

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Marion County

Honorable William H. Seals, Circuit Court Judge

KENNETH ROBINSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001378

APPENDIX

ADAM SINCLAIR RUFFIN
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

SAMUEL KEY
Assistant Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

RECEIVED

Apr 13 2020

S.C. SUPREME COURT

INDEX

INDEX	i
GUILTY PLEA TRANSCRIPT DATED NOVEMBER 26, 2007	1
APPLICATION FOR POST-CONVICTION RELIEF	33
RETURN.....	57
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JUNE 26, 2019	63
ORDER OF DISMISSAL	101
INDICTMENT.....	118
SENTENCE SHEET.....	122

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF MARION) COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA)

STATE,)
VS.)

KENNETH DEON ROBINSON)
DEFENDANT)

TRANSCRIPT OF RECORD
2007-GS-33-78
November 26, 2007
Marion, South Carolina

B E F O R E:

D. GARRISON HILL, JUDGE.

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

JACK W. LAWSON, JR., ESQ.
Attorney for the State

RALPH WILSON, ESQ.
Attorney for the Defendant

FRANCES BAKIS-RAY, RPR
OFFICIAL COURT REPORTER

I N D E X**P A G E**

1		
2		
3	Qualifying of defendant	4
4	Facts by Mr. Lawson	11
5	Mitigation by Mr. Wilson	16
6	Remarks by the mother	24
7	Remarks by Reverend Davis	25
8	Remarks by the grandmother	27
9	Remarks by the defendant	28
10	Sentence of the Court	29
11		

E X H I B I T S**COURT'S:**

14	NO.	DESCRIPTION	I.D.	EVD.
15	1	4 Letters	31	31
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 MR. LAWSON: May it please the Court.

2 THE COURT: Yes, sir, Mr. Lawson.

3 MR. LAWSON: The State would call
4 indictment 2007-GS-33-78 State versus Kenneth Deon
5 Robinson. Your Honor, Mr. Robinson comes tendering
6 a plea to homicide by child abuse count two. The
7 indictment -- the remaining counts of the indictment
8 will be dismissed. Your Honor, for purposes of this
9 plea it's my understanding with the Defense that we
10 would ask Your Honor to take the plea today and
11 defer sentencing until in the morning. Primarily
12 from the State side, the victims will be here in the
13 morning but couldn't get here this afternoon, and we
14 would ask that Your Honor consider that.

15 THE COURT: All right.

16 THE CLERK OF COURT: We need to swear him
17 in also.

18 WHEREUPON,

19 KENNETH ROBINSON,
20 having been duly sworn by the Deputy Clerk of Court,
21 testified as follows:

22 THE COURT: Okay, and you're Kenneth Deon
23 Robinson?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: How old are you, Mr. Robinson?

1 THE DEFENDANT: 28.

2 THE COURT: How far did you go in school,
3 sir?

4 THE DEFENDANT: I went to 12th grade. I
5 graduated.

6 THE COURT: And what kind of work have you
7 done in the past, sir?

8 THE DEFENDANT: I've been locked up in the
9 county jail.

10 MR. WILSON: He said in the past.

11 THE DEFENDANT: I worked at Blumenthal
12 Mills. It's a textile plant.

13 THE COURT: How long have you been in
14 jail?

15 THE DEFENDANT: Four-and-a-half years.

16 THE COURT: Have you had any alcohol,
17 drugs or medication in the past 48 hours, sir?

18 THE DEFENDANT: No, sir.

19 THE COURT: Do you have any physical,
20 mental, or emotional condition that might keep you
21 from understanding what's happening here today?

22 THE DEFENDANT: No, sir.

23 THE COURT: Have you had enough time to
24 talk to Mr. Wilson about your case?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Fully satisfied with his
2 services as your lawyer?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Has he done everything you
5 want him to do and kept you apprized of your rights
6 and your options and represented you well in this
7 case, sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. And do you
10 understand the maximum sentence for this charge is
11 20 years to life?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand the elements
14 of the crime of homicide by child abuse?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have you fully discussed those
17 things with Mr. Wilson?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And have you talked to him as
20 long as you need to?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. Mr. Robinson, are
23 you pleading guilty because you are guilty, sir?

24 (Confers with attorney.)

25 MR. WILSON: He's asking -- if I may.

1 THE COURT: Yeah, sure. You can talk to
2 him.

3 MR. WILSON: What he's saying is, he's
4 pleading guilty under North Carolina versus Alford
5 to this charge. That's what he's -- that's what
6 he's saying.

7 THE COURT: Okay, I didn't know that. I
8 don't believe I'm going to do that. I did not know
9 that was what was being worked out. I will not
10 accept an Alford plea to this offense.

11 MR. WILSON: All right. May I have a
12 minute to speak to him about it?

13 THE COURT: Sure.

14 (Pause while defendants confers with his attorney.)

15 MR. WILSON: Your Honor, I've discussed
16 that with him and he understands. He wants to go
17 forward with his plea.

18 THE COURT: Okay. You, as I understand
19 it, have signed the sentencing sheet for count two
20 of the indictment which is homicide by child abuse.
21 And again, sir, I'll ask you, are you pleading
22 guilty to that charge because you are guilty?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And you understand that this
25 offense is classified as a violent offense and a

1 most serious offense?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Has your lawyer talked to you

6 about the two strikes law and the three strikes law?

7 You understand that?

8 THE DEFENDANT: He didn't talk to me about
9 it but I understand.

10 THE COURT: You better confer with him.

11 (Pause while defendant confers with his attorney.)

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You understand the two strikes
14 law and three strikes law?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And you understand further
17 that the law is that if you were to be convicted of
18 another offense that's classified as serious or most
19 serious, then depending on your record, if any, you
20 could be subject to a mandatory term of life in
21 prison without the possibility of parole. You
22 understand that, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now Mr. Robinson, you
25 understand that you have the right to a jury trial,

1 sir?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And we have a jury coming in
4 tomorrow as I understand it. And I understand this
5 case would be called for trial tomorrow, and you
6 certainly can go forward with that trial and at a
7 jury trial you would be presumed innocent. You
8 would not have to prove -- you are not guilty; you
9 wouldn't have to prove you're innocent. Instead,
10 the burden of proof is on the State and you can only
11 be convicted of this crime if the State convinced
12 all 12 jurors, whose verdict must be unanimous, that
13 they had proven the elements of the crime of
14 homicide by child abuse. Do you understand that,
15 sir?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Now, sir, do you understand
18 further that at your trial you can see and hear the
19 witnesses. You can confront the evidence against
20 you. You can cross-examine the witnesses, have your
21 lawyer help you do that. You could bring in your
22 own witnesses using the subpoena power of the Court.
23 You could testify if you wanted to or you could
24 choose to remain silent. If you chose to remain
25 silent, the Court would tell the jury that you have

1 the absolute right to do that under the law, and
2 they could not hold that against you or take it into
3 account whatsoever in determining whether you're
4 guilty or not guilty. You understand that, sir?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: At your trial you could raise
7 any defenses you may have to these charges --
8 charge, and present any evidence you wish to and you
9 could challenge the State's evidence as I've said.
10 You could challenge any statements you had given to
11 the police or any searches that were made or any
12 testing that was done or should have been done. Do
13 you understand those rights you would have with a
14 jury trial, sir?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Now, do you understand further
17 you have to give those rights up in order to plead
18 guilty here today in court?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And are you relying on
21 anyone's prediction or promise or prophecy as to
22 when you might be paroled or eligible for parole in
23 entering this plea?

24 THE DEFENDANT: No, sir.

25 THE COURT: All right. And you understand

1 that the classification of the offense is violent
2 and most serious and would mean that I can't give
3 you any prediction about those things either, and
4 I'm certainly not going to other than to tell you
5 you better assume that any sentence you receive
6 you're going to serve all of it in entering your
7 plea. You understand that, sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Have you understood all my
10 questions, Mr. Robinson?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you have any questions of
13 me, sir?

14 THE DEFENDANT: No, sir.

15 THE COURT: And do you need to talk to
16 your lawyer any further?

17 THE DEFENDANT: No, sir.

18 THE COURT: All right. And has anyone
19 told you how to answer my questions?

20 THE DEFENDANT: No, sir, nobody has.

21 THE COURT: Okay. All right, listen
22 carefully because the State's going to set forth the
23 facts that relate to your case.

24 And yes, sir, Mr. Lawson.

25 MR. LAWSON: May it please the Court, on

1 May the 20th of 2003 at 11:54 p.m. in the evening
2 Marion 911 received a phone call that a child was
3 having trouble breathing and had actually stopped
4 breathing. As it turns out Mr. Robinson was the one
5 who was calling in relation to Minor ,
6 who was three years, eight months at the time. She
7 was the daughter of Mr. Robinson's live-in
8 girlfriend. Approximately a month-and-a-half
9 earlier on April the 8th the child had had bruises
10 on her back side. An investigation by DSS at that
11 time indicated that she had been spanked, and a
12 safety plan was done in which Ms. McDaniel, the
13 mother of the child, agreed not to leave the child
14 alone with Mr. Robinson. However, on this
15 particular evening Ms. McDaniel was working the
16 night shift at Blumenthal, which is where I
17 understand she and Mr. Robinson had met both having
18 worked there. She went in at approximately 11:43 on
19 that evening. And when EMS arrived, they observed a
20 child that was badly bruised and was straight-lined
21 on the monitors. She was taken immediately to the
22 emergency room and was pronounced dead at 12:40 on
23 that evening. That would have been the evening
24 of -- early morning of May the 21st. An autopsy was
25 then performed and revealed that the child had died

1 from blunt force trauma to the head. She was
2 bleeding in her brain, and that was the immediate
3 cause. And Mr. Robinson in a statement admitted
4 that he had shaken the child, and I think he also
5 said that he had man-handled her. In the
6 investigation it was found that Mr. Robinson and
7 Ms. McDaniel, the mother of the child, were the only
8 two people that had had contact with the child since
9 about April the 20th, which was Easter Sunday of
10 that year. As a result of the statement which
11 Mr. Robinson gave and the physical condition of the
12 child upon arrival of EMS at the house where Ms.
13 McDaniel and Mr. Robinson were residing, he was
14 charged with homicide by child abuse and had been
15 incarcerated since May the 21st of 2003 on this
16 charge now. He has no prior record that the State's
17 aware of.

18 THE COURT: And is there a plea agreement,
19 Mr. Lawson?

20 MR. LAWSON: Other than taking the plea to
21 homicide by child abuse, there is no other agreement
22 in the case, Your Honor. The other counts will be
23 dismissed.

24 THE COURT: Okay. So the Solicitor's
25 Office has set forth their version of the facts. Is

1 that what happened, Mr. Robinson?

2 THE DEFENDANT: That's pretty much it.

3 THE COURT: And did you in Marion County
4 between April 8th of 2003 and May 20th of that year
5 unlawfully cause injury resulting in subsequent
6 death to one Minor ?

7 THE DEFENDANT: I didn't understand.

8 THE COURT: I said, did you in Marion
9 County between April 8th and May 20th, 2003,
10 unlawfully cause injury resulting in the subsequent
11 death to Minor while committing child
12 abuse or neglect and the death of Minor

13 ----

14 THE DEFENDANT: Yes, sir.

15 THE COURT: ---resulting from those
16 injuries?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. And you have no
19 plea agreement with the State other than the
20 dismissal of the other counts of the indictment; is
21 that right, sir?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. I find there's a
24 factual basis for the plea. It's been entered into
25 freely and voluntarily and with the assistance of

1 skilled counsel. And I understand sentencing will
2 be in the morning?

3 MR. WILSON: Yes, sir.

4 THE COURT: Okay. Anything further at
5 this time?

6 MR. WILSON: No, sir.

7 THE COURT: All right. Okay.

8 MR. LAWSON: Nothing from the State, Your
9 Honor.

10 (Plea was adjourned until the next morning.)

11 MR. LAWSON: May it please the Court, Your
12 Honor, the State would call for sentencing Kenneth
13 Robinson, indictment 2007-GS-33-78. Plea was
14 accepted yesterday and we are here for sentencing
15 today, Your Honor.

16 MR. WILSON: Your Honor, may I have a
17 minute before we go forward please? May I have a
18 minute with the Solicitor before we go forward?

19 THE COURT: Oh sure, yes, sir.

20 (Pause while Mr. Wilson confers with the defendant.)

21 MR. WILSON: We're ready, Your Honor.

22 THE COURT: Yes, sir, Mr. Lawson.

23 MR. LAWSON: May it please the Court, Your
24 Honor, the facts were discussed yesterday. Today we
25 have the victim's family here; her grandmother Ms.

1 Rose McDaniel, the father, Mr. Hazelton and family
2 members as well, Your Honor. Just to present to
3 Your Honor, this is what the child appeared -- those
4 are autopsy photographs, just overviews and the
5 facts are as indicated yesterday during the guilty
6 plea, Your Honor. It -- on the 20th of May, 2003,
7 the 911 call was made, the child was not breathing,
8 EMS arrived. She was taken to the emergency room at
9 the hospital here in Marion at 12:19 and at 12:40
10 she was pronounced dead. During the autopsy it was
11 determined that she had a bleeding in her head from
12 blunt force trauma or shaking that occurred earlier
13 in the evening was the direct and proximate cause of
14 death. Through the investigation it was determined
15 that Ms. McDaniel, who was the mother of the child,
16 and Mr. Robinson were the only two people that had
17 been in or around the child since approximately
18 April the 20th, a month prior to this incident
19 having occurred. As a result, both Mr. Robinson and
20 Ms. McDaniels were charged. The charges against her
21 are still pending. She, through her attorney, has
22 indicated that she also will plead to homicide by
23 child abuse. There will be no recommendation by the
24 State as to her plea as well, Your Honor. And I
25 would ask if any member of the family has anything

1 they would like to say. Neither would like to
2 address the court, Your Honor.

3 THE COURT: Okay. Well, I certainly
4 appreciate y'all being here and you're presence
5 alone certainly sends a message. So. Yes, sir,
6 Mr. Wilson.

