

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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May 20 2020

S.C. SUPREME COURT

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Certiorari to Aiken County

Honorable J. Cordell Maddox, Circuit Court Judge

—————
RAYMOND E.A. BURNS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001137

—————
APPENDIX
—————

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E X H I B I T S

NO EXHIBITS WERE INTRODUCED

1 (The following proceedings were held August 8, 2017,
2 beginning at 11:57 AM.)

3 **BAILIFF:** All rise, please. Court is now in session.
4 The Honorable Jack Early presiding.

5 **THE COURT:** Thank you. Please be seated.

6 **MR. GRIMES:** Raymond Burns.

7 **THE CLERK:** Place your left hand on the Bible and
8 raise your right hand.

9 (Whereupon, Raymond E.A. Burns was duly sworn by the
10 Clerk of Court.)

11 **THE COURT:** Ms. Hayes, do you represent Raymond Edward
12 Burns? There are two indictments. 17-GS-2-1590, reckless
13 homicide with death --

14 **MS. HAYES:** Yes, Your Honor.

15 **THE COURT:** -- and 16-GS-2-2113, hit and run and
16 accident dealing with death.

17 **MS. HAYES:** Yes, Your Honor.

18 **THE COURT:** You've advised your client of the charges
19 and the potential sentences?

20 **MS. HAYES:** I have, Your Honor.

21 **THE COURT:** Have you advised your client on the hit
22 and run indictment it is classified as violent and it will
23 have some effect on where how he's housed in the Department
24 of Corrections?

25 **MS. HAYES:** I have, Your Honor.

1 **THE COURT:** Have you further advised him that under
2 that statute it carries up to twenty-five years and a fine
3 between ten thousand and twenty-five thousand and that
4 whatever sentence I impose upon him that it will be an
5 85 percent, no parole sentence? Meaning that whatever
6 sentence I impose he will do 85 percent before he's
7 released into a community supervision program?

8 **MS. HAYES:** Yes, Your Honor.

9 **THE COURT:** Have you advised him of his right to trial
10 by jury?

11 **MS. HAYES:** I have, Your Honor.

12 **THE COURT:** And how does he indicate to you he wishes
13 to plead to both of these indictments?

14 **MS. HAYES:** He indicates to me he would like to enter
15 a guilty plea.

16 **THE COURT:** Do you agree with his decision?

17 **MS. HAYES:** I do, Your Honor.

18 **THE COURT:** Mr. Burns, good afternoon.

19 **THE DEFENDANT:** Good afternoon.

20 **THE COURT:** You're twenty-two years of age?

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** How far did you go in school?

23 **THE DEFENDANT:** Eleventh grade.

24 **THE COURT:** Anything further than that?

25 **THE DEFENDANT:** No, sir.

1 **THE COURT:** Do you understand why you are here?

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** There are two charges regarding the death
4 of D.C.

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** One is a charge for reckless homicide
7 where death resulted within three years. That carries up
8 to ten years in the Department of Corrections and/or a
9 fine between one thousand and five thousand dollars. Do
10 you understand that?

11 **THE DEFENDANT:** Yes, sir.

12 **THE COURT:** Ms. Hayes, did you advise him on this
13 reckless homicide that it is an indictment that has not
14 been sent to the grand jury and his rights to have that
15 done?

16 **MS. HAYES:** I have, Your Honor.

17 **THE COURT:** Sir, do you understand the charge of
18 reckless homicide and the potential sentence?

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** You're also charged with hit and run
21 involving an accident where death ensued. Do you
22 understand that?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** That carries up to twenty-five years in
25 the Department of Corrections. It is classified as a

1 violent offense, so it will have some affect on where and
2 how you're housed in the Department of Corrections. Do
3 you understand that?

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** Do you understand that it is an 85 percent
6 sentence, which means that you will not be eligible for
7 parole, you'll have to do 85 percent of whatever sentence
8 is imposed, and once you're released it would be into a
9 community supervision program?

10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** Do you have any questions about any of
12 the things I've just been over with you?

13 **THE DEFENDANT:** No, sir.

14 **THE COURT:** Understanding what you're charged with,
15 the potential sentences, the classification of violent, and
16 the fact that the hit and run is a no parole, 85 percent
17 sentence, how do you wish to plead to these charges; not
18 guilty or guilty?

19 **THE DEFENDANT:** Guilty, sir.

20 **THE COURT:** Mr. Burns, when you plead guilty to these
21 charges -- you will give up your right to have the reckless
22 homicide indictment sent to the grand jury. Do you
23 understand that?

24 **THE DEFENDANT:** Yes, sir.

25 **THE COURT:** You will give up your right to remain

1 silent. You will have to admit to me the allegations
2 contained in the two indictments. Do you understand that?

3 **THE DEFENDANT:** Yes, sir.

4 **THE COURT:** You will give up your right to a jury
5 trial.

6 **THE DEFENDANT:** (Nods head.)

7 **THE COURT:** Obviously, if you pled not guilty, the
8 State would provide a jury trial for you and during that
9 jury trial you would have the right to confront and
10 cross-examine everyone who testified against you.

11 **THE DEFENDANT:** Yes, sir.

12 **THE COURT:** You'd have the right to tell your side of
13 the story, present your defense by calling witnesses,
14 introducing relevant exhibits and getting on the witness
15 stand and testifying.

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** If you exercised your constitutional
18 right to remain silent, I would instruct the jury that
19 they could not hold the fact that you did not testify
20 against you in any manner whatsoever.

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** And I would instruct them that they
23 cannot consider the fact that you did not testify when
24 they deliberated your guilt or innocence.

25 **THE DEFENDANT:** Yes, sir.

1 **THE COURT:** You would be presumed innocent throughout
2 the trial and the State of South Carolina would have the
3 burden of proving guilty beyond a reasonable doubt to a
4 jury of twelve people.

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** In order for the jury to convict you, all
7 twelve people would have to unanimously agree you were, in
8 fact, guilty and even if you were found guilty, you would
9 still have a right to an appeal.

10 Now do you understand your rights to a trial by jury?

11 **THE DEFENDANT:** Yes, sir.

12 **THE COURT:** Understanding those rights, do you still
13 wish to plead guilty?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** Has anybody promised you anything, held
16 out any hope of reward or threatened you in any manner in
17 order to make you plead guilty?

18 **THE DEFENDANT:** No, sir.

19 **THE COURT:** Are you satisfied with the representation
20 provided to you by Ms. Hayes?

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** In your opinion, has she had enough time
23 to spend with you, enough time to research the law and
24 investigate the facts so that she can properly defend you
25 here today?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** Is there anything else you want her to
3 do for you today before we move forward other than speak
4 up on your behalf?

5 **THE DEFENDANT:** No, sir.

6 **THE COURT:** And are you totally and completely
7 satisfied with her?

8 **THE DEFENDANT:** Yes, sir.

9 **THE COURT:** Are you today, sir, under the influence
10 of alcohol?

11 **THE DEFENDANT:** No, sir.

12 **THE COURT:** Drugs?

13 **THE DEFENDANT:** No, sir.

14 **THE COURT:** Prescription medications?

15 **THE DEFENDANT:** No, sir.

16 **THE COURT:** Sir, are you today aware of any mental,
17 nervous or emotional condition which would keep you from
18 understanding these proceedings?

19 **THE DEFENDANT:** No, sir.

20 **THE COURT:** Do you have -- have you understood all of
21 my questions?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** Do you have any questions you would like
24 to ask of me?

25 **THE DEFENDANT:** No, sir.

1 If you disagree with these proceedings or my sentence,
2 you have ten days to file an appeal. Do you understand
3 that?

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** Mr. Grimes.

6 **MR. GRIMES:** Thank you, Your Honor.

7 Before we begin, I'm going to hand up to Your Honor
8 depictions from the MAIT team CAD drawings, as well as a
9 photograph of the front of the Defendant's vehicle after
10 the collision so Your Honor will be able to reference that
11 as we go through the facts.

12 This occurred January 3rd of 2016. The estimation of
13 time for the incident was 8:10 PM.

14 **THE COURT:** 8:10 PM?

15 **MR. GRIMES:** That's correct, Your Honor.

16 **THE COURT:** Dark, nighttime?

17 **MR. GRIMES:** This is, I guess, at best an estimation
18 because the Defendant is the only living witness to the
19 collision. Fifteen-year-old D.C. was walking
20 west on North Street. That's in New Ellington, here in
21 Aiken County. The Defendant was also travelling westbound
22 on North Street at the same time. The victim was walking,
23 facing oncoming traffic. He was walking on the side of
24 the road, he was on the pavement, and by -- what later
25 resulted from the investigation, not really doing anything

1 that would cause this collision and may not have even been
2 aware that the Defendant was behind him.

3 The Defendant was driving in the opposite lane than
4 he should have been for travel. In other words, he was
5 driving in the eastbound lane of travel, but he was
6 travelling westbound. He struck D.C. from behind.
7 D.C. 's body came to rest on the side of the road at the
8 edge of a ditch and the Defendant following that collision
9 corrected his vehicle back to the appropriate lane of
10 travel, continued on to the stop sign that's not too far
11 from that location. He indicated -- he would give a
12 statement and essentially indicated that I think it was at
13 that point that he noticed that his vehicle had been
14 leaking fluid and was difficult to steer. You'll see in
15 the CAD drawing a dark shaded portion. I believe that is a
16 depiction of what you can see in the picture which is fluid
17 on the pavement that helps indicate the location of the
18 collision and the direction of travel for the vehicle
19 itself after the collision.

20 Your Honor, after this incident the Defendant gave a
21 statement to highway patrol. I believe it was early the
22 next morning on January 4th at the detention center, but
23 he indicates a number of things and one of the things that
24 he says is that after -- I guess after he stopped at that
25 stop sign he continued onto his friend's house. His friend

1 lives a few miles away in a road off of 278 on the other
2 side of Whiskey Road from where the incident location is.
3 It's not a terribly far distance from the wreck itself,
4 but certainly further than the Defendant's home, which he
5 had left when this occurred, and wasn't very far from when
6 this occurred. His residence is back the direction he was
7 coming from and a shorter distance than travelling to his
8 friend's house off 278.

9 The Defendant then had his friend, Eric Williams --

10 **THE COURT:** Eric Williams?

11 **MR. GRIMES:** Yes, Your Honor.

12 -- take him home. The Defendant indicated that as
13 they came back past the crime scene -- of course, at this
14 point, law enforcement had already arrived and were
15 investigating this matter, that he realized at that point
16 that he had hit a person. He further indicated that he
17 went to his home, he called several people to include, I
18 believe, his girlfriend, maybe his mother, and his boss,
19 and indicated that his boss told him that he should call
20 law enforcement and so he did that at that time.

21 Law enforcement -- after he called the sheriff's
22 offices, highway patrol and I believe a sheriff's deputy
23 responded to his house and placed him under arrest. And
24 this is at 22:30, so it's approximately -- well, more than
25 two hours after this collision occurred between the time

1 of the collision and the time he was placed under arrest
2 with law enforcement.

3 The defendant indicated a number of things, but one
4 of the things that he told law enforcement that night was
5 that he took a Xanax and smoked a blunt just before they
6 arrived at his house to calm his nerves, I believe. The
7 circumstances of this collision being that the Defendant
8 was on the wrong side of the road and indicated that he
9 had consumed these substances led law enforcement to begin
10 a felony driving under the influence investigation. That
11 would include a field sobriety test, a DataMaster test,
12 and ultimately a blood sample that would occur at Aiken
13 Regional Medical Center at 12:45 AM, about four hours
14 after this wreck occurred, maybe longer.

15 The victim, D.C. , was pronounced dead
16 at the scene of the collision. The autopsy performed the
17 next day listing as the cause and mechanism multiple blunt
18 force injuries due to pedestrian motor vehicle collision
19 with an interval of minutes.

20 The Multidisciplinary Accident Investigation Team
21 investigated this collision and I'll explain some more
22 details of the stuff that they ultimately found in a
23 minute. Part of this investigation included SLED
24 toxicology tests of the Defendant's blood sample that he
25 provided at Aiken Regional Medical Center that night and

1 the testing of Defendant's blood would later indicate that
2 he was found to be positive for both active and metabolized
3 THC or marijuana and Alprazolam, more commonly referred
4 to as Xanax.

5 The central issue in this case in investigation --

6 **THE COURT:** Did he test positive with any degree of
7 positive or just a positive test? Any quantitative
8 amounts?

9 **MR. GRIMES:** They listed amounts -- they listed
10 quantitative amounts and to a lay person as myself would
11 really not be so significant without expert interpretation,
12 which we later contacted, Your Honor, but the issue became
13 whether or not the Defendant had used the drugs prior to
14 the collision and because of the time difference or the
15 amount of time between the collision itself and when he
16 was ultimately taken into custody by law enforcement, that
17 question was the subject of significant investigation.

18 Our office met with Eric Williams, who indicated that
19 he was with the Defendant at lunchtime earlier that day,
20 that they had smoked a blunt I believe at around 12:00,
21 that they had gone to Augusta and that he, Mr. Williams,
22 had dropped the Defendant off at his home around 5:00 PM.
23 This would be roughly three hours or so, maybe a little
24 longer, prior to this collision.

25 **THE COURT:** When you say smoked a blunt, I assume

1 that's marijuana or --

2 **MR. GRIMES:** Yes, Your Honor.

3 **THE COURT:** Around lunchtime?

4 **MR. GRIMES:** That's correct. He also indicated that
5 he was with the Defendant obviously for both of their
6 statements after the collision occurred and that he didn't
7 -- he didn't see the Defendant take any pills at that time.

8 **THE COURT:** Did he see him smoking any marijuana?

9 **MR. GRIMES:** Not to my knowledge, Your Honor.

10 **THE COURT:** All right. So Mr. Williams, who is -- was
11 with him after the wreck and before the wreck, testified
12 that they smoked marijuana around lunchtime. Subsequent
13 to the wreck he was with him and did not see him smoke any
14 marijuana or take any type of medication?

15 **MR. GRIMES:** That's correct, Your Honor. He -- he
16 was not with him the entire time after the collision.
17 Obviously --

18 **THE COURT:** Well, did he go straight to his house?

19 **MR. GRIMES:** He did, Your Honor. And ultimately left
20 his vehicle at Mr. Williams' house. That --

21 **THE COURT:** And Mr. Williams took the Defendant back
22 to his house?

23 **MR. GRIMES:** That's correct, Your Honor.

24 **THE COURT:** So they had to be in the same car.

25 **MR. GRIMES:** That's correct. He was with him from --

1 from that point on. I don't know that he was within sight
2 of him the entire time, but he was at least with him.

3 **THE COURT:** Until the police came?

4 **MR. GRIMES:** Until the police came.

5 **THE COURT:** And testified under oath that he saw no
6 ingestion of marijuana and/or Xanax or any other pills?

7 **MR. GRIMES:** He provided a statement to us indicating
8 that he did not see the Defendant take any pills. I
9 believe his statement was that he didn't see him consume
10 drugs.

