)	
	)	<b>RETURN AND PARTIAL MOTION</b>
v.	)	<b>TO DISMISS</b>
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the application for post-conviction relief filed on October 18, 2018, would respectfully show this Court:

I. Procedural History

Rebecca Smoak (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. During its May 2017 term, the Pickens County Grand Jury indicted Applicant for possession of a weapon during the commission of a violent crime (2017-GS-39-1313) and murder (2017-GS-39-1314). Assistant Public Defender John M. Gravlee, of the Pickens County Public Defender’s Office, represented Applicant on these charges. Assistant Solicitor John Baker Cleveland, III, of the Thirteenth Circuit Solicitor’s Office, prosecuted the case. On July 25, 2018, Applicant appeared before the Honorable Edward W. Miller and pled guilty to the lesser-included offense of voluntary manslaughter. Applicant also pled guilty as indicted to the weapons charge. Pursuant to a negotiated sentence, Judge Miller sentenced Applicant to a term of imprisonment of twenty years for voluntary manslaughter and five years for the weapons charge. The sentences were to be served concurrently. Applicant did not appeal her plea or sentence.

## II. Factual History

At the time of this crime, Jim Scooter Brazeal (Victim) was living in a tent in the yard next to Applicant's home; and there was an ongoing dispute between Victim and Applicant. Tr. 8. On September 10, 2016, Applicant shot Victim in the abdomen with a .410 shotgun while he was in his tent. Tr. 8. After being shot, Victim was able to call 911 and identified Applicant as his shooter, but later died as a result of two gunshot wounds to the abdomen. Tr. 8. Law enforcement responded to Applicant's home, where they found Applicant intoxicated. Tr. 8. Law enforcement also found Victim's blood in Applicant's home, as well as the .410 shotgun and ammunition matching the shell casings at the crime scene. Tr. 8.

## III. Current Application

In her application for post-conviction relief, Applicant alleges she is being held in custody unlawfully based on:

1. I feel my lawyer was incompetent. He did not represent me as he should have. He was vague and did not supply me with complete and concrete information regarding my plea offer. I went into court unprepared and confused. He also never once mentioned to me an appeal process. He was relocating to Greenville County Public Defender's Office at the time of my court date and I feel this took precedence over my case. My case was the only one he had left in Pickens County.
  - a. My lawyer only met with me 3 times. The last time was rushed. I did my best to try to understand what I was being told, but I found it all quite confusing [and] feel I was not given all the information I needed to make proper decisions. I have never been through these types of court proceedings [sic] before.
2. I also feel like Pickens County Law Enforcement did not do their job, to serve and protect. I called the Sheriff's [sic] Office multiple times and they did not respond.
  - a. I did everything by protocol trying to resolve my problem. I contacted Bob Stewart, building code, I personally went to the Sheriff's [sic] Office, was not allowed to speak directly to the Sheriff [sic], I talked to Judge Baker at Magistrate's

Court, I had a Sherriff's [sic] Deputy at my house on three different occassions [sic], and I called law enforcement the day before and the day of the incident.

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

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

#### IV. Ineffective Assistance of Counsel

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a post-conviction relief action, Applicant bears the burden of proving the allegations in her application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as

having produced a just result.” *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland v. Washington*, 466 U.S. 668. First, the applicant must prove that counsel’s performance was deficient. *Id.*; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. In order to satisfy the prejudice prong of this test following a guilty plea, the applicant “must show that there is a reasonable probability that, but for counsel’s errors, [s]he would not have pleaded guilty and would have insisted on going to trial.” *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

#### ***Failure to Prepare***

Applicant contends plea counsel was ineffective for failing to fully explain everything to her. “There is a strong presumption counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case.” *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). Moreover, when there is evidence counsel met with Applicant in

preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective. *Harris v. State*, 377 S.C. 66, 659 S.E.2d 140 (2008), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

Applicant admits she met with counsel and counsel discussed her case with her, although she contends she found all of the information confusing. Furthermore, Applicant has wholly failed to provide this Court with any evidence as to what benefit could have been realized from additional preparation by counsel. *See Harris*, 377 S.C. at 75, 659 S.E.2d at 145 (“Furthermore, Harris did not offer any evidence or augment as to how counsel’s alleged lack of preparation prejudiced him. Therefore, it is merely speculative that counsel’s alleged deficient performance was prejudicial to Harris.”). Accordingly, Respondent submits Applicant’s allegations of ineffective assistance of counsel are without merit.

#### ***Failure to File an Appeal***

Applicant further alleges plea counsel was ineffective for failing to file an appeal on her behalf. Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that she was interested in appealing. *Roe v. Flores-Ortega*, 528 U.S. 470 (2000). When a defendant has pled guilty, “there must be proof that extraordinary circumstances exist, such as where a defendant inquires about an appeal, in order for counsel to be required to advise a defendant of the right to appeal.” *Rolen v. State*, 384 S.C. 409, 415, 683 S.E.2d 471, 474-75 (2009) (citing *Weathers v. State*, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)). When counsel has consulted with the defendant regarding the right to appeal, “Counsel performs in a professionally unreasonable manner *only* by failing to follow the defendant’s express

instructions with respect to an appeal.” *Flores-Ortega*, 528 at 478 (emphasis added).

Here, Applicant wholly fails to set forth with any specificity what extraordinary circumstances existed such that plea counsel should have filed an appeal on Applicant’s behalf. In fact, Applicant wholly fails to assert she even asked plea counsel to file an appeal on her behalf. Under such circumstances, plea counsel did not have a duty to advise Applicant of the right to appeal. Accordingly, Respondent submits Applicant cannot establish her burden.

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

#### V. Involuntary Guilty Plea

Applicant further alleges she “was not given all the information I needed to make proper decisions,” which Respondent interprets as an allegation her plea was not knowingly or intelligently entered. Respondent submits this allegation is without merit. In post-conviction relief 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: (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 her 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*, 474 U.S. at 56. 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 she should be allowed to depart from the truth of those statements. *Crawford v. United States*, 519 F.2d 347 (4th Cir. 1975); *Edmonds v. Lewis*, 546 F.2d 566 (4th Cir. 1976).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. Applicant indicated she understood the potential sentences of both offenses and also understood voluntary manslaughter was a violent and most serious offense. Tr. 4-5. Applicant further indicated she understood all of her constitutional rights, including her right to a trial by jury. Tr. 5-6. She also told the plea court she was pleading guilty freely and voluntarily. Tr. 5, 7.

Respondent submits the record conclusively refutes Applicant's allegation her plea was involuntary. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. *Sharper v. State*, 305 S.E.2d 247.

#### VI. Summary Dismissal Based on Failure to State a Cognizable Claim

Applicant further alleges errors by Pickens County law enforcement officers. This allegation should be dismissed for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

5. That [her] sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or [s]he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A).

Applicant's allegations of errors by law enforcement do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Post-conviction relief is only proper when the application collaterally attacks the validity of the conviction or sentence. *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). Accordingly, Respondent submits this allegation should be summarily dismissed.

#### VII. Denial of All Other Claims

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

#### VIII. Conclusion

WHEREFORE, Respondent requests an evidentiary hearing be held on the claims of ineffective assistance of counsel and involuntary guilty plea. Respondent further requests Applicant's allegation of errors by law enforcement be summarily dismissed for failing to state a cognizable claim.

*[signature block to follow]*

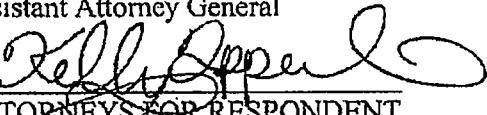
Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

KELLY OPPENHEIMER  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

December 21, 2018

STATE OF SOUTH CAROLINA )  
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 COUNTY OF PICKENS )  
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 )  
 REBECCA SMOAK, 377159 )  
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 Applicant, )  
 )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
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 )  
 Respondent. )  
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IN THE COURT OF COMMON PLEAS

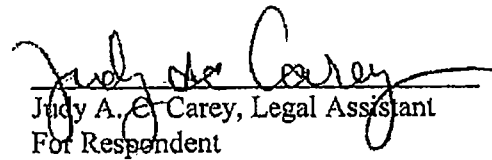
2018-CP-39-1122

AFFIDAVIT OF SERVICE BY MAIL

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

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

DATED this 21<sup>st</sup> day of December, 2018.

  
 Judy A. Carey, Legal Assistant  
 For Respondent



I N D E X

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

Page No.

(AW) REBECCA BARTEN SMOAK:

Direct Examination by Mr. Thompson.....	5
Cross-Examination by Mr. Smith.....	18
Examination by the Court.....	29
Redirect Examination by Mr. Thompson.....	29

(RW) JOHN MAXWELL GRAVLEE:

Direct Examination by Mr. Smith.....	30
Cross-Examination by Mr. Thompson.....	43

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

1  
2 THE COURT: All right. I'm ready whenever y'all are.

3 MR. SMITH: Your Honor, the last case of the day is  
4 Rebecca Smoak v. State, caption 2018-CP-39-01122.

5 If it please the Court, Rebecca Smoak is presently  
6 confined in the South Carolina Department of Corrections  
7 pursuant to orders of commitment of the Lexington [sic]  
8 County Clerk of Court. During its May 2017 term, the  
9 Pickens County Grand Jury indicted the Applicant for  
10 possession of a weapon during the commission of a violent  
11 crime and murder.

12 Assistant Public Defender John Gravlee of the Pickens  
13 County PD's Office represented the Applicant on these  
14 charges. Assistant Solicitor John Baker Cleveland, III,  
15 of the Thirteenth Circuit Solicitor's Office prosecuted  
16 the case.

17 On July 25th, 2018, the Applicant appeared before the  
18 Honorable Edward W. Miller and pleaded guilty to a lesser  
19 included offense of voluntary manslaughter. She, also,  
20 pleaded guilty as indicted to the weapons charge.

21 Pursuant to a negotiated sentence, Judge Miller  
22 sentenced Applicant to a term of imprisonment of 20 years  
23 for voluntary manslaughter and five years for the weapons  
24 charge with sentences running concurrent. The Applicant  
25 did not appeal.

1           This application for post-conviction relief was filed  
2 on October 18th, 2018. Ms. Smoak is here today and  
3 represented by Don A. Thompson.

4           The State is ready, Your Honor. However, I would  
5 request that Mr. Thompson confirm that the Applicant will  
6 be moved forward -- moving forward today solely on the  
7 basis of the -- of the claims presented in her PCR  
8 application and no others since there have been no  
9 amendments or supplements.

10           THE COURT: Is that right, Mr. Thompson?

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

12           It's based on ineffective assistance of counsel.

13           Basically, I can -- I can briefly -- there's four  
14 items. Number one, she -- she claims that she did not  
15 fully understand what she was doing at the time of the  
16 plea because of health issues and medications. And that  
17 was not explored by her attorney. That she had a mental  
18 condition. And there was -- she has a mental diagnosis.  
19 And that that was never explored -- determined by -- by  
20 her attorney to determine whether or not she knew what she  
21 was doing. That her attorney did not take the time  
22 necessary to ascertain that she knew what she was doing in  
23 entering the plea.