7 MR. WILSON: Please the Court, Your Honor.
8 Mr. Robinson is 28 years of age and at the time of
9 this incident, he was 23. He's been in jail now for
10 better than four years awaiting this day. Your
11 Honor, I -- you know let me say at the outset I
12 understand that there's nothing that I can say which
13 is going to change the facts of this case or the
14 seriousness of this matter and I understand that.
15 And certainly I'm not intending to say anything
16 which takes away from the death of this child, which
17 was obviously a travesty and I'm not trying to
18 minimize that in any way whatsoever in my
19 presentation to the Court. But what I am trying to
20 do is explain to the Court the circumstances
21 surrounding this young man and how he found himself
22 in the situation that he found himself in. And in
23 order to do that I think it's fitting for me to tell
24 you just a little bit about him so that you have
25 some appreciation of who he is and who he was before

1 he found himself before this court. Judge, when he
2 graduated from high school and he did, he was not an
3 honor student or anything, but he graduated from
4 high school. He immediately went into the national
5 guard where he served 7 years until this incident
6 occurred. He was arrested and actually was an
7 active member of the guard at the time he was
8 arrested for this offense and was supposed to be
9 going to Iraq and the only reason he didn't go was
10 because he was arrested shortly before and placed in
11 custody. The other thing that I'd say about him,
12 Your Honor, is is that he has been around children
13 all of his life. Siblings, he dated other women who
14 had children, nothing like this has ever happened to
15 him. And he's never been accused of anything even
16 remotely similar to this kind of incident prior to
17 this time. He has absolutely no criminal history,
18 any type whatsoever. Has been a good citizen in
19 every respect and every meaning of the word, until
20 this incident. And what happened to him, you know,
21 as best I can tell from my conversations with him
22 and from my conversations with his mother is is that
23 he found himself with cancer and cancer of the
24 stomach which would have been just a few months
25 actually before this occurred. He -- I think it was

1 called lymphoma of the stomach. He was being
2 treated for that, he was on chemotherapy, he was on
3 several different medications, all of which had you
4 know dire side affects on him and on his ability to
5 function but he continued to try. He had worked
6 at -- he had worked at Blumenthal mills for five
7 years prior to this incident occurred and was a very
8 valued employee there. He -- after he got sick with
9 cancer he had to stop working for a period of time
10 because of the cancer. And he was going to
11 treatments back and forth and doing the best that he
12 could do to try to make it. The young lady Ms.
13 Brandy, who he was living with, was the mother of
14 this child, and the child was living in the home
15 with him. And apparently what would occur, is she
16 would go to work at Blumenthal which was how the two
17 of them actually met. They were both employees at
18 Blumenthal, had been there for several years, they'd
19 known each other for several years but they'd only
20 lived together for a few months before the incident
21 occurred. Apparently, at some point in time they
22 started dating and they both had been living with
23 someone else and then they started living together.
24 And within a couple of months of that, DSS was
25 called in and -- which was the initial event and at

1 that time it's my understanding that DSS asked Ms.
2 Brandy if she would have the child live with her
3 mother or at least which she goes to work to leave
4 the child with the mother, which would have been the
5 maternal grandmother of the child. And of course,
6 from all indications, that was never done. She
7 continued to leave the child with him as she went to
8 work in the evening time. For a period of about two
9 weeks or maybe 3 leading up to this incident no one
10 outside of the home saw the child, as best I can
11 tell from what I've been able to glean from all of
12 this. And this would have been after DSS had gotten
13 involved. No one, DSS, none of the parents either
14 paternal or maternal parents came to -- grandparents
15 came to check on the child. The child was basically
16 alone with Ms. Brandy and with Mr. Robinson for that
17 entire period of time. It is really unclear in
18 going back to the statement that Mr. Robinson gave
19 and the night that this incident occurred, he gave a
20 very detailed statement to the police about what he
21 said he had done. And he admitted to them that --
22 that he had been rough with the child, he admitted
23 to them that he had shaken the child in his
24 statement to the police. Obviously, Your Honor, he
25 understands that that's wrong, obviously, he's pled

1 guilty here and I think that that says again says
2 something about him. The fact that he could have
3 had a trial had he wanted a trial and I'm sure this
4 court would have given him a trial. He has
5 indicated look, no I'm pleading guilty. I'm guilty.
6 I'm standing up here. I'm pleading guilty. And
7 again, I'm not offering any of this to suggest that
8 somehow you know what happened is okay because it's
9 not. It's egregious, we all understand that, and
10 we're here because of that. What I am saying
11 though, is I believe though Your Honor, is that this
12 is something that happened that he would never ever
13 do again, you know, if -- you know, if he's ever out
14 of jail again. He would never ever do this kind of
15 thing again. Maybe it was all of the circumstances
16 combined, maybe it was the chemo, and we can stand
17 here all day and guess about what caused it, I don't
18 know. We do know that it happened. And but I do
19 believe, Your Honor, that there is something worth
20 saving in this young man. I do believe that. You
21 know in my conversations with him and just in his
22 history, just in looking over how he has lived his
23 life up until this one egregious incident. You know
24 I think that's important and so often I think we
25 lose sight of the fact that somebody who has done

1 good for 20 plus years and then all of the sudden
2 they do something as -- even though as it is as
3 horrendous as this is, doesn't mean that there is
4 not something good inside of that individual or in
5 that person. Something worth saving. He
6 understands that he's got to be punished. There's
7 no question about that and he understands that his
8 punishment will be significant. He understands
9 that. But what I am asking this Court and what I am
10 saying to this Court is I do believe, looking at
11 what he has done to this point, what he has done for
12 society at this point, his being in the service, his
13 graduating from school, his not having a criminal
14 record, his not being in trouble with the law, I
15 think all those things are important and I would ask
16 the Court to be mindful of those things and to take
17 those things into consideration when the Court, you
18 know, passes sentence on this young man. I know
19 that he wants to get this behind him and when I talk
20 to him out at the jail and I'm -- I think I'm like
21 his fourth lawyer that he's had over a period of
22 four years that he's been in the jail. Not one time
23 did he say to me well you know I want you to get me
24 a bond and get me out of here, which is what I hear
25 most often from defendants when I go to see them,

1 first thing they want to know is how soon are you
2 going to get me out of here, you know. No. He
3 didn't ask me that. He said look I want you to go
4 talk to the Solicitor, see what you can do, do the
5 best you can for me, that's all I ask you to do. I
6 think that's fair. I thought that was real honest
7 of him. He never tried to deny that he gave a
8 statement which is another thing that often happens.
9 He could have very easily come in and say look the
10 police tricked me into saying this or made me say it
11 or they're not telling the truth or whatever it is.
12 None of that. He is accepting responsibility for
13 what he has done and for his role in this process.
14 And I ask the Court and I -- to give him credit for
15 doing those things. I also ask you, Your Honor, to
16 give him credit for the time that he has spent in
17 jail which is again, a little better than four
18 years. Now with me is his mom who is standing to
19 this side. This is his minister who is behind me,
20 Reverend Davis. I also have, Your Honor, his
21 grandmother to my left.

22 THE GRANDMOTHER: I am the grand mother.

23 MR. WILSON: I have four statements that I
24 would like to pass up to the Court for the Court to
25 review which are just friends and people who've

1 known him all of his life who he had been involved
2 with and all of which have children who he had been
3 around and who he has kept and babysitted for and
4 one young lady who he had a relationship with and
5 nothing like this has ever happened before. There
6 was not even an indication that something like this
7 would even be possible with the kind of person that
8 he is.

9 (Papers were tendered to the Court.)

10 MR. WILSON: And I just ask the Court to
11 take those things into consideration that before you
12 hear from his mother and from his minister. I don't
13 know if grandma -- do you want to say something?
14 And his grandmother.

15 GRANDMOTHER: Yes, I do.

16 THE COURT: Thank you very much,
17 Mr. Wilson. I appreciate the fine job you've done
18 for Mr. Robinson, and I will be glad to hear from
19 anybody else. Just tell me your name before you
20 speak so we have it for the record.

21 MOTHER OF DEFENDANT: Okay. I'm Gwen
22 Robinson, Kenneth's mother, Kenneth is my oldest. I
23 have two sons. As a child growing up I never had a
24 problem with him. I mean, I could sit here and try
25 to tell you that he was an angel. He wasn't an

1 angel, no, I can't tell you that. He was a good
2 child; he was a very good child. He helped plenty
3 of the people in my family with their kids, and we
4 came from a big family. I am the oldest of ten,
5 five boys and five girls. And he's the oldest
6 grand. We never had any problems with him as far
7 as, you know, you have problems like little children
8 going and, you know, picking at other or something
9 like that. But when he got up of age Kenneth was
10 also the one that, don't you do this, don't you do
11 this. You know, he always watched after his cousins
12 and his brother, his nie -- his little -- well, his
13 sister. He had this little girl he used to keep; he
14 called her his sister. And he still, you know, he
15 still tries to watch over her. Even when he was in
16 jail he watched over her, told her the right things
17 to do. He always tried to keep her in, you know, in
18 check along with the rest of them. I mean, no
19 matter what, you know, it's -- he's still my child;
20 I love him. And I don't -- I don't think he would
21 do anything like this, you know, it's just a bad
22 situation, just got caught up in a bad situation.
23 He's just -- he just a good child, you know. Well,
24 he's not a child anymore; he's a grown man but as a
25 child he was a good one. I can truly say that. I

1 had two. The other one is a different story, but
2 this one, you know, he's a good child.

3 THE COURT: Thank you, Ma'am.

4 MR. DAVIS: My name is Reverend Johnny
5 Davis, pastor with the ** Giddeon Baptist Church. I
6 just want to say that I think that you've heard a
7 lot about his past so I won't insult the Court by
8 saying more about the past but I would like to
9 elaborate on the present. In I knowing Mr. Robinson
10 family before he was ever born. I know three
11 generation of his family, but I won't talk about
12 that. What I'd like to say is that I had the
13 opportunity along with some of the other Giddeon
14 brothers to go to the detention center in Marion
15 County, and we would minister to the inmates. And
16 we all agree that Mr. Robinson, Kenneth, is a
17 delight, not just to the immediate inmates but to
18 the whole prison detention center. He grown to be
19 someone that really have a great interest to help
20 educate people as to how to become a better person.
21 And when I went to visit him on the very first time
22 I really was surprised because I was ministering to
23 him, and it turns around he started ministering to
24 me. And I was really amazed as to his wisdom, you
25 know, spiritual wisdom so I won't talk about

1 anything that happened, and like I said, may be
2 irrelevant but from a character standpoint I can say
3 that I'm really impressed as to way he grown and
4 understand a lot of that has come since he was
5 detained. And like the other ministry, like I said,
6 from the Gideon ministry we -- they've shared with
7 me as to how much they appreciate him by helping
8 them with the inmates and help educate them as to
9 how to become a better person. And just on last
10 Sunday when we was there I was very amazed not --
11 you know, very amazed at Mr. Robinson not only
12 having some of the other inmates, especially him,
13 they weren't impressed for their family members.
14 They wasn't asking for themselves; they was asking
15 for their family members, their friends, and that
16 amazed me. As attorney Wilson said, you know, he
17 doesn't have that much concern as to what he's done.
18 I mean, sure, he had concern, but you know, he have
19 a greater love for society and that's rare, you see,
20 because normally when somebody is going through that
21 type of ordeal they want some relief, they want to
22 change the situation but he was most concerned about
23 his family members and his friends and getting a
24 prayer for them and that just amazed me. So
25 that's -- I just found that to be astonishing.

1 THE COURT: Thank you, sir.

2 GRANDMOTHER: My name is Karen Felton.

3 I'm his -- Kenneth grandmother. I give honor to
4 him. I love him very much. He was a honorable
5 young man, and he still is. I don't care what you
6 say about him he is a good, good person, and he been
7 around children all his life. And I had ten and he
8 was with them. I helped raise him; I never had no
9 problems out of him. I never in my life had
10 problems out of him. Since he been in jail he
11 encourage me a lot. He strict -- he lift me up
12 every time I go out there because he is a wonderful
13 person. And he did love this little girl. I know
14 that from myself. I had went there and I have, you
15 know, fed with them and talk to them and he loves
16 that little girl and I know he wouldn't have hurt
17 that little girl for nothing in this world because
18 he is a honorable person. That's all I got to say,
19 Your Honor. Lord have mercy.

20 THE COURT: Thank you, Ms. Felton.

21 MR. WILSON: Thank you very much, Your
22 Honor, that's it.

23 THE COURT: Mr. Robinson.

24 THE DEFENDANT: First Your Honor, I would
25 like to give thanks to God 'cause he's brought me a

1 long way. And today I'm looking for him to be
2 glorified today, not only just for something easy
3 but maybe I was -- I just put it like this right
4 here. I'm just looking for God to glori -- be
5 glorified today just like he was when he helped me
6 free cancer. I came into Marion Detention County
7 four years ago diagnosed with cancer and I got
8 healed in jail. I'm thankful for that. And today
9 I'm just asking, and in my prayers I pray that God
10 touch your heart today, and this will be done. And
11 I'd like to apologize -- I apologize to the McDaniel
12 family for whatever went on. We can't change that.
13 All we can do is look to the future. And I hope
14 that God put forgiveness in your heart. I know
15 y'all care for him, the grandma and the brother, the
16 uncle. I don't know about the rest of them 'cause I
17 have never met them, but I know the grandmother a
18 little. And that's all I mean. The Lord will be
19 done.

20 THE COURT: And you mentioned your illness
21 and your lawyer mentioned it as well, but certainly,
22 as you told me yesterday, at the time this happened
23 you knew it was wrong; didn't you?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Okay. Well, I

1 appreciate whatever everybody said and this is a
2 very difficult case I think from everybody who is
3 involved and I appreciate the skillful ways it's
4 been handled both by the State and by you,
5 Mr. Wilson. And I appreciate the victim's family
6 being here and the family of Mr. Robinson being here
7 to support him and the pastor. You know, cases that
8 come into criminal court are always difficult and
9 tragedy is re-told and re-lived here almost every
10 day. And sometimes it's incomprehensible just the
11 magnitude of what has occurred, and I think in this
12 particular case it's breathtaking. And certainly,
13 with a child that young and vulnerable involved it
14 hits home to everybody in this room who has either
15 been a child or is now a parent or grandparent and
16 it is something that strikes the very core of our
17 society and culture. But things often can't be
18 explained, and I don't think anyone comes in here
19 looking for the Court to give answers to questions
20 underlie all these things; I think there are other
21 places to go for that. And I'm certainly not trying
22 to give answers for it or preach about it, but I do
23 often see things that are almost beyond words in the
24 heart that they illustrate. And I have a saying
25 that I use sometimes when that happens, and it is

1 that someone once said that man human kind is the
2 only creature that both laughs and cries and that's
3 because it's the only creature that knows the
4 difference between the way things are and the way
5 things should be. And I hope everyone today will
6 gain some solace and comfort in what happens here.
7 No one is going to be entirely happy with what
8 happens, but that's the way justice is in many ways.
9 This case, as I understand it, was set for trial and
10 would have taken pretty much the rest of the week
11 and I think it would have been as the trial process
12 itself was many years ago an ordeal for everyone,
13 not only for the families of victims but the
14 witnesses having come in and having all those scars
15 reopened and wounds reopened as well.

16 And certainly, Mr. Robinson, by your
17 accepting responsibility you've saved the State the
18 time and expense of that and also the time and
19 expense in human terms of having people have to go
20 back through what had to be unbearable at the time
21 and certainly it would be hard to bear this week.
22 And under our justice system when someone does plead
23 guilty and accepts responsibility the custom is that
24 they're entitled to some consideration for that and
25 accepting responsibility and showing remorse and

1 apology you're entitled to some consideration for
2 that as well. But I understand you don't have a
3 record but also understand what happened in this
4 case. And the sentence range I have is 20 years to
5 life, and in this instance I find that the
6 appropriate sentence is sentence of 45 years with
7 credit for time served. Good luck to you, sir.