11 Your Honor, in trying to determine whether or not we
12 could meet our burden of proof on the --

13 **THE COURT:** Let me ask you another one. Any drugs
14 found in the Defendant's vehicle?

15 **MR. GRIMES:** Yes, Your Honor. He was charged with
16 possession of marijuana. I believe he had a small amount
17 of marijuana in his vehicle.

18 **THE COURT:** In the car?

19 **MR. GRIMES:** Yes, Your Honor. His vehicle was later
20 taken into custody by law enforcement and inspected
21 pursuant to the regular MAIT protocol. We consulted with
22 a doctor of pharmacology expert to help us basically
23 understand the toxicology results that we had. The --

24 **THE COURT:** Well, what was the level of THC and Xanax?

25 **MR. GRIMES:** Your Honor, at the time he was tested,

1 he had 4.2 milligrams per liter of THC, which would be
2 active, and then a metabolite of THC at a level of 23
3 milligrams per liter, and then the Alprazolam was .08
4 milligrams per liter. Your Honor, I couldn't tell you
5 offhand whether that's an impairing amount or not an
6 impairing amount, but we did consult with an expert in
7 purposes of preparing this case for trial to determine
8 what that meant and the information that we got from the
9 pharmacologist is essentially that it would be strange for
10 a person to have that much active marijuana in their system
11 at this time period after the wreck occurred. In other
12 words, marijuana metabolizes so quickly that it would be
13 unusual for him to have consumed this prior to four hours
14 before the testing.

15 Your Honor, this is based on some studies that
16 are available and after discussing this with the
17 pharmacologist, I think maybe there's limited information
18 available on this particular issue, but the primary
19 studies that are available that are referenced in this
20 type of investigation would indicate that it's more likely
21 than not the Defendant consumed some amount of marijuana
22 after this collision occurred.

23 **THE COURT:** Well, how about before?

24 **MR. GRIMES:** Well, it can't tell us that. So --

25 **THE COURT:** But you do know he smoked some at lunch

1 because of the testimony of --

2 **MR. GRIMES:** That's correct. From our discussion
3 with the pharmacologist, what they said is that amount that
4 was described to be consumed at 12:00, roughly eight or
5 more hours before this collision, wouldn't necessarily have
6 affected him at the time of the collision. So, in other
7 words, there would have to be some consumption prior to
8 the collision after the lunchtime consumption that would
9 be impairing his ability to drive at the time of the
10 collision, which may or may not --

11 **THE COURT:** What you do know is you have a substantial
12 amount of marijuana and Xanax, you just don't know when it
13 was consumed?

14 **MR. GRIMES:** That's -- ultimately, that's correct.
15 And the window of -- the time period for the Xanax itself
16 is actually really broad. The metabolic rate for that,
17 the doctor provided us a window of like six to twenty-two
18 hours, so potentially could have been consumed up to a day
19 before this testing had occurred.

20 **THE COURT:** So you've got the amount, you don't know
21 when it was ingested, but you do have a witness who says
22 he didn't see him ingest any after the wreck?

23 **MR. GRIMES:** Right, Your Honor, and ultimately leads
24 us -- and this -- all of this information or a lot of this
25 information existed after the time the Defendant was

1 charged, but prior to his coming to trial. So based on
2 that information, it essentially leads us with
3 circumstantial evidence and nothing to definitively prove
4 that he had consumed these substances prior to the
5 collision. In an effort to resolve this case, Ms. Hayes
6 and I ultimately negotiated a resolution of the Defendant
7 pleading to reckless homicide in lieu of the felony driving
8 under the influence charge based on the evidence that was
9 available to us at the time. He's additionally pleading
10 to leaving the scene of an accident involving death, which
11 he was charged with initially. And I would say this,
12 Your Honor. In reference to the reckless homicide charge,
13 the --

14 **THE COURT:** But the MAIT team showed a speed of --

15 **MR. GRIMES:** Between 39 and 47 miles per hour. This
16 is --

17 **THE COURT:** The speed limit?

18 **MR. GRIMES:** 30 miles per hour, Your Honor.

19 **THE COURT:** 39 and 47?

20 **MR. GRIMES:** Yes, Your Honor.

21 **THE COURT:** 30 mile an hour speed limit?

22 **MR. GRIMES:** 30 mile an hour speed limit. That's
23 correct. The Defendant was speeding at the time of the
24 collision, the Defendant was driving on the wrong side of
25 the road at the time of the collision, the Defendant was

1 using his cell phone per his statement, the Defendant had
2 the radio turned up per his statement and had even
3 indicated and described that the stereo system in his
4 vehicle I guess was louder than normal and all of this --
5 all of this occurred while the Defendant was driving at
6 night in an area with limited visibility and even he
7 described it as being dark, there aren't streetlights in
8 that area, and all of those factors even absent any
9 impairment would certainly support a charge of reckless
10 homicide in this case, Your Honor. He was most definitely
11 acting in reckless disregard for the safety of others on
12 that indictment whether he was impaired at the time of the
13 collision or not.

14 **THE COURT:** Let me ask a question before you leave
15 there. What is all -- what is all this all over the
16 vehicle?

17 **MR. GRIMES:** There is -- there is mud on the vehicle,
18 Your Honor, and he described that in his statement, I
19 think it was on there before, and ultimately that area
20 where there isn't mud on the vehicle is the area of this
21 collision. I did want to address that vehicle.

22 **THE COURT:** Well, how did he get that mud all over
23 it? That takes a good bit of speed to get mud up all --

24 **MR. GRIMES:** Right, but that was prior to the
25 collision. Not involved in the collision, Your Honor.

1 **THE COURT:** Did he tell you where it came from, how
2 long it had been on there?

3 **MR. GRIMES:** He didn't say when it had gotten on
4 there, but he did describe to the officer that he had
5 taken his vehicle off road and I'm not sure when that
6 occurred. This -- this road is paved, so.

7 **THE COURT:** Well, in his statement did he admit that
8 he hit something, he just didn't know what it was or did
9 he just say I don't remember --

10 **MR. GRIMES:** He indicated in his statement that he
11 hit something and didn't know what it was. Now I did
12 want to get into that because Your Honor had noted there's
13 significant damage to the front of that vehicle on the
14 driver's side headlight area, front bumper area and hood,
15 grill. That indicates a significant impact, which we know
16 it did occur, but it's difficult to believe that the
17 Defendant was unaware of what he hit given that damage to
18 his vehicle or wasn't at the very least curious as to what
19 caused that damage to his vehicle. His vehicle was leaking
20 fluid and per his testimony or his statement difficult to
21 steer, yet he continued on after suffering that type of
22 damage to his vehicle and didn't stop there at the scene
23 which tends to indicate that he was very well aware of what
24 he had struck during that collision.

25 Additionally, Your Honor --

1 **THE COURT:** He may have been well aware of his
2 condition and didn't want anybody to know about it.

3 **MR. GRIMES:** Maybe so, Your Honor.

4 **THE COURT:** But you can't prove that.

5 **MR. GRIMES:** Well, we can't, and the reason we can't
6 is because he didn't stay at the scene of the accident.

7 **THE COURT:** Exactly.

8 **MR. GRIMES:** And I do want to get to that point, Your
9 Honor, but before I get there the Defendant's behavior
10 after this collision very much indicates that he was aware
11 of what occurred, that he hit a person, not something else,
12 and that he left that scene in a vehicle that didn't work.
13 He drove to his friend's house, which is several miles
14 away, instead of staying -- or returning to his house,
15 which he had just left. He left his vehicle at his
16 friend's house, he came back to his house in his friend's
17 vehicle. All of that would tend to indicate that maybe
18 he was trying to hide that vehicle from law enforcement
19 hoping that he wouldn't ultimately be found out. Maybe
20 he changed his mind later and called law enforcement and
21 confessed and gave them all the information that he wanted
22 them to have at that time, but he didn't do that initially,
23 Your Honor.

24 He says in his interview that he didn't see him and
25 he apparently has maintained that, but he indicates in that

1 interview that night later that the only thing I seen was
2 when he was flying through the air and also supposed that
3 he had to have hit -- he had to have had his back to me.
4 Now both of these statements were made after the Defendant
5 said that he didn't know he hit a person. Why he would
6 have that information and not know that he hit a person
7 doesn't seem to correlate very well, Your Honor.

8 There ultimately will be unanswered questions given
9 this resolution. There are just going to be things that
10 we don't know about this case and it has to be -- the
11 purpose for this hit and run statute, this leaving the
12 scene of the accident statute, first and foremost, would
13 be to render aid to somebody that was involved in a
14 collision. I don't think that anybody would say under
15 these facts that that would have changed the outcome in
16 this particular case.

17 But, secondly, law enforcement needs the information
18 immediately to be able to investigate these cases, these
19 collisions, to determine who is culpable, who's
20 responsible, and ultimately provide some information to
21 the family in this case, and we're not going to have that
22 here. The Defendant was charged with felony DUI and
23 investigated for that charge and my understanding as to
24 this day he would contend that he wasn't impaired at the
25 time of the collision. That's just based on discussions

1 with his defense attorney. The circumstances and the
2 behavior of the Defendant seem to call that into question
3 in light of the toxicology information that we have.
4 We're just not gonna know. And the Defendant leaving the
5 scene, delaying his interaction with law enforcement for
6 hours after this collision occurred ultimately caused
7 those questions to exist.

8 **THE COURT:** Well, let me ask you this question. Did
9 the toxicologist give you any indication of how much
10 marijuana he would have had to have smoked between eight
11 and 10:00 PM, the time of the alleged death, and 22:30
12 when the deputies got there? That's, what, eight -- how
13 many hours is that? Eight, nine, ten --

14 **MR. GRIMES:** It would be a two-hour window roughly.

15 **THE COURT:** How much during that two hours and
16 change, how much marijuana would he have had to have
17 smoked to have a reading of 4.2 active and 23 metabolized?

18 **MR. GRIMES:** He couldn't give us that information and
19 part of it is just due --

20 **THE COURT:** Well, the reason I'm asking, I mean,
21 obviously it sounds like he might have smoked a lot and
22 obviously if he smoked a lot somebody must have seen him
23 and the only person he was with was Ernest Williams --
24 Eric Williams.

25 **MR. GRIMES:** There is some limitations on -- on

1 metabolizing -- the rate of metabolizing marijuana and
2 it kind of boils down to two factors; the amount of
3 marijuana consumed and whether or not the person consuming
4 it is a chronic user, and so there's two studies and,
5 surprisingly, apparently a chronic user will metabolize
6 marijuana slower than somebody who doesn't use marijuana
7 and also -- and here's where the studies kind of left us
8 at a deficit, the primary studies to reference for this
9 are about smoking marijuana a single time. In other words,
10 one marijuana cigarette versus two to three over a period
11 of over five hours, so some of that information isn't
12 available to us and that's part of where we are in this
13 case, Your Honor, but ultimately the answer to your
14 question is I don't know. The pharmacologist indicated
15 that your level of active THC in your system would
16 generally peak really quickly, possibly within, just for
17 an estimate, ten to fifteen minutes and then come down
18 over a period of time depending on other factors. So it
19 could have been that -- that the Defendant did consume
20 marijuana just before law enforcement arrived as he stated,
21 but ultimately we won't know.

22 The Defendant in this case, aside from the unanswered
23 questions about his impairment, struck a person in the
24 roadway and left and he didn't know that D.C.
25 was deceased at the time. Now ultimately he was, but he

1 didn't get out and check to see if there was anything he
2 could do. He continued on to his friend's house where he
3 left his vehicle.

4 Your Honor, I think that concludes the facts that I
5 have for this case. There is a significant contingent
6 from the victim's family here to include his mother and
7 stepfather and aunt, who I believe would like to address
8 the Court. Trooper Butler is here from the South Carolina
9 Highway Patrol. He is one of our local officers. He was
10 assigned to this case. They kind of investigate things,
11 one, with a local trooper that's assigned to investigate
12 the case and additionally with MAIT officers who we met
13 with I believe a couple weeks ago in preparation for court
14 on this case, but he is here representing the highway
15 patrol in this matter as well.

16 **THE COURT:** Mr. Burns, you're under oath. I'm going
17 to ask you a question.

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** Are you gonna pass a drug test this
20 morning?

21 **THE DEFENDANT:** Yes, sir. Without a doubt.

22 **MS. HAYES:** Your Honor, in regards to the drugs that
23 you asked him, I actually have had several conversations
24 with Mr. Burns and he actually has indicated to me that
25 since this incident he has not touched drugs and I actually

1 told him that you could possibly ask him that question
2 and you would test him so he better make darn sure he was
3 telling you the truth and he has been steadfast with that
4 every time I've met with him that he has not been doing
5 any of these drugs since this incident occurred.

6 I inherited this case from another attorney. I've
7 met with Mr. Burns several times in regards to this case.
8 He's always indicated to me from the get-go that he was
9 not impaired when this accident occurred, but he would
10 plea to the leaving the scene because he did leave the
11 scene of that accident.

12 **THE COURT:** Why did he leave the scene?

13 **MS. HAYES:** He has always told me that he didn't
14 know it was a person. He said he thought it was an
15 animal. He didn't see anything in the road. He said he
16 heard a thud. He noticed his vehicle was messed up.

17 **THE COURT:** He didn't see anything in the road? A
18 fifteen-year-old kid must be five feet tall at least
19 walking down the side of the road and he didn't see him?

20 **MS. HAYES:** He's telling me he didn't see him, no.

21 **THE COURT:** Did he say why he was in that lane of
22 traffic, why he swerved over to that side of the road or
23 drove over there?

24 **MS. HAYES:** That road was prior a dirt road before
25 and it had been recently paved. Right before the incident

1 occurred, there's a curve and he says that he always
2 drives down that road, he doesn't hug the edge because
3 it's a curve and it's kind of a tight curve.

4 **THE COURT:** But the MAIT report doesn't show it being
5 a tight curve, does it?

6 **MS. HAYES:** That doesn't show the curve. I actually
7 went out to that road with my investigator and we drove
8 through the curve and -- actually Mr. Todd Gantt was my
9 investigator, he actually did not hug the edge either.
10 MAIT has determined that the pedestrian was walking on
11 the edge of the road. I wasn't there, I don't know, but
12 Mr. Burns has never --

13 **THE COURT:** But nevertheless there was a paved road
14 when this happened that I would assume had a yellow line
15 going down the middle of it?

16 **MS. HAYES:** No, Your Honor. There's no -- there's
17 no road markings. Just a black paved road. There's no
18 streetlights. It's very dark. It was very dark this
19 night and based on what Mr. Grimes talked about -- and I
20 believe Trooper Butler had asked Mr. Burns how fast he
21 was going and he told Trooper Butler he thought he was
22 going about 40 miles an hour. He was truthful with that.
23 In regards to his using the cell phone, that would be
24 reasonable. That's probably why he didn't see anything in
25 the road. He's always been very adamant that he did not

1 realize it was a person. This accident occurred around
2 8:00. The police went to his house at 10:30. That's a
3 two and a half hour timeframe. He didn't have to call
4 the police. He could have made them find him, which he
5 didn't.

