

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Honorable John C. Hayes, Circuit Court Judge

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Apr 30 2020

S.C. SUPREME COURT

ALFRED Q. DUNKIN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001462

APPENDIX

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INDEX

INDEX i

TRANSCRIPT OF GUILTY PLEA HEARING HELD AUGUST 28, 2017 1

SENTENCING HEARING HELD OCTOBER 3, 2017 14

APPLICATION FOR POST-CONVICTION RELIEF 27

RETURN..... 34

TRANSCRIPT OF POST-CONVICTION RELIEF HEARING HELD JUNE 18, 2019 41

ORDER OF DISMISSAL..... 79

INDICTMENTS 93

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2017-GS-26-01879

STATE OF SOUTH CAROLINA,)

Plaintiff,) **Transcript of Record**

vs.)

August 28, 2017

ALFRED DUNKIN,)

Defendant.)

B E F O R E:

Honorable Steven H. John
Horry County Courthouse
Conway, South Carolina

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

Cara J. Walker, Esquire
Attorney for Plaintiff

Erin E. Bailey, Esquire
Attorney for Defendant

REPORTED BY:

Dixie C. Eubank
Circuit Court Reporter

PREPARED BY:

Kay H. Richardson
Circuit Court Reporter

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I N D E X

AUGUST 28, 2017

Pg.

Alfred Dunkin

By the Court 3

Ruling of the Court 10

Certificate of Court Reporter 13

E X H I B I T S

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(No exhibits were marked or admitted.)

State v. Dunkin - 2017-GS-26-01879
BY THE COURT

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1 **AUGUST 28, 2017**

2 ALRED DUNKIN, HAVING BEEN DULY SWORN,
3 TESTIFIED AS FOLLOWS:

4 THE COURT: Yes, Solicitor.

5 MS. WALKER: Yes, Your Honor. This is Mr. Alfred Dunkin,
6 represented by Erin Bailey. He's here before you today to
7 plead guilty to two counts, an armed robbery, indictment
8 number 2017-GS-26-1879; and accessory after the fact to
9 murder, which is a waiver of indictment 2017-GS-26-3245.

10 Mr. Dunkin is also entering -- well, I've handed up a
11 copy of the proffer agreement that Mr. Dunkin is entering into
12 that he will be testifying in his codefendant Mr. Jordan
13 Principe's trial at a later date. And so, we would ask that
14 his sentencing be held open until such time that he completes
15 that testimony.

16 THE COURT: All right. Very good.

17 All right. Mr. Dunkin, give me your attention, sir.
18 You're coming before the Court and you're pleading guilty the
19 crimes of accessory after the fact of murder and armed
20 robbery. Is that correct?

21 MR. DUNKIN: Yes, sir.

22 THE COURT: You understand the potential sentence
23 regarding accessory after the fact of murder could be up to 15
24 years; you understand that?

25 MR. DUNKIN: Yes, sir.

State v. Dunkin - 2017-GS-26-01879
BY THE COURT

4

1 THE COURT: And armed robbery could be from a minimum of
2 10 up to 30 years; you understand that?

3 MR. DUNKIN: Yes, sir.

4 THE COURT: Now, regarding the indictment for armed
5 robbery, you understand that you were indicted for that crime
6 by the Horry County Grand Jury and the indictment was for May
7 -- on May 8th of 2017; you understand that?

8 MR. DUNKIN: Yes, sir.

9 THE COURT: And accessory after the fact of murder, that
10 matter has not been presented to the Horry County Grand Jury;
11 you understand that?

12 MR. DUNKIN: Yes, sir.

13 THE COURT: All right, sir. And you've talked to Ms.
14 Bailey about that; is that right?

15 MR. DUNKIN: Yes, sir.

16 THE COURT: And you've indicated on the face of the
17 sentencing sheet that you want to waive or give up that
18 presentment to the Grand Jury; is that correct?

19 MR. DUNKIN: Yes, sir.

20 THE COURT: All right. Now, you understand this matter
21 comes before the Court under the circumstance where you've
22 entered what's called a proffer or an agreement with the state
23 regarding the -- regarding the case of the codefendant -- I'm
24 sure I'm pronouncing his last name incorrectly -- Principe or
25 Principe, you understand that the state is expecting you to be

State v. Dunkin - 2017-GS-26-01879

5

BY THE COURT

1 a witness against him in that particular matter; you
2 understand that?

3 MR. DUNKIN: Yes, sir.

4 THE COURT: All right, sir. And the plea here today is
5 being presented to the Court to qualify or accept the guilty
6 plea with the sentence portion of it to be held in abeyance
7 until after the trial or the case involving Mr. Principe is
8 resolved one way or another; you understand that?

9 MR. DUNKIN: Yes, sir.

10 THE COURT: All right. Very good. All right. So,
11 understanding then all these things that we have now just
12 talked about, do you want to go forward with your two guilty
13 pleas?

14 MR. DUNKIN: Yes, sir.

15 THE COURT: Are you currently under the influence of any
16 drugs or intoxicants of any kind or currently have them in
17 your system?

18 MR. DUNKIN: No, sir.

19 THE COURT: Are you suffering from any kind of physical,
20 mental, emotional problem that would keep you from
21 understanding what you're doing here today?

22 MR. DUNKIN: No, sir.

23 THE COURT: When you plead guilty, you give up
24 constitutional rights, among those the right to remain silent.
25 You're talking to me, you've giving that right up; you

State v. Dunkin - 2017-GS-26-01879
BY THE COURT

6

1 understand that?

2 MR. DUNKIN: Yes, sir.

3 THE COURT: Other rights are the presumption of
4 innocence, the right against self-incrimination at a trial.
5 The state has to prove you guilty beyond a reasonable doubt.
6 You're pleading guilty, you give up those rights; do you
7 understand that?

8 MR. DUNKIN: Yes, sir.

9 THE COURT: You're entitled to a jury trial. Twelve men
10 and women would be sitting in the box like that one over
11 there, listening to the facts and evidence presented by the
12 state to see if there are indeed enough facts and evidence to
13 prove you guilty beyond a reasonable doubt. You're pleading
14 guilty, you're giving up that jury trial. You understand
15 that?

16 MR. DUNKIN: Yes, sir.

17 THE COURT: Now, in that jury trial, with your attorney,
18 you can question the witnesses, the evidence presented. If
19 you wanted to, you could present a defense, testify, call
20 witnesses, present evidence. You're pleading guilty, you give
21 up all those rights. Do you understand that?

22 MR. DUNKIN: Yes, sir.

23 THE COURT: You're coming before the Court and you're
24 pleading guilty to the armed robbery and the accessory after
25 the fact of murder. Are you pleading guilty to both of those

State v. Dunkin - 2017-GS-26-01879
BY THE COURT

7

1 crimes freely and voluntarily?

2 MR. DUNKIN: Yes, Your Honor.

3 THE COURT: Of your own freewill and accord?

4 MR. DUNKIN: Yes, sir.

5 THE COURT: Pleading guilty because you are guilty of
6 those crimes?

7 MR. DUNKIN: Yes, sir.

8 THE COURT: Anybody promise you anything or threaten you
9 or force you in any way to get you to plead guilty?

10 MR. DUNKIN: No, sir.

11 THE COURT: You're here today with your attorney, Ms.
12 Baily; is that correct?

13 MR. DUNKIN: Yes, sir.

14 THE COURT: Did you tell her everything you wanted to
15 tell her about these two cases and the other matters for which
16 you were charged?

17 MR. DUNKIN: Yes, sir.

18 THE COURT: Have you had enough time to talk to her?

19 MR. DUNKIN: Yes, sir.

20 THE COURT: You need any more time to talk to her?

21 MR. DUNKIN: No, sir.

22 THE COURT: Satisfied with her help?

23 MR. DUNKIN: Yes, sir.

24 THE COURT: And any complaints about here help and
25 representation?

State v. Dunkin - 2017-GS-26-01879
BY THE COURT

8

1 MR. DUNKIN: No, sir.

2 THE COURT: Very good.

3 All right. Ms. Bailey, you represent the interest of
4 your client, Mr. Dunkin, in these matters?

5 MS. BAILEY: I do, Your Honor.

6 THE COURT: He comes before the Court to tender his pleas
7 of guilty to the two offenses named. Do you concur?

8 MS. BAILEY: Yes, Your Honor.

9 THE COURT: And you believe he's coming before the Court
10 of his own freewill and accord?

11 MS. BAILEY: Yes, Your Honor.

12 THE COURT: And you've explained to him his
13 constitutional rights, any defenses he might have, as well as
14 the information and the evidence in the possession of the
15 state?

16 MS. BAILEY: I have, Your Honor.

17 THE COURT: Thank you very much.

18 All right. Solicitor, the facts of the cases, please.

19 MS. WALKER: Yes, Your Honor. And I apologize, I didn't
20 mention earlier the victims' parents are here today.

21 And as far as the facts of the case, on Wednesday,
22 November 4th, 2015, law enforcement responded to 2221
23 Technology Boulevard, Conway section of Horry County. And
24 they responded to a call for a shooting. There they found the
25 victim, Mr. Craig Gray. He had sustained several gunshot

State v. Dunkin - 2017-GS-26-01879
BY THE COURT

9

1 wounds and ultimately did die as a result of those wounds.
2 And, what transpired was that Mr. Dunkin and his codefendant
3 Jordan Principe went to Mr. Gray's apartment allegedly to
4 purchase marijuana. However, there was a gun on Mr. Principe.
5 Mr. Dunkin knew that the gun was there and knew that at some
6 point, Mr. Principe had wanted to conduct a robbery, and he
7 went with Principe to the location. During the exchange,
8 there was an altercation. Ultimately, Mr. Principe did shoot
9 the victim, Mr. Gray. And the charge of accessory after the
10 fact comes from fact that Mr. Dunkin was the one that hid the
11 gun and took other steps to conceal the crime that had
12 occurred.

13 THE COURT: All right. Thank you.

14 All right. Mr. Dunkin, you heard the basic facts of the
15 case against you by the state and a brief summary of those
16 same facts are in your two indictments. My question to you
17 is, are those facts true and correct?

18 MR. DUNKIN: Yes, sir.

19 THE COURT: And you understand you engage in that kind of
20 activity, you are committing a crime; do you understand that?

21 MR. DUNKIN: Yes, sir.

22 THE COURT: Have you understood my questions here today?

23 MR. DUNKIN: Yes, sir.

24 THE COURT: Have all your answers to me been the truth?

25 MR. DUNKIN: Yes, sir.

State v. Dunkin - 2017-GS-26-01879
RULING OF THE COURT

10

1 THE COURT: Anybody tell you how to answer my questions?

2 MR. DUNKIN: No, sir.

3 THE COURT: And you understand you have the right to
4 appeal your guilty pleas. Once a sentence is imposed, you
5 have 10 days from that date to appeal your guilty pleas; you
6 understand that?

7 MR. DUNKIN: Yes, sir.

8 RULING OF THE COURT:

9 THE COURT: I find there's been a substantial factual
10 basis for the plea. I find the defendant's decision to plead
11 guilty has been done freely, voluntarily, knowingly, and
12 intelligently made. He's had the advice of competent counsel
13 with whom he's satisfied. Therefore, Mr. Dunkin's decision to
14 plead guilty to armed robbery and accessory after the fact of
15 murder is accepted.

16 Regarding these matters then, the Court will withhold
17 sentencing until after the case involving Mr. Principe is
18 resolved to a final resolution by trial or otherwise.