24           And that she was informed at the plea that she would  
25 receive between two and 20 years. She did not realize it

1 was a negotiated plea. That was never explained to her  
2 about the negotiations.

3 And that's the issues she wants to go forward on.

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

5 MR. THOMPSON: Yes, sir.

6 THE COURT: You can call your first witness.

7 MR. THOMPSON: Ms. Smoak, go right up there.

8 THE CLERK: Ms. Smoak, please, place your left hand  
9 on the Bible and raise your right hand.

10 WHEREUPON,

11 REBECCA BARTEN SMOAK,

12 after first having been duly sworn, testified as follows:

13 THE CLERK: Thank you.

14 You may be seated.

15 Please state your full name for the record.

16 THE WITNESS: Remember Barten Smoak.

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

18 THE COURT: Yes, sir.

19 DIRECT EXAMINATION

20 BY MR. THOMPSON:

21 Q Ms. Smoak, I know you're -- you're hard of hearing.

22 Which ear is it?

23 A (There was no verbal response.)

24 Q The right ear?

25 A Yes, sir. I'm deaf in my right ear.

1 Q Okay. Can you hear me?

2 A Yes, sir.

3 Q Okay. I'll try not to holler at you, but --

4 A Okay.

5 Q -- I want to make sure you hear me.

6 Give us your full name, please, ma'am.

7 A Rebecca Barten Smoak.

8 Q Okay. And you're at Leath Correctional now; is that  
9 correct?

10 A Yes, sir.

11 Q And what are you there on?

12 A I'm sorry.

13 Q What charge are you there on?

14 A Voluntary manslaughter.

15 Q And what kind of sentence did you receive on that?

16 A I'm to do 17 years.

17 Q Well, you -- you didn't receive a 17-year sentence.  
18 You received --

19 A No. It's 85 percent of -- it's 85 percent of 17.

20 Q Well, 17 is 85 percent of 20; right?

21 A Right. It's 20 --

22 Q You got a 20-year sentence.

23 A I'm sorry. I thought you meant how long am I  
24 supposed to be there.

25 Q Okay. Now, all this came about because of an

1 incident involving one of your neighbors; is that right?

2 A A -- a man living in a tent in my neighbor's yard.

3 Q Okay.

4 A It wasn't, actually, my neighbor.

5 Q And you had had some -- or had you had some problems  
6 with him?

7 A Yes, for five years.

8 Q Okay. And was there an incident that happened on the  
9 day that this incident happened that caused you to go over  
10 to that yard?

11 A Yes. The -- the noise -- I had been everywhere  
12 trying to get somebody to do something about all the noise  
13 they made.

14 Q What kind of noise did he make?

15 A The gentleman that owned the home would sit on his  
16 back porch and the gentlemen that's out in the yard in the  
17 tent -- and they would holler back and forth all day long.  
18 I could hear it inside my home.

19 Q Okay. Did the man -- the victim in this case, on the  
20 day this happened, did he confront you in any way?

21 A He asked -- well, he'd always holler and ask me for  
22 something. That was a daily thing.

23 Q Okay. And you went over there; is that correct?

24 A Yes. Well, I don't recall very much. But I did go  
25 over there.

1 Q All right. And, unfortunately, you carried a 410  
2 shotgun with you; is that correct?

3 A Yes, I did.

4 Q And he was shot?

5 A Yes, he was.

6 Q By you?

7 A Well, he grabbed the barrel.

8 Q Okay. And he died as a result of being shot?

9 A Yes, sir. I'm sorry he did.

10 Q Now, you were charged with murder; is that correct?

11 A Yes, sir.

12 Q And did you have an attorney?

13 A I had a public defender.

14 Q Okay. And who was that?

15 A Max Gravlee.

16 Q Okay. Is that the gentleman that's sitting back  
17 there --

18 A Yes, sir.

19 Q -- in the blue suit?

20 Okay. Were you in the Pickens County jail?

21 A Yes, sir.

22 Q Did you ever make bond?

23 A Yes, sir.

24 Q Okay. Did Mr. Gravlee represent you prior to making  
25 bond, or was it after you made bond that you got him

1 appointed?

2 A Prior.

3 Q Prior.

4 Did he help you get the bond?

5 A Yes, sir.

6 Q Okay. Did he meet with you and go over the case with  
7 you?

8 A Yes, sir -- well, yes. I think two times when I was  
9 incarcerated.

10 Q Okay. Did he -- how long between the time this  
11 incident happened and you went to court? How much time  
12 between that?

13 A Do you mean the incarcerated time?

14 Q Well, no. The time that the incident happened and  
15 the time you went to court and pled guilty, how -- was it  
16 weeks, months, years?

17 A I was incarcerated for five and a half months.

18 Q And then you made bond?

19 A Yes.

20 Q Okay. Then how long were you out on bond before you  
21 went to court?

22 A About a year and nine months.

23 Q Okay. So it was almost a two-year period?

24 A Yes, sir.

25 Q Did he represent you during that whole two-year

1 period?

2 A Yes, sir.

3 Q Okay. And how many times did you meet with him  
4 total? You said twice in the jail?

5 A I think twice.

6 Q Did you -- did you ever meet with him after you made  
7 bond --

8 A At his office, I believe it was twice.

9 Q Okay. So twice while you was in jail and twice in  
10 his office?

11 A I believe that's what it was.

12 Q Okay. Did you go over -- or did Mr. Gravlee go over  
13 your discovery with you and what the State says they had  
14 against you?

15 A I remember discovery, yeah, some of it. It was  
16 pretty thick.

17 Q You said it was pretty thick?

18 A We went over some of it.

19 Q Okay. Did he do that on more than one occasion?

20 A No.

21 Q All right. Did you understand what you went over  
22 with Mr. Gravlee?

23 A As best I could with what knowledge I have of the  
24 legal system myself.

25 Q Okay. Now, do you have health issues?

1 A I have a lot of health issues.

2 Q Did you have health issues at that time?

3 A Yes.

4 Q What are your health issues -- or what were they at  
5 that time?

6 A Well, I have physical health issues. I have  
7 fibromyalgia, neuropathy, COPD, a nodule in my left lung.  
8 I'm deaf in my right ear. I have vertigo. I've had a  
9 stroke. I have dead tissue between my brain stem and the  
10 ponds [phonetic] in my brain. I have bone spurs on my  
11 knees. I have deterioration in my back.

12 Q Okay. Let's talk about --

13 A I have messed up sinuses because I was in a bad car  
14 wreck. And then I, also, suffer from depression, anxiety.  
15 And I've been -- have been diagnosed with schizophrenia at  
16 one time.

17 Q Okay. Were you diagnosed with schizophrenia prior to  
18 this incident happening?

19 A Yes, sir.

20 Q Okay. Did you tell Mr. Gravlee that?

21 A I don't recall.

22 Q Okay.

23 A That stroke affects my short-term memory.

24 Q Okay. Does -- the mental issues, did they affect  
25 your ability to understand what was going on at the time?

1 A I -- I would think so. I -- I really didn't  
2 understand what I was agreeing to. I thought the Judge  
3 was going to decide between two and 20.

4 Q Well, let's get to that in a minute. Okay.

5 A Okay.

6 Q All right. Now, you say you told your attorney about  
7 the schizophrenia?

8 A I -- I remember him asking me a lot of questions.  
9 They mentioned mental health. And John asked me a lot of  
10 questions like, who's the president?

11 Q John is -- who's John?

12 A John, he's in the public defender's office.

13 Q John DeJong, the chief public defender?

14 A Yeah, John DeJong.

15 Q Was he representing you, also?

16 A No. He just was -- he was at a couple of the  
17 meetings.

18 Q Okay. He was Mr. Gravlee's boss; is that correct?

19 A Right. I guess so.

20 Q All right. Were you ever given a mental health  
21 examination? Were you ever sent to a doctor or had a  
22 doctor come in to evaluate you?

23 A No, sir.

24 Q All right. Did your attorney take the time to  
25 necessarily ascertain that you knew what you were doing?

1 A No, sir. Another thing I was never told -- told  
2 about an appeal process. I didn't even know about that  
3 until it was too late either.

4 Q Well, we haven't raised that issue. Okay.

5 A Okay. Well, I was just saying.

6 Q When did you find out about a plea offer?

7 A After -- it was before I went to court.

8 Q Was it --

9 A It wasn't long before I went to court.

10 Q Was it the day you went to court, or a few days  
11 before that, or a few weeks --

12 A It was before I went to court, maybe a week or two  
13 before, I think.

14 Q A week or two before.

15 Okay. And how did you come about finding out about  
16 the plea offer?

17 A Max told me.

18 Q Okay. Did he call you and tell you on the telephone,  
19 or did you come into his office --

20 A I think I just spoke with him on the phone about it.  
21 I don't -- I can't remember. We spoke on the phone. And  
22 we went in -- you know, I went to his office those times.  
23 I -- I really don't recall.

24 Q Okay. Do you remember what he told you about the  
25 plea?

1 A He said that the Prosecutor was only offering me one  
2 plea.

3 Q Okay. And what was that?

4 A That was voluntary manslaughter.

5 Q All right. Did he tell you how much time you could  
6 get for voluntary --

7 A Anywhere between two and 20.

8 Q He told you that you could get between two and 20?

9 A That was it.

10 Q Okay. Well, you got 20 years, did you not?

11 A Yes, sir.

12 Q Okay. Did he tell you that it was a negotiated plea?

13 A I don't know what that means.

14 Q Did he tell you that -- that it was -- you say  
15 between two and 20?

16 A Right.

17 Q Did he tell you that this was a plea where it was a  
18 20-year plea that the State was making?

19 A My understanding was it could be the maximum of  
20 20 years.

21 Q All right.

22 A I thought the Judge would decide that.

23 Q Did he tell you that -- as you say, you don't  
24 remember whether he told you it was a negotiated plea or  
25 not. Did he tell you that a negotiated plea meant the

1 Judge had to either take the plea or reject the plea, but  
2 he couldn't do anything different?

3 A I don't recall that, no, I don't.

4 Q Okay. When the Judge did your plea, it was Judge  
5 Miller; is that correct?

6 A I assume so.

7 Q Okay. Did he tell you that he either had to accept  
8 your plea or reject your plea?

9 A No, sir.

10 Q Did he explain what a negotiated plea was to you?

11 A No, sir.

12 Q Okay. Now, in the course of your plea, several times  
13 your plea was kind of backed down for you to talk to your  
14 attorney; is that correct?