6 **THE COURT:** Well, he didn't call them for a long
7 time.

8 **MS. HAYES:** He did wait. He did, Your Honor, and
9 that is his mistake. He was twenty years old when this
10 occurred. He was scared, especially when he realized it
11 was a person. He went home. He should have stopped when
12 he realized it was a person, when his friend took him back,
13 but he didn't. He went home, he called his family --

14 **THE COURT:** So when he realized it was a person, how
15 long did he wait after that to call?

16 **MS. HAYES:** He was right near his home. He said he
17 went home, called his family, told them what happened,
18 called his boss and told him he wasn't gonna be into work,
19 he was probably going to jail, called the police. As soon
20 as the police showed up, he turned himself in, submitted
21 to everything that the police asked him to do. He answered
22 questions, he gave them drug tests.

23 **THE COURT:** Who did he smoke the marijuana in front
24 of?

25 **MS. HAYES:** Pardon me?

1 **THE COURT:** Who did he smoke the marijuana in front
2 of after the wreck? Did he tell you that?

3 **MS. HAYES:** I don't know if he smoked in front of
4 anybody, Your Honor.

5 **THE COURT:** Well, his friend was with him the whole
6 time and Eric said he didn't see it. He doesn't have to
7 answer.

8 **MS. HAYES:** Did you smoke the marijuana before or
9 after the accident?

10 **THE DEFENDANT:** I smoked at 12:00. I knew that
11 whenever I took the drug test that marijuana would show
12 up in my system, so I told the officer that I smoked after
13 the accident because I --

14 **THE COURT:** Did you?

15 **THE DEFENDANT:** No, sir.

16 **THE COURT:** So the only marijuana that you smoked was
17 that blunt at lunchtime with your buddy Eric?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** And you had that kind of reading at --
20 whenever they tested it at midnight?

21 **THE DEFENDANT:** Yes, sir. I would also like to
22 mention that I was a heavy smoker of marijuana previous to
23 this accident. It was an every day thing for me, so that
24 may be why.

25 **THE COURT:** Young man, I've been doing this a long

1 time.

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** It's hard for me to believe that you had
4 those readings from one -- I don't know what a blunt is.
5 I think from what I've heard on the bench it's a cigar
6 that you put marijuana in. I don't know what a blunt is.

7 **THE DEFENDANT:** You're exactly right.

8 **THE COURT:** I normally hear it with cocaine, but you
9 can put marijuana, too? I didn't say you had cocaine. Do
10 you also use a blunt with marijuana?

11 **THE DEFENDANT:** Yes, sir.

12 **THE COURT:** Well, is it all marijuana or is it
13 cigarette tobacco? What's a blunt? What did you smoke?

14 **THE DEFENDANT:** A paper. Like a -- just like a
15 cigarette would be rolled in.

16 **THE COURT:** You roll marijuana in that and you call
17 it a blunt?

18 **THE DEFENDANT:** Right. Yes, sir.

19 **THE COURT:** And you're telling me whatever time you
20 ate lunch with Eric that's the only marijuana you had that
21 day and you had that kind of reading at 12:45 that next
22 morning?

23 **THE DEFENDANT:** Your Honor, under oath, God's honest
24 truth, that is the only marijuana I smoked.

25 **THE COURT:** How about the day before?

1 **THE DEFENDANT:** Like I said, I -- I smoked pretty
2 heavy previous to this accident.

3 **THE COURT:** Well, is pretty heavy one blunt at 12:00
4 or is pretty heavy smoking all day?

5 **THE DEFENDANT:** Pretty heavy being three to four
6 times a day.

7 **THE COURT:** So why was this day different than the
8 other days?

9 **THE DEFENDANT:** Like I stated, me and Eric went to
10 the mall. Following the mall we got back around 5:00.
11 You know you can't smoke marijuana at the mall. After
12 that, my tie rod busted on -- on my truck and I actually
13 replaced the tie rods. I went to Advance Auto and got
14 the tie rods before all this in order to replace the tie
15 rods on my truck, so I was fairly busy and I imagine
16 that's why. And I also stopped and gave a random couple
17 walking down the road a ride to Wal-Mart and then to their
18 home where actually I was on the way home -- on the way
19 to their house and they told me to stop and I pulled over
20 on the side of the road and they got out and hopped in
21 somebody else's car. I'd never met this couple before in
22 my life, but that's exactly what happened.

23 **THE COURT:** How much marijuana do you put in a blunt?

24 **THE DEFENDANT:** Approximately one gram.

25 **THE COURT:** Go ahead, ma'am.

1 **MS. HAYES:** Your Honor, Mr. Burns is twenty-two years
2 old. He works at Amick Farms. His boss is here on his
3 behalf and actually a supervisor as well. His boss would
4 like to address the Court when it's the appropriate time.
5 His uncle, Robert Green, would also like to address the
6 Court in regards to Mr. Burns.

7 **THE COURT:** You may call either one of them in
8 whatever order you want.

9 **MS. HAYES:** Okay. On top of that he has a
10 two-year-old son with his girlfriend, Tara Sprouse, and
11 Tara is here.

12 **THE COURT:** Which one is she?

13 **MS. SPROUSE:** (Indicating.)

14 **THE COURT:** Thank you.

15 **MS. HAYES:** I think part of him, the reason he didn't
16 stop, was he was scared. He was twenty years old. He's
17 young, he's never been in trouble before, but he did call
18 the police and didn't make them search for him and I do
19 believe he should get credit for taking -- I mean, he
20 waited two and a half hours, I know that, but --

21 **THE COURT:** Well, he absolutely will get credit for
22 that.

23 **MS. HAYES:** -- he could have not called. But he said
24 if he would have known it was a person, he would have
25 stopped at the scene. And actually he told me that his

1 friend told him not to call, keep it between them, and he
2 said no, I -- if that was a person, I've got to call the
3 police.

4 And I have done some research in regards to the
5 marijuana. Based on the chronic users from what I've
6 looked into, your body, your fat cells, always store
7 marijuana in your -- the THC in your system and it takes
8 a long time to get that out. When you're chronically
9 using that --

10 **THE COURT:** While it's in your system, does it affect
11 your ability to operate a vehicle if it takes such a long
12 time for it to get out?

13 **MS. HAYES:** I would -- I doubt that, but I --

14 **THE COURT:** Huh?

15 **MS. HAYES:** -- I did not look into that. I'm
16 assuming it's kind of like an alcohol issue if you're an
17 alcoholic.

18 **THE COURT:** You can have alcohol in you and it
19 affects your ability to operate a vehicle notwithstanding
20 you're letting it ease out over period of time.

21 **MS. HAYES:** It does, Your Honor. It would be really
22 nice if they could get studies to give us those numbers.

23 **THE COURT:** Well, you see my concern. We've got a
24 poor innocent kid who was --

25 **MS. HAYES:** Walking down the street.

1 **THE COURT:** -- needlessly killed. We've got a young
2 man -- and I hate these cases worse than anything in the
3 world. I have two young boys. They were young. They're
4 44 and 40 now. But he admits he's a heavy user of
5 marijuana. He admits smoking a blunt sometime that day
6 around lunch, whatever that is, and he's got this amount
7 at the time they do the toxicology. What amount was in
8 there when the poor child was killed?

9 **MS. HAYES:** We don't know that.

10 **THE COURT:** And that's what -- I mean, and here he
11 is with his whole life in front of him, this kid had his
12 whole life in front of him, and then choose to heavily
13 use marijuana. Society should be protected from people
14 driving and heavily using marijuana. They choose that
15 lifestyle, they have to realize the risk involved, and
16 that's why he's standing here today because the risk
17 caught up with him and unfortunately resulted in the death
18 of an innocent child.

19 I'll be glad to hear from your witnesses.

20 **MS. HAYES:** Would you like to speak now? Jose, would
21 you like to speak now?

22 **MR. MERCADO:** Come up here?

23 **THE COURT:** Yes, sir. That will be fine.

24 Sir, if you would just let the clerk swear you in,
25 please, and then I'm going to ask you your name and --

1 **THE CLERK:** Put your left hand on the Bible and raise
2 your right hand.

3 (Whereupon, Jose Mercado was duly sworn by the Clerk
4 of Court.)

5 **THE COURT:** Your name, please.

6 **MR. MERCADO:** Jose Mercado.

7 **THE COURT:** I'll be glad to hear from you. We have
8 in our courtroom -- almost every term of court we have a
9 lot of people who work at Amick Farms. You all employ a
10 lot of people.

11 **THE DEFENDANT:** We've got a big turnaround there.

12 **THE COURT:** Well, I admire you. You give people
13 chances up there who have checkered pasts and some people
14 make it through okay, some don't, but it sounds like it's
15 a big operation.

16 What do you want to tell me about this young man?

17 **MR. MERCADO:** Well, I've known now Raymond for about
18 nine and a half months.

19 **THE COURT:** Nine and a half months?

20 **MR. MERCADO:** Yes.

21 **THE COURT:** So you knew him after this happened?

22 **MR. MERCADO:** Yes, sir. And since he's been under
23 me working at Amick Farms, he's been a hard worker. He's
24 there every day. He's only missed about three days out
25 of the whole time he was there and that was due to his

1 child being sick, but if we ask him to do anything, he's
2 there. He shows up four hours early to help the second
3 shift out so our shift can run smoothly. I mean, he's
4 proven a lot to us at Amick Farms that he's a hard worker,
5 a good person to society and that he wants to really
6 support his family.

7 **THE COURT:** I understand. He didn't work there
8 before this?

9 **MR. MERCADO:** No, sir.

10 **THE COURT:** So you can't tell me his -- how a heavy
11 use of marijuana would have affected him?

12 **MR. MERCADO:** No, sir.

13 **THE COURT:** And had he been using marijuana, I'm
14 assuming you would not have let him stay around?

15 **MR. MERCADO:** Oh, you get randomly tested at Amick
16 Farms.

17 **THE COURT:** And he's told me he hasn't used since
18 this accident.

19 **MR. MERCADO:** Excuse me, sir?

20 **THE COURT:** I said he has told me he has not used
21 since this accident.

22 **MR. MERCADO:** Since I've known him at Amick Farms, I
23 have not -- he's not come in looking like he's used
24 marijuana. Because, I mean, we've got a lot of workers
25 there that they come in and, boy, they're red eyed and --

1 **THE COURT:** I understand.

2 **MR. MERCADO:** He's a hardworking guy. I mean, stuff
3 happens in life, but I -- you know, I mean, you can't go
4 around that. Things happen, but you can always do a
5 change in life and I feel like he can change and be
6 something good for his kid and family.

7 **THE COURT:** I feel like he probably can, but on the
8 other side of the coin he has -- he didn't always behave
9 like that and his marijuana use partially or -- in full
10 or in part has caused this tragedy here today --

11 **MR. MERCADO:** I understand.

12 **THE COURT:** -- and that's what I have to deal with
13 and it's not an easy job.

14 **MR. MERCADO:** No, it's not, sir. I've been down
15 this road before also myself and by society giving me
16 that second opportunity I became a supervisor supporting
17 my kids and family. My wife has cancer. So, I mean, we
18 all have got to give a second opportunity to prove it and
19 I think everybody should have it.

20 **THE COURT:** I'm gonna give him a second opportunity
21 because I'm not gonna put him in jail for twenty-five
22 years, but he's got to be punished for what he's done.

23 **MR. MERCADO:** Oh, yes, sir. I understand that.

24 **THE COURT:** Thank you.

25 **MR. MERCADO:** Thank you.

1 **THE COURT:** Who else?

2 **MS. HAYES:** Mr. Green.

3 (Whereupon, Robert Green was duly sworn by the Clerk
4 of Court.)

5 **MR. GREEN:** Your Honor, I'd like to first apologize
6 to the family of the victim for Raymond, my family and
7 myself.

8 **THE COURT:** Your what relationship to him?

9 **MR. GREEN:** Uncle.

10 **THE COURT:** Uncle?

11 **MR. GREEN:** Yes. Well, he's my niece's son and my
12 sister took him on every since he was a baby and raised
13 him, so.

14 **THE COURT:** So you're his great uncle, I guess, or
15 whatever?

16 **MR. GREEN:** Yeah. There's been a lot of things said
17 and there's been a lot of things done, but Raymond's a
18 good boy. He --

19 **THE COURT:** You know, the sad part about this whole
20 situation is that good guys do things bad or break the
21 law and maybe 90 percent of the time nothing happens.
22 It's that 10 percent of the time with that heavy use of
23 marijuana with an innocent kid on the side of the road to
24 end up with somebody dead and gone.

25 **MR. GREEN:** Yes, and that's why in the letter I'd

1 given you I said every one of us goes through our lives
2 and nothing like this will happen, but it does happen and
3 it happened to us, as well as their family, we're all
4 involved in this, and we feel that under the circumstances,
5 Raymond, yes, was in the middle of the road and probably
6 all of us on a dirt -- on a back road drive in the middle
7 of the road. We don't straddle one side because there's
8 no line, it's pitch dark, you don't know whether you're
9 gonna run off the edge of the road or not, so you want to
10 be in the middle.

11 **THE COURT:** Well, let me just -- the investigation
12 though shows without question that the young man was hit
13 way over on the very edge of the road on the side he was
14 supposed to be on and not the side your nephew was
15 supposed to be on.

16 **MR. GREEN:** But you can look at his vehicle, and
17 I've seen the vehicle, and it was the driver's side of
18 the vehicle. If the kid was two-foot, three-foot in the
19 middle of the lane and all, he could have hit -- and
20 Raymond was just in the middle of the road, he could have
21 swiped the kid and did the same damage if he hit him if
22 the kid was in the middle of the road, you know, so.

23 **THE COURT:** Yes, sir.

24 **MR. GREEN:** I just want to say Raymond, he's done the
25 best he could in his life. He's had a lot of downfalls,

1 he's done drugs, he dropped out of school, but he got on
2 and he's worked -- ever since he was sixteen years old
3 he's worked steady and not been in and out of jail, not
4 none of that stuff.

5 **THE COURT:** I hope I have not indicated that he is a
6 bad person; however, he's done something bad.

7 **MR. GREEN:** I just want everybody to understand.

8 **THE COURT:** I understand. And, unfortunately, I see
9 this too many times and, unfortunately, some of our young
10 people use alcohol, drugs or a combination and most of
11 the time nothing happens, but when it does happen normally
12 it's very bad and it can't get any worse than an innocent
13 fifteen-year-old kid losing his life. So we've got to
14 deal with what we've got and obviously I have to punish
15 him --

16 **MR. GREEN:** Oh, I understand.

17 **THE COURT:** -- but I will temper that punishment with
18 as much mercy as I can give him.

19 **MR. GREEN:** I sure would appreciate it.

20 **THE COURT:** He's looking at thirty-five years in the
21 Department of Corrections.

22 **MR. GREEN:** Huh?

23 **THE COURT:** He's looking at a total of thirty-five
24 years.

25 **MR. GREEN:** Oh, yes, sir. That's what everybody's

1 concerned about.