19 Anything else from the defense at this time?

20 MS. BAILEY: Yes, Your Honor. We're just making a
21 clarification of his bond situation given the plea that was
22 just entered. On June 14th of 2017, Judge Culbertson entered
23 a bond order wherein he set a bond of \$20,000 on each charge,
24 one for murder, one for possession of a weapon during the
25 commissions of a violent crime, and one for armed robbery. He

State v. Dunkin - 2017-GS-26-01879
RULING OF THE COURT

11

1 has now pled guilty to one of those and the sentence is being
2 held in abeyance. Mr. Dunkin has been unable to raise the
3 funds for that very reasonable \$60,000 bond. However, he has
4 a medical issue. You can see his ears. They were not like
5 that when he checked into the jail two years ago. They have
6 progressively gotten worse. They're causing him all kinds of
7 migraines, headaches. They've bled from time to time. And
8 the jail is refusing to address it. He is hopeful that even
9 though the trial is coming up very soon, he would very much
10 like to bond out just so that he can get his medical issues
11 addressed. He asked me to ask the Court if Your Honor would
12 consider releasing him on his own recognizance until his trial
13 date. And so I'm doing that at this time. In the
14 alternative, I would ask the Court if, given the resolution
15 today, given that now one of these charges -- one of the three
16 charges is resolved, perhaps the Court can clarify that his
17 current bond situation might be 40,000 instead of 60 since one
18 of the charges has been resolved. Regardless, given the
19 unusual procedural nature of where we are now, he would still
20 at least like the opportunity to post some kind of bond
21 between now and his trial date.

22 THE COURT: All right. What's the position of the state?

23 MS. WALKER: Your Honor, we certainly would oppose him
24 getting out. As far as own his own recognizance, we
25 definitely think whether it's the 60 or the 40, that's more

1 than reasonable given the nature of the charges. And that if
2 he is able to post bond, definitely a curfew and perhaps some
3 means of monitoring his whereabouts.

4 MS. BAILEY: Your Honor, the prior bond order I have and
5 it orders -- it does not order any monitoring. It does order
6 that he reside with his foster sister in Conway, gives her
7 name and address. And it orders that he have no contact with
8 the victim's family, but it does not order any monitoring. He
9 was ---

10 THE COURT: All right. That's fine.

11 I'm not gonna order any monitoring. I do -- I'm not
12 going to change the bond other than the fact that I do believe
13 that the bond as it now exists is a \$40,000 surety bond due to
14 his plea here today. So, if an order needs to be issued, Ms.
15 Bailey, if you would want to do so so that it's clear to the
16 jail authorities that a bond in this matter is now a \$40,000
17 surety bond with those terms and conditions that were
18 previously set and that will remain the same.

19 MS. BAILEY: Thank you, Your Honor.

20 THE COURT: Thank you.

21 **ADJOURNED**

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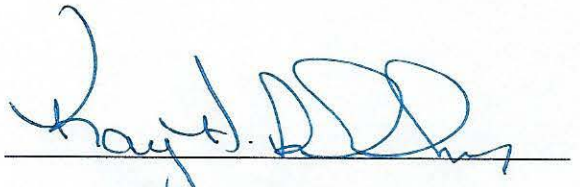
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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus Alfred Dunkin, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on August 28, 2017, as reported by Dixie C. Eubank.

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



Kay H. Richardson
Official Court Reporter

November 28, 2018.

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STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**
COUNTY OF HORRY) CASE NO: 2017-GS-26-03245
2017-GS-26-01879

SENTENCING

B E F O R E: The Honorable Larry Hyman
October 3, 2017

STATE OF SOUTH CAROLINA,
Plaintiff,
vs.
ALFRED DUNKIN,
Defendant.

APPEARANCES:

Joshua Holford, Esq.
For the State of South Carolina.

Erin Bailey, Esq.
For the Defendant.

Court Reporter:
Natalie Dahl, RPR

1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: All right.

3 (ALFRED DUNKIN was duly sworn.)

4 MR. HOLFORD: State of South Carolina, County of
5 Horry versus Alfred Dunkin, 2017-GS-26-03245,
6 accessory after the fact of murder. It is a
7 non-violent offense that carries up to 15 years. And
8 true bill Indictment 2017-GS-26-01879 for armed
9 robbery, violent, most serious, carries 10 to 30
10 years. The defendant pled guilty in front of Judge
11 Steven John on August 28, 2017. He pled guilty to
12 both indictments. At that time, his sentencing was
13 held in abeyance. Judge John executed an order
14 accepting the guilty plea and holding sentence in
15 abeyance, as well as an order clarifying bond, in
16 which he also stated he will be sentenced at a later
17 date. His guilty plea has been accepted. I can
18 approach with those as well.

19 THE COURT: Can you tell me why this was done
20 this way?

21 MR. HOLFORD: Yes. Mr. Dunkin had a codefendant,
22 Jordan Principay (phonetic). Jordan Principay was
23 scheduled for trial this week. He was on the trial
24 roster. After the State made a 20-year plea offer to
25 Alfred Dunkin, the State decided to go forward with

1 the charges of murder against his codefendant, Jordan
2 Princapay. At that time, the State made a proffer
3 agreement with the defendant. The defendant signed
4 the agreement, agreed to testify against his
5 codefendant. So at that time, he pled guilty to the
6 armed robbery and accessory after the fact to murder,
7 but his sentence was held in abeyance until he had the
8 time to testify. His codefendant, who was on the
9 trial roster this week, pled guilty yesterday to
10 voluntary manslaughter for a 25-year sentence, and so
11 the State brought it back before the Court to handle
12 just sentencing. I can give you facts.

13 THE COURT: Certainly.

14 MR. HOLFORD: The victim's parents are present
15 and would like to speak at the appropriate time. This
16 defendant and codefendant had met with Craig Gray, a
17 21-year-old individual. There was a marijuana sale
18 involved. They went to Craig Gray's apartment. The
19 codefendant brought a gun with him. There was a
20 struggle over the marijuana. There was actually a
21 broken bag of marijuana left in the apartment which
22 indicates there was a struggle over the drugs.

23 Mr. Dunkin pled guilty to the armed robbery.
24 There was a plan beforehand at some point to rob Craig
25 Gray of the marijuana, not to buy it. A gun was

1 brought to that scene. Dunkin then afterwards --
2 Jordan Principay, the codefendant, pled guilty
3 yesterday. He was the shooter. He shot Craig Gray
4 five times. Both Alfred and Jordan ran outside of the
5 apartment, got in a car and left. The investigation
6 showed that Alfred knew where the gun was. He was
7 calling on the jail phone trying to get someone to
8 pick it up, and we recovered it. The gun was behind
9 an apartment building. It was recovered. DNA did
10 match Alfred on that bag where the gun was stolen, so
11 he pled to accessory after the fact of murder.

12 Your Honor, they went there together,
13 participated together, but there is no question for
14 the State, especially at this stage after the
15 codefendant pled, that the codefendant was, in fact,
16 the shooter in this case. That is what the State
17 believed at the time of the plea. Alfred has tried to
18 cooperate. I will say from the beginning that the
19 State was not willing to allow him to until the end of
20 August when he did agree to testify. His testimony
21 wasn't necessary as the codefendant pled, but it
22 certainly spurred the codefendant to pleading guilty
23 in this case.

24 THE COURT: Okay. And the codefendant shooter
25 got 25?

1 MR. HOLFORD: 25 on voluntary manslaughter, yes,
2 sir.

3 THE COURT: And this is simply a sentencing
4 matter?

5 MR. HOLFORD: Yes, Your Honor. This is Margarita
6 Shaw. She's the mother of the victim.

7 THE COURT: Okay. Let me hear from her.

8 MS. SHAW: The killing of my son has devastated
9 my family. My family is really missing my baby son,
10 Craig. We will forever grieve the loss of Craig. I
11 believe Dunkin knew my son even though he say he was
12 not the shooter, but I think he was the master mind
13 because he went to the house to rob and kill him. I
14 think Mr. Alfred is toxic and a danger to society. I
15 think he deserves equal punishment or the same
16 punishment or more punishment as the codefendant
17 because they were there together. I just hope that
18 the death of my son haunts him just like it haunts me.
19 Thank you, sir.

20 THE COURT: Thank you, ma'am.

21 MR. HOLFORD: In 2015, simple possession of
22 marijuana and breach of trust. Then he has trespass
23 and possession of beer by a minor.

24 THE COURT: Okay. Ms. Bailey, let me hear from
25 you.

1 MS. BAILEY: Thank you. Alfred is a 22-year-old
2 young man. He grew up in foster care. He was in
3 foster care from a very young age, his entire
4 childhood. The week before this happened, for the
5 first time in his life, he had been able to get his
6 own apartment. In the time that he was growing up,
7 despite the fact he was in foster care, Alfred had
8 gotten a job, worked at golf courses and had been
9 working selling alarm systems. He was a hard worker
10 and beginning to see there was a straight path to get
11 out of the streets and do the right thing. He allowed
12 Jordan to stay with him. That is someone who he met
13 on the street. He allowed Jordan to stay with him
14 and --

15 THE COURT: Who is that?

16 MR. HOLFORD: Codefendant.

17 THE COURT: Okay.

18 MS. BAILEY: He and Jordan were talking about how
19 they might be able to get some marijuana. Alfred knew
20 Craig. Alfred was the connection. The plan was to go
21 over there and get some marijuana from Craig. At some
22 point, there was a decision that they might not pay
23 for the marijuana, may snatch and run, but never a
24 plan to kill him or shoot him. Things went horribly,
25 horribly wrong, as sometimes happens when you engage

1 in this behavior. Alfred introduced Craig to Jordan.
2 Craig got a little bit suspicious because he didn't
3 know Jordan and demanded that he set a meeting in the
4 parking lot. They went up to Craig's home, both
5 Alfred and the codefendant Jordan went to his home to
6 purchase the marijuana. There was a dispute about the
7 quality. At that point, Jordan snatched the
8 marijuana. There is marijuana all over the crime
9 scene. There is a fight between Jordan and Craig, and
10 Jordan brought a gun and Jordan shot Craig five times.
11 For that, Alfred is devastated. Craig was Alfred's
12 friend and he feels and acknowledges his
13 responsibility for introducing his friend, Craig, to
14 Jordan and for setting this up. He never intended for
15 Craig to die. He never intended for this to be
16 violent or turn the way it did so quickly.

17 Alfred is a young man with very little prior
18 record. This is the only time he's ever been in jail,
19 and he's been there for two solid years. We were able
20 to get a bond reduction several months ago, but there
21 is no one to post bond. He's been in foster care his
22 entire life. He has a biological sister and a cousin
23 here with him today in the courtroom. He has Chris
24 Williams. Chris runs one of the group homes, the
25 foster care group homes that Alfred was in. Chris is

1 the closest thing that Alfred has to parents. Alfred
2 is very lucky to have Chris. Chris continually
3 visited Alfred at the jail and consulted with me
4 consistently throughout the course of this case.

5 Chris would like to speak to the Court at the
6 appropriate time. He's also brought with him other
7 folks involved at that home who knew Alfred. If you
8 could, stand up. These are folks who were familiar
9 with Alfred and here to support him since he has no
10 family.

11 Alfred prepared a letter for the Court. He would
12 like to read it to Your Honor. The range in this
13 case, before I let him read the letter, the range
14 basically -- armed robbery carries a base of ten.
15 Obviously, the max is 30. Alfred was presented with a
16 plea offer with no cooperation necessary. He had a
17 plea offer for 20 years. So, Your Honor, I would
18 submit to the Court that 20 -- really the range we're
19 talking about is 10 to 20. Alfred, since the
20 beginning, since after a month after he got locked up
21 has been trying to cooperate with the State against
22 Jordan because he is devastated at the loss of his
23 friend, Craig.