8

9 (Court's Exhibit Number 1, four letters, was
10 marked and made a part of the record.)

11

12 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

13

14

15

16

17

18

19

20

21

22

23

24

25

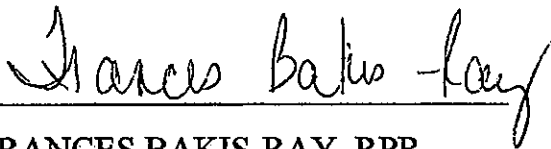
1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA }
4 COUNTY OF FLORENCE }
5
6

7 I, FRANCES BAKIS-RAY, Registered
8 Professional Reporter (RPR), court reporter for the
9 State of South Carolina, Twelfth Judicial Circuit,
10 do hereby certify that the foregoing proceeding is a
11 stenographic report and was transcribed through
12 computer-aided transcription; that the foregoing
13 transcript contains a true record of the
14 proceedings.

15 I further certify that I am neither
16 counsel for, nor related to nor employed by any of
17 the parties connected to the action, nor am I
18 financially interested in the action.

19 Witness my hand at Florence, South
20 Carolina, this 11th day of March, 2008.

21
22 
23

24 FRANCES BAKIS-RAY, RPR
25 My Commission Expires: 9-13-2014

FORM 5

STATE OF SOUTH CAROLINA)

County of Marion)

IN THE COURT OF COMMON PLEAS

Kenneth Robinson #325713)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

2810-CP-33-659

APPLICATION FOR

POST-CONVICTION RELIEF

BOOK 27-56

FILED

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 Lieber Correctional Institution, P.O. Box 205
136 Wilborn Ave. Ridgeville, SC. 29472
2. Name and location of Court which imposed sentence Marion County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) Mrs. McDaniel
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2007-GS-33-78 (homicide by child abuse)

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) November 26, 2007 (45-years)
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty plea of guilty
- (b) after a plea of not guilty n/a
- (c) after a plea of nolo contendere n/a
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. affirmed conviction and sentence
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. December 3, 2009
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2009-UP-578
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) n/a

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel, failure to
- (b) investigate resulting in erroneous advice, rendering
- (c) plea involuntary.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see attached memorandum of law in support
- (b) same as above
- (c) same as above
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. n/a
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. n/a
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. n/a

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. n/a

ii. _____

iii. _____

iv. _____

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

i. n/a

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?

first filing for post conviction relief

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

(a) which grounds have been presented:

i. n/a

ii. _____

iii. _____

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

i. n/a

ii. _____

iii. _____

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) first filing for post conviction relief
- (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? yes
- (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. Mr. Ralph Wilson, Esquire
P.O. Box 1827, Conway, SC. 29526
- ii. Ms. M. Celia Robinson, Esquire
South Carolina Office of Appellate Defense
- iii. same as i
- (b) the proceedings at which each such attorney represented you:
- i. plea and sentencing
- ii. direct appeal
- iii. _____

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

Kenneth Robinson -- Petitioner,

-VS-

State of South Carolina -- Respondent,

MEMORANDUM OF LAW IN SUPPORT OF
APPLICATION FOR POST CONVICTION RELIEF
PURSUANT TO S.C. CODE ANN.
§§ 17-27-20 THROUGH 17-27-160

Respectfully Submitted,

/s/ Kenneth Robinson
Kenneth Robinson
SCDC# 325713
Lieber Corr. Inst.
P.O. Box 205
Ridgeville, SC. 29472

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

Kenneth Robinson #325713) Indict. No. 2007-GS-33-78
Petitioner,)
- V -) MEMORANDUM OF LAW IN SUPPORT OF
State of South Carolina) APPLICATION FOR POST CONVICTION
Respondent,) RELIEF PURSUANT TO S.C.CODE ANN.
_____) §§ 17-27-20 THROUGH 17-27-160

COMES NOW, Kenneth Robinson, pro-se, herein after petitioner seeking relief in this Honorable Court pursuant to S.C. Code Ann. §§ 17-27-20 through 17-27-160, claims that his Constitutional Rights have been violated in a number of ways, including but not limited to his Sixth Amendment right to the effective assistance of counsel and his Fourteenth Amendment right to due process of law that is protected under the Federal Constitution.

Petitioner, through the issues presented, statement of facts and citations of authorities relied on will show unto this Honorable Court that he is entitled to the requested relief sought herein.

Respectfully Submitted,

/s/ Kenneth Robinson
Kenneth Robinson

STANDARD OF REVIEW

In Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.E.2d 674 (1984), the United States Supreme Court set forth a two-part standard for evaluating claims of ineffective assistance of counsel. The first part of the test requires that a defendant show that his counsel's performance was deficient, such that it falls below an objective standard of reasonableness.

The second part of the test requires that a defendant show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.

This second part of the Strickland test has also been referred to as the "prejudice" requirement. Although the Supreme Court decision in Strickland dealt with ineffective assistance of counsel in a capitol sentencing proceeding, and was premised in part on the similarity between such a proceeding and the usual criminal trial, the same two-part standard was extended so as to apply to ineffective assistance claims arising out of the plea process in Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.E.2d 203 (1985).

In Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985), the Supreme Court held that in the context of determining the voluntariness of a guilty plea that is entered upon the advice of counsel, the first half of the Strickland test would require an inquiry into whether counsel's advice was within the range of competence demanded of attorneys in criminal cases.

Simply put, the first inquiry is whether trial counsel's advice was deficient. According to Hill, the "prejudice" requirement of the Strickland test focuses on whether counsel's ineffective performance affected the outcome of the plea process.

In other words, in order to satisfy the "prejudice" requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.

ISSUE (A) WAS COUNSEL INEFFECTIVE FOR ADVISING PETITIONER TO PLEAD GUILTY WITHOUT PERFORMING ANY PRETRIAL INVESTIGATION, INCLUDING BUT NOT LIMITED TO, MEDICAL REPORTS, AND POSSIBLE SIDE-EFFECTS OF THE MEDICINE PETITIONER WAS TAKING PRIOR TO AND DURING THE TIME PERIOD OF THE INCIDENT, THUS RENDERING PETITIONER'S GUILTY PLEA INVOLUNTARY?

FACTS

Petitioner asserts that he was denied the effective assistance of counsel when counsel failed to do any pretrial investigation and for not consulting with a medical expert to determine whether Petitioner suffered from uncontrollable side-effects from taking prescription medication used to treat his cancer.

Prior to being arrested Petitioner was diagnosed with stomach cancer and as a result Petitioner was taking numerous medications and undergoing extensive treatments. Petitioner asserts the side-effects from the medication could have reasonably distorted his motor skills and thinking process and as a result the side-effects of the medication and treatments played a major role in the ability to conform the prerequisite criminal intent to commit the crime with which Petitioner was charged.

Petitioner asserts that counsel had an obligation to investigate and prepare for trial. In the instant matter, counsel was not an expert in the field of medicine. Given the nature of the crime and the facts surrounding the circumstances it would

have been imperative for counsel to consult with an expert to determine whether or not the side-effects of the medicine was attributable to the actions in question.

To fully develop this issue, Petitioner has submitted an ex parte application to retain expert services in this field and will present testimony in support during the PCR hearing.

Since being incarcerated Petitioner has obtained his medical records that counsel was privy to but failed to investigate. During the PCR hearing Petitioner's medical records will become part of the record.

DISCUSSION

The Sixth Amendment of the United States Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right.. "...to have the assistance of counsel for his defense." U.S. Const. amend. IV. The right to the effective assistance of counsel means the right to "effective assistance of counsel." Culyer v. Sullivan, 446 U.S. 335, 344, 352 (1980); also see United States v. Morrison, 449 U.S. 361, 366 (1981); Tollett v. Henderson, 411 U.S. 258, 266-68.

At the heart of effective representation is the independent duty to investigate and prepare. Goodwin v. Balkcom, 684 F.2d 794, 805 (11th.Cir.), cert. denied ___ U.S. ___, 103 S.Ct. 1798. Therefore, permissible trial strategy can never include the "failure" to conduct a reasonably substantial investigation into the case.

The test formulated in Strickland v. Washington, 466 U.S. 668 (1984), for determining whether counsel has rendered constitutionally ineffective assistance reflects this concern. In Strickland, the court identified two components to any ineffective assistance of counsel claim. (1) deficient performance; and (2) prejudice. Under that decision a criminal defendant alleging prejudice must show that counsel's errors were serious enough to deprive the defendant of a fair trial. Id; see also Kimmelman v. Morrison, 477 U.S. 365, 374 (the essence of an ineffective assistance of counsel claim is that counsel's unprofessional errors so upset the adversarial balance between the defense and prosecution that the trial was rendered unfair and the verdict rendered suspect.).

Preparation and investigation "must be more than perfunctory." Counsel has an affirmative duty to conduct appropriate investigation, both factual and legal. Coles v. Peyton, 389 F.2d 224, 226 (4th.Cir), cert. denied 393 U.S. 849 (1968). The failure to ascertain and investigate possible defenses has often resulted in finding that the defendant was denied adequate representation. See Goodwin v. Swenson, 287 F.Supp. 166, 176-86 (W.D.Mo.1968).

The primary input of an attorney to his client's case is that of professional expertise. Even in a simple criminal case, meticulous investigation and thoughtful legal analysis will often reveal a panolpy of issues — to which the defendant, a layman, will often be oblivious. Garland v. Cox, 472 F.2d 875, 879 (4th.Cir.)

The notion that defense counsel must obtain information that the State has and will use against the defendant is not simply a matter of common sense. The American Bar Association Standards for Criminal Justice, Prosecution and Defense Function describes the obligation in terms no one could misunderstand in circumstances of a case like this one: "It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should always include efforts to secure information in the possession of the prosecution and law enforcement authorities. See ABA Standards for Criminal Justice 4-4.1 (2nd ed. 1982 Supp.). The newer version of the Standards now reads any "investigation should include efforts to secure information in the possession of the prosecution and law enforcement. ABA Standards for Criminal Justice, Prosecution Function and Defense Function 4-4.1 (3rd. ed. 1993).

The failure to investigate, research and prepare is equivalent to no presentation at all. Brubaker v. Dickson, 310 F.2d 30; accord Williams v. Beto, 354 F.2d 698 and Brooks v. Texas, 381 F.2d 619.

Petitioner asserts that he was denied the effective assistance of counsel when counsel failed to do any pretrial investigation into the facts and circumstances in the instant matter. Therefore, Counsel's erroneous advice to simply plead guilty cannot be deemed effective representation.

For the aforementioned reasons, Petitioner respectfully prays
that this Court will grant the requested relief of a new trial.

ISSUE (B) IS PETITIONER'S GUILTY PLEA INVOLUNTARY BASED ON COUNSEL'S ERRONEOUS ADVICE AND FAILURE TO INVESTIGATE?

FACTS

Petitioner asserts that he was denied the effective assistance of trial counsel when counsel erroneously advised Petitioner to plead guilty without performing any pretrial investigation thus rendering Petitioner's guilty plea involuntary.

DISCUSSION

In Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984), the United States Supreme Court set forth the two-part test for evaluating claims of ineffective assistance of counsel. The same two-part standard of Strickland as extended so as to apply to ineffective assistance of counsel claims arising out of the plea process. See Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

In Hill, the United States Supreme Court held that in the context of determining the voluntariness of a guilty plea that is entered upon counsel's advice, the first half of the Strickland test would require an inquiry into whether counsel's advice was within the range of competence demanded of attorneys in criminal cases.

Simply put, the first inquiry is whether counsel's advice was deficient. According to Hill, the "prejudice" requirement of the Strickland test focuses on whether counsel's ineffective

performance affected the outcome of the plea process.

In other words, in order to satisfy the "prejudice" requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty but would have insisted on going to trial.

In support of the first part of the Strickland and Hill test, Petitioner asserts that counsel was deficient in advising Petitioner to plead guilty without performing any type of pretrial investigation into the circumstances and facts of the case. Under the circumstances of the case it would have been conceivable to believe that counsel should have consulted with experts in the field of medicine in order to determine if the plethora of medications Petitioner was taking could have been attributable to and caused adverse side-effects that would have distorted Petitioner's thought process and the ability to conform the prerequisite criminal intent to commit such an act, especially when considering that homicide is a crime of specific intent. Counsel's failure to conduct any pretrial investigation and erroneous plead advice satisfies the first prong of Strickland and Hill.

In support of the second part of the Strickland and Hill test, the "prejudice" requirement, Petitioner submits evidence which conclusively establishes that but for counsel's erroneous advice, he would not have plead guilty but would have insisted on going to trial. The record is replete that Petitioner was [only] willing to plead under Alford v. North Carolina, yet the Court

would [not] allow Petitioner to plead under Alford. Petitioner's willingness to enter a plea under Alford succinctly shows that Petitioner was [not] willing to admit to "knowingly" committing the crime and further counsel's ineffectiveness is apparent on the record that after the Court advised Petitioner his plea under Alford was [not] going to be accepted Counsel should [not] have encouraged Petitioner to plead guilty.

In many guilty plea cases, the "prejudice" inquiry will closely resemble the inquiry engaged in by courts reviewing ineffective assistance of counsel challenges to convictions obtain through a trial. The longstanding test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160 (1970), see also Boykin v. Alabama, 395 U.S. 238, 242 (1969) and Machibroda v. United States, 368 U.S. 487, 493 (1962). Here, Petitioner claims that his plea was "involuntary" and "unitelligently" entered simply because counsel failed to conduct any pretrial investigations that resulted in erroneous advice.

For the aforementioned reasons Petitioner respectfully prays that this Court will grant the requested relief of a new trial.

CONCLUSION

WHEREFORE, Petitioner respectfully prays this Court will grant the requested relief of a new trial.

Respectfully Submitted,

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

Kenneth Robinson -- Petitioner,

-Vs-

State of South Carolina -- Respondent,

CERTIFICATE OF SERVICE

I, Kenneth Robinson, do hereby swear and declare that I have mailed the Original and (1) one copy of the enclosed Post Conviction Relief Application and Memorandum of Law in Support to the Marion County Clerk of Court, by placing the aforesaid documents in a properly addressed, sufficient postage affixed envelope and placed in the U.S. Mailroom here at Lieber Correctional Institution in Ridgeville, SC. 29472.

Sworn to and Subscribed before Me

This 29th day of July, 2010

Sylvia Jones
Notary Public

My Comm. Expires 1/24/2018

Respectfully Submitted,

/s/ Kenneth Robinson

Kenneth Robinson

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

Indict. No. 2007-GS-33-78

Kenneth Robinson -- Petitioner

-VS-

State of South Carolina -- Respondent,

**EX PARTE APPLICATION TO OBTAIN
EXPERT SERVICES**

Respectfully Submitted,

/s/ Kenneth Robinson

Kenneth Robinson

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

Kenneth Robinson #325713) Indict.No. 2007-GS-33-78
Petitioner,)
-v-) EX PARTE APPLICATION TO OBTAIN
State of South Carolina) EXPERT SERVICES
Respondent,)
_____)

COMES NOW, Kenneth Robinson, pro-se, who respectfully moves this Honorable Court pursuant to an ex parte application to obtain expert services for post conviction relief. See S.C.Code Ann. §17-3-50(B), cf. Ake v. Oklahoma, 470 U.S. 68 (1999); and Bannister v. State, 333 S.C. 298, 303, 523 S.E.2d 459 (1999)(PCR applicant must produce testimony of favorable witness to establish prejudice). In support of this application, Petitioner will show the following:

(1), Petitioner was charged with one count of homicide by child abuse. (2007-GS-33-78).