2 **THE COURT:** Yes, sir. Thank you for coming and I
3 certainly understand your situation.

4 **MS. HAYES:** Your Honor, I also have letters from the
5 family that they would like me to give to you.

6 **THE COURT:** Yes. Hand those up, please.

7 **MS. HAYES:** One thing that Raymond has indicated to
8 me was how sorry is he about this accident. Because of
9 his bond requirements, he had no opportunity to ever tell
10 the family that he was sorry that this occurred, how bad
11 he felt. His grandma actually indicated to me that she
12 has spent several nights on the phone with him crying and
13 upset, he can't sleep, because he's constantly thinking
14 about this incident.

15 And we've spoke about sentencing and Raymond wanted
16 me to ask you in regards -- you know, he would always
17 hope for probation. I've indicated to him that that's
18 probably not gonna happen, but he asked me one time in
19 our conver -- in our meeting can we just ask the judge to
20 hang twenty-five years over my head and if I screw up he
21 can send me to prison for every single one of them days
22 because he knows right now he's working, he's supporting
23 his family. He's actually the only one in his family that
24 is working, so he is supporting family, also paying for
25 the ankle monitor, and he's come to the office directly

1 from work to meet with me because we needed to discuss
2 this case without sleeping because he works the evening
3 shift. He works six days a week. He goes in. If they
4 need him extra time, he's always there. He's always come
5 to see me anytime he's needed and to come to court when
6 he's been requested.

7 Your Honor, this is an awful situation for the
8 victims and Mr. Burns' family. I know he -- if he could
9 go back, he would change it, he would trade places, but
10 he can't.

11 **THE COURT:** I just wish he could have been working
12 at Amick Farms and conducting his life as he is now on
13 January 3rd and not heavily smoking marijuana every day
14 and we would not be here.

15 **MS. HAYES:** And I'm sure he wishes to go back and
16 change that, too.

17 **THE COURT:** I'm not preaching to him, I'm not -- he
18 knows he's made a mistake, you know. One of the things
19 is he's young, so whatever sentence I give him he'll be
20 -- he won't be old.

21 **MS. HAYES:** And no matter how long, Your Honor, he
22 does do, you give him, he has to live with this until the
23 day he dies.

24 **THE COURT:** Certainly.

25 **MS. HAYES:** So I don't know if Mr. Burns wants to

1 address anything else, but we would just ask for mercy.

2 **THE DEFENDANT:** I would -- I would like to say I'm
3 sorry, you know, from the bottom of my heart.

4 **THE COURT:** I know you are.

5 **THE DEFENDANT:** You know, I couldn't imagine what,
6 you know, they're going through. I could never in a
7 million years imagine the pain that this family is going
8 through and I wish, you know, that I could take it back
9 from them, take the pain from them. You know, I pray that
10 God heals their hearts, you know, and I also pray that,
11 you know, just they learn to forgive me for the terrible
12 thing, you know, that has happened, the accident that's
13 happened. I pray that the Lord puts forgiveness in their
14 hearts and gives them strength to move on because I cannot
15 imagine going through what they are going through.

16 Your Honor, I understand completely that I deserve
17 a punishment. There's no doubt, no doubt, about that
18 whatsoever. I just ask, you know, you take my son into
19 consideration because, you know, if you sent me to prison
20 today, my son will not have a place to stay tomorrow. I
21 pay all of the bills, you know. Also, you know, like I
22 said, and like Ms. Hayes said, you know, you can hang
23 as much time over my head as you please and under any
24 circumstances extra things that you need me to do and feel
25 that I need to do, I will do. I just -- I am now for sure

1 a contributing member to society. I go to work, I come
2 home. I'm drug free. I plan to be drug free for, you
3 know, the remainder of my life. You know, I have to set
4 an example for my son and as terrible as this accident is,
5 it has taught me, you know, that drugs are not the way to
6 live, you know, that lifestyle is not the way to live.
7 That is the reason why I have not touched drugs since
8 January 3rd of 2016.

9 Like I say, I'm sorry from the bottom of my heart.
10 I pray -- I pray for the family every single day and I
11 will continue to do so after this situation.

12 I originally had a letter wrote out that I was gonna
13 read off, but I decided not to go with that and just speak
14 from the heart, so. You know, I could go on for -- for
15 days, you know, saying how sorry I am. I just pray that
16 you have mercy and I pray that God heals their hearts, and
17 that's all, Your Honor.

18 **THE COURT:** Thank you.

19 **MR. GRIMES:** Your Honor, I have to appreciate his
20 candor, but in regards to this plea arrangement, Mr. Burns'
21 statement to law enforcement after he was finally arrested
22 that night that he smoked marijuana after this wreck
23 occurred was the significant probably issue that we had to
24 deal with in this investigation and he's just admitted to
25 that the Court that was inaccurate information to law

1 enforcement --

2 **THE COURT:** Well, obviously --

3 **MR. GRIMES:** -- that probably led us to this
4 resolution instead of as it was initially charged.

5 But I will bring the family up here, Your Honor.
6 First, Ms. Carla Shealey. She is D.C. 's mother.

7 **BAILIFF:** One at a time, please, sir.

8 **THE COURT:** No, sir. I've allowed them to have two.
9 I'm sorry. They asked for three. I didn't tell security.
10 Thank you.

11 **BAILIFF:** Yes, sir.

12 **THE COURT:** Yes, ma'am. Your name, please.

13 **MS. SHEALEY:** My name is Carla Shealey, and this is
14 my son.

15 **THE COURT:** Pass one of those pictures up here -- or
16 both of them.

17 Yes, ma'am.

18 **MS. SHEALEY:** On July 14, 2000, at 5:15 AM, I gave
19 birth to a seven-pound, one-ounce, eighteen and a quarter
20 inch long baby boy, who would be named D.C. . My
21 only son, my only child. He was such a good baby, hardly
22 ever cried, slept through the night, and was always happy.
23 He was the first grandchild for my mom and dad and would
24 remain the only grandchild for four years. He was so
25 upset when his first cousin came because that was his

1 maw-maw and poppy.

2 He had a wonderfully great imagination. He could
3 play for hours just making up stories going on his
4 interests. He could talk as soon as he started walking.
5 Many people said that was not normal for a child of
6 one year. He was so smart; the top speller in his school.
7 He loved sports and was on the football team; Number 25.
8 He was so passionate about the things he cared about,
9 especially football. I wasn't allowed to talk when his
10 favorite team, the Florida State Seminoles, were playing;
11 it would jinx them. He had such a good sense of humor and
12 always wanted people to laugh and pay attention to the
13 things he said or did. He was my cautious baby. If you
14 told him once it would hurt, he never did it again.

15 We have so many memories of D.C. 's short life of
16 just fifteen years. We made sure to let him take -- to
17 let him and take him to do everything within our means.
18 When we heard -- when he heard my husband and I were
19 planning a date night, he would always say where are we
20 going and, of course, he got to go. If he was your
21 friend, he was your best friend; very loyal and
22 protective.

23 As parents, you want what's best for your children
24 and to always keep them safe. On January 3, 2016, it all
25 came crashing down for us. We were not there to keep him

1 safe from the tragedy that would happen. He was staying
2 at my mom's that day, so I thought he was there and she
3 let him go to a friend's house where she thought he was
4 at. At 11:30 PM that night we got the knock that no
5 parent should get. It was the coroner asking me if D.C.
6 was my son. I said yes and he told me D.C. was gone. My
7 head was spinning and I couldn't breathe. I can remember
8 very little about that moment.

9 We couldn't go to him because the Defendant never
10 stopped, which made it a crime scene. My husband had to
11 identify D.C. from a cell phone picture taken by the
12 coroner of D.C. lying on the side of the road. I just
13 don't get how a person knowing he hit a person could just
14 leave them on the road like an animal. I was told D.C.
15 never saw it coming or felt anything as it was instant. I
16 have to make myself believe that. I cannot imagine my
17 baby laying on the road hurting wondering why no one came
18 to help. Could you imagine that about your child? It
19 was hours before we were told after the crash. It took
20 another motorist passing by, a teenage boy, to see D.C.
21 and call 9-1-1 is what I was told.

22 The Defendant had no driver's license and should have
23 never been behind the wheel of any car to begin with. My
24 whole life was taken in an instant. I will never see
25 D.C. get his license to drive, I will never see him

1 graduate. He missed his junior prom this past April
2 when his dad was supposed to be taking him to get a tux
3 and flowers for his date. He couldn't. That was taken
4 from him. We had to stand and watch from the sidelines.
5 He would be starting his senior year of high school this
6 year. We should be buying a cap and gown, having pictures
7 made, looking at colleges from all of the brochures we get
8 in the mail almost daily for D.C. . We shouldn't be here
9 doing this because of the actions of a person who doesn't
10 seem care or show any remorse for what he has done. I
11 will never get to see D.C. become a man, fall in love,
12 get married and have children of his own. I will never
13 get to experience the joys of being a grandmother. It
14 was taken from me.

15 I will read something the Defendant wrote on
16 October 23, 2016. This is his words. Quote, I hate my
17 son has to miss out on all this because of my situation.
18 I want to take him to the fair, I want to take him trick
19 or treating for his first Halloween, take him to the park.
20 It's unfair to him. Just know daddy loves you. This
21 won't last forever, end quote.

22 Let's talk about unfair for a moment. I will never
23 get to talk to my D.C. again. I will never get to watch
24 him play ball at the park again. I will never get to say
25 I love you, baby boy, to him again. I will never get to

1 see him enjoy cooking again. I will never get to hold my
2 baby boy again. That choice was selfishly taken from me.

3 The Defendant -- the Defendant will go to jail
4 prayerfully and still have the choices I don't have. His
5 maw-maw and poppy, aunts, uncles, cousins have suffered
6 right along with us. My parents could not be in court
7 because of the anger my dad holds, which we all have, and
8 the doctor telling my mom it wouldn't be wise because of
9 the stress. I have anxiety so bad now I can't be away
10 from my husband more than a few hours without thinking
11 something bad has happened or will happen to him. I've
12 had to get on medication just to get through the day. He
13 has cousins who will never know the personality of D.C.

14 .

15 I am asking you, Judge, to sentence the maximum. He
16 is facing a possible thirty-five years for the two charges
17 he has plead guilty to. If not the maximum, at least half
18 of that, twelve and a half years for one and five for the
19 other, a total of seventeen and a half years. We all know
20 he will never serve the allotted time. Probation will be
21 a slap in the face for my family and me, especially to
22 D.C. who did nothing wrong that night. He followed all
23 the laws of a pedestrian. He had no mercy. He had none.
24 Thank you.

25 **MR. GRIMES:** Your Honor, I believe Mr. Willie Shealey

1 has prepared a statement.

2 **THE COURT:** Give us your name. And you're reading
3 the statement for whom?

4 **MS. COCKRELL:** Yes, Your Honor. My name is Kimberly
5 Cockrell. I'm reading a statement from Mr. Willie Shealey,
6 who has been D.C. 's dad since he was four years old.

7 **MR. GRIMES:** Ms. Cockrell works for Mothers Against
8 Drunk Driving.

9 **MS. COCKRELL:** On January 3, 2016, I lost my son. I
10 didn't realize it at the time, but I also lost my wife.
11 The loss of D.C. changed every aspect of our lives.
12 There's a constant sadness. It is as if the luster of
13 life has left us. I have watched Carla sleep into --
14 excuse me. I have watched Carla slip into a deep chronic
15 depression. The whole family is stricken with a deep
16 sadness. None of us enjoy things anymore because there's
17 something missing; just D.C. . All of this because a
18 person chose to do drugs and drive. What gave him the
19 right to do such a thing? What he did was bad enough.
20 When he hit D.C. , all he thought of was himself. He
21 left the scene. He didn't even try to help D.C. . He
22 didn't call an ambulance. He didn't have a license to
23 begin with.

24 I thank God every day that D.C. was saved and
25 baptized. He really loved going to church and so did we.

1 We still try to go to church from time to time, but it's
2 hard for us anymore because there's always going to be
3 that empty seat beside us. There is an empty place with
4 all of us all of the time now. It hasn't been easy to see
5 the people I love suffer with such a broken heart. I can
6 fix everything from plumbing to carpentry, et cetera. I
7 feel helpless because I want to fix broken hearts. My
8 family depends on me a lot, but I can't do anything about
9 this. I never heard of how to fix a broken heart.

10 And, Your Honor, his daddy is right there on the
11 front row.

12 **MR. GRIMES:** He just -- he just exited the courtroom.

13 **MS. COCKRELL:** I apologize. He was wearing a purple
14 shirt. Thank you.

15 **MS. GRIMES:** Your Honor, this is Ms. Rissa Keller.
16 She is D.C. 's aunt.

17 **THE COURT:** Yes, ma'am.

18 **MS. KELLER:** On July 14, 2000, the world welcomed a
19 healthy seven pound, one ounce, beautiful redheaded baby
20 boy. That perfect, healthy baby boy would be known as
21 D.C. . D.C. 's birth brought much
22 happiness to his family. D.C. is the first and only
23 child of his mother, Carla Crutchfield Shealey, and the
24 first grandchild born into the family. D.C. was one of
25 the happiest babies and toddlers that you would ever see.

1 D.C. had a wonderful imagination growing up and could
2 sing I Got You, Babe before he was two years old. D.C. 's
3 wonderful personality made him very likeable among kids
4 his age. He was even described by one teacher as a cool,
5 funny dude. D.C. made friends wherever he went. If
6 someone didn't know D.C. personally, they could always
7 identify him about the head full of beautiful red hair.

8 On January 3, 2016, the once happiness of D.C. 's
9 existence was shattered. It shattered into the pieces of
10 a mother who will never hear her child call her mom again
11 or become a grandmother. Grandparents who know that
12 there's a missing boy whenever they look at their
13 grandchildren. Aunts and an uncle who feel sorry as they
14 look at their own children. Cousins that are left with
15 only memories of D.C. , cousins that will only know
16 D.C. from pictures, and friends that will never be able
17 to celebrate their first jobs, graduation or marriages.

18 D.C. 's young life was gone from him in a senseless
19 action. The Defendant in the evening of January 3, 2016,
20 took D.C. 's life. The Defendant made the illegal
21 decision to get behind the wheel of a vehicle knowing he
22 had a suspended license, was driving too fast for the
23 posted twenty miles per hour speed limit sign, drove into
24 the oncoming traffic line -- lane allegedly high on drugs,
25 hitting D.C. from behind. The Defendant fully admitted

1 to the fact that he knew he hit a person, a redhead. To
2 make it worse, he also thought he knew the redhead he
3 killed. The Defendant did not try to slow down or brake
4 to even check before leaving the scene. The Defendant
5 cowardly not only left once, but twice. The Defendant
6 needs to be held accountable for his actions.