24 He wrote letters. I was not his attorney then.
25 He quit writing letters once I was his attorney, but

1 he wrote letters to the Solicitor, to the judge. He
2 wrote letters to anyone who would listen, and in those
3 letters he detailed fact by fact what happened and
4 what evidence he believes would corroborate his story.
5 His primary interest for two years was to bring
6 Craig's killer to justice, and that killer was Jordan.
7 When the State finally came around to allow Alfred to
8 testify against Jordan, he entered his plea, and as a
9 result of Alfred being willing to testify Jordan ended
10 up pleaing and sparing the State and the victims a
11 risk of a painful trial and risk of not guilty.

12 Due to Alfred's cooperation, his light record and
13 hard circumstances that he came from, Your Honor,
14 we'll be requesting the 10 years. He could have
15 gotten 20 with no cooperation and a significant
16 downward departure is in the interest of justice and
17 in order to encourage folks to do the right thing and
18 tell what happened. At this point, I'll let him read
19 his letter.

20 THE COURT: All right.

21 MR. DUNKIN: First, I would like to apologize to
22 the victim's family for the loss of their son. I ask
23 for forgiveness for whatever you hold me accountable
24 for, but I want you to know that I honestly had no
25 hand in this situation. I would have never -- never

1 known this was going to take place. General, I'm
2 sorry and I hope my sincerest apology is accepted. I
3 don't want to be looked at as an inmate or defendant,
4 but as a young man. I'm not the monster it may seem.
5 I am considering the charges I've been accused of. I
6 made the mistake of involving myself in the wrong
7 activities and people and happen to be in the wrong
8 place at the wrong time, which I'm fully responsible.
9 I'm ready to put this behind me and ask that you find
10 it in your hearts to have mercy and believe me when I
11 say you won't ever see me again. It doesn't take me
12 much to learn often, but I know now this is not the
13 way to live life. I'm so sorry any of this happened.
14 I plan on entering a trade to better myself and be a
15 better person in this community and my family. Hoping
16 you understand this, Your Honor, that this letter is
17 coming from the heart and heart only. I now leave my
18 life in your hands. I believe a fair judgment will be
19 made and justice will be served.

20 THE COURT: Thank you.

21 MS. BAILEY: Chris Williams would like to speak
22 on Alfred's behalf.

23 THE COURT: All right.

24 MR. WILLIAMS: Christopher Williams. Your Honor,
25 I stand before you today speaking on behalf of Alfred

1 Dunkin. I wish -- I wish I could truly convey how
2 sorry I am for Craig's family. Alfred Dunkin is a
3 caring person. I wish I could have known him -- I
4 wish I could have been there to help him ride his bike
5 for the first time. I wish I could have taught him
6 math in the fourth grade. I wish I could have done so
7 many other things, but when Alfred entered my life, I
8 recognized immediately, and having done this type of
9 work in foster care for 27 years now, I've dealt with
10 almost tens of thousands of youth, Alfred is one of
11 those ones that I was connected to. I had an
12 opportunity to get to know him on a level. I mean, he
13 is a singer, athlete. He was a writer -- he is a
14 writer. During this opportunity -- and I had a chance
15 to meet the codefendant as well, I told Alfred over
16 and over that this young man, this is a problem.
17 Alfred, this is a problem. Alfred continued to tell
18 me he needs someone. You know, he needs someone like
19 you were there. I want to be there. I'm trying to be
20 there and he needs someone. He continued to try with
21 this young man. In desperate situations, things moved
22 on. Alfred is a caring person. Going from foster
23 care into adoption back into foster care into my care,
24 and after that he took it upon himself to remove
25 himself from care to help this young man, and that was

1 ultimately the first bad decision. But he is a good,
2 young man. He has a strong heart for other people. I
3 believed him immediately. When we found out about the
4 situation, I called him and I asked him, Did you do
5 this? He said, No, sir. So I escorted him that same
6 day, along with the gentlemen in the back here, we
7 escorted him to the police station to get his side
8 that day. He said, no, sir, and I believe that.

9 THE COURT: Thank you. Anything further?

10 MS. BAILEY: No, Your Honor.

11 THE COURT: Mr. Dunkin, without question you
12 engaged in an armed robbery which carries 10 to 30
13 years, and that armed robbery was to steal illegal
14 drugs. Why would you do that? You know, what were
15 you thinking? I mean, it was an armed robbery that
16 went terribly wrong. You are not pleading to murder,
17 you are pleading to accessory after the fact, and that
18 is why the maximum there is 15 years. It is a very
19 bad situation resulting in the death of a young man.
20 When you embark on this path, you have to take the
21 consequences of your action.

22 Sentence of the Court as to each offense is you
23 are confined to the State Department of Corrections
24 for a period of 14 years. Thank you. Concurrent.

25 (Whereupon, the proceedings concluded.)

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CERTIFICATE OF REPORTER

State of South Carolina)
County of Horry)

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the matter of the captioned case, relative to appeal, in the Court of General Sessions for Horry County, South Carolina, on the 3rd day of October, 2018.

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

September 28, 2018

Natalie Dahl, RPR

Natalie Dahl, RPR

Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)
County of Horry)
Alfred Quirk Dunkin)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

20 18 CP26 4480

v.

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

HORRY COUNTY
2018 AUG -2 PM 4:35
RECEIVED
CLERK OF COURT
HORRY COUNTY, SC

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 386 Redemption Way, McCormick SC, 29899
McCormick Correctional Institution.
2. Name and location of Court which imposed sentence Harry County General
Sessions Court / Harry County Courthouse - Conway, South Carolina
3. Name(s) of co-defendant(s) (if any) Jordan Principe
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) N/A
 - (b) N/A

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) October 6, 2017 - Armed Robbery - 14 years concurrent
 - (b) October 6, 2017 - Accessory After the Fact of Murder - 14 years concurrent
 - (c) _____

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

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

- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. N/A
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. _____
 - iii. _____

- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) My attorney never informed me of my right to appeal
 - (b) _____

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

- (a) Ineffective Assistance of Counsel
- (b) Plea was not knowing, intelligently, and voluntarily made.
- (c) _____

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

- (a) _____
- (b) _____
- (c) _____

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

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

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

- (a) the specific nature thereof:
 - i. 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?

_____ No _____

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

(a) which grounds have been presented:

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

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

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

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

- (a) _____
- (b) _____
- (c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Erin E. Bailey (Private Attorney) _____
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. I was represented by Erin E. Bailey at bond court and sentencing. _____
 - ii. _____
 - iii. _____

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

I would like my case to be reversed and remanded.

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

No

20 18 CP26 4480

STATE OF SOUTH CAROLINA)
County of Horry)

VERIFICATION

I, Alfred Dunkin, 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.

Alfred Dunkin

SWORN to and subscribed before me this 19 day of July, 2018.

JCA Rankin (L.S.)
Notary Public

My Commission Expires: 12-16-2019

HORRY COUNTY
2018 AUG -2 PM 4:34
RENÉE M. LEVINS
CLERK OF COURT
HORRY COUNTY, SC

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

20 18 CP26 4480

I, Alfred Dunkin, 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.

Alfred Dunkin
Applicant

SWORN or affirmed to and subscribed before me this

19 day of July, 2018.

[Signature]
Notary Public

My Commission Expires: 12/10/2019

HORRY COUNTY
2018 AUG -2 PM 4:34
RENEA L. LEVINS
CLERK OF COURT
HORRY COUNTY, SC

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	
Alfred Q. Dunkin,)	Case No.: 2018-CP-26-04480
S.C.D.C. No. 374134,)	
)	
Applicant,)	
)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	

HORRY COUNTY
 2018 DEC -6 PM 2:41
 REBEKKA ELMIS
 CLERK OF COURT
 HORRY COUNTY, SC

In response to the application for post-conviction relief filed by Alfred Q. Dunkin (Applicant) on August 2, 2018, Respondent would show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the April 2017 term of the Horry County Grand Jury for armed robbery (2017-GS-26-01879). Applicant later waived presentment of an indictment to the grand jury for accessory after the fact to murder (2017-GS-26-03245).¹ The underlying facts, as affirmed by Applicant at his plea, are as follows:

[O]n Wednesday, November 4th, 2015, law enforcement responded to 2221 Technology Boulevard, Conway section of Horry County. And they responded to a call for a shooting. There they found the victim, Mr. Craig Gray. He had sustained several gunshot wounds and ultimately did die as a result of those wounds. And, what transpired was that Mr. Dunkin and his codefendant Jordan Principe went to Mr. Gray's apartment allegedly to purchase marijuana. However, there was a gun on Mr. Principe. Mr. Dunkin knew that the gun was there and knew that at some point, Mr. Principe had wanted to conduct a robbery, and he went with Principe to the location. During the exchange, there was an altercation. Ultimately, Mr. Principe did shoot the victim, Mr. Gray. And the

¹ Applicant was additionally indicted at the January 2016 term for murder (2016-GS-26-00265), and possession of a weapon during the commission of a violent crime (2016-GS-26-00264). These indictments were dismissed *nolle prosequi* as part of his guilty plea.

charge of accessory after the fact comes from [the] fact that Mr. Dunkin was the one that hid the gun and took other steps to conceal the crime that had occurred.

(Plea Tr. 8-9). Erin E. Bailey, Esq. represented Applicant. Joshua D. Holford, Esq. and Cara Walker, Esq., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On August 28, 2017, Applicant pled guilty before the Honorable Steven H. John as above indicted. Sentencing was held in abeyance pending Applicant's testimony in the matter of State v. Jordan Principe.² On October 3, 2017, the Honorable Larry B. Hyman, Jr. sentenced Applicant to imprisonment for concurrent terms of 14 years. Applicant did not appeal his plea or sentence.

II.

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

1. "Ineffective Assistance of Counsel"
2. "Plea was not knowing, intelligently, and voluntarily made."

Attached to and incorporated herein are the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

III.

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 that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a

² Mr. Principe wound up pleading guilty to voluntary manslaughter on or about October 2, 2017. See State v. Jordan Pasquale Principe, 2015 A26 20400886. Mr. Principe received a sentence of 25 years.

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

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

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 respectfully 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 further claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir.1985)).

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

V.

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI.

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; Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, 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.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless

granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VII.

Respondent denies each allegation not expressly admitted, qualified, or explained.

VIII.

WHEREFORE, Respondent respectfully requests that this Court grant the motion for a more definite statement as set forth in Section V, above, and thereafter convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

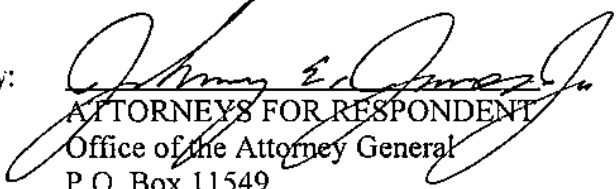
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

3 Dec., 2018

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2018-CP-26-4480

Alfred Q. Dunkin,)

Applicant,)

Versus)

June 18, 2019

State of South Carolina,)

Respondent.)

_____)

B E F O R E:

Honorable John C. Hayes, III
Horry County Courthouse
Conway, South Carolina

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

James K. Falk, Esquire
Attorney for Applicant

Jacob A. Isenberg, Esquire
Attorney for Respondent

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

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I N D E X

Alfred Q. Dunkin

Direct by Mr. Falk. 4

Cross by Mr. Isenberg 15

Erin Bailey

Direct by Mr. Isenberg. 16

Cross by Mr. Falk 28

Certificate 38

(There were no exhibits marked during the hearing.)

Dunkin v. State (6-18-19)

3

1 (On the record, June 18, 2019.)