15 A Yes, sir.

16 Q And why was that?

17 A Because I wasn't -- didn't really understand what was  
18 taking place.

19 MR. THOMPSON: Okay. And, Your Honor, for the -- for  
20 the record, I would point to the transcript on Pages 5, 6,  
21 and 7.

22 THE COURT: Right.

23 MR. THOMPSON: And I think there was one other  
24 location in here where there was a stand down. I may -- I  
25 can't locate it real easy. But I'll -- I'll just leave

1 that to the Court.

2 BY MR. THOMPSON:

3 Q Did your attorney ever discuss with you how much time  
4 you'd have to do off 20 years?

5 A I was told it'd have to be 85 percent of my sentence.

6 Q Okay. Did your attorney tell you that or did I tell  
7 you that?

8 A I just -- I -- I don't know where I got that from,  
9 somewhere -- either somebody in jail told me or Max told  
10 me. See, with that stroke, my short-term memory is -- is  
11 bad.

12 Q Okay.

13 A I have a hard time understanding things because I  
14 can't recall like a normal person, I -- I guess. I  
15 don't -- like I used to. I'll put it that way.

16 Q After he advised you of what the offer was, did you  
17 consult with anybody else, a family member, or anything  
18 like that about whether or not you should take the plea?

19 A No. I just spoke with him and John about it.

20 Q Okay. And did they tell you that you should take the  
21 plea?

22 A They -- he told me I should take the plea because the  
23 laws could change.

24 Q Okay. Did you ever tell them that you didn't  
25 understand what you were pleading to?

- 1 A I knew that it was voluntary manslaughter.
- 2 Q Okay.
- 3 A But I didn't understand that it was going to be a  
4 maximum -- was 20 years.
- 5 Q Okay. You understood the charge?
- 6 A I understood the lesser charge.
- 7 Q You just didn't understand the time?
- 8 A Right.
- 9 Q Okay. Do you feel like your mental condition  
10 affected your understanding in any way?
- 11 A Yes. My physical condition, too.
- 12 Q Well, if my knee hurts, that's not going to keep me  
13 from knowing what I'm doing, is it?
- 14 A No. But the stroke, it's --
- 15 Q Right.
- 16 A I have dead tissue in my brain.
- 17 Q Do you -- is it your position that you think your  
18 attorney was ineffective for not doing a mental -- having  
19 a mental examination done?
- 20 A Yes, sir.
- 21 Q Do you think your attorney was ineffective for not  
22 making sure that you understood what you were pleading to  
23 and -- and what was involved in that plea?
- 24 A Yes, sir.
- 25 Q Part of that being involved is what the sentence was?

1 A I'm sorry.

2 Q Part -- part of the involvement being what the  
3 sentence was, that he didn't make sure you understood what  
4 the sentence was?

5 A The -- the time.

6 Q Yeah. Well, that's -- that's what I'm talking about,  
7 the amount of time --

8 A Yes, yes, sir, yes, sir. I thought the Judge decided  
9 that.

10 MR. THOMPSON: Please answer any questions that the  
11 State may have. Okay.

12 THE WITNESS: Sure.

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. SMITH:

16 Q Ms. Smoak, you testified just a few minutes ago that  
17 you -- you remember meeting Mr. Gravlee about four times  
18 before your plea here; is that -- that's right?

19 A Yes, sir.

20 Q Okay. When you met with him, about how long would  
21 you spend with him during each one of those meetings? How  
22 much time were you spending with him?

23 A I -- I couldn't -- I mean, it was four different  
24 times. I mean, it varied because sometimes in the -- when  
25 I was in jail, I would -- it wasn't -- it was very brief

1 one time. And then I met with him and Daniel one time.

2 Q You don't remember how long it was --

3 A It wasn't for a very long time.

4 Q Okay. So a very long time, five minutes, 10 minutes,  
5 30 minutes? I'm just trying to get a sense of --

6 A I don't know. I have -- I mean, I couldn't -- I  
7 really couldn't tell you.

8 Q Okay. Well, other than those four occasions you said  
9 you met with him, did you ever talk with him on the phone?

10 A Yes.

11 Q Okay. How many times did you talk with him on the  
12 phone?

13 A Oh, I don't know. Maybe three or four.

14 Q Three or four. Okay.

15 A To make arrangements to come to his office.

16 Q Okay. Did you ever have -- did he ever talk about  
17 anything else on the phone, other than what time you were  
18 going to meet him at his office?

19 A I don't recall.

20 Q Okay. Did you ever talk with anyone else from his  
21 office about your case, other than what time to show up,  
22 or something like that?

23 A John was in on one of my consultations.

24 Q Okay. And Mr. Gravlee was there at that time, too?

25 A Yes, sir.

1 Q Okay. Did you ever exchange letters with  
2 Mr. Gravlee? Did he send you letters? Did you send him  
3 letters?

4 A I don't -- no. I don't remember that.

5 Q Okay. And you -- you testified that, at least, on  
6 one of these occasions, he went over the evidence with you  
7 that the State had?

8 A We went over some of the discovery, yes.

9 Q Okay. But you understood, though, that voluntary  
10 manslaughter was a less serious offense than murder;  
11 right?

12 A Correct.

13 Q Okay. And you preferred that to murder; right?

14 A I -- I don't even think I'm guilty of that. I think  
15 it was involuntary.

16 Q Okay.

17 A But that's the only plea I was offered.

18 Q Well, you -- during the time when you met with  
19 Mr. Gravlee and you were going over this discovery, did he  
20 talk with you about defenses you might have?

21 A About what?

22 Q Defenses.

23 A I don't recall. I -- I don't understand what you're  
24 asking me really.

25 Q Okay. Well, I'll leave -- I'll leave that one.

1           Did you tell -- give him any leads or say, hey, go  
2 talk to this person, this person might be a witness,  
3 anything like that?

4           A     (There was no response.)

5           Q     Did you provide information to him that you believed  
6 would have shown that you were innocent?

7           A     I -- well, I -- I knew some people that understood  
8 what I was going through, I mean, you know, the situation.

9           Q     Okay.

10          A     And had seen where -- where Jim had physically hurt  
11 me, had seen marks on me.

12          Q     Okay. Did you provide any names of people who might  
13 have been there and seen what happened that day?

14          A     No.

15          Q     All right. Well, let me ask you this, at your plea  
16 hearing, do you remember Judge Miller asked you questions  
17 and told you about some of your rights. And you told him  
18 you understood those rights, didn't you?

19          A     I don't recall that.

20          Q     Okay.

21          A     I'm telling you, my -- that stroke -- I just can't  
22 remember stuff.

23          Q     Well, do you doubt that you did that?

24          A     Doubt that I did what?

25          Q     That you told him you understood what your rights

1 were.

2 A I don't understand what you're asking me.

3 Q Okay. Well, let's -- let's take a look.

4 A What do you mean my rights? What kind of rights?

5 Q Okay. Well, we're going to look.

6 A I remember one time he told me I could have a jury  
7 trial.

8 Q Okay. Well, that's one of them.

9 A I recall that.

10 Q Okay. Let's look on Page 6 of the transcript. If  
11 you look right here, it says, Do you want to give up all  
12 your rights and enter the plea? And you said -- what did  
13 you say?

14 A I said, Yes, sir.

15 Q Okay.

16 A I didn't really understand what my rights were,  
17 except other than a jury trial.

18 Did I have any other rights?

19 Q But you gave it up; right? You told him you would  
20 give it up.

21 A Yes, sir, I did.

22 Q Okay.

23 A But I didn't really know what I was giving up.

24 Q Well, you didn't know what a jury trial was? Is that  
25 what you're telling me?

1 A No. I knew what a jury trial was, a trial by my  
2 peers. But I didn't know what rights I had. What I  
3 understood, when you're criminal, you have no rights is  
4 what people have always told me.

5 Q Well, you knew, at least, that much; right? That you  
6 could have a jury trial? Because that sounds like that's  
7 what you just told me --

8 A Yeah. I -- I knew when he said that.

9 Q Okay. Do you remember Judge Miller -- he asked  
10 you -- he said, Are you satisfied with Mr. Gravlee's work?

11 And you told him; Yeah.

12 Do you remember that?

13 A I -- I probably said, yes.

14 Q Okay.

15 A I don't -- I don't remember exact words.

16 Q You didn't complain to the Judge about Mr. Gravlee,  
17 did you, and say he's not doing this, he's not doing that?

18 A No. I'm not a complainer.

19 Q All right. When the Judge asked you was it your  
20 voluntary decision to plead guilty, you told him it was;  
21 right?

22 A If you say so.

23 Q Well, I'm asking you.

24 A Well, you've got the transcript --

25 Q Well, I'll pull --

1 A I don't remember --

2 Q -- it out. If you don't remember, we'll look.

3 A I don't remember what was said exactly.

4 Q Well, let's look at Page 5 of the transcript --

5 A Verbatim, you know.

6 Q Let's look right here on Line 11. He says, Is it  
7 your free and voluntary decision to plead guilty?

8 And what do you tell him on Line --

9 A I said, Yes, sir.

10 Q Okay.

11 A That I never had intentionally hurt anyone.

12 Q Okay. And you understood you could have had a trial;  
13 right, where that would have been decided?

14 A But I was advised to go ahead and take the plea.  
15 Because they said laws could change.

16 Q Okay.

17 A And I could get a short -- get time taken off by a  
18 new law.

19 Q Okay. And you told the Judge you wanted to plead  
20 guilty, even after the State gave it's version of what  
21 happened and what they thought they'd prove at trial?

22 A I didn't understand what that man was saying, the  
23 Prosecutor --

24 Q You didn't understand that?

25 A I didn't -- I said I did, but I didn't hear every

1 word he was saying. I can't hardly hear.

2 Q Well, let's look. I mean, I -- you can't -- all  
3 right. Let's look at this. I mean, you just sat here  
4 with your own attorney and admitted to that same version  
5 of the facts. And you're telling me you didn't  
6 understand --

7 A Well, what did I admit it? I don't understand what  
8 you're asking me.

9 Q He asked you, Did you go over there with a shotgun?  
10 And you told him, Yeah.

11 Did it go off?

12 Yeah.

13 You pulled the trigger.

14 A I didn't pull the trigger. The trigger pulled when  
15 he pulled the gun.

16 Q Well, a minute ago, you testified that it was shot --  
17 that your neighbor was shot by you.

18 A Yes. He -- yes. He was shot by the gun I had in my  
19 hand, I'll say that.

20 Q Okay. Well, we'll let -- let the transcript speak  
21 for itself on that.

22 A That's exactly what happened.

23 Q And at the plea hearing, Judge Miller gave you plenty  
24 of opportunities to say you didn't want to plead guilty;  
25 right?

1 A I guess so. But I -- I stopped him a -- a bunch of  
2 times.

3 Q Well, you stopped him --

4 A I didn't understand what was going on.

5 Q He even gave you a 30-minute break; right?

6 A I don't remember how long the break was, but there  
7 was break.

8 Q Okay. And when you came back, you still pled guilty;  
9 right?

10 A Yes, sir.

11 Q Okay. And you also -- you're saying now today that  
12 your health -- health condition prevented you from  
13 understanding what was going on?