7 Since D.C. 's death his family deals with daily
8 struggles from missing work and not able to enjoy daily
9 activities, just struggling to not break down mentally
10 and physically. D.C. 's mother and father could not
11 financially afford to take an extended time off work to
12 grieve and along with counseling sessions Carla has to
13 daily take antidepressant and anti-anxiety medications.
14 D.C. 's grandmother is also on medication and one of his
15 -- and one of D.C. 's aunts and cousins had to move to
16 another home due to the fact D.C. was killed in front of
17 their home and the last image his aunt and twelve-year-old
18 cousin has of him is D.C. laying lifeless in a ditch.

19 Unfortunately, we will always have the worst
20 consequence of the Defendant's actions. The Defendant's
21 life will continue, but D.C. will now only live on
22 through stories and pictures. The Defendant stole
23 everything from D.C. . D.C. was denied being able to
24 have a driver's license, walk on stage to receive a high
25 school diploma or a college diploma, marriage and

1 children. The Defendant denied D.C. life and the only
2 comfort that can be found in D.C. 's death is hearing
3 the saddest, yet sweetest words, it was quick, he died
4 instantly.

5 We, as D.C. 's family, mother, father, grandmother,
6 grandfather, aunts, uncles and cousins, and now D.C. 's
7 voice, are speaking up and asking for justice for D.C. .

8 **THE COURT:** Anyone else?

9 **MR. GRIMES:** No, Your Honor.

10 **THE COURT:** Anything else?

11 **MS. HAYES:** No, Your Honor.

12 I do -- well, actually I want to reference in regards
13 to -- I don't believe Raymond knew at the time of the
14 accident that it was a person. When Trooper Butler told
15 him in the car that the person had died, he indicated it
16 was a redhead and he thought it was a friend of his.

17 I don't -- there's no fix to this. Everybody's
18 hurting. It was an awful tragedy. I know Raymond has
19 to live with this the rest of his life and he wishes he
20 could give them back D.C. , but he can't. He's here to
21 face, you know, the consequences of his actions and, as
22 we said, Your Honor, just ask for mercy.

23 **MR. GRIMES:** I will say just because it was
24 referenced earlier, he has a prior conviction for
25 something probably not significant at all in relation to

1 this just involving his sister and foster care.

2 **THE COURT:** I hear he had no driver's license. Why
3 is that?

4 **MR. GRIMES:** His driver's license was suspended at
5 the time of the collision, Your Honor.

6 **MS. HAYES:** It was. I believe it was for failure to
7 pay a traffic ticket. He indicated to me he didn't know
8 because the letters actually went to his uncle's house,
9 but it would have -- it was suspended.

10 **THE COURT:** Well, some revealing things have taken
11 place in this plea. For everyone sitting in the
12 courtroom, oftentimes the lawyers for both sides will meet
13 with the judge in chambers and the reason this case was
14 not prosecuted as a felony driving under the influence
15 with death -- which carries what?

16 **MR. GRIMES:** One to twenty-five, Your Honor.

17 **THE COURT:** -- one to twenty-five years was because
18 of the statement of the Defendant that he had ingested
19 the marijuana after the collision. By clearing his
20 conscious today in truthful response to my questioning,
21 we now learned that, in fact, he did not smoke any
22 marijuana after the wreck, nor ingest any Xanax,
23 therefore, the reading of 4.2 and 23 on the THC marijuana
24 would have to have been a result of the ingestion or the
25 smoking of the marijuana prior to the wreck and one can

1 only infer that it had to have some effect on his ability
2 to operate the vehicle. Had that information been known
3 before today, I assume this case would have taken on the
4 different posture of a felony DUI as opposed to leaving
5 the scene of the wreck with death involved, so I have to
6 look at it I think in a different light somewhat based on
7 the admission of the Defendant, which I will give him
8 consideration for being truthful with me.

9 So we have one side who has lost a wonderful son, a
10 friend, a family member, a relative, who was innocently
11 walking on the side of the road down the road who are
12 demanding what they say justice requires, which is a
13 thirty-five-year sentence and I have young man who has
14 now allegedly straightened out his life, but before this
15 happened was heavily using marijuana by his own admission
16 on a daily basis and operating a vehicle on this day after
17 having ingested marijuana, who is demanding mercy -- well,
18 not demanding, asking for mercy. So I have to -- I have
19 the difficult task of trying to decide what justice
20 demands tempered with some mercy, and I don't have any
21 formula for doing that.

22 The Legislature gives me a lot of discretion,
23 anywhere from zero to thirty-five, as to what number
24 meets their request for justice and what number meets
25 your request for mercy. I'm not asking, I'm just asking

1 myself. It's not an easy task sitting up here in this
2 black robe sending a twenty-two-year-old child, young
3 man, to the State Department of Corrections for a
4 significant period of time. I hate it more than anything
5 I do, but my position demands that I punish you. My
6 position demands that I chastise people who heavily use
7 marijuana from driving and killing people. My position
8 demands that the sentence that I impose hopefully will
9 show other drivers who intend to do something like this
10 maybe I ought not do this, maybe I ought to get a
11 designated driver, maybe I ought to not drive today, and
12 perhaps a young fifteen-year-old will not be killed as a
13 result of it.

14 So as to the offense of driving -- strike that. As
15 to the offense of leaving the scene of an accident
16 involving the death of this young man, the sentence of
17 the Court is that you be committed to the State Department
18 of Corrections for a period of fifteen years. On the
19 reckless homicide, that's a ten-year sentence that will
20 run concurrent.

21 I wish you all the best in the world, son.

22 **MS. HAYES:** Your Honor, can I address one issue?

23 **THE COURT:** Hold on. Come here, son.

24 What's that, Ms. Hayes?

25 **MS. HAYES:** Your Honor, Raymond has been on an ankle

1 monitor since he was released on bond and we would ask
2 the Court to consider giving him credit for that. He
3 was only allowed to go to and from work, come to the
4 attorney's office and come to court and seek medical
5 attention, if needed.

6 **THE COURT:** I will take that under advisement and
7 hold the sentence sheet in abeyance. I will listen to
8 you make a legal argument on that subsequent to this.

9 They can go.

10 Now listen to me very carefully. The Defendant's
11 family, I'm gonna ask you very reverently to leave the
12 courtroom. The victim's family, please remain seated.
13 I am going to exit the courtroom. Officers, would you,
14 please, be in control. Would y'all, please -- I don't
15 think anything untoward is gonna happen, but I don't want
16 to create any problems outside. So y'all, please, if you
17 don't mind, wait a few minutes and -- but I'll tell you
18 when to leave the courtroom.

19 I will hold the issue of credit for the ankle monitor
20 in abeyance, so you will have a chance to look at that law
21 and we'll put it on the record at the proper time.

22 All right.

23 (Whereupon, the proceedings were concluded at
24 1:23 PM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 8th day of August, 2017.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

October 15, 2018

ISI Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

FORM 5

H 567694

2017GS0201590
IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA)

County of Aiken)

Raymond Edward Abn Burns 373437
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick State Prison

2. Name and location of Court which imposed sentence 2nd Judicial Circuit Court Aiken County

3. Name(s) of co-defendant(s) (if any) N/A

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016G50202113 Hit & Run Death
 - (b) 17G50201590 Reckless Homicide

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- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Aug 8, 2017 Hit & Run - 15 years adult straight sentence
 - (b) Aug 8, 2017 Reckless Homicide - 10 years adult straight sentence
 - (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty Guilty
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) _____
 - (b) _____

9. My public defender was informed by me to appeal the imposition of sentence directly after court proceedings and I was left under the impression and understanding that she was handling the proceedings to which I was not properly informed of the ten day statute of limitations to file an appeal to which my public defender failed to do so.

- (c) _____
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) Ineffective Counsel
 - (b) _____
 - (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. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

11: My public defender failed to properly inform me of all the details and stipulations that the sentence I was pleading guilty to entailed; that being that my crime is classified as violent it carries a mandatory 85% minimum served and is parole ineligible.

- The public defender failed to file an appeal in a timely manner and failed to properly inform of the ten day statute of limitations on filing an appeal.

- The public defender constantly persuaded me to make a plea deal by advising me that if I didn't plead guilty that I would be charged with two offenses both carrying 25 years, totaling 50 years and that without doubt I would get the maximum for both offenses without pleading guilty.

- The attorney did not represent me during court proceedings; by which the very bare minimal was stated on my behalf thus leaving crucial facts unspoken that could have resulted in a lesser sentence.

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

No _____

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

(a) which grounds have been presented:

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

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

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

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

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

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Suzanne Hayes P.O. Drawer 2217
Aiken, SC 29301
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____

6. My public defender failed to file an appeal in a timely manner therefore leaving post conviction Relief my only option.

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

I wish to have my sentence reviewed and modified.

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

NO

STATE OF SOUTH CAROLINA)
County of Aiken)

VERIFICATION

I, Raymond E. Alan Burns, 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.

X T. Burns FOR Raymond Burns

SWORN to and subscribed before me this 24th day of July, 2018

Rita M. Davis **BITA M. DAVIS**
SC NOTARY PUBLIC (L.S.)
Notary Public

My Commission Expires: 7-16-2020

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

I, Raymond E. Alan Burns, 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.

Raymond E. Alan Burns For Raymond Burns
Applicant

SWORN or affirmed to and subscribed before me this
24th day of JULY, 2018.

Chita M. Davis **CHITA M. DAVIS**
Notary Public **SC NOTARY PUBLIC**

My Commission Expires: 7-16-2020

STATE OF SOUTH CAROLINA)
 COUNTY OF AIKEN)
)
 Raymond E. A. Burns, #373437,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SECOND JUDICIAL CIRCUIT

Case No.: 2018-CP-02-1800

RETURN

The State (Respondent), making its Return to the application for Post-Conviction Relief ("PCR") filed on July 31, 2018, would respectfully show this Court:

I.

Raymond E. A. Burns (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. In November 2016, the Aiken County Grand Jury indicted Applicant for failure to stop and render aid at the scene of an accident resulting in death (2016-GS-02-02113). Additionally, in August 2017, Applicant waived presentment to the grand jury on an indictment for reckless homicide (2017-GS-02-1590). The charges resulted from a January 3, 2016 incident in which Applicant was driving and struck the victim, D.C. , who was walking on the side of the road, which resulted in the victim's death. Applicant did not stop to render aid to the victim but later turned himself in.

Suzanne Hayes, Esquire, represented Applicant on the charges. Assistant Solicitor Samuel B. Grimes, Esquire, prosecuted the case. On August 8, 2017, Applicant pled guilty as indicted to both charges before the Honorable Doyet A. Early, III. Judge Early sentenced Applicant to imprisonment for concurrent terms of fifteen years for hit and run that resulted in a death and ten years for reckless homicide. Applicant did not appeal his conviction or sentence.

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

II.

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

1. Ineffective Assistance of Counsel
 - a. Failure to file a direct appeal.
 - b. Failure to inform Applicant of details of his plea, including violent classification of the crime and parole eligibility.
 - c. Persuaded Applicant to make a plea deal by advising him he would get the maximum sentence at trial.
 - d. Failure to mitigate in sentencing.

III.

Applicant alleges ineffective assistance of counsel, but has wholly failed to set forth any facts to support this allegation. Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove 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 (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). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. 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 (1985).

The transcript directly refutes some of Applicant's allegations. At the guilty plea, Plea Counsel informed the plea court that she had advised her client that the hit and run indictment is classified as violent and that it carried up to twenty-five years and a fine and Applicant will serve an 85 percent, no parole sentence. Tr. 3, line 21 – 4, line 8. Furthermore, regardless of his advice from Plea Counsel, Applicant was directly advised of the details of his conviction on the record by the plea court. At the guilty plea, the plea court advised Applicant his conviction was classified as a violent offense, and it was an 85 percent sentence, which means he will not be eligible for parole. Tr. 5, line 20 – 6, line 10. Applicant testified on the record that he understood both of those concepts.

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

IV.

To the extent Applicant alleges his guilty plea was not freely or voluntarily entered, Respondent asserts this allegation is meritless. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Respondent submits the transcript reflects that the pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Boykin, supra; Dover, supra. Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). Respondent submits the Applicant should not be allowed to depart from the truth of the statements he made during his guilty plea hearing.

At the guilty plea, Applicant testified he understood his charges and that he could be sentenced to serve up to 20 years in prison. Tr. 5-6. He testified that he understood it was a no-

parole offense and was classified as violent and most serious. Tr. 5-6. Applicant testified he understood and wished to waive his constitutional rights, and he was not promised anything or threatened to plead guilty. Tr. 6-8. He testified that he was satisfied with his attorney, and he was not under the influence of alcohol, drugs, or prescription medication. Tr. 8-9. Applicant admitted he was guilty of the charges and he wished to plead guilty. Tr. 10. Finally, he testified he understood that he had ten days to file an appeal if he disagreed with the proceedings or sentence. Tr. 11.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Respondent submits that Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it should therefore, be treated as such. Accordingly, this allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Applicant alleges Plea Counsel failed to file a direct appeal after being instructed to do so. Counsel has a constitutionally-imposed duty to consult with defendant about appeal when there is reason to think either (1) that rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-

Ortega, 528 U.S. 470, 120 S. Ct. 1029, 145 L. Ed. 2d 985 (2000). Although not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings. Id. 528 U.S. at 480, 120 S. Ct. at 1036. To show prejudice in these circumstances, a defendant must demonstrate that there is a reasonable probability that, but for counsel's deficient failure to consult with him about an appeal, he would have timely appealed. Id. 528 U.S. at 484, 120 S. Ct. at 1038.

In White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), the South Carolina Supreme Court held that even if the post-conviction relief court finds that the Applicant never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. Therefore, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

Respondent submits that this allegation is without merit and demands strict proof thereof. Nevertheless, the allegation raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

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),

SCRCP. 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, SCRCP. 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), SCRCP.

VII.

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

VIII.

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

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JULIE A. COLEMAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

October 29, 2018

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
 RAYMOND E. A. BURNS, #373437)
)
 Applicant,)
))
 vs)
))
 STATE OF SOUTH CAROLINA,)
))
 Respondent,)
 _____)

IN THE COURT OF COMMON PLEAS


2018-CP-02-01800

AFFIDAVIT OF SERVICE BY MAIL

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

Nancy C. Fennell, Esquire
 PO Box 2176
 Irmo, SC 29063

DATED this the 29th day of October, 2018.



 Jennifer Jennison, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
C/A NO. 2018-CP-02-1800

Raymond E. A. Burns, #373437

AMENDMENT TO PCR APPLICATION

Applicant,

v..

State of South Carolina

Respondent.

The Applicant, by and through appointed counsel below, hereby amends his PCR application filed on July 31, 2018, to add the following grounds and/or facts on which Applicant bases his allegations that he is being held in custody unlawfully:

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

Applicant amends his response to item 10 to add the following:

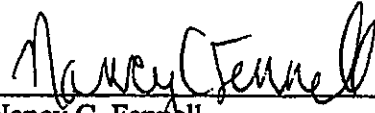
Ineffective assistance of counsel for making prejudicial statements during sentencing comparing Applicant's actions to driving under the influence of alcohol.

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

Applicant amends his response to Item 19 as follows:

Order vacating guilty plea and a new trial.