2 MR. ISENBERG: Your Honor, this is Alfred Dunkin versus
3 the State of South Carolina. His allegations are ineffective
4 assistance of counsel and involuntary plea. I understand that
5 you've reviewed the application. So I'll save you the long
6 procedural history, just knowing that the allegations of
7 ineffective assistance of counsel and involuntary plea were
8 the two allegations made in the return and that's what the
9 State is proceeding on in this hearing, and with that I'll
10 turn it over to opposing counsel --

11 THE COURT: All right.

12 MR. ISENBERG: -- for his opening statement.

13 MR. FALK: Just briefly and then I'll put my client up
14 and he'll elaborate further, but the issue, my client
15 certainly was willing and able in accepting a plea to murder,
16 accessory to murder after the fact. It's the fact that he
17 wound up also pleading to this armed robbery charge, which he
18 did not -- that part of the plea he says is not knowingly and
19 intelligently entered into.

20 THE COURT: Okay.

21 MR. FALK: So I mean, he -- he's not trying to -- he
22 accepts some responsibility for the ultimate transaction but
23 not that it was armed robbery. I'd call Alfred Dunkin to the
24 stand.

25 THE COURT: Okay.

Dunkin v. State (6-18-19)

5

1 the fact?

2 A Yes, sir, which I found out at that hearing. I didn't
3 know anything about that before that hearing.

4 Q Okay. Now, part of the idea -- and why was there a, a
5 gap? Why weren't you sentenced the day that you pled guilty?

6 A Because they wanted -- the State had wanted me to testify
7 on my Co-Defendant if he went to trial.

8 Q Okay. So, so you were -- had you signed a proffer
9 agreement?

10 A I signed a proffer agreement as well.

11 Q Okay. And what was -- what did the State want you to
12 testify to?

13 A The State -- well, my lawyer had tell me that Mr. Holford
14 wanted me to say that my Co-Defendant went there to actually
15 rob, to rob Craig, and that's, that's not what I wanted to --

16 Q Why, why don't we back up. Why don't we tell the Judge,
17 sir, what, what happened?

18 A Well, what actually happened was my Co-Defendant and
19 Craig got into a fight over the quality of the weed.

20 Q Where was -- where did the fight take place?

21 A In an apartment complex.

22 Q Okay. And whose apartment complex was it?

23 A It was Craig's apartment complex.

24 Q Okay. And there had been a prior drug transaction or --

25 A Well, that was actually they was -- he was showing my Co-

1 Defendant the weed actually.

2 Q Okay.

3 A And my Co-Defendant didn't like the quality of the weed.

4 Q Okay.

5 A So he just told him, "I ain't paying for this, you beat,"
6 you know what I'm saying?

7 Q Okay.

8 A And they started fighting and that led to Craig yelling,
9 "Baby, bring me the shotgun," which is in my motion.

10 Q Uh-huh.

11 A She brung [sic] a 20-gauge shotgun downstairs. That's
12 what caused my Co-Defendant to start shooting. It's not like
13 we went there to rob this man and this happened. It was a
14 fight that went way overboard and they started shooting.

15 Q Okay. So now, did you have a gun?

16 A No, sir.

17 Q Okay. But your Co-Defendant did?

18 A Yes, sir.

19 Q And it's your understanding that the State thought that
20 this was an armed robbery?

21 A Yes, sir.

22 Q And that's what they wanted you to testify?

23 A That's what they wanted me to testify.

24 Q Okay.

25 A And I let my lawyer know that that's not what I wanted to

Dunkin v. State (6-18-19)

7

1 do, and she said this is what Josh Holford wanted me to say.
2 We actually spoke with -- spoke about this, I think, a couple
3 of days before my trial. This is what Josh Holford wanted me
4 to say. So I'm not saying my lawyer wanted me to lie, but
5 Josh Holford wanted me to lie.

6 Q And who is, who is -- who are you saying? Is that the
7 solicitor?

8 A The solicitor.

9 Q In your Co-Defendant's case?

10 A Yes, sir.

11 Q Okay. Or in this case?

12 A In this case.

13 Q Okay. So did you know that -- what did you think was
14 going to happen the day that you entered your first plea?

15 A Well, I knew I was pleading guilty hoping to get a bond.

16 Q Okay.

17 A Yes, sir.

18 Q And you were hoping to get a bond on the murder charge?

19 A On -- yes, sir. I, I was hoping to get a bond on murder
20 and possession of a weapon, and at the end when he set the
21 bond he said \$60,000, 20,000 apiece. That's when I looked at
22 my lawyer like, "Whoa, I thought I -- it was 40,000," but she
23 said, "I'll talk to you in the hallway," and she told me in
24 the hallway I was indicted for armed robbery, also. So it was
25 60,000.

1 Q I sent you a copy of the transcript; didn't I?

2 A Yes, sir.

3 Q You want me to hand you your stuff?

4 A Yes, sir.

5 Q You can look at page three of the transcript. This is
6 August 28th, 2017. You see it?

7 A Yes, sir.

8 Q Okay. So that first paragraph Ms. Walker is saying,
9 "He's before you today to plead guilty to two counts, armed
10 robbery, indictment number," and then she gave the number,
11 "and then accessory after the fact to murder, which is a
12 waiver of indictment," and she gave that number. So now you
13 heard that; did you not?

14 A Yes, sir.

15 Q Did -- what were you thinking at the time?

16 A I, I mean, at the time I was just -- I don't know, man.
17 Honestly, I don't know, coming, coming inside the courtroom is
18 I don't, I don't know. It's a weird feeling. So I know my
19 lawyer tell me to say yes, sir, and no, sir, and that's what I
20 basically was waiting to hear something where I can yes, sir,
21 to no, sir to. So me hearing this, I heard it but was I
22 listening, I was listening more for something to say yes, sir,
23 and no, sir to. You know what I'm saying?

24 Q Uh-huh.

25 A Right.

Dunkin v. State (6-18-19)

9

1 Q Did you realize that you were pleading guilty to a two-
2 strike?

3 A To -- my lawyer made me aware of this.

4 Q Okay. When was that?

5 A She, she actually came to me with a manslaughter plea.

6 Q Okay.

7 A And I told Ms. Bailey, Ms. Erin Bailey I was not taking
8 any plea that said I killed anybody --

9 Q Uh-huh.

10 A -- because I didn't. She said, "Okay. I will go speak
11 to your solicitor." She went to the solicitor and came back
12 two days --

13 Q She -- okay. You -- I interrupted you. I shouldn't
14 have.

15 A She came back within two days I think, and she said, "All
16 right. I got good news and bad news. Good news is the
17 solicitor is willing to let you plead to the accessory; said,
18 "Bad news is he wants you to take an armed robbery that way
19 you're on a two-strike law. You get in any more trouble major
20 you're going to be put away for life." That -- those are the
21 exact words. So --

22 Q What did you tell her?

23 A I mean, I was like, "I don't want to plea to an armed
24 robbery. I didn't do an armed robbery." She said, "Well, if
25 you don't take this we'll have to go to trial for the murder."

1 Q Uh-huh.

2 A I mean, I was just -- I weighed my options.

3 Q What was she explaining to you? What was your
4 responsibility for the murder?

5 A Well, basically she was saying that even, even the --
6 even though I, I say I didn't do the murder they would find me
7 guilty -- they could find me guilty of just being there during
8 the murder.

9 Q Did she talk about a hand of one hand of all?

10 A Hand, yes, yes, sir, and I tried to explain to her that
11 there was also another female who was present, also. She
12 didn't get hit with hands of one hands of all either. She was
13 actually the getaway driver.

14 Q She drove you and your Co-Defendant?

15 A She drove me and my Co-Defendant there.

16 Q Okay.

17 A And she didn't know anything was going to happen because
18 no one knew anything was going to happen. You understand what
19 I'm saying, but afterwards by law she knew what happened. You
20 know what I'm saying? So she was also an accessory.

21 Q Uh-huh.

22 A She's just as guilty as me. So I tried to bring this up
23 and I guess no one wants to hear about her because I guess she
24 didn't get charged or whatever the case may be.

25 Q Okay. Did she give you any indication after the -- after

Dunkin v. State (6-18-19)

11

1 they resolved your Co-Defendant's case sort of what kind of
2 range you were looking for?

3 A Well, she said 10 to 20, it was a 10 to 20 plea, but she
4 was telling me that if, if I cooperated with the State she
5 would try to get me to -- she would try to get me to ten.

6 Q Uh-huh.

7 A But like I said earlier, we, we had a meeting a couple of
8 -- a day before trial, before my hearing. It wasn't a
9 friendly meeting, you know what I'm saying? It was one of
10 those meetings where she was telling me, "He's been lying on
11 me for two years and" --

12 Q Who's been lying?

13 A My, my Co-Defendant has been accusing me of the murder
14 for two years.

15 Q Okay.

16 A And she's -- which she, she was working for me very hard,
17 and she let me know that she needed me to say what Josh
18 Holford, the solicitor, wanted me to say or I wasn't going to
19 get the ten years, and that's not what I was going to do. I
20 wasn't going to get on the stand and say whatever he wanted me
21 to say. Luckily my Co-Defendant didn't go to trial. So that
22 didn't come about.

23 Q So you didn't have to testify?

24 A I didn't have to.

25 Q And did you ever make a statement?

1 A During court?

2 Q No. Did you ever give the police a statement that your
3 Co-Defendant went there to rob?

4 A No, sir.

5 Q So what relief are you looking for today?

6 A What I'm looking for today is the -- this armed robbery,
7 I don't, I don't see -- I don't know why I'm charged with
8 armed robbery. I understand I took the plea, but I didn't
9 take that plea because I did an armed robbery. It was -- it,
10 it really wasn't because I did an armed robbery, and I never
11 told my lawyer I did an armed robbery. I actually wrote a
12 letter. I actually wrote a letter on, on my -- on my court
13 date that had this issue addressed in it, and it wasn't
14 addressed with the court.

15 Q Because when they were talking about the -- Ms. Walker
16 and this is on page nine, however she started like on line,
17 line four, "However there was a gun on Mr. Principe. Mr.
18 Dunkin knew that the gun was there and knew that at some point
19 Mr. Principe wanted to conduct an armed robbery and there was
20 an altercation," but that's not true; is that right?

21 A No, sir. What, what, what -- where, where this is
22 probably coming from is that I, I, I told my lawyer and I
23 told, I think, the solicitor that at one point my Co-Defendant
24 wanted to snatch his weed while he came to the car.

25 Q Uh-huh.

Dunkin v. State (6-18-19)

13

1 A He wanted to snatch his weed. I told him no. That's why
2 I went in the house in the first place because I told him,
3 "No, we're not going to do that." They misconstrued it and
4 said this, and that's why, like I told you, I wrote a letter
5 during my second hearing to address this situation.

6 Q Uh-huh.

7 A Ms. Erin marked out some stuff before we came in the
8 courtroom, said she would address it. It didn't get addressed
9 in court.

10 Q All right. The solicitor is going to stand up here and
11 ask you -- I mean, the attorney general is going to ask you so
12 I'll go with it right now. He's -- so the judge said, "All
13 right. You heard the basic facts of the case against you by
14 the State and a brief summary of those."

15 THE COURT: What, what page and line?

16 MR. FALK: Oh, I'm on page nine again.

17 THE COURT: Okay. Go ahead.

18 By MR. FALK:

19 Q So the -- so the judge asked you, "My question to you is
20 are those facts true and correct," and you answered, "Yes,
21 sir." Why did you answer yes, sir, if they were not true?