14 A My health prevents a lot for me.

15 Q Okay. And you -- just a minute ago you listed out  
16 things you've got wrong with you, issues you've got,  
17 health issues, et cetera; right?

18 A I've got more than that. I just can't recall all of  
19 them. I've got, like, 25 medical conditions.

20 Q Now, let me ask you this, when you were at that plea  
21 hearing, Judge Miller asked you about this. He said, Have  
22 you ever had any drug or alcohol -- treated for substance  
23 abuse or mental illness?

24 A I said, Yes.

25 Q Well, that's not what you said. Let's look here,

1 Page 4 of the transcript, Line 15. Have you ever been  
2 treated for substance abuse or mental illness?

3 No, sir.

4 A Well, I have. I must have misunderstood the  
5 question.

6 Q Well, let me ask you this, ma'am, you're saying you  
7 misunderstood that. Today --

8 A I've been in -- I was in Brian Psychiatric in  
9 Columbia.

10 Q Well, you didn't have any trouble listing it off  
11 right here. Mr. Thompson asked you about your health  
12 issues --

13 A Well, I must have misunderstood that question, if I  
14 said no.

15 Q Okay. Well, I mean, because you rattled off for five  
16 minutes here about your health issues. But you didn't  
17 understand that question?

18 A I must have misheard it.

19 Q You misheard it. Okay. But you heard it clearly  
20 today?

21 A But I've been in -- I've been in Brian Psychiatric.  
22 I believe I told my -- Max that, too.

23 Q Okay.

24 A I told him at the jail. When they checked me in at  
25 the jail, they asked me that question. And I told them,

1       yes.

2       Q     Did you ever write any letters to Mr. Gravlee asking  
3       for an appeal?

4       A     I didn't know there was an appeal.  I never knew  
5       about the appeal until I got to prison.

6       Q     Okay.  What is it you're hoping --

7       A     Then it was too late.

8       Q     -- to get out of the petition?

9       A     I'm sorry.

10      Q     What is it you're hoping to get out of this petition?

11      A     I would like to start over.

12      Q     Okay.

13      A     Have a jury trial.

14      Q     Even though you said that day that you didn't want  
15      one.  You waived it; right?

16      A     I don't feel like I -- I don't feel like I'm  
17      justified in having 20 years.  I'm not guilty.  I'm not --  
18      I don't think I was -- I killed somebody.

19      Q     You don't think you killed anybody?

20      A     I did not intentionally hurt anyone.  And that's the  
21      truth.

22               MR. SMITH:  Your Honor, I -- I don't have any more  
23      questions.

24               THE COURT:  All right.  Let me -- I've just got one  
25      question.

EXAMINATION

1  
2 BY THE COURT:

3 Q Ma'am, I read somewhere that you're a 1981 graduate  
4 of Lander College and you have a bachelor's degree.

5 A Yes, sir.

6 Q What did -- what did you major in at Lander College?

7 A Physical education.

8 Q All right. So you have a bachelor's degree?

9 A Yes, sir.

10 THE COURT: Okay. I don't have any other questions.

11 MR. THOMPSON: May I follow up, Your Honor, with just  
12 one or two?

13 THE COURT: Yeah.

14 REDIRECT EXAMINATION

15 BY MR. THOMPSON:

16 Q You went over to the neighbor's with -- with a  
17 shotgun; correct?

18 A Yes, sir.

19 Q And I believe your -- what you said is you didn't  
20 pull the trigger, but he pulled the barrel and the gun  
21 went off?

22 A Yeah. I had been out in my yard shooting the gun.  
23 And I didn't even know it was cocked or loaded.

24 Q Okay. Did you tell your attorney that?

25 A Yes.

1 Q Okay. Did y'all discuss a defense based on that?

2 A No.

3 MR. THOMPSON: Thank you.

4 THE COURT: Anything else?

5 MR. SMITH: No, Your Honor.

6 THE COURT: All right. Thank you, ma'am.

7 You can step down.

8 THE WITNESS: Okay.

9 THE COURT: Any other witnesses for the Applicant?

10 MR. THOMPSON: No, sir.

11 THE COURT: Is the State ready to proceed?

12 MR. SMITH: Yes, Your Honor.

13 We call Mr. Gravlee as a witness.

14 THE CLERK: Mr. Gravlee, please, place your left hand  
15 on the Bible and raise your right hand.

16 WHEREUPON,

17 JOHN MAXWELL GRAVLEE,

18 after first having been duly sworn, testified as follows:

19 THE CLERK: Thank you.

20 You may be seated.

21 And, please, state your full name for the record.

22 THE WITNESS: John Maxwell Gravlee.

23 DIRECT EXAMINATION

24 BY MR. SMITH:

25 Q Okay. Mr. Gravlee, how long have you been practicing

1 law?

2 A I clerked for two years. And I've been a public  
3 defender for about four years now.

4 Q Okay. And that's with the Greenville County Public  
5 Defender's Office?

6 A I was in Pickens until about a year ago, a year in  
7 July. So I've been in Greenville for about a year now.

8 Q Okay. And so how did you come to be the attorney for  
9 Ms. Smoak?

10 A I was appointed. It was back in September of 2016  
11 when the charges happened. And I went down to see her, I  
12 believe, the day of or the day after. I remember myself  
13 and John DeJong, head of the public defender's office over  
14 there, went down to speak with Ms. Smoak.

15 Q Okay. Did -- to the best of your knowledge, did she  
16 have any other attorneys before you?

17 A She did not.

18 Q Okay. How many times did you meet with Ms. Smoak  
19 before her plea hearing?

20 A Before her plea?

21 Q Yes.

22 A I know I met with her, at least, three times at the  
23 jail, once when she was first charged, another time in  
24 October. And then, again, I believe in -- let me see my  
25 notes -- again in November. And then she had a bond

1 hearing in January --

2 Q Okay.

3 A -- of 2017.

4 Q Is that three or four?

5 A Three -- three times that I know that I met with her  
6 down there. But I made contact on more occasions than  
7 that because you could call down to the jail in Pickens  
8 and have a client pick right up.

9 Q Well, how many times did you talk with her on the  
10 phone then?

11 A Oh, let me check.

12 At least, five times.

13 Q Okay. When you would meet her in person, how many --  
14 how many minutes would you spend with her each time?

15 A I can't say exact minutes. But when I'd go down to  
16 speak with Ms. Smoak, it wasn't quick. We went over  
17 discovery on multiple occasions. And I know that those  
18 jail visits probably weren't less than 20 minutes.

19 Q Okay.

20 A And I know leading up to that bond hearing, we had a  
21 lot of notes from those to discuss her bond situation, her  
22 mother living in Greenwood, and trying to work that out  
23 with the -- she was going back to her house where the  
24 incident occurred. And I was trying to work out those  
25 details.

1 Q Okay. Did you move for discovery in this case?

2 A I did.

3 Q Did you receive discovery?

4 A I sure did.

5 Q All right: Tell me what you got in response to that  
6 motion --

7 A A lot --

8 Q -- briefly.

9 A Like Ms. Smoak said, there were incident reports from  
10 several officers that arrived on scene that processed  
11 the -- it was a tent that was in her neighbor's backyard  
12 behind Ms. Smoak's yard. And Ms. Smoak had -- and there  
13 was documentation of Ms. Smoak trying to reach out about  
14 this guy that was homeless living in a tent and never  
15 being quiet. And it kind of took away Ms. Smoak's peace  
16 of mind there. So there was a lot about contacts there  
17 from law enforcement going out to diffuse prior  
18 situations. And then it came to a head on that day.

19 There was autopsy reports that we reviewed. And I  
20 think that probably was the kicker in the case was the  
21 autopsy that revealed that two shots were fired. I  
22 believe there's one to the shoulder and maybe one to the  
23 abdomen. And it was a single-shot shotgun that they  
24 found.

25 So the big point was the whole reloading that

1 occurred during it that we discussed that was going to  
2 be -- that was going to be the toughest hurdle to probably  
3 climb at trial was the -- the taking the time to reload.

4 Q So was it the kind where you had to manually reload  
5 it by --

6 A Yeah. It was like a break barrel single shot. You  
7 put it in, close it back up, and then you -- you've got to  
8 pull the trigger again.

9 Q Was it the kind of weapon that you thought might  
10 accidentally be fired twice in a row?

11 A It -- I mean, it couldn't be twice in a row. We  
12 discussed the initial one. Ms. Smoak and I discussed her  
13 claim that it accidentally went off, you know. We  
14 discussed that, you know, going off accidentally, yeah, we  
15 could go to -- go to trial with that and try to go with  
16 the -- the accidental discharge.

17 But the issue is getting past that first one and the  
18 reloading part that is -- that a jury probably is going to  
19 be more in terms of thinking that that's -- that's  
20 premeditated, the breaking of the barrel and putting  
21 another shell in the shotgun, and then the trigger, you  
22 know, going off again, even though there was, you know, a  
23 struggle going on, so.

24 Q Was there any piece of evidence in the discovery that  
25 you thought was more damaging to her case than the fact

1 that the single-shot shotgun had been fired twice?

2 A I mean, there was -- there was other stuff. The gun  
3 was found washed or, at least, wet from the shower with a  
4 bunch of her clothes. There was shells found inside her  
5 home, empty shells. They were inside a vodka bottle with  
6 some pill bottles and stuff nearby. That didn't look  
7 good.

8 And -- and then she was found with a -- like, a blood  
9 alcohol level of .27, .272, I think, which was pretty  
10 high. And I explained the whole issue of voluntary  
11 intoxication not being a defense. And there wasn't any  
12 claims of involuntary intoxication. So we didn't pursue  
13 that.

14 So I'd say those two things combined, along with the  
15 prior history between the two, you know, explained how the  
16 prior history -- it stinks that nobody did anything about  
17 it. And Ms. Smoak barked up all the legal avenues that  
18 she could before this incident took place. I mean, she  
19 went to everybody. She went to building codes  
20 enforcement. She went to the magistrate's office. She  
21 went to the sheriff's office. But, unfortunately, that  
22 contact and the escalation of everything wasn't going to  
23 be a legal defense to what happened that day.

24 Q Okay. So it sounds like you discussed intoxication  
25 and maybe some self-defense as possible defenses?

1 A Yeah, self-defense. But that was going to be tough,  
2 too, because it happened at his tent, which isn't his  
3 yard, but it was definitely not on her property. So I  
4 talked to her about the Castle Doctrine and things of that  
5 nature that weren't exactly going to be viable defenses  
6 with it not being -- happening at her house at the time of  
7 it.