(2), Before being arrested Petitioner was being treated for cancer and while being treated Petitioner was prescribed a plethora of different and various types of medicines.

(3), During these treatments for cancer Petitioner was being given numerous types of medicines which he believes caused adverse side-affects.

(4), As part of Petitioner's strategy and defenses, Petitioner seeks to introduce expert testimony to show that certain types of medicines have adverse side effects that would cause an individual to not be able to conform a prerequisite criminal intent.

(5), As part of Petitioner's defense, he needs to explore the issue of whether certain medicines do in fact have adverse reactions with other certain types of medicines and whether certain side-affects would include abnormal uncontrollable behavior.

(6), Petitioner is indigent and is financially unable to obtain expert services necessary for adequate presentation.

(7), The burden of proof is on the Petitioner during the PCR proceedings and Petitioner is not qualified to give expert opinions therefore, expert witness testimony is imperative in the instant matter to determine whether or not his trial counsel should have sought expert services before advising Petitioner to plead guilty.

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

vacate sentence and conviction and remand for new trial
or in the alternative whatever relief this Court deems
appropriate and just

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

no

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Dorchester)

I, Kenneth Robinson, 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.

Kenneth Robinson

SWORN to and subscribed before me this 29th
 day of July, 2010.

Sylvia Jones (L.S.)
 Notary Public

My Commission Expires: 1/24/2018

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

I, Kenneth Robinson, 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.

Kenneth Robinson
Applicant

SWORN or affirmed to and subscribed before me this

29th day of July, 2010

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

BOOK _____ PAGE _____

FILED

2010 AUG -5 PM 12:11

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE TWELFTH JUDICIAL CIRCUIT
COUNTY OF MARION	)	
	)	
Kenneth Robinson, #325713,	)	Case No.: 2010-CP-33-0659
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on August 5, 2010,¹ would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marion County Clerk of Court. In February 2007, the Marion County Grand Jury indicted Applicant for one count each of murder, homicide by child abuse, criminal sexual conduct with a minor – first degree, and conspiracy (2007-GS-33-0078). Ralph Wilson, Sr., Esquire, represented Applicant. Jack Lawson, Esquire, prosecuted the case on behalf of the Twelfth Circuit Solicitor's Office. The charges arose from the death of Applicant's girlfriend's minor child. On May 20, 2003, Applicant, in violation of a safety plan agreement with the South Carolina Department of Social Services, was home alone with the minor child while Applicant's girlfriend was at work. EMS received a call that the child had stopped breathing and responded to Applicant's residence. The minor child was observed to be badly bruised, and an autopsy performed later that evening determined the cause of death was blunt force trauma to the head. Applicant later admitted

¹ Respondent has no record of receiving this Application until December 7, 2017.

to law enforcement that he had shaken and “manhandled” the child.

On November 26, 2007, Applicant pleaded guilty to homicide by child abuse before the Honorable D. Garrison Hill. The remaining charges were dismissed in exchange for Applicant’s plea. Judge Hill sentenced Applicant to a term of imprisonment of forty-five years.

Applicant filed a timely notice of appeal. Celia Robinson, Esquire, of the South Carolina Office of Indigent Defense - Appellate Defense Division perfected the appeal pursuant to *Anders v. California*, 386 U.S. 736 (1967). The South Carolina Court of Appeals affirmed Applicant’s conviction on December 3, 2009. State v. Robison, Op. No. 2009-UP-578 (S.C. Ct. App. filed December 3, 2009). The remittitur was returned to the circuit court on December 21, 2009.

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

II.

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

1. “Ineffective Assistance of Counsel,” in that:
 - a. Plea counsel failed to investigate, resulting in erroneous advice which rendered the guilty plea involuntary.

III.

Respondent submits Applicant’s allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove “counsel’s conduct so undermined

the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 689 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also asserts his plea was involuntary. An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56. Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137–38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty

plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). “In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing.” Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant’s plea. However, allegations regarding the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

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

VI.

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

VII.

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

VIII.

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

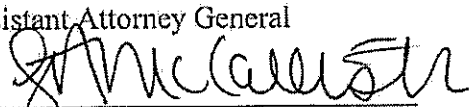
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LINDSEY A. MCCALLISTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

February 5, 2018

STATE OF SOUTH CAROLINA	)	
COUNTY OF FLORENCE	)	COURT OF COMMON PLEAS
	)	2010-CP-33-00659
	)	
	)	
	)	
Kenneth Robinson	)	TRANSCRIPT OF RECORD
vs.	)	
State of South Carolina	)	
	)	
DEFENDANT	)	June 26, 2019
		Florence, South Carolina

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR.

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

SAMUEL L. KEY, ASSISTANT ATTORNEY GENERAL
Attorney for the State

JONATHAN D. WALLER, ESQUIRE
Attorney for the Applicant

KESHIA REED
Official Court Reporter

1	<u>I N D E X</u>				
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Kenneth Robinson				
4	Mr. Waller	5			
5	Mr. Key		21		
6					
7	Ralph Wilson, Sr.				
8	Mr. Key	23		36	
9	Mr. Waller		31		
10					
11	Certificate of Reporter 38				
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					

1 THE COURT: Okay. State will go ahead and call
2 your first case.

3 MR. KEY: May it please the Court.

4 THE COURT: Yes, sir.

5 MR. KEY: This is Kenneth Robinson vs. The State
6 of South Carolina case number 2010-CP-33-0659.
7 Mr. Robinson is presently confined in the South Carolina
8 Department of Corrections pursuant to orders of commitment
9 of the Marion County Clerk of Court. In February of 2007,
10 the Marion County grand jury indicted Mr. Robinson for one
11 count of murder, one count of homicide by child abuse, CSC
12 criminal sexual conduct with a minor first degree and
13 conspiracy. He was represented by Ralph Wilson, Sr. And
14 Jack Lawson prosecuted the case.

15 On November 26, 2007, he pleaded guilty to
16 homicide by child abuse before the Honorable D. Garrison
17 Hill and his remaining charges were dismissed. Judge Hill
18 sentenced Mr. Robinson to 45 years imprisonment.
19 Mr. Robinson filed a timely notice of appeal and Celia
20 Robinson of South Carolina Office of Indigent Defense
21 appellate defense division perfected the appeal by filing
22 an Anders brief. And the Court of Appeals affirmed the
23 applicant's conviction on December 3rd 2009. And the case
24 was remitted back to the circuit court on December 21st
25 2009. Mr. Robinson filed this PCR application timely on

1 August 5th 2010. However, the State did not receive the
2 application until December 7th of 2017. He's present
3 today and represented by Mr. Jonathan Waller.

4 THE COURT: All right, Mr. Waller.

5 MR. WALLER: Judge, just to clarify when Mr. Key
6 says the State didn't receive it, I think he means the
7 attorney general's office didn't receive notice of it. It
8 was filed in the clerk's office back in 2010. And I don't
9 know what happened it to for those seven years, Judge. So
10 just to clarify the attorney general's office did have
11 notice of it. It's my understanding as soon as they
12 received notice -- and Judge Brown may have actually been
13 doing -- kind of audit of some filings and noticed it. As
14 soon they did, I was appointed and we moved forward.
15 Judge, this is a -- Mr. Robinson filed an application of
16 post-conviction relief alleging essentially ineffective
17 assistance of counsel and involuntary guilty plea for
18 various aspects, Judge. So at this time I would call
19 Kenneth Robinson.

20 THE COURT: All right.

21 THE CLERK: Raise your right hand as much as you
22 can. Do you swear to tell the truth, the whole truth, and
23 nothing but the truth so help you God?

24 THE WITNESS: Yes, ma'am.

25 WHEREUPON,

1 Kenneth Robinson,
2 after first having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. WALLER:

5 Q Good morning, Mr. Robinson. How are you today?

6 A I'm doing fine.

7 Q All right. It's been along time for you to get into
8 court, hasn't it?

9 A That's right.

10 Q Yes, sir. All right. Do you recall -- I know it's
11 been a long time almost ten years now. You recall when
12 you were first arrested on these charges?

13 A Some of it.

14 Q Okay. Do you recall what you originally charged
15 with?

16 A The charges he just called out.

17 Q Okay. So you never had any different charges?

18 A No.

19 Q They were homicide by child abuse from the get go?

20 A Yeah.

21 Q Okay. All right. Who was your attorney ---

22 A At first?

23 Q --- at first, yes, sir?

24 A Henry Anderson.

25 Q Okay. How did you ultimately end up hiring

1 Mr. Wilson or did you hire Mr. Wilson?

2 A No, I didn't.

3 Q Okay. How did Mr. Wilson come to represent you?

4 A Well, we got rid of Hank. Then I got William
5 Derrick. He was the public defender in Marion.

6 Q Okay.

7 A I think he retired and then I end up with Mr. Wilson.

8 Q Okay. Was Mr. Wilson appointed to represent you or
9 did you retain him?

10 A Appointed.

11 Q All right. When you -- I know you had two lawyers
12 prior to Mr. Wilson, but when you and Mr. Wilson had an
13 opportunity to meet, what did y'all talk about?

14 A We talked about the case. I didn't meet him until
15 about maybe a little over a month before I went up, but he
16 talked about the case. Mainly he was just talking about
17 getting -- pleading and that's it.

18 Q Okay. If you -- what did the State allege happened
19 if you remember?

20 A The State allege happened. You got to explain that.

21 Q Yes, sir. What did the prosecutor say took place?
22 Why were you charged?

23 A They say I was charged because -- we called EMS. I
24 call EMS and Chasity was -- she was foaming at the mouth
25 and things like that and they said that all this happened

1 while committing child abuse.

2 Q Okay. Was there some vomiting as well?

3 A Vomiting and things like that.

4 Q Okay. You call 9-1-1?

5 A I call 9-1-1.

6 Q All right. You had according to your statement you
7 gave a statement to law enforcement, is that right?

8 A Yes.

9 Q Okay. According to your statement, you had washed
10 her, cleaned her up.

11 A I washed her because I was getting ready to take her
12 -- trying to get her to the hospital.

13 Q Right. Did you and Mr. Wilson have a chance to talk
14 about what you said happened?

15 A Probably a little. I can't -- really I can't
16 remember, but I think we probably talked about it a little
17 bit.

18 Q Okay. Did you ask him to do anything for you? Did
19 you ask him to investigate, talk to any witnesses or
20 anything like that?

21 A No, I didn't ask him to do that.

22 Q Okay.

23 A I didn't ask him to investigate. I figure that's his
24 job.

25 Q Okay. Did you give him any information or anything

1 that you wanted him to investigate though?

2 A I gave -- the only thing I gave him was some medical
3 records. I think I gave him some medical records and
4 stuff. I don't know if he investigated it or not. I
5 mean, it wasn't brought up in the plea trial, so he must
6 have didn't investigate it.

7 Q Okay. All right. Did y'all ever talk about going to
8 trial?

9 A It came up, but he was telling me it wasn't no use
10 for that.

11 Q Okay. Did you ask him why?

12 A Because of that statement, I think, that's what he
13 said.

14 Q Because of your statement at trial?

15 A Yeah.

16 Q He didn't think trial was a good option?

17 A He didn't think it was a good option.

18 Q What did you think?

19 A I didn't know. I mean, I'm going off him. He study
20 law, I didn't. So I'm going off what he said.

21 Q Okay.

22 A He's a lawyer.

23 Q Did you want to go to trial?

24 A If I got a better outcome, yes, I would have went to
25 trial.

1 Q Okay. You knew that you -- you know that pleading
2 guilty to homicide by child abuse was going to result in
3 some significant amount of time whether it was 45 years or
4 not?

5 A Let me tell you what he told me and my parents, that
6 I was looking at 20 to 25. Now, he told me what the
7 charge carries, but he said that's that we looking at. My
8 mama out there now she can tell you the same thing.

9 Q Okay.

10 A Go ahead and finish your question.

11 Q Well, my question is 20 to 25 is significant amount
12 time in prison?

13 A Yes, it is.

14 Q Did you ask Mr. Wilson about a trial knowing if you
15 pled you have to do a minimum of 20 years?

16 A Yeah.

17 Q Did you ask him about going to trial?

18 A No, I didn't ask him. Like I said, he said it wasn't
19 good. I'm listening to him because he's the lawyer. He
20 went to school for law, so he suppose to know what's best
21 for me. I'm not a lawyer.

22 Q Okay. Was there a DSS case along with this?

23 A I'm hearing that there's a DSS case with my
24 co-defendant.

25 Q Okay. Were you ever involved in a DSS case?

1 A No, I wasn't.

2 Q Okay. You weren't named as a defendant in a DSS
3 action?

4 A No, never.

5 Q Okay. Okay. Were you -- you were suffering from
6 some medical problems yourself around this time?

7 A That's right.

8 Q Okay. What was going on with you?

9 A I was taking chemo, chemo therapy. It's hard to
10 explain that, but you be real sick vomiting a lot and
11 different things.

12 Q Not to get into your business too much, but what were
13 you taking chemo for?

14 A Lymphoma, stomach cancer.

15 Q Did you and Mr. Wilson talk about the chemo and how
16 it might have affected you?

17 A I said something to him about it.

18 Q Okay. And you were taking chemo at the time of the
19 incident or while he was representing you or both?

20 A The time of the incident not while he was
21 representing me. I was already in remission then.

22 Q Okay. Did y'all talk about how that might have
23 affected your decision making?

24 A Not really because I don't think he was trying to
25 hear nothing too much about that. It's in the transcript.

1 He didn't bring it up. He said we could have brought it
2 up, but he said the only thing I wanted was time serve for
3 the time I spent in the county.

4 Q Okay. Did y'all talk about any defenses that you
5 might have including your health issues?

6 A No, no, we didn't talk about it. I bought up the
7 medicine. I bought up the medical records and things and
8 he -- I don't know, I guess, he wasn't trying to hear
9 that.

10 Q Okay. How many times do you think you met with
11 Mr. Wilson?

12 A Probably two.

13 Q Okay.

14 A Then the third time, I think, at the courthouse right
15 before I went up for pleading.

16 Q Okay. When -- I know it's been a long time, but when
17 y'all met -- I know you testified y'all were discussing a
18 plea?

19 A Yeah.

20 Q Did you discuss your constitutional rights?

21 A I don't remember that. I don't think so.

22 Q You already given a statement. Did y'all discuss
23 that you had the right to remain silent?

24 A No, we never discuss that. We talked about the
25 statement though.

1 Q Okay. And you gave your statement had you already
2 been arrested?

3 A No. The detectives had, but I wasn't arrested yet.

4 Q You hadn't been arrested until after your statement?

5 A No.

6 Q Was it immediately after your statement?

7 A Yes.

8 Q Okay. All right. Mr. Robinson, when you first --
9 when you were first charged and you had Hank Anderson and
10 then you had another public defender, had you discussed
11 with those two lawyers of going to trial?