22 A So I was under duress. I acted like, like me hoping, me,
23 me hoping that I would get the ten years because at, at the
24 time I'm thinking about the 15, accessory after the fact
25 carries a maximum of 15 years.

1 Q Uh-huh.

2 A And it's non-violent, and after doing the research of
3 that and looking at the ten years my lawyer was trying to get
4 me it evened out to the same thing. You understand?

5 Q Uh-huh.

6 A So before we came in she told me what to say yes, sir to,
7 you know what I'm saying, what to say no, sir to. So I'm just
8 yes, sir and no, sir, yes, sir and no, sir. That's, that's
9 really all that was. Now that I'm more -- I'm, I'm, I'm more
10 aware of the court system and how this works, I listen more.

11 Q Uh-huh.

12 A You understand? I would listen more now. I really
13 wasn't listening to anything but what to say yes, sir and no,
14 sir to.

15 Q Okay. What kind of record did you have prior to this?

16 A I -- a breach of trust, the only thing on my record.

17 Q Okay. Is there anything else you want to add?

18 A I do. During my Co-Defendant's hearing he also made the
19 Court aware of there wasn't an armed robbery, and this is,
20 this is the guy that actually did the murder who they -- if he
21 did the murder, he was -- he, he's obviously the one who
22 committed the armed robbery. You understand what I'm saying?
23 He even told the judge it wasn't an armed robbery. This
24 wasn't made aware at my court hearing. I don't know if
25 anybody knew about that at the time, but, yeah, that, that was

Dunkin v. State (6-18-19)

15

1 --

2 Q What did he plead guilty to?

3 A He pled guilty to the murder.

4 Q Okay. But not to the armed robbery?

5 A Not to the armed robbery.

6 Q And you didn't have a gun?

7 A I didn't have a gun.

8 Q Anything else?

9 A No, sir.

10 MR. FALK: No further questions.

11 MR. ISENBERG: May it please the Court, Judge?

12 THE COURT: Yes.

13 MR. ISENBERG: Beg the Court's indulgence just to
14 reposition for a second.

15 CROSS EXAMINATION

16 BY MR. ISENBERG:

17 Q Let's see. You -- sorry, Mr. Dunkin, how are you doing
18 today?

19 A Pretty good.

20 Q Good. I'm glad to hear that. You indicated on direct
21 examination you pled guilty to armed robbery because you were
22 under duress. You were under duress because of the amount of
23 time you were facing; is that what you said?

24 A I, I ain't gonna' say the amount of time. I was just
25 under, under, under duress from the time I, I wanted and

1 compared to the time I would get.

2 Q Okay. So you wanted less time than you were going to
3 get?

4 A Yes, sir.

5 Q Okay. And that's why you were under duress?

6 A Yes, sir.

7 Q Okay.

8 MR. ISENBERG: And beg the Court's indulgence for just
9 one second. I've got no further questions, Your Honor.

10 THE COURT: You can step down and have a seat back with
11 the attorney.

12 A Yes, sir.

13 THE COURT: Call your next witness.

14 MR. FALK: We have no further witnesses.

15 THE COURT: All right. Does the State have any
16 witnesses?

17 MR. ISENBERG: Your Honor, the State would call
18 Applicant's counsel.

19 THE COURT: Okay. Please come up and be sworn.

20 Whereupon, Erin Bailey is called to the stand, duly sworn
21 by the clerk and testified as follows:

22 THE CLERK: Please state your name for the Court and
23 spell your last name, please. Thank you.

24 MS. BAILEY: Erin Bailey, last name B-A-I-L-E-Y.

25

DIRECT EXAMINATION

Dunkin v. State (6-18-19)

17

1 BY MR. ISENBERG:

2 Q Good morning, Ms. Bailey, or good afternoon, Ms. Bailey.

3 A Good morning.

4 Q I apologize. You represented Mr. Dunkin during his case,
5 his criminal case; correct?

6 A A portion of it. In the beginning he was represented by
7 Buddy Long.

8 Q Okay.

9 A Buddy Long was suspended from bar service, and so when
10 Buddy Long was suspended then I -- Ms. West, Orrie West, the
11 public defender called me and asked me if I would step in and
12 take over representation.

13 Q Okay. And after you stepped in what if any meetings did
14 you initially have with him?

15 A Sure. So I went back and looked at my notes. When I
16 took over the file Alfred, prior to my representation, Alfred
17 had given a statement to the solicitor, been put on a
18 polygraph and failed the polygraph, at which point the
19 solicitor offered -- had a -- had issued a written offer of 30
20 years to murder, was the, was the plea offer as it stood when
21 I took over. I was appointed at some point in November. I
22 can't read the stamp on the order to see exactly which day,
23 but it was at some point in November of 2016 I was appointed
24 to represent him. I met with him for the first time on
25 November 30th of 2016 at the jail, seems like a good time to

1 note that I -- at that point I gave him my card with my phone
2 number. The phone number that I give for the jail here and in
3 Georgetown is registered as a public defender number so my
4 clients can call me for free and it rings to my cell phone.
5 So I'm very accessible to my clients, and he called me on the
6 phone and if, if at all possible I take it. I can't call him
7 back because there's no way to call the jail, but --

8 Q Right.

9 A -- you know, he and I spoke on the phone many, many times
10 during the course of my representation of him.

11 The next note that I have is that I received discovery on
12 February 20th. So between November and February I don't have
13 any records of any meetings, and I think I -- I usually tell
14 my clients the first time I meet with them that I'm not going
15 to come back until I have discovery because there's not much
16 else to talk about. So I, I received discovery February 20th
17 of 2017. I reviewed that discovery, including audio
18 interviews, and my notes indicate that on February 22nd of 2017
19 I met with Alfred for over two hours at the jail to review all
20 of the discovery in detail.

21 Q And at that point how did you work your way because you
22 indicated it -- the offer was 30 years before you got on the
23 case, how did you work your way to that manslaughter plea?

24 A Sure. So at that point, the solicitor, this is one of
25 those cases where you have a small apartment, someone who's

Dunkin v. State (6-18-19)

19

1 dead and two people who were there, and it was pretty clear
2 because the cause of death was a gunshot wound that only one
3 of them shot this person.

4 Q Right.

5 A Which one actually did the shooting was very much in
6 question, which is why they put Alfred on a lie detector test
7 right off the bat when he wanted to cooperate because both
8 sides -- both parties were, were pointing a finger at the
9 other guy.

10 Q Right.

11 A And when I initially spoke with Alfred he was very upset
12 that he'd failed that lie detector test. He said that Buddy
13 Long had not done a good job preparing him for that and
14 understanding what was coming. He swore that he was telling
15 the truth and that he wanted to continue to pursue this path
16 of cooperating against his Co-Defendant. So as far as I was
17 concerned those were my marching orders was to convince Josh
18 Holford, the solicitor, that Alfred was, in fact, the one who
19 was telling the truth. So we went over discovery. Alfred --
20 I found Alfred -- he and I to the best of my knowledge got
21 along very well and had very productive meetings. He had
22 great questions. He had some other discovery that he wanted
23 me to track down. I made my best efforts to do that. There
24 were some audiotapes from like intake portions of the jail
25 that I was not able to get that he really wanted because I

1 discovered that they had not been preserved. Other than that
2 I was able to get the other discovery. So at that point our
3 strategy that, that Alfred and I talked about together was to
4 wait for some of the forensic evidence to come in. It had
5 still not come in and that Alfred felt confident that that
6 forensic evidence would corroborate his story.

7 Q And so when you, when you stop at that point in time were
8 you all waiting on the forensic evidence -- sort of talk me
9 through how you got from that step to the manslaughter plea.

10 A Sure. So I skipped a couple of jail visits in there.
11 Let me tell you, on March 24th of 2017 I sent an email to Josh
12 Holford and requested the additional discovery that Alfred
13 wanted me to, to track down. March 29th of 2017 I visited
14 Alfred again. March 30th of 2017 I wrote a letter on Alfred's
15 behalf for some medical care that he felt like he wasn't
16 getting at the jail that he needed. May 9th of 2017 was
17 another jail visit. May 17th of 2017 I wrote another -- a
18 letter to the solicitor. June 14th of 2017 we had a bond
19 hearing. This was Alfred's -- his bond had initially been
20 denied before I represented him, and he had wanted bond, and I
21 told him he needed to wait 18 months, and so that 18 months
22 ran in May, and so in June we had a bond hearing and he did
23 get a \$60,000 bond on that day. He was never able to post
24 that bond, but he did have 60,000 on that day.

25 Then on June -- at some point in here, and I don't have

Dunkin v. State (6-18-19)

21

1 good notes about when I received it, but at some point I did
2 get the forensic evidence, and I met with Alfred and we went
3 over that, and so on June 30th of 2017 I sent an email to the
4 solicitor's office that was very detailed about the facts of
5 the case that included the forensics to try to convince Josh
6 Holford that Alfred was not the shooter based on the physical
7 evidence. I didn't get an immediate response to that.

8 On August 7th of 2017 Josh Holford issued both parties, so
9 both Alfred and his Co-Defendant, both got 20 year offers to
10 manslaughter.

11 Q Okay. So this is the point after you send this email,
12 even though he didn't respond, where you get the manslaughter
13 plea offer?

14 A Yes.

15 Q And that manslaughter plea offer is for 20 years?

16 A Twenty, 20 years negotiated.

17 Q Okay. And what if any conversations did you have with
18 your client about that manslaughter plea offer?

19 A So I went to see him. I think I talked to him on the
20 phone first, and I went to see him and said, "Okay. We have a
21 new offer. Previously it was 30 to murder. Now it's 20 to
22 manslaughter," and just as Alfred testified, he said, "I
23 didn't kill anybody. I'm not pleading to killing anybody."
24 He and I had extensive discussions about hand of one, hand of
25 all and that principle, and so he told me at that meeting, he

1 said, "I'm not pleading to killing anybody because I didn't
2 kill anybody."

3 Q Right.

4 A So I took that, again, as my marching orders, and I went
5 back to the solicitor, Josh Holford, and said, "He's not going
6 to plea to 20. If it's -- if 20 is the best you can do we're
7 going to have a trial."

8 Q Okay.

9 A And I think -- well, I'm not going to speculate as to
10 what the solicitor was thinking, but from the evidence it was
11 pretty clear that the solicitor was not going to be able to
12 try this case without picking a shooter.

13 Q Right.

14 A Right. Without having a clear theory of the case, and if
15 he did that he was going to need one party to testify.

16 Q Right.

17 A So on August 8th of 2017 the solicitor sent an email that
18 he was going to agree to let Alfred proffer and he sent -- on
19 August 14th I got the proffer agreement.

20 Q So if -- and I, I, I, I want to potentially backtrack
21 here.

22 A Uh-huh.

23 Q In these discussions with your client you all, you all
24 talked about the armed robbery charge; correct?

25 A We did, and I think, I think where some confusion came in

1 is because I was the second attorney.

2 Q Right.

3 A And he was not initially charged with armed robbery.

4 That, that came as a result of a direct indictment when he was
5 indicted. So I -- he had already been -- I'm not clear on if
6 I assumed that the prior attorney talked to him about the
7 armed robbery or where the confusion came in.

8 Q Right.

9 A But I will tell you that before this case resolved Alfred
10 and I did have extensive discussions about the armed robbery.
11 At some point we had a hearing. It was probably the bond
12 hearing, and he was surprised that he was charged with armed
13 robbery. That did happen.