8 Q Okay. Did you discuss any other defenses with her or  
9 that you saw that might apply?

10 A I'd say that's about it.

11 Q Okay. Did she give you any indication that she  
12 didn't understand what you were telling her about that?

13 A No. I mean, Ms. -- Ms. Smoak's -- she's pretty  
14 sharp. Granted, her short-term memory has always been,  
15 you know, an issue. And we discussed that. And she's a  
16 little hard of hearing. But that wasn't an issue that we  
17 couldn't overcome with an extensive office visit.

18 Q Okay. And that -- that discovery you had, did you  
19 show her that and go over that with her, too?

20 A I did.

21 Q And did it appear that she understood that?

22 A As far as I could tell.

23 Q Okay. Did you go over the charges with her, what  
24 murder would be?

25 A I did. We went over 30 to life, you know, best case

1 scenario at trial-if convicted of murder was 30. And that  
2 was day for day. And then, you know, the extra five on  
3 the possession of a weapon. And that's the extent of --  
4 those were her only charges.

5 Q Did you talk about things like lesser included  
6 offenses?

7 A We did.

8 Q Okay.

9 A She asked me to ask for involuntary -- for a plea on  
10 involuntary. It was never extended. I never got that. I  
11 tried to get it to ABHAN. That wasn't happening. So the  
12 lowest that it ever got to was just 20 years negotiated.

13 Q Okay. So she wanted you to make plea offers and  
14 enter plea negotiations?

15 A Yeah. She -- I mean, she wanted me to explore it,  
16 you know. We -- I'd say up until -- you know, through --  
17 through spring, I'd say around this time in -- I guess two  
18 years in 2017, we were discussing the plea offer. I mean,  
19 I shared it. I gave her the plea offer on April 23rd  
20 of -- actually, 2018. It was last year.

21 I talked to her about that 20-year offer. And, you  
22 know, it wasn't -- it wasn't necessarily good news. But  
23 we discussed 85 percent, it being around 17 years. That  
24 she was going to get credit for the time that she had in  
25 jail, but not while she was out on house arrest on bond.

1 Q Okay. Did you make any promises or guarantees that  
2 it would only be about 17, though?

3 A No. I just told her that it was a 20-year negotiated  
4 offer that was -- the Judge, basically, had to take it or  
5 leave it, if that was what we had worked out. And we  
6 discussed it, you know. And she stood up first and talked  
7 to the Judge about it, and then stood down. And I talked  
8 to Ms. Smoak again about it.

9 Q Well, and -- and going back to the -- the case. What  
10 did -- what did Ms. Smoak tell you about what happened?

11 A I mean, that was what we discussed earlier, the  
12 initial shot going off. And then she said things were  
13 crazy. The, you know, barrel -- she ended up -- you know,  
14 somehow during this, it was reloaded. And then, like, he  
15 had come at -- come at her again, I believe is what she  
16 told me. And then he was shot again. But, I mean,  
17 that's -- that's about the extent of it.

18 So based on -- on that, it was going to be a tough --  
19 it was going to be a tough trial.

20 Q Okay. So getting closer to time for court, did she  
21 tell you she was ready to go to trial or did she say,  
22 okay, let's plead?

23 A Well, eventually, she did. Because we had -- I  
24 remember it was in the summer. We talked about it a lot.  
25 Because I had -- in -- in late spring, May 11th, 2018, I

1 had a two-hour office visit with her, a 15-minute phone  
2 call about three days later, and another 30-minute phone  
3 call on May 16th of 2018.

4 And we just talked about getting her affairs in  
5 order. She was trying to get her house sold, trying to --  
6 I remember speaking with SCDC about items that she could  
7 and couldn't bring with her. So we were -- we were  
8 preparing for a plea at that time.

9 Q Okay. If she'd have told you, you know what, I  
10 want -- I want to go to trial on it, would you have taken  
11 it to trial?

12 A Absolutely. That's her call.

13 Q Okay. But she didn't ask -- she didn't ask for that,  
14 did she.

15 A No. That day, we -- we discussed it. She wanted to  
16 plead. We went forward. She stepped down because she  
17 started -- I don't have the plea transcript in front of me  
18 right now. But I remember she said, you know, something  
19 to the effect where she was waffling on some matter. And  
20 Judge Miller, you know, told her that she could step down  
21 and speak with me.

22 So we stepped out. I spoke with her and her mother  
23 for -- I don't know -- 15, 20 minutes probably. And then  
24 we went back before the Judge at a different time and  
25 finished up the plea at that time.

1 Q So this negotiated sentence, this was the final deal  
2 that you arrived at with the State?

3 A Yeah. I think -- I think it was the only -- really,  
4 the only deal that was extended. If there was anything  
5 more, it might have been a 25-year offer. I don't have  
6 any notes to that effect. But I think it was -- 20 years  
7 was about just where we -- where we met.

8 I tried to get it down. Because it was -- I shared  
9 with Ms. Smoak -- Ms. Smoak it was two to 20. But it  
10 didn't really matter in terms of the plea because it was a  
11 20-year negotiated offer. So the rest of the range was  
12 not in play.

13 Q Well, what did you tell her about the fact that it  
14 was a negotiated plea? How did you explain that kind of  
15 plea?

16 A That it's -- it's negotiated. So the Judge who was  
17 hearing the plea had to either accept the negotiated  
18 sentence or reject it altogether. And then if the plea  
19 was rejected, then she wouldn't be sentenced higher or  
20 lower. She would just walk out of the courtroom that day.

21 Q Okay. Did you tell her that before the plea hearing?

22 A Correct.

23 Q Okay. Did she give you any indication that she  
24 didn't understand that?

25 A Not to my knowledge, no.

1 Q Did she ask any questions after that about whether he  
2 would sentence her within that range of two to 20?

3 A No. I mean, when I discussed negotiated, again, we  
4 just -- it was a take it or leave it kind of plea.

5 Q Okay. Well, in speaking to -- to her understanding,  
6 did she ever give you any indication that she wasn't  
7 mentally competent to go to trial or to plead guilty?

8 A No. I -- I never sent her to Columbia to DMH for an  
9 evaluation. I didn't see that as an issue. She's always  
10 been pretty sharp, and never any mention of schizophrenia,  
11 or anything like that.

12 I mean, she does have a bunch of health issues that  
13 we'd always discussed. But they were in terms of  
14 respiratory disease, fibromyalgia, neuropathy, COPD, and  
15 her hearing issues. But nothing mentally that would  
16 prevent her from understanding what was going on.

17 Q Okay. Did she ever tell you, I don't -- I have some  
18 mental deficiency, I can't go to trial, or can't make a  
19 decision?

20 A No. She told me that she'd had a stroke before. But  
21 it wasn't anything that concerned me with competency.

22 Q Okay. During the plea hearing, obviously, Judge --  
23 Judge Miller picked up that she was indecisive about  
24 entering a plea. What did you talk about during the  
25 30-minute break that Judge Miller gave you to discuss?

1 A I think I probably told her that -- I don't remember  
2 because I don't have exactly what we discussed. But, you  
3 know, saying -- again, talking about the negotiated thing,  
4 that it was, you know, one way or the other. And if she  
5 didn't want to plead, she didn't have to. But, you know,  
6 it would be set for trial and the offer would be off the  
7 table. And we'd be going to trial on murder, and not --  
8 not manslaughter.

9 We could try for manslaughter, ask for a charge on  
10 that, ask for a charge on involuntary at trial. But I  
11 couldn't guarantee her what was going to happen at trial.  
12 But, you know, I could pretty much guarantee her that  
13 if -- in the plea that it was 20 years negotiated. So  
14 that was either going to happen or it wasn't.

15 Q Did she come out of that meeting telling you, okay, I  
16 want to go forward with it then?

17 A She did. She went back up before the Judge with me.

18 Q Okay. And it was her -- her decision to plead  
19 guilty?

20 A That's correct.

21 Q Okay. Did you have any indication from her answers  
22 to Judge Miller about waiving her rights, deciding to go  
23 forward and plead, the fact that she understood what was  
24 against her, she understood the charges? Did you have any  
25 indication from that that she didn't understand his

1 questions?

2 A No. Because we'd -- we'd been over that, over her  
3 rights to trial, and what we could do at trial, who we  
4 could call in her defense to try to show that she had been  
5 trying to get ahold of somebody through legal means  
6 necessary about the rowdy guy that was in her backyard.  
7 And we could call the witnesses that we wanted,  
8 cross-examine them.

9 She could take the stand, if she wanted to. She  
10 didn't have to. She didn't have a record. She had no  
11 record. And that was what was kind of tough about this  
12 is, you know, that this had happened to somebody with no  
13 record whatsoever. It's a tough case. But at the end of  
14 the day, we had discussed it up and down leading up to the  
15 plea.

16 MR. SMITH: Okay. Well, thank you.

17 I have no more questions, Your Honor.

18 THE COURT: Mr. Thompson.

19 CROSS-EXAMINATION

20 BY MR. THOMPSON:

21 Q Good afternoon, Mr. Gravlee.

22 A How are you doing?

23 Q Good.

24 You?

25 A Good.

1 Thank you.

2 Q You were appointed to represent Ms. Smoak?

3 A That's correct.

4 Q Do you recall how soon after her arrest you were  
5 appointed?

6 A Generally, in Pickens, when you hear about a murder,  
7 it's probably going to be yours. So we were down there.  
8 Arrest date was 9/12, and we opened it 9/13. So I imagine  
9 I was down there on the 13th.

10 Q Okay. And you say you saw her, according to your  
11 records, three times while she was still incarcerated?

12 A Yes, sir.

13 Q Or still in detention?

14 A Yes, sir.

15 Q And a few times once she got out in your office?

16 A I saw -- I probably had three or four office visits  
17 with her, a lot of phone calls. We were -- we were in  
18 touch on the phone a good bit.

19 Q Okay. Did you know her at all before you were  
20 appointed to represent her?

21 A No, sir.

22 Q Okay. Now, Mr. DeJong was involved in some of these  
23 meetings, or one of them, at least?

24 A Yes, sir. I remember he -- I think he was probably  
25 down there when we both went to go see her, initially.

1 And then an office visit, he'd pop his head in and speak  
2 with us about it.

3 Q Okay. During any of these -- well, you say that she  
4 never mentioned any mental issues. So you were not aware  
5 that she had been in a mental institution, and things like  
6 that; is that correct?

7 A No, sir.

8 Q All right. You did say -- I think you said that she  
9 had short-term memory problems during the time you were  
10 representing her because she'd had a stroke?

11 A Correct.

12 Q Okay. Would -- those short-term memory problems from  
13 one meeting to the next, is there the possibility -- well,  
14 let me ask you this question. Did you observe having to  
15 continuously tell her the same thing over and over?

16 A No. We would discuss certain things two and three  
17 times. But it wasn't -- you know, it would be something  
18 we had discussed and I think that she knew that we had  
19 discussed that. But it was just an ongoing conversation  
20 about her defense.