Respectfully submitted,



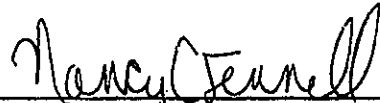
Nancy C. Fennell
Law Office of Nancy C. Fennell, LLC
P.O. Box 2176
Irmo, South Carolina 29063
(803) 553-1772
nancyfennell1@gmail.com
SC Bar No. 69729
Attorney for Applicant

Columbia, SC
January 17, 2019

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this Amendment to PCR Application was served upon the following this 17th day of January, 2019 via email and First Class Mail, postage prepaid, to:

Megan Harrigan Jameson
Senior Assistant Deputy Attorney General
mjameson@scag.gov
P.O. Box 11549
Columbia, SC 29211



Nancy C. Fennell
Attorney for Applicant

State of South Carolina) In the Court of Common Pleas
)
) Second Judicial Circuit
 County of Aiken)

Raymond E. A. Burns,) 2018-CP-02-01800
)
 Plaintiff,)
)
 vs.)
)
 The State of South Carolina,)
)
 Defendant.)

May 13, 2019

Aiken, South Carolina

B e f o r e:

J. Cordell Maddox, Judge

A p p e a r a n c e s:

Janell Gregory, Esquire
Attorney for the Plaintiff

Nancy Fennell, Esquire
Attorney for the Defendant.

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

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E X H I B I T S

NO.	DESCRIPTION	I.D.	EV.
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-- NO EXHIBITS ENTERED --

(On the record at 10:43 a.m.)

1 MS. GREGORY: Your Honor, we're ready to proceed with
2 the next one.

3 THE COURT: Okay. Which one? Where are we at?

4 MS. GREGORY: We are at -- with Raymond Burns, Your
5 Honor.

6 THE COURT: All right.

7 MS. GREGORY: I'm Janell Gregory with the Attorney
8 General's office.

9 In November of 2016, Mr. Burns was indicted by the
10 Aiken County Grand Jury for failure to stop and render aid
11 at the scene of an accident resulting in death. He later
12 waived presentment to the Grand Jury on an indictment for
13 reckless homicide as well.

14 On August 8, 2017, Mr. Burns appeared before Judge
15 Early and pled guilty as indicted to both charges. Judge
16 Early sentenced Mr. Burns to 15 -- excuse me -- 15 years
17 for the failure to stop and render aid and a concurrent 10
18 years for the reckless homicide.

19 Mr. Burns did not appeal this conviction or sentence,
20 He did file a timely PCR application on July 31, 2018. He
21 amended that application in January through his counsel.
22 His counsel is Ms. Fennell. He is here today. I'll let

1 them put the allegations on record.

2 THE COURT: Okay. Yes, ma'am.

3 MS. FENNELL: Thank you, Your Honor. In his original
4 application, Mr. Burns asserted that his Public Defender
5 failed to file an appeal in a timely manner. He asserted
6 that his Public Defender persuaded him to make a plea deal
7 by advising him that if he did not plead guilty, that he
8 would be charged with two offenses, both carrying 25
9 years, totaling 50 years; and that he would get the
10 maximum penalty for both of those offenses if he did not
11 plead guilty.

12 His attorney did not represent him during court
13 proceedings, including the very bare minimum, not stating
14 on his behalf crucial facts that would've resulted in a
15 lesser sentence.

16 And then we amended the application to include an
17 allegation for ineffective assistance of counsel for
18 making prejudicial statements during sentencing, comparing
19 applicants actions to driving under the influence of
20 alcohol, and also amended his application regarding the
21 relief he was seeking that he was seeking an order
22 vacating his guilty plea and a new trial.

23 THE COURT: Okay. All right. Y'all have witnesses.
24 However you want to ...

25 MS. FENNELL: Okay. Thank you, Your Honor. At this

1 time, Applicant calls Mr. Raymond Burns to the stand.

2 THE COURT: Come forward, Mr. Burns.

3 (The applicant complies.)

4 RAYMOND BURNS, having been first
5 duly sworn, testifies as follows:

6 COURT CLERK: State your name for the record.

7 THE WITNESS: Raymond Burns.

8 DIRECT EXAMINATION

9 BY MS. FENNELL:

10 Q Thank you, Mr. Burns. Can you tell us where you're
11 currently housed?

12 A McCormick Correctional Institution.

13 Q Okay. And what sentence are you serving?

14 A A 15, 85 percent sentence with a 10 year -- a 10 year
15 non-violent sentence.

16 Q Okay. And those are concurrent?

17 A Right.

18 Q Okay. And is that sentence the result of a plea?

19 A Yes.

20 Q And when did you plead guilty?

21 A On August of 2017.

22 Q And what did you plead guilty to?

23 A Hit and run involving death and reckless homicide.

24 Q All right. And did you file an application for post-
25 conviction relief?

1 A Yes.

2 Q And when did you file that application?

3 A July 8, 2018.

4 Q And do you understand that if you are successful in
5 your PCR application, you are subjecting yourself to the
6 potential of a greater sentence than what you've already
7 received?

8 A Yes.

9 Q And you understand that any charges that were pending
10 against you that were dropped would be brought back
11 against you?

12 A Yes.

13 Q Okay. And who was your attorney who represented you
14 in the underlying charges?

15 A Suzanne Hayes.

16 Q And was she appointed or did you hire her?

17 A Appointed.

18 Q And how many times did you meet with her when she was
19 representing you?

20 A Three to five times.

21 Q Okay. And when did you first meet with her?

22 A I'm not exactly sure.

23 Q Okay. Do you recall the conversations you had with
24 Ms. Hayes?

25 A I -- yes.

1 Q Okay. And did you all talk about the potential
2 outcome of your case if you did go to trial?

3 A Yes.

4 Q And what did she tell you about that?

5 A If I went to trial, I'd get the maximum time.

6 Q And what do you mean by "the maximum time"? What did
7 she specifically tell you?

8 A Up to 50 years.

9 Q Okay. Did she tell you that you would get 50 years?

10 A It's a good possibility.

11 Q Okay. Did you have a full understanding of the
12 charges that were pending against you?

13 A I don't believe so.

14 Q Did she go over the elements of each charge with you?

15 A I was told they was violent, 85 percent, but I was
16 not under -- I did not know that they was [sic] non-
17 paroleable.

18 Q Okay. When did you find out it was non-paroleable?

19 A When I was pleading guilty and the judge told me it
20 wasn't.

21 Q Okay. So up until that point in time, you thought
22 you were gonna be eligible for parole?

23 A Right.

24 Q And specifically, what did she tell you regarding
25 your parole eligibility?

1 A That I might would be eligible for parole the
2 following year.

3 Q Okay. So the following year -- year from the date
4 you were pleading guilty?

5 A Right.

6 Q Okay. And so at that time, when you went in to plead
7 guilty, you were under the impression that you would be
8 pleading guilty and receive a sentence that would leave
9 you with parole eligibility?

10 A Yes.

11 Q Okay. And after talking to Ms. Hayes about the
12 option of a guilty plea, was it your understanding that
13 you would get 5 to 10 years?

14 A Yeah. I -- I never thought that I would get any more
15 than 10 years.

16 Q Okay. And why did you -- why did you think that?

17 A Because those are the numbers that we discussed.

18 Q Okay. So when you went in to enter a guilty plea
19 that day, you thought you were going to receive between 5
20 and 10 years with parole eligibility?

21 A Yes.

22 Q Okay. If she had not led you to believe that, would
23 you have pled guilty that day?

24 A No.

25 Q Would you have insisted on going to trial?

1 A Yes.

2 Q Did the fact that Ms. Hayes told you that you would
3 be guaranteed to get two 25-year sentences if you went to
4 trial, did that impact your decision to plead guilty?

5 A Yes.

6 Q Did the fact that she told you, you would get that
7 sentence, was that the reason you decided to plead guilty?

8 A Yes.

9 Q Okay. One of the allegations that we've put forward
10 is that Ms. Hayes was ineffective in making prejudicial
11 statements during sentencing at your guilty plea hearing.
12 Do you recall what statements she made that day?

13 A Yeah. She said -- she compared me to being an
14 alcoholic and driving under the influence with alcohol.

15 Q Okay. And -- and she spoke that to the judge during
16 -- during the sentencing?

17 A Page 35 of the transcript.

18 Q Okay. And do you think that what she said that day
19 had an impact on the sentence you received?

20 A Definitely.

21 Q Okay. And what do you think the impact of her
22 statement was?

23 A I -- I don't believe I would've got as much time.

24 Q Okay. And what makes -- what makes you think that?

25 A Because after she said that, that's when I received

DIRECT EXAMINATION BY MS. FENNELL - RAYMOND BURNS 11

1 my sentence, and the -- the judge didn't seem too happy
2 about it 'cause it was a big misunderstanding.

3 Q Okay. And did you have an opportunity to talk to Ms.
4 Hayes after your sentencing about the sentence that you
5 received?

6 A Yes.

7 Q And did she express surprise that you received the
8 sentence you received?

9 A Yes.

10 Q Okay. And what -- what did she say about the
11 sentence that you received?

12 A She didn't know that I was gonna get that much time
13 either.

14 Q Okay. And so you think that statement that she made
15 was prejudicial to you?

16 A Yes.

17 Q Now, after you were sentenced that day, did you
18 discuss with Ms. Hayes the option of filing a direct
19 appeal?

20 A Yes.

21 Q When did that discussion take place?

22 A Directly after I got sentenced.

23 Q Okay. So you were still in -- in the courthouse when
24 you had that discussion?

25 A Yes.

1 Q And what did you tell her about your -- filing an
2 appeal on your behalf?

3 A You know, we were both pretty emotional, and I
4 explained to her that it -- it might not do any good, but
5 I would like to do an appeal, and that's all.

6 Q Okay. So you made the request on that same day?

7 A Right.

8 Q Okay. And did she indicate that she would file an
9 appeal?

10 A Right.

11 Q Okay. And do you know whether she filed an appeal on
12 your behalf?

13 A I'm guessing not.

14 Q Okay. Were you ever made aware that she did file an
15 appeal?

16 A No.

17 Q Have you -- have you done anything to follow up with
18 her to determine whether she filed an appeal?

19 A I wrote her a letter and she says that I needed to do
20 a PCR application. That's how I started out for my PCR
21 application.

22 Q Okay. And when -- when -- when did that
23 communication take place?

24 A Probably about a month before I filed out for my PCR.

25 Q Okay. And so at that time, you learned that an

DIRECT EXAMINATION BY MS. FENNELL - RAYMOND BURNS 13

1 appeal had not been filed on your behalf?

2 A Right.

3 Q Okay. Did you intend to waive your right to a direct
4 appeal?

5 A No.

6 Q Okay. You thought an appeal was filed on your
7 behalf?

8 A Right.

9 Q You thought Ms. Hayes filed that for you?

10 A Yes.

11 Q Okay. And then, just to go back to the -- the fact
12 that Ms. Hayes told you that you would receive two 25-year
13 sentences if you went to trial, that statement that she
14 made to you that was a basis for you determine -- deciding
15 to plead guilty that day?

16 A Yes.

17 Q Okay. Is there anything else you'd like to tell the
18 Court today?

19 A No.

20 Q Please answer any questions that the Attorney
21 General's office has.

22 CROSS-EXAMINATION

23 BY MS. GREGORY:

24 Q Morning, Mr. Burns.

25 A Morning.

1 Q Was Ms. Hayes your first attorney?

2 A No.

3 Q Who was your first attorney?

4 A Nicholas McCarley.

5 Q And at what point did Ms. Hayes start representing
6 you?

7 A I'm not exactly sure.

8 Q Okay. Were you able to be out on bond while these
9 charges were pending?

10 A Yes.

11 Q And you -- your testimony was that you only met with
12 Ms. Hayes three to five times?

13 A Right.

14 Q Does that include phone calls or is that just in-
15 person meetings?

16 A In-person meetings.

17 Q Did you have phone calls in addition to the in-person
18 meetings?

19 A Maybe, yes.

20 Q Do you know how many phone calls you had?

21 A Not exactly sure, no.

22 Q Do you recall reviewing discovery with your attorney?

23 A No. I've never even received a motion of discovery,
24 even before I pled guilty.

25 Q All right. Do you recall telling -- the judge

CROSS-EXAMINATION BY MS. GREGORY - RAYMOND BURNS 15

1 telling you that the hit-and-run involving death is
2 classified as a violent offense, right?

3 A Yes.

4 Q Okay. Do you recall telling -- or the judge telling
5 you that it's also an 85 percent charge, and that you'd be
6 released into community supervision program?

7 A Yes.

8 Q And you said you learned about the parole -- like,
9 not being parole eligible during the guilty plea?

10 A Right.

11 Q Why did you continue to go on with your guilty plea?

12 A I was already here, you know? I -- I was ---

13 Q You realize you could've stopped it, though?

14 A Right.

15 Q Okay. Do you recall telling the judge that you
16 wanted to plead guilty?

17 A Yes.

18 Q And that you were waiving your constitutional rights?

19 A Yes.

20 Q And that you were completely and totally satisfied
21 with your lawyer?

22 A Yes.

23 Q And that nobody promised you anything in exchange for
24 your guilty plea?

25 A Yes.

1 Q And that you were pleading guilty freely and
2 voluntarily?

3 A Yes.

4 Q And you also admitted to the judge that you operated
5 your vehicle in reckless disregard for the safety of
6 others ---

7 A Yes.

8 Q -- which caused death? And you recall admitting to
9 the judge, that after hitting the victim and causing his
10 death, you willfully and law -- unlawfully failed to stop
11 your vehicle and render aid?

12 A Yes.

13 Q And you recall telling the judge that you smoked
14 three to four blunts a day prior to the incident, that you
15 considered yourself a heavy user of marijuana?

16 A Yes.

17 Q Do you think that played into the sentencing at all?

18 A (No audible response.)

19 Q Do you recall the judge lecturing you about that
20 prior to sentencing you?

21 A I believe it all had a partaking in my sentencing,
22 yes.

23 Q I'm sorry, your -- your what?

24 A I -- I believe all of it had a partaking in my
25 sentencing, yes.

DIRECT EXAMINATION BY MS. GREGORY - SUZANNE HAYES 17

1 Q Okay. And do you recall apologizing to the victim's
2 family?

3 A Yes.

4 MS. GREGORY: No further questions, Your Honor.

5 THE COURT: Okay. Anything on redirect?

6 MS. FENNELL: No, Your Honor.

7 THE COURT: Okay. You can step down.

8 (The witness complies.)

9 MS. FENNELL: Your Honor, Applicant rests at this
10 time.

11 THE COURT: All right. Yes, ma'am.

12 MS. GREGORY: The State would call Suzanne Hayes.

13 THE COURT: Okay.

14 SUZANNE HAYES, having been first
15 duly sworn, testifies as follows:

16 COURT CLERK: State your name for the record.

17 THE WITNESS: Suzanne Hayes.

18 DIRECT EXAMINATION

19 BY MS. GREGORY:

20 Q Good morning, Ms. Hayes.

21 A Morning.

22 Q How long have you been practicing law?

23 A Since November of 2008.

24 Q And how much of that has been in -- in criminal law?

25 A Almost nine.

DIRECT EXAMINATION BY MS. GREGORY - SUZANNE HAYES 18

1 Q Nine years?

2 A Almost nine years, yes.

3 Q Okay. And how did you come to represent Mr. Burns?

4 A I took on all the DUI cases, from DUI first, all the
5 way up to felony DUI. So at that time, Mr. Burns case was
6 reassigned to me.