14 Q Right, but before he pled to armed robbery you indicated
15 you all had a lengthy discussion about everything that goes in
16 --

17 A Oh, we did.

18 Q -- into the facts and the law and sort of the
19 implications?

20 A We did. We talked about it and he, he did have a lot of
21 hesitancy as to pleading to the armed robbery, and he and I,
22 again, talked about hand of one, hand of all. He, he --
23 Alfred had written a lot of letters before I represented him.
24 So he had actually written the solicitor and kind of laid and
25 he had given that prior statement and he, he had laid out

1 everything that happened, and what he mentioned on the stand
2 is what I was concerned about, which is that at some point
3 there was a plan to take the drugs without paying for the
4 drugs.

5 Q Right.

6 A And also that gun, my recollection is that Alfred did not
7 -- Alfred told me that he didn't know that Jordan was bringing
8 the gun into the location, but that Alfred knew that that gun
9 was along for the, for the ride.

10 Q Right.

11 A He just didn't know it went into the apartment.

12 Q Right. So you all talked sort of about his knowledge of
13 the gun in that -- sort of how that plays into it?

14 A Yes.

15 Q Okay.

16 A And the fact that --

17 Q I got it.

18 A -- Craig, Alfred and Craig, the gentleman who ended up
19 deceased --

20 Q Right.

21 A -- Alfred and Craig were friends. Jordan, the Co-
22 Defendant, did not know Craig.

23 Q Right.

24 A So the whole thing was Alfred was the contact as to how
25 they ended up at Craig's apartment, and so all of those facts

Dunkin v. State (6-18-19)

25

1 together are what I explained to Alfred constituted the hand
2 of one, hand of all --

3 Q Right.

4 A -- for the armed robbery. I know he wasn't happy about
5 pleading to the armed robbery. He and I talked through those
6 facts about how that could constitute, you know, enough for a
7 guilty plea to the armed robbery, but I think my impression --
8 well, not my impression, he told me his -- all along our goal
9 we were trying very hard to let him plead accessory after the
10 fact.

11 Q Right.

12 A And I had hoped to get that, but I wasn't able to. I
13 can't control the solicitor's plea offer.

14 Q Right. But eventually you did get the offer that was 10
15 to 20?

16 A Yeah. So eventually on August 28th of 2017 we had a
17 roster meeting. This case was getting old, and so we had to
18 meet with the chief administrative judge. On -- I have a set
19 of undated notes from a jail visit that was in that time in
20 August of 2017 at some point, and then -- so the case got set
21 for trial on September 5th of 2017. It was on the trial roster
22 and the plan for the trial roster was that Jordan Principe,
23 the Co-Defendant, was going to be on trial and Alfred was
24 going to be testifying. I blocked off my week. I had planned
25 on being there for when he testified. He and I talked about

1 what that would be like.

2 Q Right.

3 A Even though that had been our goal all along he was
4 nervous about that.

5 Q Right.

6 A And so we talked through it. I did -- I, I would never
7 tell a witness or a client what, what to say.

8 Q Right.

9 A I did tell him that Jordan Principe is charged with
10 murder and armed robbery, that he should tell the truth, but
11 that I was sure that Josh Holford was hopeful that what Alfred
12 had to say would back up his version of events, which did
13 include the armed robbery, and when -- so the morning -- the
14 plea happened, and when the, when the --

15 Q Can I --

16 A -- case was on the roster -- sorry, go ahead.

17 Q Yeah. No. I just wanted to back you up.

18 A Uh-huh.

19 Q So when you advised him about the plea offer of 10 to 20
20 years, you know, contingent upon his testimony you talked to
21 him about the fact that a 10 to 20 year sentence is up to the
22 judge; right?

23 A I did, and so actually the plea it was not a 10 to 20
24 year range. It was sort of a de facto 10 to 20 year range
25 because he was pleading to armed robbery and accessory after

1 the fact.

2 Q Right.

3 A And so armed robbery gave us the minimum of ten and his
4 prior plea offer without his cooperation was 20.

5 Q Right.

6 A So we all knew it was not going to be over 20. So I
7 advised him, you know, that this is the range we're looking
8 at.

9 Q Uh-huh.

10 A Certainly you're going to get a downward deviation from
11 the 20 because you were willing to testify, and I'm going to
12 -- I believe my exact quote to him was probably, "I'm going to
13 argue like hell for 10."

14 Q Right.

15 A "I can't promise you that that's what we're going to get.
16 It just is going to depend on the judge. It's going to depend
17 on the way the facts are presented. It's going to depend on
18 the amount of mitigation that we can present."

19 Q Right.

20 A "And I'll do my best."

21 Q Right. And so you never -- the question I would ask is
22 you never guaranteed him 10?

23 A No.

24 Q Okay.

25 MR. ISENBERG: One -- beg the Court's indulgence for just

1 a second, Your Honor.

2 I have no further questions for the witness, Your Honor.

3 Thank you.

4 THE COURT: All right. You can step down. Thank you.

5 CROSS EXAMINATION

6 BY MR. FALK:

7 Q So Mr. Dunkin testified about the proffer and were you

8 telling him -- what -- did Holford want him to say that

9 Principe shot him or that they meant to rob him?

10 A I don't recall Josh Holford ever telling me, and I, I

11 don't recall any solicitor ever telling me what they want my

12 client to say on the stand.

13 Q Okay.

14 A I think that was me advising Alfred that should he

15 testify it will probably benefit him but that if he took the

16 stand and gave a story that was vastly different than the

17 solicitor's theory of the case that it may not benefit him.

18 Q But he was going to always testify that he was not the

19 shooter; is that correct?

20 A Yes.

21 Q And that his Co-Defendant was the shooter?

22 A Yes.

23 Q But Mr. Dunkin's testimony is is that the sort of the

24 sticking point in this was that the purpose of going there was

25 to commit the armed robbery, and your testimony is that you

Dunkin v. State (6-18-19)

29

1 were not telling him that they had to admit to the armed
2 robbery, that he had to say that the reason they went to the
3 house was for the armed robbery?

4 A I think I told him that I was sure that the solicitor
5 wanted to get that armed robbery, but I don't -- I wouldn't
6 describe it as a sticking point because it was never a
7 conversation that I had with Josh Holford. I mean, they were
8 trying to get a conviction on the murder, the -- you know, the
9 armed robbery was sort of secondary, but I mean, at some point
10 I, I do think we had a conversation where I said, "You know,
11 they're going to want to know why this happened, why were you
12 going there," and, and we had lengthy discussions about how at
13 some point there was an intent of a robbery and then Alfred
14 changed his mind and maybe that didn't get communicated to
15 Jordan and it went back and forth on whether the whole
16 situation was going to be a robbery, and so he and I talked
17 about what that meant in terms of his criminal responsibility.

18 Q Did you discuss with him what his potential defenses
19 would be to the armed robbery?

20 A Yes. We talked about the defense of abandonment, and I
21 -- because I remember doing some research on the defense of
22 abandonment like when you abandon your plan, and he and I
23 talked about how we would prove that and that that would be a
24 difficult affirmative defense to prove in this case because
25 essentially our only proof of that would be Alfred testifying

1 that at one point there was an intent of a robbery and then at
2 some point he didn't want to do it anymore.

3 MR. DUNKIN: Could I say something?

4 THE COURT: You can talk to your lawyer in a little bit.

5 MR. DUNKIN: All right.

6 THE COURT: Go ahead.

7 BY MR. FALK:

8 Q I'm sorry. You said you talked about abandonment.

9 A We did. We talked about that as a potential defense to,
10 to the armed robbery, and that he didn't -- he wanted to use
11 as a defense the fact that he didn't have the gun in the
12 apartment. For a long time we were just fighting that battle
13 of being able to prove to the solicitor or any jury that he
14 was, in fact, not the one with the gun.

15 Q Uh-Huh.

16 A Because whoever had the gun was the one who did the
17 murder.

18 Q And was there evidence that he knew that his Co-Defendant
19 had the gun? Did he admit to that?

20 A My recollection is yes, well, that there was a gun in the
21 car but not necessarily that he knew that his Co-Defendant was
22 bringing his gun into the drug transaction.

23 Q And so the, the armed robbery would have clearly been a
24 hand of one hand of all type of theory to --

25 A Yes.

Dunkin v. State (6-18-19)

31

1 Q -- to Dunkin?

2 A Yes. And I -- I mean, I do remember explaining to him
3 that even the, the driver of an armed robbery who never goes
4 inside, never holds a gun, never says, "Give me anything," is
5 legally responsible for the armed robbery, but the hand of one
6 hand of all was -- it -- well, like a lot of my clients, it
7 was a, it was a hard thing for Mr. Dunkin to understand, but I
8 specifically recall before he entered this plea to armed
9 robbery being in lockup. It might have been in this
10 courtroom, and, and he was hesitant about it, but I said, "Are
11 you sure you want to do this? Is, is this definitely what you
12 want to do," and he said, "Yeah. I'm going to do it."

13 Q I know he has a question and maybe you know the answer.
14 Why was there no charges pursued against the driver of the
15 car?

16 A I don't know, and that was something that came up often
17 in our discussions, but all I could tell him was that I was
18 focused on defending him, and I, I'm not responsible for
19 charging decisions of law enforcement or the solicitor, and
20 that we were hoping that that driver might back up our story.
21 So I certainly didn't want to be the one to push to get her
22 arrested.

23 Q What kind of statement would she have made if you had had
24 a chance to talk with her?

25 MR. ISENBERG: Objection, Your Honor, pure speculation.

1 He's asking --

2 THE COURT: Well, it --

3 MR. ISENBERG: -- what kind of statement would she have
4 made?

5 THE COURT: I, I, I --

6 MR. FALK: That was a poorly worded question.

7 THE COURT: Okay.

8 BY MR. FALK:

9 Q Did you interview her?

10 A I did not personally interview her, no. I did review a
11 prior interview of hers.

12 Q And did that review of the prior interview did that
13 support his story?

14 A That interview --

15 Q Let me ask it this way.

16 A Uh-huh.

17 Q Based on would you have wanted to call her as a witness
18 at the trial?

19 A Yes.

20 MR. FALK: One moment, please. No further questions.

21 A Thank you.

22 MR. ISENBERG: Nothing on redirect, Your Honor.

23 THE COURT: All right. You can step down and be excused.
24 We appreciate your time.

25 A Thank you, Your Honor.

Dunkin v. State (6-18-19)

33

1 MR. ISENBERG: Your Honor, I would just ask that the
2 witness be excused.

3 THE COURT: She can be excused.

4 MR. ISENBERG: Thank you, Your Honor.

5 A Thank you, Your Honor.

6 MR. ISENBERG: And that -- with that the State rests
7 their portion of the case and we're ready to proceed with
8 closing statements if Your Honor --

9 THE COURT: All right.

10 MR. FALK: Your Honor, if you'll -- if the Court would
11 allow me to recall my client. He had something -- he had an
12 outburst during cross examination.

13 THE COURT: All right.

14 MR. FALK: And if I could call him back to the stand.

15 THE COURT: You, you can come back up and take the stand.

16 MR. DUNKIN: I need to go back up?

17 THE COURT: Yeah. Well, you can, you can testify from
18 there if it's going to be brief.

19 MR. DUNKIN: Yes, sir.

20 MR. FALK: You're still under oath.

21 MR. DUNKIN: All right.

22 THE COURT: What did you want to tell me? You're under
23 oath.

24 MR. DUNKIN: The whole time even inside this paper here
25 you can see where like where every, every, every time I like

1 tried to let the facts be known it's kind of blanked out in
2 the transcript here. It's blanked out. For example --

3 MR. FALK: Well, actually --

4 THE COURT: Tell me where something is blanked out. I
5 didn't see anything blanked out.

6 MR. DUNKIN: Well, not blanked out, but like it's, it's
7 -- it's got dots, dots, dots of, of important stuff that I'm
8 pretty sure is on audio but it's not on this paper here.