21 Q Well, was it something y'all had discussed and she  
22 knew you had discussed it, but could not remember what  
23 you'd discussed?

24 A I mean, I -- I think she knew. I couldn't tell you.  
25 Sometimes, probably not. Sometimes, yes. I mean, I -- I

1 don't know.

2 Q Okay. But you never had any reason to believe you  
3 should look into her mental condition?

4 A No, sir.

5 Q Did you go over the discovery with her on more than  
6 one occasion?

7 A Yes, sir.

8 Q Okay. And when you was talking about the plea, I  
9 think you said you told her that voluntary carried two to  
10 30?

11 A Yes, sir.

12 Q And murder was 30 to life?

13 A Correct.

14 Q I believe that was your testimony. And that the plea  
15 was 20 years. Are you certain that she understood -- that  
16 she knew that it was a 20-year sentence she was going to  
17 receive?

18 A Yes, sir.

19 Q And not that there could be some confusion between  
20 two to 30, and 30 to life, and we're talking 20?

21 A No, sir. Negotiated is a -- I mean, it's right there  
22 on the plea sheet that I shared with her.

23 Q I know you and I know what negotiated is because --

24 A Yes, sir.

25 Q -- we're attorneys.

1 A Right.

2 Q But do you think she fully understood what negotiated  
3 meant?

4 A Yes, sir. I mean, I -- I explained it to her as I do  
5 to any other client that it's a take it or leave it kind  
6 of situation. And that if the Judge is willing to go  
7 along with it, then that is the plea -- that is the  
8 sentence that you would receive. Otherwise, you won't  
9 receive that. The plea's not going to happen. It's not  
10 going to go forth.

11 Q And you -- you remember telling her that if the Judge  
12 accepted the plea, she had to get 20 years?

13 A Yes, sir.

14 Q Okay. Now, during the plea, there were several times  
15 that -- I won't use the word broke down. It, actually,  
16 broke down once; right, and you had to go have a little  
17 discussion?

18 A Yes, sir.

19 Q But there was several times where her answers to the  
20 Judge was not what the Judge was looking for and had to  
21 have sort of a little side conversation with you during  
22 the plea; is that correct?

23 A Right.

24 Q And isn't that an indication of her really not  
25 understanding what was going on?

1 A I think it's an indication of what she had been  
2 talking about the whole time, which was some of her -- you  
3 know, of how it shook down with the shots, the two shots.  
4 We -- she asked me, you know, what -- you know, what do  
5 you think I should do?

6 And I said, Ms. Smoak, this is -- this is your plea.  
7 It's -- it's not mine. If you'd like to go forward, we  
8 can do the plea. But, otherwise, it's going to be a  
9 trial. So that's your call.

10 Q And if it had only been one shot, the way she says it  
11 happened, it could have well been a defensible case; is  
12 that right?

13 A I think it would have been more defensible, yes.

14 Q Okay. With it being two shots, I think you said she  
15 said that he continued to come at her?

16 A The second shot, that is -- that is what she -- she  
17 shared with me. But she'd always say that she didn't  
18 really recall too well what -- what had happened. And we  
19 talked about the issue of the blood alcohol. That was  
20 going to be -- be a sticking point at .27. Because she  
21 was found comatose almost.

22 Q So there really wasn't a lot of help for putting up a  
23 defense. Is that what you're saying?

24 A I -- yeah.

25 Q The facts didn't point towards one?

1 A Yeah. It -- there wasn't a lot to work with, no.

2 Q Had you known that she had spent time in a mental  
3 institution and had been diagnosed with schizophrenia,  
4 would you have asked for a mental evaluation?

5 A I probably would have, yeah.

6 Q Okay. Hindsight's 20/20; right?

7 A Absolutely.

8 Q Okay. And there was nothing that gave you any reason  
9 to even suspect that she should have a mental evaluation?

10 A No, sir. The Judge kind of talked to her about it  
11 earlier. But, you know, she had -- she had a bachelor's  
12 degree. She had worked pretty much every job under the  
13 sun, as I recall, talking to her about it.

14 So she had a ton of life experience that made her a  
15 lot quicker than a lot of other clients that I've come  
16 across.

17 MR. THOMPSON: Thank you.

18 THE WITNESS: Thank you.

19 THE COURT: All right. Anything else?

20 MR. SMITH: No more questions, Your Honor.

21 THE COURT: All right. And I have no questions.

22 Thank you, Mr. Gravlee.

23 You can step down.

24 THE WITNESS: Thank you, Your Honor.

25 MR. SMITH: Your Honor, I'd ask that Mr. Gravlee be

1       excused as a witness.

2               THE COURT: Any objection?

3               MR. THOMPSON: No objection.

4               THE COURT: Does the State have any more witnesses?

5               MR. SMITH: No, Your Honor.

6               THE COURT: All right. What I'd like to do, if  
7 Counsel could give me a little short argument on both  
8 sides.

9               MR. THOMPSON: Do you want me to go first?

10              THE COURT: It doesn't matter.

11              MR. THOMPSON: Okay. Judge, Ms. -- Ms. Smoak  
12 testified that -- that she had a number of physical  
13 problems. And I realize most of the physical problems  
14 wouldn't really be an issue on her understanding.

15              But she, also, testified to some mental problems,  
16 schizophrenia, depression, anxiety. She testified that  
17 she had been in a mental institution, and that she'd been  
18 treated -- diagnosed with that prior to this incident  
19 happening.

20              Mr. Gravlee's testimony was he did not realize all  
21 that. And had he realized that, he would have had a  
22 mental evaluation to see if she knew what she was doing.

23              He did testify, however -- Mr. Gravlee did -- that  
24 she had short-term memory due to a stroke at that time  
25 when he would talk with her. And, sometimes, they would

1 go over things more than once. He didn't know whether it  
2 was that she really didn't understand, or whether maybe --  
3 maybe they would just have to go over it a second time.

4 But be that as it may, I think given the seriousness  
5 of the -- of the case, of the charges, and the fact that I  
6 believe he said he met with her three times. My mind --  
7 my mind just slipped me. Three times while she was in  
8 jail, maybe four, and three or four after she got out over  
9 a two-year period with numerous phone calls.

10 When you look at the transcript -- and it's a very  
11 short transcript. But in that very short transcript,  
12 Judge Miller had to pause the plea, at least, three times  
13 because of -- it appears she didn't understand what was  
14 going on. And I'm -- I'm basically, pointing between  
15 Pages 5, 6, and 7. And he did, at one point in time,  
16 actually, stand her down to continue talking with  
17 Mr. Gravlee before the plea was allowed to go forward.

18 I understand -- and I've talked with Ms. Smoak. And  
19 I understand this would be a very hard case. Two shots  
20 from a single-shot shotgun would be a very hard case to  
21 defend. And I understand that. And I've explained that  
22 to Ms. Smoak.

23 The -- the issue that -- that I think, Judge, is  
24 really applicable here is whether or not she fully  
25 understood what was going on, it was a free and voluntary

1 plea, and whether or not there should have been some  
2 examination of her mental capacity.

3 Thank you.

4 MR. SMITH: Well, Your Honor, I -- I think we've  
5 heard testimony here today from Mr. Gravlee that he was  
6 prepared for the plea hearing and was prepared for trial,  
7 had Ms. Smoak wanted one. But he testified that she was  
8 adamant the whole time that -- although, you know, there  
9 were issues and maybe she didn't remember exactly  
10 everything that happened, that she wanted to take the plea  
11 deal.

12 And this indicates that she understood what she was  
13 facing with the murder charge. And based off of his  
14 explanations to her, she understood that this was going to  
15 be a tough trial, if she went to it, especially with the  
16 two shots scenario.

17 It's -- you know, and he testified, too, that she had  
18 a lot of alcohol in her blood at the time of the incident.  
19 I -- I think it would have been reasonable for him to draw  
20 the conclusion that some of her memory issues from that  
21 were probably due to the alcohol.

22 Now, he did -- he, also, testified that she never  
23 gave him any indication that she had a mental illness, or  
24 he never got the impression that a mental evaluation was  
25 necessary. And that's -- that's a strategic decision

1 under the information he had at the time. I think it's a  
2 pretty reasonable decision.

3 Now, hindsight is 20/20. Maybe looking back if at  
4 some point in her history, she had been diagnosed with  
5 something like schizophrenia -- although we haven't seen,  
6 I don't think, any medical records in evidence today to  
7 that effect -- that may have been a different story. But  
8 that wasn't what Mr. Gravlee had to go on at the time.

9 I'll, also, note that -- that the testimony that the  
10 Applicant gave at the plea hearing, she didn't give any  
11 indication from the record that she had some kind of  
12 mental condition. It appeared she understood the  
13 questions.

14 I, also, submit to the Court that the hesitation was  
15 because she understood how big of a decision it was to  
16 plead guilty to voluntary manslaughter. And I think  
17 rightly so. That's a very big decision. It's hard. But  
18 it doesn't mean she didn't understand.

19 The -- the fact is, Your Honor, after the break that  
20 Judge Miller gave her to go talk to her attorney, she  
21 waffled a little bit, but she came back and she said, I  
22 want to plead guilty. I -- she's indecisive, it looks  
23 like that. I'd -- I'd submit to the Court that's probably  
24 true.

25 At the end of the day, she pleaded guilty, admitted

1 to the State's facts. And her own attorney testified here  
2 that she never told him she didn't understand. Any  
3 confusion, he submitted to maybe just the -- the  
4 drunkenness on her part during the incident.

5 So at the end of the day, Your Honor, I think that  
6 you should deny her -- her case. I think her -- her plea  
7 was voluntary and intelligent. I think although she was  
8 indecisive at the plea hearing, maybe that indecisiveness  
9 itself shows she understood what was going on and what was  
10 on the line.

11 So that's our case.

12 THE COURT: All right. Of course, as Counsel well  
13 knows, the prong that -- the two-prong test that the Court  
14 is to utilize in evaluating the application for  
15 post-conviction relief as it relates to ineffective  
16 assistance of counsel is the case of -- the Strickland v.  
17 Washington case. And that -- that -- those prongs are as  
18 follows, one is you've got to establish that counsel's  
19 performance was deficient.

20 After having heard the testimony of the Applicant, as  
21 well as the testimony of the witness, Mr. Gravlee, I find  
22 that the Applicant has not met the first prong of that  
23 test.

24 The second prong is that the Applicant must show that  
25 counsel's deficient performance must have prejudiced the

1 Applicant. And there's reasonable probability that but  
2 for the counsel's alleged unprofessional errors, the  
3 result of the proceeding would have been different.

4 Based upon my analysis of the testimony as well --  
5 from -- from the Applicant, as well as the witness, I find  
6 that that portion of the test under Strickland has not  
7 been met. And that is, also, cited in the Cherry  
8 versus -- I think it's Cherry v. State case. Both of  
9 those cites are in the return that was filed on behalf of  
10 the State.