7 Q Did you have the benefit of having a file from the
8 previous attorney?

9 A Yes.

10 Q Was discovery already included in that?

11 A It was.

12 Q And how long did you represent him prior to the
13 guilty plea?

14 A It was about a year and a half.

15 Q How many times did you meet with him during that year
16 and a half?

17 A I met with him at least nine times or more.

18 Q Is that in person or just phone calls; do you recall?

19 A In person.

20 Q In person, at least nine times in person. Did you
21 explain the potential charges and sentences?

22 A I did.

23 Q Okay. You heard him testify about the two 25-year
24 sentences. Were those potential if you went forward at
25 trial?

DIRECT EXAMINATION BY MS. GREGORY - SUZANNE HAYES 19

1 A The felony DUI with death carries 0-to-25 years and a
2 significant fine, and the hit and run with death also
3 carries a 0-to-25 with a significant fine. They are
4 violent offenses, and you'd have to serve 85 percent
5 before you're able to get out.

6 And we went over the elements of the charge, and he
7 was advised the minimum and maximum of each sentence. I
8 explained to him concurrent/consecutive; if he went to
9 trial, the judge has discretion on sentencing, but I told
10 him that judge -- I believe our judge was Judge Early at
11 that time, and told him that Judge Early usually sentences
12 concurrent.

13 Q Okay.

14 A But it's -- it's up to the judge.

15 Q Okay.

16 A Those were his -- that was his potential exposure.

17 Q So he was potentially facing two 25-year sentences?

18 A Correct.

19 Q He -- as you heard, he alleges that you did not go
20 over the parole aspects of those sentences with him.

21 A He was informed that he had to serve 85 percent of
22 whatever sentence he was given before he was eligible to
23 be released.

24 Q Is that, in fact, what he's serving, correct?

25 A Correct.

DIRECT EXAMINATION BY MS. GREGORY - SUZANNE HAYES 20

1 Q Okay. Did you review his constitutional rights with
2 him prior to his guilty plea?

3 A I did.

4 Q And he was aware of his right to a jury trial?

5 A I believe so 'cause that's what we were prepping for
6 before the plea offer and his acceptance was done.

7 Q Okay.

8 A And we were preparing the case for trial.

9 Q For trial? Okay.

10 What were the facts of the case?

11 A There was a 15-year-old boy walking in the street,
12 Mr. Burns -- it was alleged that Mr. Burns, driving
13 through there, hit the 15-year-old male, drove away, and
14 then later on called law enforcement and turned himself
15 in.

16 They did all the DUI tests. They took his blood, and
17 he tested positive for marijuana and I believe Xanax.

18 Q Okay. And when he drove past, did he continue to
19 drive that car after he drove past -- after the accident
20 occurred -- the incident occurred, did he continue to
21 drive that car?

22 A He did. He drove it to a friend's house, I believe,
23 and parked it in the back yard. And then his friend-- he
24 had his friend take him, I believe, to the store and then
25 home.

DIRECT EXAMINATION BY MS. GREGORY - SUZANNE HAYES 21

1 Q And then home? And did you discuss Mr. Burns's
2 version of the facts?

3 A I did with him.

4 Q And what did he say?

5 A He indicated that he drove the car to this friends,
6 his truck -- he hit something in the road and he assumed
7 it was a deer.

8 He went to his friends house, his truck was messed
9 up. So he asked his friend to give him a ride back home.

10 On the way home, he went back by the accident and
11 realized that it was a person. They spoke to the officer,
12 Hugh Ray, in North -- New Ellenton, which directed them to
13 a different -- to -- to go around the accident.

14 At that time, he said he saw a shoe in the road and
15 realized it was a person, and he didn't indicated to the
16 law enforcement at that time that he was the one that --
17 that hit the person in the road. He continued home, and
18 then he called law enforcement. I think it was about two
19 and a half hours later.

20 Q Did he tell law enforcement anything about what he
21 ingested prior to calling them?

22 A He told law enforcement he had smoked marijuana
23 before and after the accident.

24 Q Any pills or anything?

25 A I don't recall if he told them about the Xanax --

DIRECT EXAMINATION BY MS. GREGORY - SUZANNE HAYES 22

1 Q Right.

2 A -- but it -- he did, ultimately, test positive for
3 that.

4 Q Okay. And did he test positive for marijuana as
5 well?

6 A He did.

7 Q Okay. How did the guilty plea come about?

8 A We were getting prepared for trial, the Solicitor and
9 I had discussed the case. The Solicitor called me and
10 said that he had spoke to his marijuana expert, and based
11 on Mr. Burns's statement to law enforcement that he had
12 smoked before and after the accident, his expert had
13 indicated that there was no way to tell whether Mr. Burns
14 was impaired prior to the accident because of his
15 marijuana usage after the accident. So the State offered
16 reckless homicide and the hit and run.

17 I had talked to the Solicitor about dismissing the
18 reckless homicide charge and the felony DUI, and just let
19 him plea to the hit and run. The Solicitor was not
20 willing to do that, so I took the offer to Mr. Burns,
21 explained the -- the sentences on each, that the hit --
22 the reckless homicide was a non-violent, 65 percent
23 charge; but they were not willing to dismiss the hit and
24 run which was still a violent offense.

25 Q Right. Did you believe it was in his best interest

DIRECT EXAMINATION BY MS. GREGORY - SUZANNE HAYES 23

1 to plead guilty?

2 A As I indicated to Mr. Burns, in regards to having
3 went to trial, we may had a possible -- we had a
4 possibility of possibly beating or winning the felony DUI,
5 but the hit and run was -- well, he was most -- he would
6 most likely be convicted of that based on his own
7 admissions.

8 So we -- I believed that his standing up and
9 accepting what he did was -- would be a better sentence
10 than going to trial.

11 But that's -- you know, that was up to him. I told
12 him he had to make that decision. I couldn't make that
13 decision for him.

14 Q So you -- do you believe that his sentence that he
15 received, taking the guilty plea would've been less than
16 what he would've faced at trial?

17 A Possibly.

18 Q Possibly.

19 A I can't tell you what a judge would do, but in my
20 experience, that's usually what happens.

21 Q Okay. And if you -- if Mr. Burns had wanted to take
22 the case to trial, would you have taken the case to trial?

23 A Absolutely.

24 Q Did you ever tell him he was gonna get the maximum
25 sentence and trial -- if he went forward on the trial I

1 mean?

2 A No. I just advised him what the maximum sentence
3 could possibly be.

4 Q But never told him that's for sure what he would
5 receive?

6 A No.

7 Q At the plea hearing, during the mitigation phase,
8 were you able to present Mr. Burns's version of the facts
9 to the plea judge?

10 A I believe we presented the facts that were best for
11 him.

12 Q Okay.

13 A I presented all the information he gave me about him,
14 we had several family members here on his behalf, his boss
15 from Amick Farms came and spoke on his behalf, we handed
16 up several letters to the judge. And I believe his aunt
17 -- it might've been his uncle ---

18 Q Uh-huh.

19 A A family member spoke, and his boss. Somebody from
20 his family spoke, and then there was several letters that
21 were written to Judge Early for him to look at.

22 Q Did Mr. Burns make any statements regarding his
23 marijuana use to Judge Early during the plea?

24 A He told the judge that he did not smoke marijuana
25 after the accident, it was all prior to the accident.

DIRECT EXAMINATION BY MS. GREGORY - SUZANNE HAYES 25

1 Q And how did that affect the plea hearing at that
2 point?

3 A I -- I believe Judge Early was a little disappointed
4 with that because it was the main reason why he was given
5 the reckless homicide charge and not the felony DUI.

6 Q Do you believe that if the Solicitor's Office knew
7 that that was his admission, he would've received this
8 plea offer?

9 A No, he would not have gotten this plea.

10 Q During the plea, the sentencing hearing, Applicant
11 has alleged that you made some prejudicial statements
12 regarding -- kinda comparing his actions to an alcoholic.
13 Do you recall these statements that you made? If you have
14 the copy of the transcript, it's page 35.

15 A I remember talking to the judge -- explaining to the
16 judge the difference between recreational marijuana use
17 versus chronic everyday use, which was Mr. Burns. There's
18 nothing laid out that explains that like alcohol.

19 There's a number -- we have a number that's presumed
20 impaired based on alcohol use and our bodies metabolize
21 alcohol the same way. If someone drinks alcohol all the
22 time, they're gonna have a regular blood alcohol level,
23 but that doesn't make them impaired.

24 I was trying to explain to the judge how, if you're a
25 chronic marijuana user, your fat cells hold on to the mari

1 -- the THC longer than if someone who just smokes
2 recreationally. Your body gets rid of it faster.

3 So Mr. Burns would've tested positive for marijuana
4 anyway had he not smoked it even in 30 days. It doesn't
5 get out -- it's not dispensed out of your system as fast
6 as if you're just a once in awhile user. And I was trying
7 to explain to the judge how that relates to an alcoholic
8 because we're more familiar with that.

9 Q Right. So your explanation did not indicate that he
10 was impaired, just why he might've tested positive for the
11 THC?

12 A Based on his -- I'm trying to -- he's -- he can
13 function with a THC level all the time versus someone who
14 randomly smokes.

15 Q Okay.

16 A He's always going to have that in his system ---

17 Q Okay.

18 A -- unless he stops. Probably could be a lot longer
19 to get rid of it all than someone who just randomly smokes
20 once in awhile.

21 Q And he admitted to being a chronic user to the judge
22 during the plea hearing ---

23 A He did.

24 Q --- is that correct?

25 Do you feel that the comments that you made affected

DIRECT EXAMINATION BY MS. GREGORY - SUZANNE HAYES 27

1 the sentence Mr. Burns received?

2 A No. Because if I believe correctly, Judge Early made
3 a comment that he's been doing this a long time and he
4 knows.

5 Q What kind of mitigation did you present? You said
6 family member and who else came to testify?

7 A His boss from Amick Farms, who spoke very highly of
8 Mr. Burns.

9 I believe it was his uncle. He had several family
10 members explain to -- you know, how old he was, he hadn't
11 been in trouble. He had children -- he had a child, a
12 girlfriend ---

13 Q Okay.

14 A --- several -- several things that he had done since
15 this accident and he was trying to better his life.

16 Q And were there letters as well you submitted?

17 A There were several letters.

18 Q Okay.

19 A Yes.

20 Q Mr. Burns has also alleged that you failed to file a
21 direct appeal. Did you discuss filing a direct appeal
22 with Mr. Burns?

23 A After the sentence was done, we went to the back. I
24 spoke to him, explained his sentence. I directly asked
25 him if he wanted me to appeal his sentence. He told me,

DIRECT EXAMINATION BY MS. GREGORY - SUZANNE HAYES 28

1 no, it wouldn't make any difference anyway.

2 Q Had he wanted to go forward and appeal the case, what
3 would you have done?

4 A I would've had the paperwork filed on his behalf.
5 And actually, after his case was finished, he had been on
6 a ankle monitor ---

7 Q Uh-huh.

8 A --- during -- while he was out on bond. We had went
9 -- had asked the judge to give him credit for the time
10 that he served on the ankle monitor while he was out on
11 bond and we got the separate order for that; and the judge
12 did sign it giving him credit for that. So had he wanted
13 an appeal, I would've done that as well.

14 Q Okay. So he got additional credit because of the
15 motion that you made?

16 A Correct.

17 MS. GREGORY: No further questions, Your Honor.

18 CROSS-EXAMINATION

19 BY MS. FENNELL:

20 Q Ms. Hayes, did you ever receive a letter from Mr.
21 Burns after he was sentenced?

22 A I did.

23 Q And what did that letter say?

24 A It was asking -- I don't remember if it was asking me
25 about an appeal. I wrote him back and told that his -- he

CROSS-EXAMINATION BY MS. FENNELLS - SUZANNE HAYES 29

1 request -- he told me not to -- if he -- let me -- I can
2 pull it up. Hold on a minute.

3 (Brief pause.)

4 A He wrote me a letter talking about how his sentence
5 was unfair, and he said he was unsure of what papers to
6 file 'cause he wanted his sentence reduced.

7 And then he went on to talk about how he didn't
8 belong in prison, he wasn't a threat to society, some
9 issues with -- I believe he said his -- some personal
10 issues. He's working on getting his GED, talking about
11 his son, and he said that he didn't think that 15 percent
12 -- 15 years at 85 percent without -- with no possibility
13 of parole was too much.

14 He said people had been talking to him about some
15 paperwork that he needed to file, but he only had one year
16 to file it. So then he said, if so, can you get back with
17 me?

18 And I responded to him in regards to -- he would need
19 to get in touch with his caseworker at prison and he would
20 need to file a PCR.

21 Q Okay. And when did he send you this communication?

22 A The letter was dated, I believe, April of 2018.

23 Q Okay. And had you heard from him before April, 2018?

24 A I had not heard from him.

25 Q Okay.

1 A His -- his -- I had heard from his family, but not
2 him.

3 Q So in his communication, he represented that he
4 wasn't sure what type of paperwork he needed to file?

5 A That's correct.

6 Q Okay. I don't have any further questions. Thank
7 you.

8 THE COURT: Anything on redirect?

9 MS. GREGORY: No, sir.

10 THE COURT: Okay. You can step down, thank you.

11 (The witness exits the stand.)

12 MS. GREGORY: State has no further witnesses, Your
13 Honor

14 THE COURT: Okay. All right. What I'll do is, Mr.
15 Burns, I'm gonna take what they've given me, which is your
16 transcript, with me. I'll be here all week, and I will
17 read it and take it under advisement. If I rule against
18 you, what I'll do is ask for an order to be prepared and
19 sent to your lawyer, and then if you want to appeal that
20 order, you can. You need to do that immediately. Or if I
21 rule in your favor, you'll get a notice, likewise. But I
22 want -- I want to read everything, and make sure I've got
23 it my head, okay? When's your max-out date?

24 THE APPLICANT: 2029.

25 THE COURT: Okay. How old are you?

1 THE APPLICANT: I'm 24.

2 THE COURT: Okay. All right. Be safe.

3 THE APPLICANT: Yes, sir.

4 THE COURT: Are y'all still on lock down at
5 McCormick?

6 THE APPLICANT: Yes.

7 THE COURT: Yeah. Okay. Thanks.

8 MS. FENNEL: Thank you, Your Honor.

9 (Off the record at 12:17 p.m.)

10 -- END OF TRANSCRIPT OF RECORD --

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CERTIFICATE

I, the undersigned, Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Aiken County, South Carolina, on the 13th day of May, 2019.