9 THE COURT: Well, show me where. That's before Judge
10 John when you did the plea?

11 MR. DUNKIN: This is actually during my letter which I
12 said that I had certain stuff in here that I wanted to say,
13 but it never got told, but right here it says, "I wish,"
14 blank, blank, "I wish."

15 THE COURT: What page number?

16 MR. DUNKIN: Page 11.

17 MR. FALK: Of his sentencing transcript.

18 THE COURT: The plea or the sentencing?

19 MR. FALK: Sentencing.

20 THE COURT: So you had already pled back in -- before
21 Judge John looks like on August 28th, 2017, and you were
22 sentenced on October 3rd of 2017. So you're on page -- what
23 page again?

24 MR. DUNKIN: Actually page nine and 10, sorry, it's page
25 nine and 10.

Dunkin v. State (6-18-19)

35

1 THE COURT: All right. I'm on nine where you talk about
2 you want to apologize.

3 MR. DUNKIN: Yeah, yeah. Yes, sir. Yes, sir. It says
4 here, "I am considering the charges I've been guilty of," on
5 page 10, on, on line five, it says, "I am considering the
6 charges I've been accused of." That's -- that doesn't even
7 make sense. I'm pretty sure I said there I'm not guilty of
8 the charges I've been accused of because the whole time I've
9 been telling everybody is I, I didn't do no armed robbery and
10 this -- the fact that people -- well, Ms. Erin just said there
11 was a plan to rob -- there was never -- that was never our
12 plan. There is no proof that me and him planned to do
13 anything. I gave -- I spoke and gave this -- not this --
14 knowledge of willingly. No one had to ask me this. I told
15 them, yeah, he did at one point say he wanted to snatch the
16 weed and drive off. I told him no, which is why I went in the
17 house in the first place. You understand what I'm saying?

18 THE COURT: Yeah.

19 MR. DUNKIN: That's all I want to say because I don't
20 want it to be misconstrued as me and him planned to rob this
21 man and we changed our mind. That's not what happened. He
22 wanted to -- me and Craig were friends. He wanted to rob
23 Craig. I wouldn't let him rob Craig. He ended up trying it
24 anyway. You understand what I'm saying?

25 THE COURT: Yeah.

1 MR. DUNKIN: And I'm not sure what, what follows under
2 the guideline of armed robbery, Your Honor, but like I was
3 speaking to my lawyer, there was never -- he -- my, my Co-
4 Defendant didn't go in there saying, "I'm going to rob this
5 man." If Craig would not have never yelled, "Baby, bring me
6 the shotgun," I don't think none of this would have ever
7 happened.

8 THE COURT: Thank you.

9 MR. FALK: He was referring to pages from his sentencing,
10 not his plea transcript.

11 THE COURT: Well, I'm looking at where he's talking about
12 and the next line says, "I made the mistake of involving
13 myself in the wrong activities and people happened to be in
14 the wrong place at the wrong time, which I'm fully
15 responsible."

16 MR. FALK: Yes, Your Honor.

17 THE COURT: All right. Anything -- all right. Well, I'm
18 going to get the attorney general -- I'm going to deny the
19 motion -- the petition for application for post conviction
20 relief under Cherry and Strickland test. A plea is a solemn
21 proceeding, and Mr. Dunkin entered the pleas, plea of guilt,
22 and I just read where he acknowledged that he had been in the
23 wrong place at the wrong time, but in any event, the attorney
24 general would draw up the order. I, I find that under Cherry
25 and Strickland applying those cases -- the parameters of those

Dunkin v. State (6-18-19)

37

1 cases to Ms. Bailey's representation that he has failed to
2 carry his burden of proof that she was ineffective assistance,
3 in assisting his -- in representing him in this matter.

4 MR. ISENBERG: Thank you, Your Honor.

5 MR. FALK: Thank you, Your Honor.

6 MR. ISENBERG: And two weeks?

7 THE COURT: Yeah.

8 MR. ISENBERG: Thank you, Your Honor.

9 THE COURT: All right.

10 (Adjourned.)

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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the hearing held in the case of Alfred Q. Dunkin versus the State, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on June 18, 2019.

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



Grace L. Hurley, CVR-CM-M

Official Reporter

November 24, 2019.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	
)	
Alfred Q. Dunkin,)	Case No.: 2018-CP-26-4480
S.C.D.C. No. 374134,)	
)	
Applicant,)	ORDER OF DISMISSAL
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	

2019 JUN 18 PM 2:52
 CLERK OF COURT
 HORRY COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief filed by Alfred Q. Dunkin ("Applicant") on August 2, 2018. Respondent served its return on December 3, 2018. The Court convened an evidentiary hearing into the matter on June 18, 2019, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by James K. Falk, Esquire. Jacob A. Isenberg, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Erin Bailey, Esquire ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Horry County Clerk of Court regarding the subject convictions, and the pleadings. After a thorough review of all the evidence and testimony presented, this Court finds Applicant has not met his burden of establishing any constitutional deprivations or other grounds entitling him to relief and denies and dismisses this application with prejudice.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the April 2017 term of the Horry County Grand Jury for armed robbery (2017-GS-26-01879). Applicant later waived presentment of an indictment to the grand jury for accessory after the fact to murder (2017-GS-26-03245).¹ The underlying facts, as affirmed by Applicant at his plea, are as follows:

[O]n Wednesday, November 4th, 2015, law enforcement responded to 2221 Technology Boulevard, Conway section of Horry County. And they responded to a call for a shooting. There they found the victim, Mr. Craig Gray. He had sustained several gunshot wounds and ultimately did die as a result of those wounds. And, what transpired was that Mr. Dunkin and his codefendant Jordan Principe went to Mr. Gray's apartment allegedly to purchase marijuana. However, there was a gun on Mr. Principe. Mr. Dunkin knew that the gun was there and knew that at some point, Mr. Principe had wanted to conduct a robbery, and he went with Principe to the location. During the exchange, there was an altercation. Ultimately, Mr. Principe did shoot the victim, Mr. Gray. And the charge of accessory after the fact comes from [the] fact that Mr. Dunkin was the one that hid the gun and took other steps to conceal the crime that had occurred.

(Plea Tr. 8-9). Erin E. Bailey, Esq. represented Applicant. Joshua D. Holford, Esquire, and Cara Walker, Esquire, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On August 28, 2017, Applicant pled guilty before the Honorable Steven H. John as above indicted. Sentencing was held in abeyance pending Applicant's testimony in the matter of State v. Jordan Principe.² On October 3, 2017, the Honorable Larry B. Hyman, Jr. sentenced Applicant to imprisonment for concurrent terms of fourteen years. Applicant did not appeal his plea or sentence.

¹ Applicant was additionally indicted at the January 2016 term for murder (2016-GS-26-00265), and possession of a weapon during the commission of a violent crime (2016-GS-26-00264). These indictments were dismissed *nolle prosequi* as part of his guilty plea.

² Mr. Principe waived his right to a jury trial to plead guilty to voluntary manslaughter on or about October 2, 2017. See State v. Jordan Pasquale Principe, 2015 A26 20400886. Mr. Principe received a sentence of twenty-five years.

II. PRESENT APPLICATION

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

1. "Ineffective Assistance of Counsel"
2. "Plea was not knowing, intelligently, and voluntarily made."

Applicant requests relief as follows:

- Reversal and Remand

At the evidentiary hearing, Applicant specified his ineffective assistance of counsel claims were a failure to investigate the getaway driver, and failure to prepare defenses for armed robbery. Additionally, Applicant went forward on an allegation his plea was rendered involuntary due to duress.

III. SUMMARIZATION OF EVIDENTIARY HEARING TESTIMONY

Applicant

Applicant testified on his own behalf at the evidentiary hearing. Applicant testified he met with Counsel a lot of times before the plea hearing.

Additionally, Applicant testified he did not want to plead to anything saying he killed anyone. Specifically, Applicant testified he was at an apartment with Principe, Craig, and Craig's girlfriend. He further testified Craig and Principe got into an argument over the quality of marijuana. Thereafter, Craig told his girlfriend to go grab the shotgun. At this point, Principe started to shoot Craig. Applicant testified he was devastated because Craig was his friend.

At some point, Applicant testified Principe him wanted to snatch the weed from Craig. Applicant testified his response was a flat no.

Applicant testified he listened to the questions presented at his plea hearing. However, Applicant testified Counsel directed him to answer yes or no to every question. He further testified

Je. N. H. 3

to being under duress throughout the entire hearing. Applicant testified this duress came from wanting to spend less time in prison.

Applicant again testified he would not plea to anything stating he killed anybody. He further testified Counsel came back with an offer of accessory after the fact and armed robbery.

Applicant testified Counsel worked very hard for him. He further testified the eventual plea agreement was contingent upon testifying against Principe. However, Applicant testified Principe pled so he did not have to testify to get the plea agreement.

Counsel

Counsel testified on behalf of Respondent at the evidentiary hearing. Counsel testified she originally took this case after the previous lawyer was removed. According to Counsel, she began with a thirty year offer based upon pleading guilty to murder. At this point, Counsel was aware Applicant gave previous statements beneficial for the Assistant Solicitor's case against Principe. Thereafter, Counsel testified she met with Applicant in jail. Counsel testified she notified Applicant they would meet again after she received discovery.

On February 22, 2017, Counsel met with Applicant for over two hours. Counsel testified they met after Applicant and Principe took a polygraph because they repeatedly accused each other of murder.

Counsel testified she emailed the Assistant Solicitor about his stance on the case in March 2017. A few days later, Counsel met with Applicant to discuss his options. Thereafter, Counsel emailed the jail on behalf of Applicant in regards to medication issues. She met with Applicant again in May 2017.

In June 2017, Counsel received forensic evidence on the weapon fired at the crime scene. Thereafter, she met with Applicant to review this evidence. After this meeting, Counsel testified

she sent a very detailed letter to the Assistant Solicitor arguing Applicant was not the shooter. The Assistant Solicitor responded with an offer to recommend twenty years in exchange for pleading guilty to manslaughter. Counsel testified Applicant rejected this offer because he would not accept responsibility for killing anybody.

Counsel testified there was evidence to show a plan to take drugs without paying. Counsel further testified evidence showed Applicant had general knowledge Principe was carrying a gun. Counsel also testified Applicant was the middleman, or contact, between Principe and Craig.

Counsel testified the common goal all along was to get an offer of accessory. Counsel testified they got this offer with a recommendation of ten to twenty years. Therefore, Counsel testified she told Applicant to expect the court to give him between ten and twenty years.

Counsel testified they discussed defenses to armed robbery. Specifically, Counsel testified they discussed abandonment based upon Applicant potentially ditching the plan to rob Craig. Counsel testified the main issue on this charge was they had a getaway drive waiting outside.

Counsel testified Applicant had a hard time accepting the legal theory of hand of one is the hand of all. Counsel testified she explained to Applicant even the getaway driver could be convicted under hand of one is the hand of all. Counsel testified she did not know why the getaway driver was not charged. However, Counsel testified she did not push to have the getaway driver prosecuted. Counsel testified she was hopeful the getaway driver would support Applicant's version of events.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the

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legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

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 that "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, 686 (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 that counsel's performance was deficient. Strickland, 466 U.S. at 686; 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). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons

counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” Yarborough, 540 U.S. at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). 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.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that 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, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements.

Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Cl. App. 2007) (citing Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Id. at 696-97.