12 A With Hank I did.

13 Q Okay.

14 A Henry Anderson. Everybody know him as Hank.

15 Q What questions did you ask him about going to trial?

16 A I didn't ask none. He was investigating and he was
17 gone let me know some things.

18 Q Okay. Did you want to go to trial at that point?

19 A If he was talking good. Like I said, they were the
20 lawyers. They went to school for law. I don't know
21 anything about the law. And if he was talking good, yes,
22 I would have went to trial.

23 Q Okay. Did you want to know what was happening in
24 your case?

25 A Yes.

1 Q Okay. I guess, my ultimate question to you is you
2 pled guilty to a minimum of 20 years. Did you want to
3 understand what was happening before you just signed on
4 the paper for that?

5 A It would have been better because we had the
6 impression me and my parents we had the impression that
7 under the North Carolina vs. Alford case plea, we was gone
8 -- he told us we was looking at 20 to 25. So we say,
9 okay, this what it is. You gone have to spend sometime in
10 prison, but this what it is because that's what he told
11 us. He's the lawyer. I'm going off his experience.

12 Q Okay. In going off his experience, did you want to
13 know what you were doing before you just trusted his
14 experience?

15 A Explain that?

16 Q Okay. You ultimately pled. Did you -- trying to ask
17 the question the right way. Did you -- you maintained
18 your innocence up until a certain point, is that right?

19 A That's right.

20 Q Until you entered your plea?

21 A Yeah.

22 Q What changed?

23 A What change during the plea?

24 Q What changed that led you to plead guilty?

25 A Well, Mr. Wilson -- he really was going for the plea,

1 so I'm thinking that's the best option I got to plea out
2 and then he told me we was gone try to plea under North
3 Carolina vs. Alford plea.

4 Q Okay. Did you -- what were your conversations like
5 with Mr. Wilson about what took place? Let me back all
6 the way back up.

7 A We talking about pleaing. We weren't really -- you
8 talking about from the beginning?

9 Q He ask you what took place that day?

10 A A little. We briefed it a little bit. We probably
11 went over it a little bit.

12 Q Okay. Did you tell him what took place that day?

13 A I answered his questions. If he ask me something, I
14 answered it. I'm telling you that's been a little while.
15 I really can't remember.

16 Q Okay. Did you volunteer any information to him did
17 you say, hey, here's what happened?

18 A No, I didn't volunteer nothing to him. Only thing I
19 really said to him is I brought up my medical records and
20 things like that.

21 Q Okay. Mr. Robinson, you filed an application for
22 post-conviction relief alleging that Mr. Wilson was
23 ineffective. What did you think he did wrong?

24 A It's a few things he did wrong I think. Here this
25 out right here, I think he's a good lawyer. I know he can

1 do his job good, but I don't think he did on this case.
2 Like I said, he talk to my parents when he said we
3 pleading under North Carolina vs. Alford plea and say we
4 looking at 20 to 25 years. All right, so we agreed to go
5 with that. And when I got in front of the judge ---

6 Q The judge wouldn't take the plea.

7 A He wouldn't take the plea. He wouldn't take the
8 plea. So in the transcript you can see where I went back
9 and talked to Mr. Ralph. When I talk to him, he sent me
10 right back up there and said his words it wasn't going to
11 make a difference any way. My thing is if it wasn't going
12 to make a difference, why did we even attempt to do that.

13 Q Okay. When you -- back into -- you know, back when
14 you pled guilty, did you understand what North Carolina
15 vs. Alford was?

16 A He explain it to me.

17 Q Okay. So you knew at the time that you were
18 maintaining your innocence?

19 A Yeah.

20 Q Okay. When the judge wouldn't take that, you would
21 have had to admit that you were guilty?

22 A Yeah.

23 Q Okay. Did y'all discuss that change?

24 A Them couple of minutes in the courtroom. It's in the
25 transcript.

1 Q Okay. Did you understand that there wouldn't be any
2 difference as far as your sentence or your custody status
3 at SCDC or anything like that except for under an Alford
4 plea you're maintaining your innocence and in a guilty
5 plea you're saying you're guilty?

6 A With him saying that -- with him telling me and my
7 parents that we was looking at 20 to 25, I'm thinking that
8 that was going to play apart in it. And then when I went
9 to talk to him he said it wasn't to going make a
10 difference. So I think we could have went back and come
11 up with a different plan. I think that was really poor
12 counseling there.

13 Q Okay. And, I guess, back to my ultimate question you
14 maintained your innocence up until you attempted to plead
15 under North Carolina vs. Alford?

16 A That's right.

17 Q Until that time you were saying I'm not guilty?

18 A Yeah.

19 Q What changed where you didn't want the trial? You
20 wanted to plead guilty at that point?

21 A I don't understand what you're saying. You talking
22 about when he told me to plead under the North Carolina
23 vs. Alford plea?

24 Q Mr. Robinson, correct me if I'm wrong, you were the
25 one that has to enter the plea, is that right?

1 A I'm the one that what?

2 Q You're the one that has to enter into the plea?

3 A That's right.

4 Q Okay. I mean, Mr. Wilson gets to go home at the end
5 of that day?

6 A That's right.

7 Q Okay. When you stood in front of the judge
8 attempting to plea under North Carolina vs. Alford, you
9 were trying to maintain your innocence?

10 A That's right.

11 Q The judge said he wasn't going to do that. What
12 changed in your mind that led you to pleading guilty at
13 that point?

14 A Well, when I went back with Mr. Wilson, he said it
15 wasn't going to make a difference any way. I don't know.
16 I don't know. At that time we was already in. If he said
17 talk to judge and say let's go back and we'll come up
18 again later. I spent four and a half years in the county.
19 I mean, what would two more months or a week or a few more
20 days be. We could have went back and came up with a
21 different plan.

22 Q Okay. You testified earlier that Mr. Wilson
23 explained what North Carolina vs. Alford was. What was
24 your understanding of it?

25 A With him explaining that and he telling me and my

1 parents that we're looking at 20 to 25 years, I'm thinking
2 that, okay, this is what we got. This is what I got to
3 do. I done did 16 years. I would have been okay with
4 that, but he sent me back up there just to plead guilty
5 and he said it wasn't going to make a difference any way.

6 Q Okay. I asked a poor question I apologize.

7 A Okay.

8 Q Not the amount of time you were looking at?

9 A But that's what caused me to want to plea under the
10 North Carolina vs. Alford case.

11 Q Did you understand what plea to North Carolina vs.
12 Alford was?

13 A He explain that to me, but he also told us that we
14 was looking at 20 to 25 years.

15 Q I understand you said he explain it to you. What did
16 he explain? What did you understand it meant to plead
17 under North Carolina vs. Alford versus pleading guilty?

18 A Well, it says that you -- it's just a bad -- you
19 taking the plea, but you still innocent something like
20 that.

21 Q Okay. Did you understand that you are -- you're
22 maintaining your innocence, but you're trying to get the
23 benefit of a bargain from the State?

24 A That's what I'm trying to tell you.

25 Q All right. That was your understanding?

1 A That what's I was going with.

2 Q Okay. Did you ever tell Mr. Wilson you want to go to
3 trial?

4 A No, I didn't tell him I wanted to go to trial.

5 Q Okay. Did you base that on his advice to you?

6 A His advice. Like I said, I been saying it over and
7 over he's the lawyer.

8 Q And you said y'all didn't even discuss trial?

9 A Because of that written statement he said it wasn't
10 a good idea.

11 Q Okay. All right. Mr. Robinson, I asked you is there
12 anything else you think that Mr. Wilson did not do
13 properly in your case?

14 A It's a lot of things. First, my mom had to call him
15 and let him know that he was appointed to me. All that's
16 poor with the State and everything. You know, just like
17 you said, they go home every day, but it's somebody else
18 life on the line. Also, I pleaded one day. The next day
19 I went back for sentencing. When I went back for
20 sentencing right before sentencing, he allowed the DA to
21 show evidence to the judge when I already pleaded guilty
22 the day before. What was the purpose of showing evidence
23 of something if I already took the plea.

24 Q Okay.

25 A He should have objected right there I think.

1 Q All right. Anything else you think of that he did
2 wrong?

3 A That's pretty -- I think he -- before -- even with
4 the -- even with me pleading with the statement, the
5 written statement he should have looked into somethings
6 before he decided to just want to go and plea out.

7 Q Okay. You don't think he did enough investigation?

8 A I really don't think he did enough investigation.
9 I'm in the county for four and a half years and you come
10 about maybe a month or two ahead of me going to trial --
11 plea trial I know that's not enough time for that. It's
12 not a small case like that. It needs more attention than
13 that I thought.

14 Q To the best of your knowledge, did he have a copy of
15 the file of either Hank Anderson or the other public
16 defender?

17 A I think they gave him all of William Derrick's stuff.
18 I don't know when they gave it to him case because my mom
19 had to call and tell him he was appointed to me.

20 Q Okay. Do you know what William Derrick or Hank
21 Anderson had done as far as investigation goes?

22 A I know Hank was investigating, that's all he was
23 telling me. And William Derrick came to see me one time
24 and then -- I think just one time him. Him and Hank came.
25 Hank was giving him -- I actually saw Hank give him all

1 the stuff that he had and a few months later he was
2 retired. And then I ended up with Mr. Wilson.

3 Q Is there anything else you think that the Court needs
4 to be aware of Mr. Wilson's representation of you?

5 A That's about it. Like I said, I think he's a great
6 lawyer, but I don't think he did a good job on this case
7 here.

8 Q Okay. You don't think he investigated properly?

9 A He didn't investigate properly.

10 Q Do you think his advice ---

11 A I'm listening to him because he's a lawyer. He went
12 to school for law and I'm trusting his advice.

13 MR. WALLER: Please answer any questions Ms.
14 McCallister has -- Mr. Key has apologize.

15 THE COURT: Mr. Key.

16 CROSS-EXAMINATION

17 BY MR. KEY:

18 Q Mr. Robinson, did -- when you pled guilty, did the
19 State -- was there any recommendation or negotiation or
20 was it just a straight up plea?

21 A I don't understand what you're saying. Talking about
22 with them dropping the other charges and me pleading to
23 one.

24 Q Okay. You pled to the one charge, but was there any
25 sentencing recommendation or anything like that?

1 A No, sir.

2 Q Okay. Did that change when it shifted from an Alford
3 plea to a guilty plea?

4 A Not from the State. Like I said, Mr. Wilson told me
5 and my parents that we were looking at 20 to 25, that's
6 what I was going off, but from the State, I didn't have.

7 MR. KEY: Okay. No further questions, Your
8 Honor.

9 THE COURT: All right. Any follow up, Mr.
10 Waller?

11 MR. WALLER: Nothing further, Your Honor.

12 THE COURT: You may step down.

13 (WHEREUPON, the witness leaves the witness
14 stand.)

15 THE COURT: Call your next witness.

16 MR. WALLER: Nothing further from the applicant,
17 Your Honor.

18 THE COURT: Mr. Key.

19 MR. KEY: The State would call Mr. Ralph Wilson.

20 THE CLERK: Place your left hand on the Bible
21 and raise your right hand. Do you swear to tell the
22 truth, the whole truth, and nothing but the truth so help
23 you God?

24 THE WITNESS: I do.

25 WHEREUPON,

1 Ralph Wilson, Sr.,
2 after first having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. KEY:

5 Q Good morning, Mr. Wilson.

6 A Good morning.

7 Q Do you recall how you came to represent Mr. Robinson
8 in this case?

9 A Yes, sir, I was appointed by the Court to represent
10 him.

11 Q Okay. And were you his first attorney or?

12 A I think I was his third maybe his fourth -- third or
13 fourth, yes.

14 Q Did you get the files from the attorneys that he had
15 before him?

16 A I did, yes.

17 Q Could you briefly give us the evidence the State had
18 against Mr. Robinson in this case?

19 A Primarily two things, one he had given a statement to
20 -- which was really really difficult to overcome.

21 Secondly, the mother of the child was going to be the
22 primary witness against him for the State. And I explain
23 when I met with him which is my practice and he's right
24 about one thing his mom -- I didn't know that I had been
25 appointed to represent him. For whatever reason, the

1 clerk's office either didn't send it or it got relayed
2 somehow I didn't know. I got a call from his family that
3 I had been appointed to represent him. At that time I
4 contacted the clerk's office found that that was correct
5 and then I went to see him. And what I remember doing is
6 this which is what I do on every criminal case that I get
7 is the first thing I do is do an interview, initial
8 interview. I went to Marion to visit with him. And I
9 remember that visit specifically. I took my interview
10 sheet. We went through the interview sheet where I go
11 through with him to get personal information about him,
12 get information about his family, who I can contact. And
13 then I talk with him about the charges, whatever the
14 charges are and I will go through those charges one by
15 one, explain to the individual what the penalties are on
16 each of those offenses. And then after I explain to them
17 I will explain to them that -- I never tell a defendant to
18 plead guilty or have a trial that's his decision. What I
19 do do is I tell them what I think is in their best
20 interest, but they are free to take that advice or not to
21 take that advice depending on how they view it. Sometimes
22 they agree with it. Sometimes they don't agree with it,
23 but, you know, my job is not to tell them to plead or to
24 have a trial. It's to give them the advice so that they
25 can make the decision and I try to do that. I recall

1 going through with him the charges that he had at the
2 time. And if I make no mistake, it was murder and
3 homicide by child abuse and I think there might have been
4 one other charge. It's been a while and I don't remember
5 all of the details of all the charges. The other thing
6 that I told him is that the Solicitor's office had
7 indicated that they were not going to offer a plea offer
8 of any type, of any significance to us. And they told me
9 that almost from day one that they weren't. And I think
10 the first offer they sent us was like murder straight up
11 or something like that. So it was never a good position
12 to be in in his place.

13 Q Okay. So the State never made any offers with a
14 sentence?

15 A No, sir.

16 Q A sentencing offer?

17 A No, sir.

18 Q It was always straight up?

19 A It was always straight up.

20 Q Okay. Now, did you tell him that he was looking at
21 20 to 25?

22 A I honestly do not recall that. I'm not going to sit
23 here and deny it because I don't have a specific memory of
24 saying it. I would doubt that I said that, but can I sit
25 here and tell you I did not say that. If he were pleading

1 to homicide by child abuse, maybe I would say the judge
2 might give him 20 or 25, but you know as well as I do
3 judges sometimes are unpredictable about what they do.
4 And so you can't always anticipate and you try to use your
5 best judgment based on your prior experiences with the
6 Court, but that's not guarantee because you can't.