11 So based upon that, I am going to deny the  
12 Applicant's application for post-conviction relief and  
13 would instruct the State to prepare the appropriate order.

14 All right. Thank y'all.

15 MR. SMITH: Thank you, Judge.

16 And do you have a time limit on that?

17 THE COURT: 30 days? 45?

18 MR. SMITH: 45.

19 THE COURT: 45 days.

20 \*\*\*\*\*END OF TRANSCRIPT OF RECORD\*\*\*\*\*  
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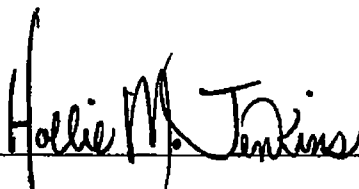
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA            )  
COUNTY OF GREENVILLE            )

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Pickens County, South Carolina, on the 16h day of April, 2019.

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

November 12, 2019

  
\_\_\_\_\_  
Hollie M. Jenkins, Court Reporter  
My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF PICKENS ) FOR THE THIRTEENTH JUDICIAL CIRCUIT

Rebecca Smoak, #377159, 2019 JUL 23 P 2:03 Case No. 2018-CP-39-01122

Applicant,

v.

State of South Carolina,

Respondent.

CLERK OF COURT  
PICKENS COUNTY  
SOUTH CAROLINA  
ORDER OF DISMISSAL

This matter comes before this Court by way of an Application for Post-Conviction filed on October 18, 2018, by Rebecca Smoak (Applicant). The State (Respondent) filed its Return and Partial Motion to Dismiss on December 26, 2018. An evidentiary hearing in the matter was held before the Honorable Alex Kinlaw, Jr., on April 16, 2019, at the Greenville County Courthouse. Applicant was present and was represented by Don A. Thompson, Esquire. Respondent was represented by Assistant Attorney General Taylor Z. Smith of the South Carolina Attorney General's Office. At the hearing, Applicant testified on her own behalf and John M. Gravlee, Esquire, testified on behalf of Respondent. Following a thorough review of the record in its entirety and the testimony and evidence presented at the evidentiary hearing, this Court finds that Applicant has failed to meet her requisite burden of proof and denies this application.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Pickens County Clerk of Court. During its May 2017 term, the Pickens County Grand Jury indicted Applicant for possession of a weapon during the commission of a violent crime (2017-GS-39-1313) and murder (2017-GS-39-1314). Assistant

Public Defender John M. Gravlee (Counsel), of the Pickens County Public Defender's Office, represented Applicant on these charges. Assistant Solicitor John Baker Cleveland, III, of the Thirteenth Circuit Solicitor's Office, prosecuted the case. On July 25, 2018, Applicant appeared before the Honorable Edward W. Miller and pleaded guilty to the lesser-included offense of voluntary manslaughter and pleaded guilty as indicted to possession of a weapon during the commission of a violent crime. Pursuant to a negotiated sentence, Judge Miller sentenced Applicant to a term of imprisonment of twenty years for voluntary manslaughter and five years for the weapons charge. The sentences were to be served concurrently. Applicant did not appeal her plea or sentence.

#### CURRENT PROCEEDING

On October 18, 2018, Applicant filed an Application for Post-Conviction Relief, in which she made the following allegations:

1. I did not even know there was an appeal process. My lawyer never told me about an appeal process. I found out about the process and then it was too late to appeal.
2. I feel my lawyer was incompetent. He did not represent me as he should have. He was vague and did not supply me with complete and concrete information regarding my plea offer. I went in court unprepared and confused. He also never once mentioned to me an appeal process. He was relocating to Greenville County Public Defender's Office at the time of my court date and I feel this took precedence over my case. My case was the only one he had left in Pickens County.
3. I also feel like Pickens County Law Enforcement did not do their job, to serve and protect. I called the Sheriff's Office multiple times and they did not respond.
4. My lawyer only met with me three times. The last time was rushed. I did my best to try to understand what I was being told, but I found it all quite confusing and feel I was not given all the information I needed to make proper decisions. I have never been through those types of court proceedings before.
5. I did everything by protocol trying to resolve my problem. I contacted Bob Stewart, Building Code, I personally went to the Sheriff's Office, was not allowed to speak directly to the Sheriff, I

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talked to Judge Baker at Magistrate's Court, I had a Sheriff's deputy at my house on three different occasions, and I called law enforcement the day before and the day of the incident.

At the start of the evidentiary hearing, Respondent requested that Applicant specify for the record the grounds upon which Applicant would move forward at the hearing. Applicant specified that she would be moving forward solely upon three allegations:

1. That Applicant did not understand the plea because of her poor health, and Counsel did not explore it with her;
2. That Counsel did not take the time necessary to make sure that Applicant knew what she was doing; and
3. That Applicant did not realize that she was entering into a negotiated plea.

Because these are the only grounds for relief upon which Applicant proceeded at the evidentiary hearing, all other grounds are deemed to be waived and will not be addressed in this Order.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented at the evidentiary hearing, which allowed the Court to scrutinize the credibility of all witnesses presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

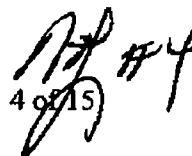
Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that trial counsel was constitutionally ineffective, he must prove that

  
3 of 15

"counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result." Strickland, 466 U.S. at 686

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Petitioner such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). The "prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial." Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not

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first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney." Id. at 690.

"A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). "Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea").

Based on this standard set forth above, this Court finds Applicant has failed to meet her requisite burden of establishing any constitutional ineffectiveness of counsel. The allegations are addressed fully below:

  
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*Applicant did not understand the plea because of her poor health, and Counsel did not explore it with her. Counsel did not take the time necessary to make sure that Applicant knew what she was doing.*

The basis of these allegations is that Applicant was asserting that she had mental health issues that prevented her from understanding the significance and consequences of the actions she took at the plea hearing, and that she was mentally incompetent and could therefore not stand trial or plead guilty, and that Counsel failed to appreciate her mental health deficiencies and take steps to ascertain her mental incompetence.

Applicant testified that she did not intentionally hurt anyone. She testified that she had been having issues with a man living in a tent in the neighboring yard for around five years. She testified that she and the victim had been arguing and that she went to the neighboring yard with her shotgun and that the victim grabbed the barrel of her shotgun and that the shotgun went off.

Applicant testified that she had lots of health issues at the time of her plea hearing, including vertigo, strokes, bone spurs, depression, anxiety, and schizophrenia. She testified that her past strokes had affected her short-term memory. She testified that her poor health prevents her from doing lots of things, and that she suffers from twenty-five different medical conditions. She testified that she has dead tissue in her brain due to her stroke. She testified that her mental and physical condition at the time of the plea hearing affected her ability to understand what was going on. She testified that she does not remember the length of her meetings with Counsel. She testified that she remembers talking on the phone with Counsel, but that she does not remember what they talked about. She testified that she did not tell Counsel that she had been diagnosed with schizophrenia. She testified that Counsel did not have a physician conduct an evaluation on her before her plea hearing. She testified that she does not remember exactly what was said

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during the plea hearing. She testified that her medical conditions prevented her from understanding what was happening at the plea hearing and from expressing herself. Applicant admitted to telling Judge Miller at her plea hearing that she had never been treated for mental illness, but testified at the evidentiary hearing that she had misheard that question from Judge Miller at the plea hearing. She testified at the evidentiary hearing that, when Judge Miller asked her during the plea hearing whether she had ever been treated for mental illness, that she answered, "Yes." She testified that she has a bachelor's degree in physical education.

Counsel testified that he has been a public defender for four years, and worked as a law clerk for two years. He testified that he had been appointed to represent Applicant immediately after her arrest. He testified that he met with her on three occasions while she was in custody, with each of their jail meetings lasting for at least twenty minutes each, and that he met with her on another three or four occasions after she was out on bond. He testified that he met with her on at least one occasion with John DeJong. He testified that he did not have quick meetings with Applicant. He testified that there was a substantial amount of discovery in the case and that he reviewed it with Applicant on multiple occasions. He testified that he had many phone calls with Applicant. He testified that Applicant told him that the victim grabbed the barrel of her shotgun and that the shotgun went off. He testified that he did not pursue the defenses of accident or self-defense. He testified that the autopsy reports revealed that Applicant had shot the victim twice—and that she was using a single-shot, breach-action shotgun that had to be reloaded between each firing. He testified that the autopsy revealed that the victim had been shot once in the shoulder and a second time in the abdomen. He testified that he discussed with Applicant her claim that the shotgun accidentally discharged. He testified that he believed that a jury would not think that Applicant's actions demonstrated anything other than pre-meditated murder. He testified that the

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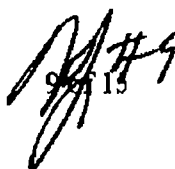
shotgun and the clothing that Applicant had been wearing at the time of the killing were wet and looked as if Applicant had tried to wash away the evidence. He testified that the spent shotgun shells were found near a vodka bottle and a bottle of pills in Applicant's home. He testified that Applicant's blood alcohol content was .27 at the time at which she was tested after her arrest. He testified that neither voluntary nor involuntary intoxication would have been legitimate defenses for Applicant to pursue considering the facts of the case. He testified that self-defense would not have been a possible defense because Applicant had walked to the victim's tent from her home with a shotgun.

Counsel testified that Applicant is an intelligent person, but that she has a short-term memory problem. He testified that Applicant never told him that she had any mental health issues. He testified that he did discuss Applicant's health issues with her but that she did not have mental health issues that prevented her from understanding the negotiated plea. He testified that he was aware that Applicant suffered from some physical ailments at the time of her plea. He testified that Applicant did tell him that she had had a stroke, but that he was not worried about her mental competency based upon his interactions with her. He testified that he was not aware that Applicant may have been in a mental institution in the past. He testified that, had he known that Applicant may have been in a mental institution in the past, he probably would have asked for a mental health evaluation in her case. He testified that he did not suspect that Applicant needed a mental health evaluation. He testified that he had no reason to believe that he suspect that Applicant was not mentally competent. He testified that he did not believe that her mental health was an issue in the case, and again referenced his assessment of Applicant as having been mentally "sharp." He testified that Applicant has a bachelor's degree and that she was mentally quicker in understanding things than his other clients. He testified that he believed that Applicant

understood the substance of their conversations and understood what was happening in her case. He testified that Applicant did not give him any indication that she did not understand the things that he was telling her about her case or that she did not understand the terms of the negotiated plea. He testified that he did not get any indication from Applicant's answers to Judge Miller's questions at the plea hearing that Applicant did not understand the questions or what was happening. He testified that he is certain that Applicant understood the terms of the negotiated sentence.