1. Failure to Investigate the Getaway Driver

Applicant contends Counsel was deficient based upon her failing to investigate the basis for his getaway driver not being prosecuted. In reviewing a claim that defense counsel failed to properly investigate a defense to a crime, a court's principle concern is whether the investigation "was itself reasonable." Taylor v. State, 404 S.C. 350, 364, 745 S.E.2d 97, 104 (2013). However, defense counsel is not deficient in conducting a reasonable investigation as long as they interview potential witnesses "when it is reasonable to do so." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011).

Here, Applicant testified he told Counsel to find out the reason this getaway driver was never charged. Applicant further testified he told Counsel finding the answer to this mystery would lead to his charges getting dropped. Applicant testified he told Counsel he believed his participation level being the same as the getaway driver. Thereafter, Applicant testified he told Counsel the getaway driver would support his version of events. Finally, Applicant testified Counsel ignored this investigation which caused him to have no real leverage to get the charges dropped.

Thereafter, Counsel conceded she did not request to interview the getaway driver. Counsel also conceded she advised Applicant the getaway driver probably should have been prosecuted. Counsel credibly testified she formed this opinion after reviewing the getaway driver's interview with police. After review, Counsel credibly testified she planned to call the driver as a favorable witness in the event of trial. Counsel credibly recalled somebody told her this witness had disappeared out of state. Counsel credibly testified the Assistant Solicitor had a record of the getaway driver's location. Therefore, she would have had to request it for an opportunity to contact the getaway driver. However, Counsel credibly testified this request would have presented a risk in preserving the positive ongoing plea negotiations.³ Additionally, Counsel credibly testified interrogating the getaway driver could have presented a risk in eliciting forthcoming and favorable testimony from her at trial.⁴

Accordingly, the testimony reflects both Applicant and Counsel were aware the getaway driver was not charged. It further reflects Applicant requested Counsel to track down an explanation. Counsel had no direct line of contact with this witness. Therefore, the Assistant Solicitor was the only source of information for an explanation or location. As previously mentioned, the testimony paints a picture both Applicant and Counsel were dedicated to pursuing a plea offer to absolve him of responsibility for the death. Thus, Counsel reasonably decided not to pursue an explanation through the Assistant Solicitor based upon the risk of eliminating ongoing plea negotiations. Furthermore, Counsel and Applicant essentially agree the getaway driver's testimony was going to corroborate his version of events. Therefore, Counsel reasonably decided

³ Specifically, Counsel credibly testified it would have been suspicious to request contact information based upon prior review of the getaway driver's police interview.

⁴ Counsel noted concern with the getaway driver's unpredictable reaction to being tracked down for an interview since her initial disappearance was without explanation.

not to pursue an explanation from the getaway driver based upon the risk of unintentionally jeopardizing potential impact as a favorable trial witness. As a result, Applicant has failed to overcome the burden to prove Counsel was deficient for failing to investigate the getaway driver's legal situation.

Additionally, Applicant contends the failure to investigate the getaway driver's legal situation caused him to miss his opportunity to get the charges dropped. The prejudice prong is dependent upon whether counsel's deficiencies "affected the outcome of the plea process." Frierson v. State, 417 S.C. 287, 789 S.E.2d 762 (Ct. App. 2016), *aff'd as modified*, 423 S.C. 257, 815 S.E.2d 433 (2018). To establish it through witness corroboration an applicant "must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. SCRE 801. Mere "speculation" about the details of what a witness would testify about is insufficient to establish prejudice. Dalton v. State, 376 S.C. 130 at 143, 654 S.E.2d 870 at 877.

Here, Applicant testified he could have applied reasoning behind not charging the getaway driver to his own case. Applicant testified the roadmap to securing this explanation was merely asking somebody who knew. Applicant testified the getaway driver would have explained how she did not get charged if Counsel actually asked. Applicant testified the getaway driver would have also corroborated neither agreed to participate with Principe. Thereafter, Applicant testified he could have used this to get the Assistant Solicitor to drop his charges. However, the getaway driver did not testify at this evidentiary hearing. Accordingly, this Court finds Applicant's testimony about the getaway driver's golden ticket to getting his charges dropped is merely

insufficient speculation. Therefore, Applicant has failed to overcome the burden to prove a failure to investigate the getaway driver's legal circumstances caused his charges not to be dropped.

2. Failure to Prepare a Defense for Armed Robbery

Counsel credibly testified as to discussing the defense of abandonment one time with Applicant in regards to armed robbery. Counsel credibly testified this defense would be difficult to present based upon his knowledge followed by his decision to go. Counsel then credibly recalled telling Applicant affirmatively ditching the plan to rob could support abandonment. However, Counsel credibly testified the main issue would be explaining why Applicant went there. Counsel credibly testified she notified Applicant there was evidence of a getaway driver, knowledge of a planned robbery, and knowledge of a weapon. Thereafter, Counsel credibly testified there was also evidence Applicant contacted Craig to carry out this drug deal with Principe.

Finally, Counsel credibly testified the initial offer was thirty years for murder when she was assigned the case. Counsel credibly testified she notified Applicant the Assistant Solicitor would negotiate the murder charge. However, Counsel credibly testified she also informed Applicant the Assistant Solicitor said an armed robbery charge was non-negotiable. Thereafter, Counsel credibly testified the goal was to ensure Applicant could plead without accepting responsibility for the murder. Counsel credibly recalled writing a lengthy argument to the Assistant Solicitor after the forensic evidence was released. Counsel then credibly testified about receiving an offer for twenty years based upon manslaughter and armed robbery. However, Counsel credibly recalled Applicant did not want to plead to a charge taking responsibility for killing Craig. Thereafter, Counsel credibly recalled receiving an offer for the recommendation of ten to twenty years based upon accessory after the fact and armed robbery. Counsel credibly

testified this offer was contingent upon Applicant testifying at Principe's trial. Counsel credibly testified Applicant was satisfied and accepted this offer.

Accordingly, this Court finds Counsel reasonably decided not to investigate this defense when she successfully negotiated to reduce the murder charge which was their primary objective. Therefore, Applicant has failed to overcome the burden to prove Counsel was deficient based upon a failure to investigate.

Additionally, Applicant contends Counsel's failure to sufficiently explain the defense of abandonment caused him to overlook the potential success of using it. The South Carolina Supreme Court has found deficient counsel does not prejudice an applicant where the basis for their decision to avoid trial was a favorable plea. Goins v. State, 397 S.C. 568, 575, 726 S.E.2d 1, 4 (2012). (finding no prejudice where evidence showed Applicant accepted the plea after State offered to dismiss certain charges). Furthermore, an applicant must present some evidence that had counsel done an investigation he would have found a witness or evidence that was helpful. Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009).

Here, Applicant testified he would not accept a plea agreement which forced him to take responsibility for murder. Counsel credibly recalled Applicant would not accept a plea offer for murder and armed robbery. Counsel further credibly recalled Applicant would not accept a plea offer for manslaughter and armed robbery. However, Counsel credibly testified the Assistant Solicitor informed her the armed robbery charged would not be dropped when she was assigned to this case. Counsel credibly testified she informed Applicant the armed robbery charge could not be negotiated. Thereafter, Counsel credibly testified Applicant was satisfied with accepting a plea offer for the charges of accessory and armed robbery. The testimony reflects Applicant avoided trial for armed robbery to accept a favorable deal regarding his murder charges. It further

reflects he willingly engaged in negotiations despite knowledge the armed robbery charge would not be reduced or dropped. Therefore, this Court finds Applicant has failed to overcome the burden to prove he was prejudiced by any deficient failure to investigate defense of abandonment.

2. Involuntary Plea based upon Duress

Applicant alleges he pled guilty under duress. To find a guilty plea voluntarily and knowingly, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000). Also, an applicant's statements during the plea hearing are considered "conclusive unless [he] presents valid reasons why he should be allowed to depart from the truth" of them. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007). Finally, the plea colloquy can cure any alleged deficiency if counsel not properly advise an applicant about the consequences of accepting it. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997) (stating that plea counsel's deficient performance can be cured by the plea court's colloquy).

Here, Applicant testified Counsel promised him his sentence would only be for ten years. However, at the plea hearing, Applicant stated he was not promised anything in exchange for pleading guilty. (Tr. 7, L. 10). Applicant testified he lied throughout the plea hearing to get a reduced sentence. On the other hand, Counsel credibly testified she notified Applicant his sentence could be anywhere between ten and twenty years. Counsel further credibly testified she notified Applicant she would advocate for ten years at the plea hearing.

At the sentencing hearing, Counsel stated the range was between ten and twenty. (Tr. 8, L. 19). She further requested ten years based upon Applicant's help with prosecuting Principe. (Tr. 9, L. 7-19). After that, Applicant stated his belief the sentencing judge would make a fair decision on the matter. (Tr. 10, L. 18-9). This supports his testimony in answering whichever way

J.A.H. 13

possible to get a lesser sentence. However, the testimony contradicts his claim of being guaranteed ten years to enter into an agreement. Accordingly, Applicant has failed to provide a valid reason to depart from his conclusive statement no promises were made in exchange for pleading guilty. Therefore, this Court finds Applicant entered a knowing and voluntary guilty plea.

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 8th day of July, 2019.

Rusk Hill
SC

John E. Hanger II

WITNESSES

Tyrone Williams Conway Police Department

D. Long

ARREST WARRANT NUMBER

2017GS2601879

CDR: 0139 16-11-0330(A)

DOA: 11/6/2015

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: **MAY 18 2017**

VERDICT

Foreperson of Petit Jury

Date:

C

The State of South Carolina

County of Horry

Joshua D. Holford

15H05303

COURT OF GENERAL SESSIONS

April, 2017 TERM

THE STATE

vs.

Alfred Quinte' Dunkin

B/ M

301 Padgett Ln

Conway, SC 29526-6752

DOB: [REDACTED]

SSN: [REDACTED]

ATTORNEY: Erin E. Bailey

Indictment for

Armed Robbery

Jimmy A. Richardson, II, Solicitor

ORIGINAL

**FILED
HORRY COUNTY**

2017 MAY 22 PM 1: 54

**RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC
DATE RECEIVED FROM**

GRAND JURY

WITNESSES

Tyrone Williams Conway Police Department

DOCKET NO. 2016-GS-26- 00265

**The State of South Carolina
County of Horry**

**FILED
HORRY COUNTY**

2016 JAN 26 AM 9:59

J. Austin Thomas

15H05303

MELANIE HIGGINS-WARD
CLERK OF COURT

DATE RECEIVED FROM

GRAND JURY

COURT OF GENERAL SESSIONS

January, 2016 TERM

ARREST WARRANT NUMBER

2015A2620400888

CDR: 0116 16-03-0010, 0020

DOA: 11/6/2015

*NP
10/9/17*

THE STATE

vs.

ACTION OF GRAND JURY

TRUE BILL

Alfred Quinte' Dunkin
B/ M
301 Padgett Ln
Conway, SC 29526-6752
DOB: [REDACTED]
SSN: [REDACTED]

Bruce Harris

Foreperson of Grand Jury
Date:

JAN 21 2016

ATTORNEY: J. M. "Buddy" Long, III

VERDICT

Indictment for

MURDER

(ORIGINAL)

Jimmy A. Richardson, II, Solicitor

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT
 MURDER


At a Court of General Sessions, convened on January 21, 2016, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Alfred Quinte' Dunkin did in Horry County, on or about November 4, 2015, willfully, feloniously, and intentionally kill the victim, Craig Gray, with malice aforethought, either express or implied, by means of firing a gun at the victim, and the victim did die as a proximate result thereof on or about November 4, 2015 in Horry County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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


 JIMMY A. RICHARDSON, II
 FIFTEENTH CIRCUIT SOLICITOR