7 Q Okay. So did you promise him 20 ---

8 A Absolutely not.

9 Q You just said you think the judge will give you
10 around 20 to 25?

11 A Yes, if I said it at all. I would have said it in
12 that way that, you know, I would think that the judge
13 might give you 25 years or 20 years or whatever, but, no,
14 at no time I can tell you that emphatically at no time
15 that I say to him or I guarantee you you're going to get
16 25 years or you're going to get 20 years or that the judge
17 is going to give you that, no, absolutely not.

18 Q Did you go over Mr. Robinson's constitutional rights
19 with him?

20 A Absolutely did, absolutely did. We talked about his
21 right to have a trial. And I explain to him, you know,
22 with going to trial that generally it's been my experience
23 that if you go to trial and you lose, then you're going to
24 get substantially greater sentence. I went through that
25 with him. And I told him that if -- there were no

1 witnesses basically on his side that we could get. He did
2 tell me -- and I'm not getting off subject here about
3 constitutional rights, but he did tell me about his cancer
4 and about the fact that during the time that these things
5 happened that apparently he had been taking some
6 treatments, some kind of chemo treatments and that he
7 thought that maybe those chemo moments affected him in
8 some way, but he never gave me anything specific that
9 would say that he was mentally ill or that he was
10 incompetent at the time that these events would have
11 occurred. But back to his constitutional rights, yes,
12 sir, I did go through his constitutional rights with him.

13 Q Okay. You just hit on that he told you about his
14 cancer?

15 A He did, yes.

16 Q Did you use that during the mitigation?

17 A I know I talked with the Solicitor about it. I don't
18 remember what my argument was to the Court. I don't
19 remember specifically to be honest, but I do know that in
20 trying to negotiate some kind of a sentence for him in
21 some kind of a deal for him if you will for a lack of a
22 better word, I talk with them about the fact that he had
23 had cancer and that he had been struggling with that for
24 sometime. I know I did that.

25 Q Now, you said the State strongest witness against him

1 was his girlfriend, the child's mother?

2 A That's correct.

3 Q Was she also a co-defendant in this case?

4 A She was, yes.

5 Q And you aware of that?

6 A Yes, sir.

7 Q And he was aware of that?

8 A Both of us were aware of that. In fact, we talked
9 about that at length.

10 Q Now, originally at the plea hearing he was going to
11 plead under Alford?

12 A Yes.

13 Q And then the judge said I'm not going to accept an
14 Alford plea?

15 A Right.

16 Q How did that change -- did you advise him what was
17 going to happen with the guilty plea instead of an Alford
18 plea?

19 A Yes, what happened is he and I had talked several
20 times about if he did a plea how to do it because he was
21 reluctant to say I'm guilty and that's not that uncommon
22 with the defendants. And the State wasn't really offering
23 us anything and the only alternative was a trial. So I
24 told him about Alford and ask him if that would make him
25 feel more comfortable pleading under Alford versus

1 pleading guilty or just pleading straight up. So when we
2 went in, we were intending to do an Alford plea.
3 Unfortunately, when we got there, then the Court said, no,
4 I'm not going to accept it as an Alford plea. So we went
5 back to the little room and we talked about it. Whether
6 he wanted to continue with it or not, understanding that
7 the judge was not going to accept it as an Alford plea.
8 We were -- I think schedule it -- we were either scheduled
9 for trial -- I think we were actually scheduled for trial.
10 And if my memory serves me correctly which is why we
11 either had to do it that day or we were going to end up
12 going to trial.

13 Q Okay. Did you discuss with Mr. Robinson any possible
14 defenses to his charges?

15 A We did not that we had of any significance. I mean,
16 the problem for him was was that he was alone with the
17 child when these things occurred, so there was really
18 nobody else to blame. There was nowhere else to look and
19 that's what made it really difficult, that the mother was
20 not in the home at the time these things occurred. So she
21 couldn't have been the perpetrator even though apparently
22 she condoned it to some degree after learning about it or
23 becoming aware of it. So, yeah, we talk about the
24 defenses and I explain to him what defenses are, but there
25 was really no real defense to be frank.

1 Q Did you recommend to him to plead guilty?

2 A No, no, I never recommended to him to plead guilty,
3 but I did tell him that if he went to trial he would get
4 found guilty. That I had very little doubt that he would
5 be found guilty at a trial and that they were going to try
6 him for murder.

7 Q Okay. Did he ever indicate to you that he wanted to
8 go to trial?

9 A No, he never wanted to go to trial. He always wanted
10 to plead, but he wanted what, you know, as most defendants
11 do he wanted to plead to, what he wanted to plead to and it
12 wasn't on the table.

13 Q And the State never offered anything?

14 A Never, never.

15 Q And then shifting from an Alford plea to a guilty
16 plea that did not change?

17 A And I probably did say to him that it's not going to
18 change anything, but anything meaning in terms of a guilty
19 plea versus an Alford plea. When you plead, it's the
20 same. I mean for all legal purposes and practical
21 purposes after you plead guilty or after you do an Alford,
22 that when you walk away from that bench, you still got the
23 same legal problems that you had whether it's Alford or
24 whether you call it a guilty plea it's the same. The only
25 difference is that it keeps you from having to stand there

1 and say I'm guilty I actually did it.

2 MR. KEY: Beg the Court's indulgence.

3 (WHEREUPON, a pause in the proceedings.)

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

5 THE COURT: All right, Mr. Waller.

6 MR. WALLER: Thank you, Your Honor. May it
7 please the Court.

8 THE COURT: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. WALLER:

11 Q Good morning, Mr. Wilson?

12 A Good morning. How are you, sir, Mr. Waller?

13 Q Doing well. Thank you for asking. Mr. Wilson, when
14 you took over -- you said you was his third possibly
15 fourth attorney ---

16 A I know at least the third, yes, sir.

17 Q When you took over, you were provided with a copy of
18 the file?

19 A I was.

20 Q Did you -- had any investigation or anything been
21 done at that point?

22 A He's right I think Hank had some medical records if I
23 remember correctly -- I'm sorry Mr. Anderson had some
24 medical records that were in the file that I do remember
25 seeing. And there was some notes in there about Hank --

1 Mr. Anderson's conversations with him. That's basically
2 what I got other than stuff from the Solicitor's office.

3 Q Okay. Did you -- as far as notes and stuff go, did
4 you rely on Mr. Anderson's notes or did you kind of redo
5 that portion of the investigation?

6 A Well, he and I talked about all those things any way.
7 So there was nothing in that file that was not -- that he
8 and I didn't discuss or go over no.

9 Q Okay. Did you conduct any independent investigation
10 yourself on other issues that hadn't been covered yet?

11 A Well, there were really no other issues. I remember
12 talking to one of the detectives and I don't remember
13 which one it was about his statement, but beyond that no.

14 Q Okay. And about his statement you testified earlier
15 that you were aware he was undergoing cancer treatments

16 ---

17 A Yes, sir.

18 Q --- dealing with chemo therapy at the time. Did you
19 look to see if that may have affected the voluntariness of
20 his statement or anything that you can potentially
21 challenge that statement?

22 A Well, if you asking me did I do any medical research,
23 the answer is no, but I can tell you this I had at least
24 three jail conversations with him where I went out to the
25 Marion County Detention Center and met with him. And then

1 I met with him at least twice up at the courthouse all
2 prior to his guilty plea. And I can tell you that in my
3 conversations with him he was lucid. He was clear minded.
4 I couldn't detect anything that would give me any
5 inclination that he had any kind of a problem whatsoever.
6 In fact, in my dealings with him, had he not told me that
7 he had undergone chemo I would have never known it just in
8 my conversations with him.

9 Q Was he still undergoing treatment when you were
10 meeting with him?

11 A No, sir, that was during the time that he claims
12 the -- he claim that he was undergoing treatments during
13 the time that the incident occurred and understanding that
14 I saw him two years later.

15 Q Okay. So not to state the obvious, but his mental
16 state could have been much different at the time of the
17 incident versus when you were meeting with him. You just
18 didn't know because he was no longer undergoing those
19 treatments?

20 A That is correct. He was no longer undergoing those
21 treatments, but there was nothing to indicate to me that
22 he had any problem understanding under M'Naghten at the
23 time because, yes, I would have been concerned if he had
24 indicated anything to me that led me to believe that at
25 the time he did -- first of all, he denied that he did

1 these incident -- these things, but if he had claim to me
2 that he had done them and he had said -- then I would
3 wanted to know what his thinking was and why he did it,
4 but his plan was or his statements were that he never did
5 these things in the first place, but no.

6 Q Let me run down three potential issues there. So did
7 you look at him under M'Naghten being able to conform his
8 conduct to the laws of the State? Did you think
9 potentially had any issues there while he was undergoing
10 treatment?

11 A Well, I mean if you're asking me whether or not under
12 M'Naghten that he would -- let me explain it this way,
13 what you have you had a situation where a child is being
14 physically and sexually abused to the point that the child
15 dies. Now, going through chemo, I never in of all my
16 years heard of chemo causing an individual to do those
17 things or driving them crazy especially stomach cancer.
18 If he had said to me, well, he had brain cancer and he was
19 taking treatments on his brain, then maybe I might feel
20 differently, but to say you got stomach cancer and that
21 causes you to rape a child or beat a child to death or
22 abuse a child to death, no, no.

23 Q Okay. Did you look at whether that might have
24 affected the voluntariness of his statement at all?

25 A Just in my mind. And as I said to you earlier, no, I

1 mean, in my conversations with him, he was always very
2 clear, very cognitive about his thinking. And I never had
3 any indication in my conversations with him that he was
4 anything other than completely lucid.

5 Q Okay. And then last thing related to his health did
6 he ever tell you that -- what physical issues the chemo
7 caused numbness in his hands or anything like that?

8 A No, no, I don't remember any details like that I do
9 remember him telling me that when he would take the
10 treatments and he would come back he wouldn't be feeling
11 well, that he would be sick to his stomach and that kind
12 of thing. I do remember him telling me that, but other
13 than that, no.

14 Q Okay. How did it switch from an Alford where he's
15 maintaining his innocence to five, ten however many
16 minutes later he's pleading guilty? What was -- what
17 caused that shift or what caused him to be okay with that
18 shift?

19 A Well, I don't know that he was okay with it. Let me
20 explain it this way, when we were in front of the judge,
21 we planned to go because we didn't want to go to trial.
22 He did not want to have the trial. And when we got in
23 front of the judge, I was taken aback a little bit because
24 I wasn't expecting the judge to say that I'm not going to
25 take an Alford plea. And so when that occurred, the judge

1 gave us an opportunity to go talk to see if he wanted to
2 continue or not and we did. We went to the side and we
3 talked about it and I told him I said, look, you don't
4 have to do it. You don't want to pled guilty, don't plead
5 guilty. And because I would never encourage somebody to
6 plead guilty to something if they don't want to do it.
7 Now, if he wants to do it no matter -- and it's not
8 unusual for defendants to say I'm not guilty. I'm not
9 guilty. I'm not guilty and then at the last minute plead
10 guilty, that's common happens every day. What my concern
11 was was that once the judge raise that issue and said I'm
12 not going to take it, then I needed to talk to him to
13 advise him as to whether or not he wanted to go forward
14 having to admit guilt on the record. And he said that he
15 wanted to do it, so then we did it.

16 MR. WALLER: Beg the Court's indulgence please.

17 THE COURT: Yes.

18 (WHEREUPON, a pause in the proceedings.)

19 MR. WALLER: Nothing further. Thank you, Mr.
20 Wilson.

21 THE COURT: All right, Mr. Key.

22 REDIRECT EXAMINATION

23 BY MR. KEY:

24 Q Mr. Wilson, did Mr. Robinson ever indicate to you
25 that he didn't recall calling 9-1-1 or making the

1 statement to the police?

2 A No, sir.

3 (WHEREUPON, the witness leaves the witness
4 stand.)

5 THE COURT: Any other witnesses?

6 MR. KEY: No, Your Honor.

7 THE COURT: All right. Anything you want to say
8 before we close?

9 MR. WALLER: Nothing further, Your Honor. I ask
10 that you consider the testimony and the packet that's been
11 presented to the Court and consider Mr. Robinson's
12 application.

13 THE COURT: I'll do it. I'll take it under
14 advisement and let you know this.

15 MR. WALLER: Thank you, Your Honor.

16 END OF REQUESTED TRANSCRIPT

17

18

19

20

21

22

23

24

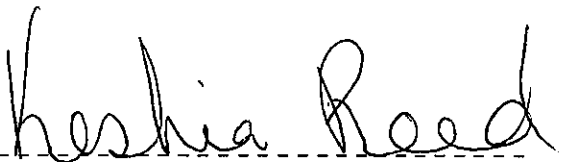
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed pages, numbered 1 through 38, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of Common Pleas for Florence County, South Carolina, on the 26th day of June, 2019.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 11th day of November 2019.

A handwritten signature in cursive script that reads "Keshia Reed". The signature is written in dark ink and is positioned above a dashed horizontal line.

Keshia Reed, Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARION	)	FOR THE TWELFTH JUDICIAL CIRCUIT
	)	
	)	
Kenneth Robinson, #325713	)	Case No.: 2010-CP-33-0659
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
Respondent.	)	
	)	

The matter before the Court is an action for post-conviction relief (PCR) commenced by Kenneth Robinson (Applicant) on August 5, 2010. The State received the PCR application on December 7, 2017; thereafter, the State submitted its return on February 5, 2018. In his PCR application, Applicant alleged ineffective assistance of counsel which rendered his guilty plea unknowing and involuntary.

An evidentiary hearing convened on June 25, 2019, at the Florence County Courthouse before the undersigned. Applicant was present and represented by Jonathan D. Waller, Esquire. Assistant Attorney General Samuel L. Key represented the State. Applicant and his former plea counsel testified at the hearing. After hearing the testimony at the PCR hearing and a full review of the record, the Court finds, as explained below, Applicant's allegations are without merit, denies relief, and dismisses the action with prejudice.

FACTS & PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marion County Clerk of Court. In February 2007, the Marion County Grand Jury indicted Applicant for one count each of murder, homicide by child abuse, first-degree criminal sexual conduct (CSC) with a minor, and conspiracy (2007-GS-33-0078).

Ralph Wilson, Sr., Esquire, (Counsel) represented Applicant. Jack Lawson, Esquire, prosecuted the case on behalf of the Twelfth Circuit Solicitor's Office.

The charges stem from the death of Applicant's girlfriend's minor child. On May 20, 2003, Applicant, in violation of a safety plan agreement with the South Carolina Department of Social Services (DSS), was home alone with the minor child while Applicant's girlfriend was at work. EMS received a call that the child had stopped breathing and responded to Applicant's residence. The minor child was observed to be badly bruised, and an autopsy performed later that evening determined the cause of death was blunt force trauma to the head. The victim also had injuries indicating sexual-abuse, which led to Applicant's first-degree CSC with a minor charge. Applicant later admitted to law enforcement that he had shaken and "manhandled" the child.

On November 26, 2007, Applicant pleaded guilty to homicide by child abuse before the Honorable D. Garrison Hill. The remaining charges were dismissed in exchange for Applicant's plea. Judge Hill sentenced Applicant to a term of imprisonment of forty-five years.