Due process prohibits the conviction of a mentally incompetent person. Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992) (citing Bishop v. United States, 350 U.S. 961 (1956)). That right "cannot be waived by a guilty plea." Id. at 308 S.C. 230, 232, 417 S.E.2d 594, 595-96 (1992) (citing Pate v. Robinson, 383 U.S. 375 (1966)). The "test for competency to plead guilty is no more stringent than the test for competency to stand trial." State v. Lambert, 266 S.C. 574, 579, 225 S.E.2d 340, 343 (1976). That test is "whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him." Carnes v. State, 275 S.C. 353, 354, 271 S.E.2d 121, 122 (1980) (citing Dusky v. United States, 362 U.S. 402 (1960)). The applicant in a PCR case "bears the burden of proof and is required to show by a preponderance of evidence he was incompetent at the time of his plea." Jeter, at 308 S.C. 232.

Applicant has not put evidence before this Court as to her supposed mental health issues other than her own testimony. Although she did testify at the evidentiary hearing about strokes that she has suffered on at least one occasion in her life, Applicant's testified cogently and clearly on her own behalf before this Court. She was responsive to questions and was able to

  
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communicate her own position on various issues through her testimony. Similarly, the transcript of the plea hearing is peppered with examples of Applicant's clear and cogent answers and affirmations to Judge Miller's questions. Applicant did not tell Counsel during his representation of her that she suffered from any type of mental illness or that she was unable to understand the substance of their discussions. Counsel thoroughly reviewed the evidence in the case with Applicant and reviewed with her potential defenses, the elements of the charges, and the evidence in the case. Applicant was engaged in Counsel's discussions with her regarding her defense. Counsel knew that Applicant had a bachelor's degree, and based upon that fact and the nature of his discussions with her, Counsel believed Applicant to be an intelligent individual. Counsel was aware of Applicant's physical ailments, and even mentioned them to Judge Miller during the plea hearing. Plea Tr. 12. When asked by Judge Miller at her plea hearing if Applicant had ever been treated for mental illness, Applicant answered, "No, sir." Plea Tr. 4. Applicant's assertion that she answered "yes" rather than "no" lacks all credibility in light of the transcript and in light of Applicant's testimony that she did not understand the question. This Court finds that, based upon Applicant's disclosure of her physical ailments to Counsel, Counsel's testimony that Applicant did not make him aware that she was allegedly suffering from mental health issues—which comports with her affirmation to Judge Miller at the plea hearing that she did not have a history of mental illness—it was reasonable for Counsel to not request a mental health evaluation of Applicant or to question her mental competency. Applicant's allegations that, at the time of her criminal case, she did not understand what was happening in her case, did not understand her discussions with Counsel, and did not understand the questions asked of her by Judge Miller at the plea hearing are without merit and lack credibility.

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This Court finds that Applicant has failed to meet her burden of proof in showing that she was incompetent at the time of her guilty plea. This Court finds that Applicant has failed to meet her burden of proof in showing that Counsel was constitutionally ineffective for failing to request a competency hearing since she has not shown any deficiency or resulting prejudice in Counsel's performance. As such, these allegations are denied and dismissed with prejudice.

*Applicant did not realize that she was entering into a negotiated plea.*

Applicant testified that she believed that the solicitor's plea offer was for voluntary manslaughter with a range of two to twenty years in prison. Applicant testified that Counsel told her that twenty years was the maximum amount of time that the Judge Miller would be able to give to Applicant after the guilty pleas. Applicant also testified at the hearing that she did not understand that the maximum sentence would be twenty years in prison. She testified that she understood the charge but not the amount of time to which she would be sentenced. Applicant testified that somebody told her that she would have to serve 85% of her sentence, but that she could not remember who told her that due to her stroke. Applicant testified that she discussed the plea agreement with Counsel and he recommended that she take the plea deal. She testified that she did not understand the sentence and believed that Judge Miller would decide the sentence. She testified that she did not remember what was said during the plea hearing. She testified that she does not remember talking with Judge Miller during the plea hearing. Applicant testified that Judge Miller did not say during the hearing that he had to accept or reject the negotiated plea. She testified that Judge Miller gave her a substantial break during the plea hearing so that she could think more about her decision to plead guilty. She testified that she did not believe that a twenty-year sentence was justified in this case.

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Counsel testified that he explained to Applicant that she was facing a potential sentence of thirty years to life in prison for the indicted charge of murder and an extra five years for the weapons charge. He testified that Applicant wanted him to explore potential plea offers. He testified that the lowest plea offer was a negotiated sentence of twenty years, to which Applicant ultimately pleaded guilty. He testified that he explained the terms of a negotiated plea to Applicant and told her that the sentencing court would be able to accept the negotiated sentence or leave it. He testified that he told Applicant that the plea offer would be a twenty-year sentence and that she would have to serve at least 85% of it and would be given credit for time served. He testified that Applicant did not give him any indication that she did not understand the nature of the negotiated sentence. He testified that he was certain that Applicant understood that the terms of the negotiated sentence would have required a twenty-year sentence. He testified that he never told Applicant that Judge Miller could have sentenced her within a two to twenty year range. He testified that Judge Miller said during the plea hearing that the court could not deviate from the twenty-year negotiated sentence and that the court had to either accept it or reject it. He testified that he and Applicant would have walked out and not pleaded guilty had Judge Miller rejected the negotiated sentence. He testified that Judge Miller did give him a thirty-minute break during the plea hearing so that he could talk with Applicant. He testified that he did not remember exactly what they talked about during the break. He testified that he thinks that the hesitation on the part of Applicant was that she disagreed with the solicitor's recitation of facts as it related to the nature of the confrontation between Applicant and the victim. He testified that would have taken the case to trial on murder and asked for a jury charge on voluntary and involuntary manslaughter had Applicant decided to go to trial instead of pleading guilty. He testified that Applicant came out of the meeting wanting to plead guilty pursuant to the negotiated sentence.

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Counsel testified that the facts in Applicant's case were not helpful to her and that he did not have much to work with in her defense.

This Court finds that Counsel was not constitutionally ineffective for failing to explain the nature of the negotiated sentence to Applicant and that Applicant knowingly and voluntarily entered her guilty plea; rather, this Court finds that Counsel adequately explained the terms of the negotiated sentence and that Applicant understood them. Counsel entered plea negotiations at Applicant's request after they reviewed the evidence in the case, the lack of viable defenses that Applicant would have should she have taken her case to trial, and the potential sentences that Applicant could face after trial. Counsel thoroughly explained to Applicant the terms of the negotiated offer of twenty years, and Applicant accepted the offer knowing that she would be sentenced to twenty years in prison for voluntary manslaughter should the plea court accept the negotiated sentence, which she believed was preferable to going to trial for murder. Counsel was sure that Applicant understood the substance of his explanations based on their quality of their interactions. Judge Miller mentioned multiple times during the plea hearing that the sentence would be a negotiated sentence. Judge Miller also pointed out that statements on behalf of the victim's family and Applicant's mitigation testimony would have had no effect on the sentence due to its being a negotiated sentence. Applicant affirmed to Judge Miller that she understood her trial rights but nevertheless wanted to plead guilty. Plea Tr. 5-6. Applicant affirmed that the solicitor's recitation of facts was true. Plea Tr. 8-9. Applicant affirmed that she was satisfied with Counsel's representation of her. Plea Tr. 8. Applicant's allegations that Counsel did not explain that her pleading guilty pursuant to a negotiated sentence would require plea court to sentence her to twenty years, if the court accepted the negotiated sentence, is without merit and lacks credibility in light of Counsel's testimony and the transcript from the plea hearing. This Court

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finds that Applicant wanted to plead guilty to voluntary manslaughter and possession of a weapon during the commission during a violent crime and be sentenced in accordance with the negotiated sentence rather than proceeding to trial on murder due to the weak defenses that would have been available to her at trial.

### **CONCLUSION**

Based on all the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant her Application for Post-conviction Relief. Therefore, this application is denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203 and 243, 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 post-conviction relief. Rule 71.1(g), SCRPC, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

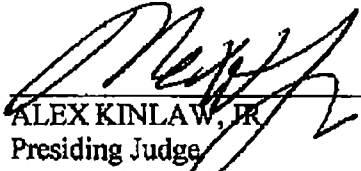
### **IT IS THEREFORE ORDERED:**

1. This application for post-conviction relief is denied and dismissed with prejudice; and

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2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 19<sup>th</sup> day of July, 2019.

  
ALEX KINLAW, JR.  
Presiding Judge  
Thirteenth Judicial Circuit

Creble, South Carolina

2019 JUL 25 P 2:03  
CLERK OF COURT  
SOUTH CAROLINA

**WITNESSES**

Anthony Raines

Pickens County Sheriff's Office

9/12/2016

**ARREST WARRANT NUMBER**

2016A3910101039

**ACTION OF GRAND JURY**

TRUE BILL

Date

MAY 18 2017

*Melanie Davis*

Foreperson of Grand Jury

**VERDICT**

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-39-1313  
JBC

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

MAY 16 2017

TERM 2017

THE STATE

vs.

REBECCA BARTEN SMOAK.

Indictment for

0549

POSSESSION OF A WEAPON DURING THE  
COMMISSION OF A CRIME

VIOLATION § 16-23-0490

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF PICKENS )

INDICTMENT FOR  
POSSESSION OF A WEAPON DURING THE COMMISSION OF A  
CRIME


At a Court of General Sessions, convened on **MAY 16 2017** the Grand Jurors of Pickens

County present upon their oath:

That REBECCA BARTEN SMOAK did in Pickens County, on or about the 10th day of September, 2016, possess or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: Murder.

This is in violation of §16-23-490 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.

  
\_\_\_\_\_  
SOLICITOR BAR # 78744

**WITNESSES**

Anthony Raines

Pickens County Sheriff's Office

9/12/2016

**ARREST WARRANT NUMBER**  
2016A39101038

**ACTION OF GRAND JURY**

• JURE BILL  
Date MAY 16 2017  
*Melanie K. ...*  
Foreperson of Grand Jury

**VERDICT**

Foreperson of Petit Jury  
Date:

DOCKET NO. 2017-GS-39-<sup>JBC</sup> 1314

The State of South Carolina  
County of Pickens

COURT OF GENERAL SESSIONS  
MAY 16 2017 TERM 2017

THE STATE  
vs.  
REBECCA BARTEN SMOAK

Indictment for  
0116  
MURDER  
VIOLATION § 16-03-0010, 0020

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

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF PICKENS )

INDICTMENT FOR  
MURDER

At a Court of General Sessions, convened on **MAY 16 2017** the Grand Jurors of Pickens  
County present upon their oath:

That REBECCA BARTEN SMOAK did in Pickens County, on or about the 10th day of September, 2016,  
unlawfully and with malice aforethought kill JAMES BRAZEAL by means of shooting him, and that JAMES  
BRAZEAL died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of  
Laws (1976) as amended.

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

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

*[Signature]*  
SOLICITOR BAR # 78744