Applicant filed a timely notice of appeal. Celia Robinson, Esquire, of the Office of Appellate Defense perfected the appeal pursuant to *Anders v. California*, 386 U.S. 736 (1967). The court of appeals affirmed Applicant's conviction on December 3, 2009. *State v. Robison*, Op. No. 2009-UP-578 (S.C. Ct. App. filed December 3, 2009). The case was remitted to the circuit court on December 21, 2009.

ISSUE

Applicant alleges ineffective assistance of counsel rendering his guilty plea unknowing and involuntary. Specifically, Applicant alleges ineffective assistance of counsel for failure to investigate resulting in erroneous advice rendering his plea involuntary.

PCR HEARING TESTIMONY

Applicant's Testimony

Applicant recalled Henry "Hank" Anderson was originally appointed to represent him on these charges. Applicant stated he fired Anderson, and was then appointed William Derrick; however, Derrick retired, and Counsel was appointed. Applicant recalled talking to Counsel about his case, and recalled meeting with Counsel a month before his plea. Applicant testified he and Counsel mostly talked about pleading guilty. Applicant testified the State's theory of the case was the victim died from child abuse inflicted by Applicant. Applicant recalled he called 911 because the victim was foaming at the mouth. Applicant stated he told law enforcement he washed the victim because he was getting her ready to go to the hospital. Applicant stated he did not ask Counsel to investigate any potential witnesses. Applicant testified he gave Counsel some medical records, but did not know if Counsel investigated them or not. Applicant testified his medical records were not referenced during his plea hearing.

Applicant stated he and Counsel briefly discussed going to trial, but Counsel did not think going to trial was a good option because of Applicant's statement to the police. Applicant testified he followed Counsel's advice. When asked if he wanted to go to trial, Applicant stated he would have to go to trial if he could have gotten a better outcome.

Applicant knew he would receive significant time for pleading guilty. Applicant stated Counsel told him he was looking at between twenty to twenty-five years. Applicant testified Counsel advised him of the potential exposure he faced by pleading guilty, and agreed twenty to twenty-five years' is a significant amount of time. Applicant stated he never asked Counsel about

going to trial, even with a twenty-year minimum sentence because he relied on Counsel to tell him what was best. Applicant stated he was never named as a defendant in a DSS action.

Applicant testified that at the time of the incident he was going through chemo therapy for stomach cancer, but by the time Counsel represented him, his cancer was in remission. However, Applicant made Counsel aware of his medical condition, and Counsel mentioned it at the plea hearing. Counsel did not discuss any potential defenses regarding Applicant's medical conditions.

Applicant claimed he met with Counsel two times, and he did not think Counsel advised him of his constitutional rights or his right to remain silent. Applicant recalled Counsel discussing his statement to the police. He recalled when he gave the statement, he was not arrested, but was arrested immediately after making the statement.

Applicant recalled discussing going to trial when Anderson represented him, and Anderson was investigating and would let him know. Applicant stated he knew what was occurring in his case, and he thought under *Alford*¹ he would be receive between twenty to twenty-five years. Applicant testified that Counsel gave his opinion as to this amount of years from his experience. Up until the plea hearing, Applicant always maintained his innocence, and Counsel thought Applicant would be able to plead under *Alford*. Applicant stated he and Counsel discussed what occurred the day of the incident, but Applicant mainly just answered Counsel's questions and did not volunteer any information other than his medical history.

Applicant wanted to plead under *Alford*, but when he got in front of the plea court, the court would not accept an *Alford* plea. Applicant recalled speaking to Counsel, and Counsel told him pleading under *Alford* or pleading guilty would not make a difference. Applicant thought pleading guilty would not change the twenty to twenty-five years because Counsel told him it would not

¹ *North Carolina v. Alford*, 400 U.S. 25 (1970).

make a difference. Applicant stated he decided to plead guilty because Counsel told him it would not make a difference. Applicant testified he never told Counsel he wanted to go to trial based on Counsel's advice going to trial was not a good idea.

On cross-examination, Applicant testified he knew he was pleading with no negotiations or recommendations from the State, but the State did drop the other charges against him, and going from an *Alford* plea to a guilty plea did not change anything regarding the State.

Counsel's Testimony

Counsel testified he was appointed to represent Applicant, was Applicant's third or fourth attorney, and he got the defense files from Applicant's previous attorneys. Counsel briefly recalled the State's evidence contained Applicant's statement which was going to be difficult to overcome, and the mother of victim was going to be the State's primary witness.

Counsel remembered doing an initial interview with Applicant which is part of his normal practice. Counsel stated he went to Marion and met with Applicant and they went through the interview sheet to get personal information from Applicant, information about Applicant's family, and who Counsel can contact. Then Counsel talked to Applicant about the charges, one by one, and explained what the penalties are. Counsel stated he never tells a defendant to plead or go trial because that is their decision. However, Counsel explained he does tell his clients what he thinks is in their best interest, but they are free to take that advice or not; sometimes they do not agree. Counsel stated it was his practice to give advice so the client can make their own decision.

Counsel recalled Applicant was charged with murder, homicide by child abuse, and maybe a few other charges. Counsel testified he told Applicant the State informed him there would be no plea offer, and he told Applicant that from day one. Counsel recalled the State's first offer was for

a plea to murder—straight up. Counsel stated the State never made offers with a sentence, and the offers were always straight up.

Counsel could not recall whether he ever told Applicant he was looking at twenty to twenty-five years. Counsel stated he may have told Applicant if pleading to homicide by child abuse, a judge could give that, but Counsel would let Applicant know judges are unpredictable, based on prior experiences, but would not have guaranteed anything. Counsel testified if he said anything, he may have said he could see a judge giving twenty to twenty-five years.

Counsel testified he absolutely went over Applicant's constitutional rights and talked about Applicant's right to have a trial. Counsel stated he explained in his experience, if you lose at trial, you are going to get a greater sentence. Counsel explained there were basically no wins on Applicant's side. Counsel stated Applicant did tell him about Applicant's cancer, and Applicant was taking chemo and maybe the treatments affected Applicant. However, Applicant never gave Counsel anything specific that would say he was mentally ill or incompetent at time the events occurred. Counsel testified he did use Applicant's health issues in trying to negotiate a sentence/deal for him. Counsel testified he and Applicant discussed at length the State's main witness would also be his co-defendant, the child's mother.

Counsel recalled originally Applicant was going to plead under *Alford*, but the plea court refused to accept an *Alford* plea. Counsel testified he explained to Applicant how that would change his plea, and he and Applicant talked several times about how to do a plea. Counsel recalled Applicant was reluctant to say "I am guilty," which is pretty common. He also explained the State was not really offering anything, so the only other alternative was a trial. Counsel told Applicant about *Alford*, asked if that would make Applicant feel more comfortable. Counsel stated when they went into court, he and Applicant intended to do an *Alford* plea, but the court would not accept

an *Alford* plea to the charge. Counsel recalled going back to little room and talking to Applicant about whether to continue the plea or not, understanding it would not be an *Alford* plea. Counsel further explained the case was scheduled for trial, which is why Applicant had to decide that day or the case was going to be a trial.

Counsel testified he discussed potential defenses with Applicant, but there were not any of any significance. The problem was that Applicant was alone with the child when the incident occurred, so there was nowhere else to shift the blame. Counsel stated the mother was not in the home at time these things occurred, and could not be perpetrator even though she condoned it to some degree after becoming aware. Counsel stated in his professional opinion there was no real defense.

Counsel testified he did not recommend for Applicant to plead guilty, but he did tell Applicant he would be found guilty at trial; Counsel had very little doubt about that. Counsel stated the State was going to try Applicant for murder, and Applicant never said he wanted a trial and always wanted a plea deal. However, Applicant wanted a specific deal and the State was never offering anything other than straight up. Counsel testified he probably did tell Applicant pleading guilty would not change anything rather than pleading under *Alford*, because all the legal consequences are the same. Counsel stated the only difference was *Alford* would keep Applicant from saying he was guilty.

On cross-examination, Counsel admitted Applicant was correct Anderson had gotten some medical records, and he remembered seeing those. There were also some notes about Anderson's conversations with Applicant, but there was nothing in the file that Applicant and Counsel did not also go over. Counsel stated he did not do any further independent investigation because there

were really no other issues. Counsel stated he did talk to one of the detectives about Applicant's statement.

Counsel testified he was aware Applicant was being treated for cancer at the time of the incident, but did not investigate to see if the treatment might have affected the voluntariness of Applicant's statement to challenge it. Counsel admitted he did not do any medical research. Counsel stated he had several jail conversations with Applicant, at least three times, and two conversations at the courthouse. Counsel further stated that in conversations with Applicant, Applicant was lucid and clear minded, and gave no inclination that he had any kind of problem whatsoever. Counsel stated if Applicant had not told Counsel he had undergone chemo, Counsel would not have known about it. Counsel stated Applicant was not currently in treatment at time of their meetings, but Applicant told Counsel he was at time of incident. Counsel stated the meetings were two years later, and Applicant's mental state could have been different, but there was nothing to indicate Applicant had any problem or there was a *M'Naghten*² issue. Counsel testified first of all, Applicant denied he did these things, but if Applicant was saying he had done them, Counsel would have wanted to know. However, Applicant always maintained his innocence to Counsel.

Counsel testified he did not examine Applicant under *M'Naghten* because the situation was the child was physically and sexually abused to the point of death. Counsel stated he had never heard of chemo causing an individual to do the alleged acts, or driving someone crazy. Counsel explained Applicant had stomach cancer, and the situation might have been different if Applicant had brain cancer, but opined stomach cancer does not cause someone to rape or beat a child.

² *M'Naghten's Case*, 8 Eng. Rep. 718 (1843); see also *State v. Lewis*, 328 S.C. 273, 277, 494 S.E.2d 115, 117 (1997) (stating South Carolina follows the *M'Naghten* test to determine insanity).

Counsel stated in his my mind, Applicant was always very clear and gave no indication during their conversations Applicant was anything other than completely lucid. Counsel recalled Applicant saying he would not feel well after treatments, but nothing further. Further, during their conversations, Applicant never indicated to Counsel he did not recall calling 911 or giving his statement to the police.

Counsel recalled when in front of the plea court, Applicant did not want a trial, but was taken aback because Counsel did not expect the court to reject *Alford*. The court gave the defense an opportunity to decide if Applicant wanted to continue or not. Counsel told Applicant he did not have to plead guilty but it is not unusual based on his experience for people to claim they are not guilty and then turn around and plead guilty. Counsel stated he advised Applicant he would have to admit guilt on the record, and Applicant said he wanted to do it.

DISCUSSION

This Court has reviewed the record and heard the testimony at the PCR hearing. This Court has observed the evidence and witnesses presented at the evidentiary hearing, judged their credibility, and weighed their testimony accordingly in its discussion below. Set forth below are findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code.

The issue before the Court is whether Applicant's guilty plea was the result of ineffective assistance of counsel. Specifically, Applicant alleges Counsel was ineffective for failure to investigate resulting in erroneous advice rendering his guilty plea involuntary. These allegations are properly before the Court as attacks on the knowing and voluntary nature of Applicant's plea. *See Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (stating a defendant who entered a plea with the advice of counsel may only attack the voluntary and intelligent nature of the plea).

For the reasons discussed below, the Court concludes Counsel was not ineffective, and finds Applicant knowingly and voluntarily pleaded guilty.

To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989).

The test for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). “[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). “The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To prove prejudice, the applicant must show a reasonable probability he would not have pleaded guilty and would have insisted on going to trial absent plea counsel's alleged deficiency. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

1. Prejudice

The Court finds Applicant has failed to show any prejudice resulted from Counsel's alleged deficiencies. The Court finds the combined record from the plea hearing and the evidentiary hearing clearly establishes Applicant pleaded guilty freely and voluntarily, and the Court is not convinced Applicant would have chosen to go to trial instead of pleading guilty.

“[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced.” *Reed v. Becka*, 333 S.C. 676, 685,

511 S.E.2d 396, 401 (Ct. App. 1999). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." *Hill*, 474 U.S. at 56. Further, to prove prejudice, the applicant must show a reasonable probability he would not have pleaded guilty and would have insisted on going to trial absent plea counsel's alleged deficiency. *Id.* at 59.

The plea transcript reflects Applicant entered his plea knowingly and voluntarily, engaged in an intelligent and coherent colloquy with the plea court, and gave appropriate responses to the plea court's questions. At the beginning of the plea hearing, Applicant informed the court he was not under influence of any substance, nor did he have any mental conditions, which would affect his ability to understand what he was doing. (Plea Tr. 4). When asked by the plea court if the facts as narrated by the State was what happened, Applicant answered, "That's pretty much it." (Plea Tr. 13). Applicant further agreed with the plea court he committed child abuse or neglect of the victim resulting in the victim's death. (Plea Tr. 13). The plea court explained Applicant's right to remain silent, right to a jury trial, the right to confront witnesses and present a defense, and the State's burden of proof beyond a reasonable doubt. (Plea Tr. 7-9). Applicant indicated he understood his rights and wished to give them up in order to plead guilty. (Plea Tr. 9). Importantly, Applicant indicated no one had pressured him to plead guilty, he was satisfied with Counsel, had no complaints against Counsel, and did not need any more time to confer with Counsel. (Plea Tr. 4-5, 9, 10). Therefore, Applicant has failed to prove any prejudice resulted from Counsel's alleged deficiency. *See Wolfe v. State*, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997) (stating any possible misconceptions due to counsel's alleged deficiencies can be cured by the plea court's colloquy).

At no time during the plea hearing did Applicant state or indicate he did not wish to plead guilty and instead wished to proceed to trial. At the PCR hearing, Applicant admitted he did not

want to go to trial because of his discussions with Counsel. Applicant testified Counsel told him he was looking at between twenty to twenty-five years' if he pleaded guilty; however, Applicant stated Counsel never promised him anything. Applicant testified he would have gone to trial *if* he could have gotten a better outcome than pleading guilty. Applicant's testimony on this issue does not convince this Court Applicant would have chosen to proceed to trial instead of pleading guilty despite Counsel's alleged erroneous advice. *Hill*, 474 U.S. at 59 (stating to prove prejudice, the applicant must show a reasonable probability he would not have pleaded guilty and would have insisted on going to trial absent plea counsel's alleged deficiency). As such, the Court finds Applicant has failed to meet his burden of proof on the prejudice prong of *Strickland*.

2. Deficient Performance

As discussed in the previous section, no prejudice resulted from Counsel's alleged deficient performance. Even so, Applicant alleges Counsel was ineffective for providing erroneous advice concerning the guilty plea, and Counsel failed to properly investigate the case. For the reasons discussed below, the Court disagrees.

Counsel's advice concerning the shift from an *Alford* plea to a guilty plea

Applicant alleges Counsel was ineffective for providing erroneous advice concerning his guilty plea, and because Counsel advised him he would receive between twenty to twenty-five years' imprisonment. The Court disagrees.

"The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson*, 287 S.C. at 357, 338 S.E.2d at 637.

Applicant testified Counsel told him during their off the record discussion whether Applicant pleaded under *Alford* or pleaded guilty would not make a difference. Counsel testified

he probably did tell Applicant the change did not make a difference during their discussion because there is no legally significant difference between pleading under *Alford* and pleading guilty. Counsel's advice to Applicant in this regard was reasonable, and correct. See *Alford*, 400 U.S. at 37 (stating there is no material difference "between a plea that refuses to admit commission of the criminal act and a plea containing a protestation of innocence when . . . a defendant intelligently concludes that his interests require entry of a guilty plea . . ."). Therefore, Counsel's advice to Applicant the shift from an *Alford* plea to a guilty plea did not make a difference was correct. Accordingly, the Court finds Counsel's advice to Applicant the shift from an *Alford* plea to a guilty plea would not make a difference was correct, reasonable, and Counsel's advice did not render his performance deficient.

Applicant alleges Counsel was deficient for advising Applicant he was facing between twenty to twenty-five years' by pleading guilty. The Court disagrees. Plea counsel is not deficient for advising a defendant to plead guilty based on what counsel reasonably believes the sentence would be if the defendant were convicted at trial. *Bennett v. State*, 371 S.C. 198, 204–05, 638 S.E.2d 673, 676 (2006).

As stated above, Counsel could not recall whether he ever told Applicant he was looking at twenty to twenty-five years. Counsel stated he may have told Applicant if pleading to homicide by child abuse, a judge could give that, but Counsel would have let Applicant know judges are unpredictable based on prior experience, but would not have guaranteed anything. Counsel testified if he said anything, he may have said he could see a judge giving twenty to twenty-five years. Applicant admitted Counsel never made him any promises regarding sentencing. Based on this testimony, the Court finds Counsel was not deficient because Applicant knew he could receive a substantial sentence and merely wished for the twenty to twenty-five year sentence, as Applicant

admitted Counsel made him no promises. *See Wolfe*, 326 S.C. at 165, 485 S.E.2d at 371 (“Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made.”). Therefore, the court denies relief on this allegation and dismisses it with prejudice.

Counsel’s investigation and advice to Applicant whether to plead guilty or proceed to trial

Applicant alleges Counsel was ineffective for advising Applicant to plead guilty instead of proceeding to trial because Counsel failed to fully investigate the facts and legal circumstances surrounding the case. The Court disagrees.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). However, counsel is presumed to have adequately assisted and exercised reasonable professional judgment in making decisions in the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011). “[W]here counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.” *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

First, at the PCR hearing, an issue arose as to whether Counsel conducted a full independent investigation of Applicant’s case. Applicant and Counsel both testified Counsel was not the first attorney appointed to represent Applicant. Counsel testified he received the previous attorneys’ case files when he was appointed, and he reviewed those files. Counsel testified from his review of the discovery and the previous attorneys’ files, there was no further investigation needed. The Court finds credible Counsel’s testimony he reviewed all the discovery and the previous attorneys’

case files. The Court finds reasonable Counsel's decision no further investigation was needed from his review of all the materials he received. This Court will not second guess Counsel's decision no further investigation was needed; therefore, this allegation is denied and dismissed with prejudice.

Applicant next contends Counsel was ineffective for failing to research whether Applicant's medical condition at the time of the incident—being treated for stomach cancer with chemo therapy—could have affected Applicant's culpability. The Court finds this issue is without merit. Counsel testified Applicant informed him Applicant was being treated for stomach cancer at the time the incident occurred; however, Applicant never claimed his treatment had any effect on his mental capacity, and Applicant never indicated he did not remember calling 911 or giving his statement to the police. Further, nothing has been presented to this Court to indicate Applicant did not recall the incident or his mental state was altered by his treatment. Applicant's own PCR hearing testimony indicates his treatment did not affect his mental state at the time of the incident, and his testimony regarding the incident supports Counsel's decision not to investigate whether Applicant's mental state was altered from the treatment. Therefore, the Court finds Counsel was not deficient for failing to investigate whether Applicant's cancer treatment altered his mental state at the time of the incident.

Applicant alleges Counsel was ineffective for advising him to plead guilty rather than proceed to trial. The Court disagrees. Plea counsel is not deficient for advising a defendant to plead guilty based on what counsel reasonably believes the sentence would be if the defendant were convicted at trial. *Bennett v. State*, 371 S.C. 198, 204–05, 638 S.E.2d 673, 676 (2006).

As discussed above, Counsel testified he did not recommend Applicant to plead guilty, but he did tell Applicant he would be found guilty at trial; Counsel had very little doubt about that.

Counsel stated he explained in his experience, if you lose at trial, you are going to get a greater sentence. Counsel testified he discussed potential defenses with Applicant, but there were not any of any significance. Counsel stated the State was going to try Applicant for murder, and Applicant never said he wanted trial and always wanted a plea deal. Counsel stated the situation was the child was physically and sexually abused to the point of death, and Counsel explained to Applicant there were basically no wins on Applicant's side.

The Court finds Counsel's advice whether to plead guilty to go to trial reasonable. Counsel credibly testified he did not tell Applicant he should plead guilty, but did tell Applicant his opinion of the outcome he expected if the case went to trial. Counsel explained the State had a compelling case against Applicant and explained to Applicant his options. Applicant chose to plead guilty based upon Counsel's sound advice. Therefore, Counsel was not deficient in advising Applicant whether to plead guilty to proceed to trial. As such, the Court denies this allegation and dismisses it with prejudice.

CONCLUSION

The Court finds Counsel's representation was neither deficient nor prejudicial. Applicant pleaded guilty pursuant to the advice of plea counsel. Applicant knew the meaning and consequences of pleading guilty to the charges and voluntarily chose to do so. Applicant failed to show Counsel was deficient for failing to undertake a reasonable investigation in the case, and Counsel provided sound and competent advice based on his view of the evidence. Further, the Court finds the plea court's thorough colloquy cured any alleged deficiencies of Counsel. Therefore, based on the foregoing, the Court denies relief on the allegation and dismisses this PCR action with prejudice.

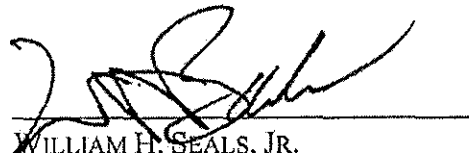
Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR.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

THEREFORE:

1. The Court denies relief and dismisses the action with prejudice; and
2. Applicant shall be remanded to the custody of the State.

AND IT IS SO ORDERED.

7/30, 2019.


 WILLIAM H. SEALS, JR.
 Presiding Judge
 Twelfth Judicial Circuit

WITNESSES
INSPECTOR KENNY DAVIS MCSO

Brunson

PROS:

D/O: 05-20-2003

ARREST WARRANT NO.

G890806 (1); G890806 (2); G890806 (3);

G890804 (4); G890806 (4); G890804 (5);

G890804 (6); G890804 (7).

ACTION OF GRAND JURY

True B:11

[Signature]

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 2007 - GS - 33 - 00078

The State of South Carolina,

County of MARION

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2007

THE STATE

vs.

BRANDY MARIE MCDANIEL

KENNETH DEON ROBINSON

Indictment for

MURDER (TWO COUNTS),
HOMICIDE BY CHILD ABUSE
(TWO COUNTS),
CRIMINAL SEXUAL CONDUCT
WITH MINOR (FIRST DEGREE),
CONSPIRACY
AND
ACCESSORY BEFORE THE FACT

INDICTMENT FOR

STATE OF SOUTH CAROLINA	)	MURDER (TWO COUNTS), HOMICIDE BY CHILD
	)	ABUSE (TWO COUNTS), CRIMINAL SEXUAL
COUNTY OF MARION	)	CONDUCT WITH MINOR (FIRST DEGREE),
		CONSPIRACY AND ACCESSORY BEFORE THE FACT

At a Court of General Sessions, convened on FEBRUARY 22, 2007, the Grand Jurors of MARION

County present upon their oath:

COUNT ONE - MURDER

That KENNETH DEON ROBINSON did in MARION County between April 8, 2003 and May 20, 2003 violate Sections 16-03-0010, 0020 and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that he did feloniously, wilfully and with malice aforethought kill one Minor by means of beating the child repeatedly over this period of time ultimately causing head trauma consistent with Blunt force injury to the head, together with other injuries consistent with blunt force trauma and that the said Minor did die as a proximate result thereof.

COUNT TWO - HOMICIDE BY CHILD ABUSE

That KENNETH DEON ROBINSON did in MARION County between April 8, 2003 and May 20, 2003 violate Section 16-03-0085(A)(1) of the Code of Laws of South Carolina (1976), as amended, in that he did unlawfully cause injuries resulting in subsequent death to one Minor, a child under the age of eleven, date of birth [REDACTED], while committing child abuse or neglect, and the death of Minor on or about May 21, 2003 resulted from said injuries which occurred under circumstances manifesting an extreme indifference to human life, including injuries consistent with injuries of an abusive head trauma consistent with blunt force injury to the head by beating, together with multiple other injuries all indicating severe beating of the said Minor.

COUNT THREE - CRIMINAL SEXUAL CONDUCT WITH MINOR (FIRST DEGREE)

That KENNETH DEON ROBINSON did in MARION County between April 8, 2003 and May 20, 2003 violate Section 16-03-0655(A)(1) of the Code of Laws of South Carolina (1976), as amended, in that he did wilfully and unlawfully commit, or attempt to commit, a sexual battery in and upon one Minor a child under the age of eleven years, by penetrating the child both vaginally and anually, the child being 3 years old, date of birth [REDACTED].

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR MURDER (TWO COUNTS), HOMICIDE BY CHILD ABUSE (TWO COUNTS), CRIMINAL SEXUAL CONDUCT WITH MINOR (FIRST DEGREE), CONSPIRACY AND ACCESSORY BEFORE THE FACT WITH THE AFORESAID NAME(S) OF BRANDY MARIE MCDANIEL AND KENNETH DEON ROBINSON SHOWN THEREON:

COUNT FOUR - CONSPIRACY

That BRANDY MARIE MCDANIEL AND KENNETH DEON ROBINSON did in MARION County on or about May 20, 2003, violate Section 16-17-0410 of the Code of Laws of South Carolina (1976), as amended, in that they did unlawfully, wilfully, knowingly, wickedly and feloniously unite, combine, conspire, confederate, agree between and among themselves and have tacit understanding with each other and with divers other persons whose names are unknown to the Grand Jurors for the purpose of committing the crime of Murder and or Homicide by Child Abuse. The agrument of the parties being evidence by the duration of the abusive conduct towards the victim ^{Minor} and the failure to take the child to the hospital or to report the abuse to law enforcement or the Department of Social Serivces who already had started investigating allegations of abuse.

COUNT FIVE - MURDER

That BRANDY MARIE MCDANIEL did in MARION County between April 8, 2003 and May 20, 2003 violate Sections 16-03-0010, 0020 and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that she did feloniously, wilfully and with malice aforethought kill one ^{Minor} by means of allowing Kenneth Deon Robinson to beat the child repeatedly over this period of time ultimately causing abusive head trauma consistant with blunt force injury to the head together with other injuries consistant with blunt force trauma and the fact that Brandy Marie McDaniel while present during this time did nothing to stop the assaults on ^{Minor} and in fact allowed the conduct to continue while the victim was continually becoming more battered through out this time period. and that the said ^{Minor} did die as a proximate result thereof.

COUNT SIX - HOMICIDE BY CHILD ABUSE

That BRANDY MARIE MCDANIEL did in MARION County between April 8, 2003 and May 20, 2003 violate Section 16-03-0085(A)(1) of the Code of Laws of South Carolina (1976), as amended, in that she did unlawfully cause injuries resulting in subsequent death to one ^{Minor}, the child of the said Brandy Marie McDaniel a child under the age of eleven, date of birth [REDACTED], by neglecting to protect the child from injuries, or to take her to the hospital for treatment, which resulted in the death while committing child abuse or neglect, and the death of ^{Minor} on May 21, 2003 resulted from said injuries which occurred under circumstances manifesting an extreme indifference to human life, including injuries consistent with an abusive head trauma consistant with blunt force injury to the head by beating, together, with multiple other injuries.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR MURDER (TWO COUNTS), HOMICIDE BY CHILD ABUSE (TWO COUNTS), CRIMINAL SEXUAL CONDUCT WITH MINOR (FIRST DEGREE), CONSPIRACY AND ACCESSORY BEFORE THE FACT WITH THE AFORESAID NAME(S) OF BRANDY MARIE MCDANIEL AND KENNETH DEON ROBINSON SHOWN THEREON:

COUNT SEVEN - ACCESSORY BEFORE THE FACT

That BRANDY MARIE MCDANIEL did in MARION County between April 8, 2003 and May 20, 2003 violate Section 16-01-0040, 0050 of the Code of Laws of South Carolina (1976), as amended, in that she did procure a felony to be committed, to wit: Criminal Sexual Conduct with a Minor, First Degree, by means of advising, aiding, counseling, encouraging and/or procuring the within named defendant, KENNETH DEON ROBINSON, for the felony of Criminal Sexual Conduct with a Minor, First Degree, in that the said BRANDY MARIE MCDANIEL did allow the said KENNETH DEON ROBINSON to repeatedly penetrate the minor child, both vaginally and anally, and doing nothing to stop said conduct, and by leaving the child alone with a person she was under a Department of Social Services Order not to allow this person to be alone with the said minor child.

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



SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF MARION
 STATE VS.
Kenneth Dean Robinson
 AKA:
 Race: R Sex: M Age: 28
 DOB: [REDACTED] SS#: [REDACTED]
 Address:
 City, State, Zip
 DL# SID#

INDICTMENT/CASE#: 2007 -GS- 33 - 78
 A/W#: 6-890806
 Date of Offense: 5/20/03 to 5/21/03
 S.C. Code §: 16-3-85(A)(1)
 CDR Code #: 2 / 3 / 5 / 6
☐ CASE RESTORED
☒ SENTENCE
☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
 TO: (C+2) Homicide By Child Abuse (20yrs. to Life)
 in violation of § 16-3-85(A)(1) of the S.C. Code of Laws, bearing CDR Code # 2 / 3 / 5 / 6
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 45 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
 Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms:
☐ set by SCDPPPS _____

Recipient: _____
 *Fine: \$ _____
 \$14-1-206 (Assessments 107.5%) \$ _____
 \$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____
 \$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
 \$56-5-2995 (DUI Assessment) \$12 \$ _____
 \$ 35.13 (Public Def/Prob) \$500 \$ _____
 \$73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____
 \$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
 \$50-21-114(BUI Breath Test Fee) \$50 \$ _____
 \$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
 3% to County (if paid in installments) \$ _____
 TOTAL \$ _____

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

☐ Appointed PD or appointed other counsel, \$35.13 TP
 Requires \$500 be paid to Clerk during probation.

Sherry B Rhodes
 Clerk of Court/ Deputy Clerk
 Court Reporter: Francis B. Ray

PRESIDING JUDGE [Signature]
 Judge Code: 2 / 1 / 3 / 18
 Sentence Date: 11-26-2007