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

E/Bonnie H. Kelly

Bonnie H. Kelly, CVR
Court Reporter

Columbia, South Carolina
December 15, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

2018-CP-02-1800

Raymond E.A. Burns, #373437,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

FILED 10-17 2019 12:30
Robert L. White SP
C.C.P. & G.S.
Shadell Parks
Deputy Clerk

This matter comes before the Court by way of an application for post-conviction relief filed on July 31, 2018, by Raymond Burns (Applicant) and was amended on January 17, 2019. The State (Respondent) filed a Return on October 31, 2018, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on May 13, 2019, at the Aiken County Courthouse. Applicant was present at the hearing and represented by Nancy Fennell, Esquire. Assistant Attorney General Janell H. Gregory of the South Carolina Attorney General's Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. Assistant Public Defender Suzanne H. Hayes of the Second Circuit Public Defender's Office (Counsel) also testified. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application.

PROCEDURAL HISTORY

The records before this Court establish Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Aiken County Clerk of Court's order of commitment. During its November 2016 term, the Laurens County Grand Jury indicted Applicant for failure to stop and render aid at the scene of an accident resulting in death (2016-GS-02-02113). Additionally, in August 2017, Applicant waived presentment to the grand jury on an indictment

for reckless homicide (2017-GS-02-1590). Counsel represented Applicant on the charges. Assistant Solicitor Samuel B. Grimes of the Second Circuit Solicitor's Office prosecuted the case. On August 8, 2017, Applicant pled guilty as indicted to both charges before the Honorable Doyet A. Early, III. Judge Early sentenced Applicant to imprisonment for fifteen years for the hit and run that resulted in a death and a concurrent ten years for reckless homicide. Applicant did not appeal his conviction or sentence.

SUMMARY OF FACTS

On January 3, 2016, D.C. (Victim) was walking west facing oncoming traffic on North Street in New Ellington. (GP Tr. 11.) Applicant was driving westbound on North Street at the same time. (GP Tr. 11.) Applicant was driving on the wrong side of the road when he struck Victim from behind. (GP Tr. 12.) Victim was pronounced dead at the scene. (GP Tr. 14.) Applicant continued to drive to his friend's house after hitting Victim. (GP Tr. 12.) Applicant left his damaged vehicle at his friend's house and had his friend drive him home. (GP Tr. 13.) According to Applicant, when he drove past the area where he struck Victim, he observed police officers at the scene and that is when he realized he hit a person. (GP Tr. 13.) Applicant went home and called several people before calling police. (GP Tr. 13.) Officers responded to Applicant's residence and arrested Applicant. (GP Tr. 13.) Applicant told officers he had smoked a blunt and took a Xanax just before they arrived to his residence. (GP Tr. 14.)

SLED test results of Applicant's blood indicated that he tested positive for both marijuana and Xanax. (GP Tr. 15.) The blood test results did not provide any conclusive information as to whether Applicant was intoxicated at the time of the collision. (GP Tr. 15.) According to Applicant's friend, he and Applicant smoked a blunt at noon the day of the collision. (GP Tr. 15.) However, his friend did not observe Applicant smoke any marijuana or take any pills after the collision, which is not what Applicant told law enforcement. (GP Tr. 16.) The State consulted

with an expert to see if the blood results showed Applicant had an impairing amount of marijuana or drugs in his system. (GP Tr. 18.) According to the State's expert, marijuana metabolizes quickly, so the results would be unusual if Applicant had only consumed marijuana around noon on the day of the collision. (GP Tr. 18.) Based on research and their expert, the State believed Applicant's statement that he consumed some amount of marijuana after the collision occurred. (GP Tr. 18.) This information led the State to negotiate a plea deal with Counsel for Applicant to plead to reckless homicide rather than felony driving under the influence. (GP Tr. 20.) However, during the guilty plea hearing, Applicant admitted to the court that he had only smoked marijuana at noon on the date of the collision, but told officers he smoked it after the collision because he knew he would test positive for marijuana. (GP Tr. 31.) Applicant admitted to being a "heavy smoker" of marijuana prior to the collision and stated he smoked "every day." (GP Tr. 31.) Applicant told the court his heavy use is probably why his levels were higher than the State's expert expected for someone who only smoked at noon on the date of the collision. (GP Tr. 31.) Counsel researched the blood test results and explained to the court that chronic marijuana users have THC stored in their fat cells and it would take a long time for THC to get out of their system. (GP Tr. 35.) Counsel went on to state she doubts it affected Applicant's ability to operate his vehicle and stated it is probably akin to an alcohol issue if one was an alcoholic. (GP Tr. 35.)

During the guilty plea hearing, Judge Early stated, "Society should be protected from people driving and heavily using marijuana." (GP Tr. 36.) Judge Early also commented on Applicant's confession that he had not smoked marijuana after the collision and noted that Applicant would not have been provided his current plea offer had he been truthful with law enforcement prior to the plea hearing. (GP Tr. 57-58.) Judge Early ultimately sentenced Applicant to fifteen years for leaving the scene of an accident involving death and a concurrent ten years for reckless homicide. (GP Tr. 59.)

ALLEGATIONS RAISED

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

1. Failure to file a direct appeal
2. Failure to inform Applicant of the details of his plea, including classification of the crime and parole eligibility.
3. Persuaded Applicant to make a plea deal by advising him he would get the maximum sentence at trial.
4. Failure to mitigate sentencing.

On January 17, 2019, Applicant, through counsel, amended his application to allege the following:

5. Counsel made prejudicial statements during sentencing comparing Applicant's actions to driving under the influence of alcohol.

On May 13, 2019, an evidentiary hearing was convened. Applicant proceeded with the hearing on all of the allegations set forth in his application and amended application.

APPLICABLE LAW

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 300 S.C. 115. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 300 S.C. 115. With respect to guilty plea counsel, the applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court viewed 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 Clerk of Court records regarding the subject convictions, the trial transcript, and Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

This Court finds Applicant has failed to meet his burden of proving he is entitled to post-conviction relief on any of his allegations of ineffective assistance of counsel. Applicant has failed to prove both deficiency on the part of Counsel and any prejudice therefrom.

Counsel failed to file a direct appeal.

Applicant alleges Counsel was ineffective for failing to file a direct appeal. Applicant testified after the guilty plea that he and Counsel were both emotional. Applicant testified he told Counsel he would like to appeal. Applicant testified he wrote a letter to Counsel about his appeal because he thought an appeal had been filed.

Counsel testified she directly asked Applicant if he wanted to appeal and Applicant told her that he did not because it would not do any good. Counsel testified she did not see any meritorious grounds to appeal Applicant's case. Counsel testified if Applicant had wanted to appeal, she would have filed an appeal. On cross-examination, Counsel testified she received a letter from Applicant in April of 2018 stating he did not belong in prison and felt the sentence was too harsh. Counsel testified she told him he could file a post-conviction relief application. Counsel testified Applicant did not ask him to appeal his case in the letter.

Counsel has a constitutionally-imposed duty to consult with defendant about appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470 (2000). "[A] defendant who explicitly tells his attorney *not* to file an appeal plainly cannot later complain that, by following his instructions, his counsel performed deficiently." Id., 528 U.S. at 477.

This Court finds Counsel's testimony with respect to this allegation very credible, whereas Applicant's testimony is not credible. This Court finds Applicant has failed to establish how Counsel was deficient for failing to file an appeal after Applicant specifically instructed Counsel not to file an appeal. Additionally, Counsel testified she did not see any meritorious grounds for Applicant to raise on appeal. Based on the forgoing, Applicant has failed to meet his burden set forth in Strickland and this allegation must be denied and dismissed with prejudice.

Failure to inform Applicant of the details of his plea, including classification of the crime and parole eligibility. Counsel persuaded Applicant to make a plea deal by advising him he would get the maximum sentence at trial.

Applicant alleges Counsel was constitutionally ineffective for failing to explain to him the terms of his plea, the classification of his crime, and parole eligibility. Applicant further alleges Counsel advised Applicant he would get the maximum sentence at trial, therefore forcing him to make a plea deal with the State. Applicant testified Counsel was appointed to represent him and he met with her three to five times during her representation. Applicant testified Counsel talked to him about potential outcomes of his case and told him he could possibly get up to fifty years. Applicant testified he talked to Counsel about a guilty plea and that she did not think he would get more than ten years. Applicant testified Counsel was surprised at the sentence he received because she did not believe he would get that much time. Applicant testified he believed he would get five to ten years and he would have gone to trial had he known he was going to get fifteen years. Applicant testified he did not have an understanding of parole, but the judge told him about his parole eligibility.

Counsel testified she met with Applicant nine times in person and explained his charges, potential sentences, and what concurrent and consecutive sentences could be in his case. Counsel testified she did not tell Applicant he would get the maximum sentence, but she did advise him of what the maximum sentence was that he faced for his charges. Counsel testified she informed Applicant the classification of his charges and that he would have to serve 85% of his sentence. Counsel also testified she believed it was in Applicant's best interest to plead guilty. Counsel testified she prepped Applicant's case for trial and would have taken the case to trial had he wanted to pursue a jury trial. Counsel testified it was Applicant's choice whether to accept the plea offer from the State. Counsel testified she never told Applicant that he would get probation, but she did ask the plea court for probation on Applicant's behalf. (GP Tr. 43.) Counsel testified there was

no doubt in her mind that the State would have been able to prove the hit and run charge at trial and Applicant would have gotten more time had he proceeded to trial.

Additionally, during the plea hearing, Counsel informed the plea court she had reviewed Applicant's charges with him, the classification, potential sentences, that he was not parole eligible, and that Applicant would have to serve 85% of the sentence imposed by the court. (GP Tr. 3-4.) The plea court also reviewed with Applicant his charges, sentences, parole implications, and that he would have to serve 85% of his sentence. (GP Tr. 6.)

This Court finds Counsel's testimony with respect to these allegations very credible whereas Applicant's testimony is not credible. This Court finds Applicant has failed to establish how Counsel was deficient as Counsel reviewed Applicant's plea and charges with him prior to the plea hearing. Counsel also appropriately informed Applicant of the sentences he faced on his charges and properly counseled him on the plea offer from the State. Additionally, the plea judge also reviewed with Applicant the terms of his plea, his charges, and parole implications prior to Applicant proceeding with his guilty plea. This Court finds Applicant was aware of the terms of his guilty plea, the classification of his charges and parole eligibility of those charges prior to entering his guilty plea. Based on the forgoing, Applicant has failed to establish any deficiency with respect to Counsel's representation or any resulting prejudice from the alleged deficiency. Therefore, Applicant has failed to meet his burden set forth in Strickland and these allegations must be denied and dismissed with prejudice.

Counsel failed to mitigate sentencing

Applicant alleges Counsel was constitutionally ineffective for failing to present mitigation to the plea court prior to Applicant being sentenced. However, Counsel testified she presented letters from Applicant's family to the plea court and had Applicant's uncle, Robert Green, and Applicant's boss from Amick Farms testify on Applicant's behalf. Counsel also testified she

believed Applicant calling law enforcement to turn himself in after the collision was good mitigation. Counsel testified Applicant's own admission to the plea judge stating he did not smoke marijuana after the incident like he told law enforcement hurt Applicant.

This Court finds Counsel's testimony with respect to this allegation very credible. This Court finds Applicant has failed to establish how Counsel was deficient because she presented mitigation on Applicant's behalf including testimony from his uncle and boss. Counsel also provided letters from Applicant's family to the plea court as well. Applicant failed to show this Court what else Counsel could have or should have provided to the plea judge during the plea hearing that would have impacted the sentence imposed by the plea court. Based on the forgoing, Applicant has failed to meet his burden set forth in Strickland and this allegation must be denied and dismissed with prejudice.

Counsel made prejudicial statements during sentencing comparing Applicant's actions to driving under the influence of alcohol.

Applicant alleges Counsel was ineffective for comparing Applicant's THC levels to driving under the influence of alcohol during the plea hearing. Applicant specifically alleges the following exchange between Counsel and the plea judge impacted his sentence:

Counsel: . . . And I have done some research in regards to the marijuana. Based on the chronic users from what I've looked into, your body, your fat cells, always store marijuana in your - - the THC in your system and it takes a long time to get that out. When you're chronically using that -

Court: While it's in your system, does it affect your ability to operate a vehicle if it takes such a long time for it to get out?

Counsel: I would - - I doubt that, but I - -

Court: Huh?

Counsel: - - I did not look into that. I'm assuming it's kind of like an alcohol issue if you're an alcoholic.

Court: You can have alcohol in you and it affects your ability to operate a vehicle notwithstanding you're letting it ease out over period of time.

Counsel: It does, Your Honor. It would be really nice if they could get studies to give us those numbers.

(GP Tr. 35.)

After reviewing the record, it is clear Counsel's statement was made in an attempt to explain to the plea judge why Applicant's THC levels were so high after the collision since Applicant had just admitted to the plea judge that he had lied to law enforcement and had *not* smoked marijuana after the collision. The State had already presented information that their expert believed it was unlikely Applicant's THC levels would be as high as they were if Applicant had not smoked marijuana within four hours of his blood test, which corroborated Applicant's initial statement to law enforcement and ultimately led to a favorable plea offer. However, after Applicant admitted in court that his initial statement to law enforcement was a lie, Counsel attempted to provide an explanation to the plea judge as to how his blood test could have come back with high THC levels when he had admittedly only smoked marijuana at noon on the date of the collision. Counsel's explanation was based on her research that THC is stored in the fat cells of chronic marijuana users, which could explain the abnormally high results. This Court does not read Counsel's explanation to mean that Applicant was under the influence at the time of the collision or that he was impaired at the time of the collision.

Further, Applicant admitted to being a "heavy smoker" prior to the collision and stated he smoked "every day." (GP Tr. 31.) It is clear from the record that Applicant's admission was impactful on the plea court's sentencing of Applicant. (GP Tr. 57-59.) Judge Early stated, "My position demands that I chastise people who heavily use marijuana from driving and killing people." (GP Tr. 59.)

Counsel testified she did not believe her statement had an effect on Applicant's sentence. Counsel testified she researched Applicant's blood results and looked up experts on marijuana usage when investigating Applicant's case. Counsel testified there is no number for intoxication of marijuana like there is in alcohol for DUI related events. Counsel also testified Applicant looked impaired in his booking photo and acted impaired in his interview with law enforcement.

This Court finds Counsel's testimony with respect to this allegation very credible. This Court finds Applicant has failed to establish how Counsel was deficient as Applicant admitted to the plea court that he was a heavy user of marijuana and had smoked marijuana at noon on the date of the collision. Further this Court finds, Applicant has failed to show any resulting prejudice from the alleged deficiency as Counsel's attempt to explain Applicant's high THC levels hours after the collision did not prejudice Applicant in any way. Based on the foregoing, Applicant has failed to meet his burden set forth in Strickland and this allegation must be denied and dismissed with prejudice.

CONCLUSION

Based on the foregoing, the Court finds and concludes 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.

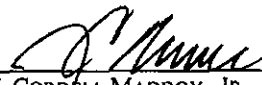
The Court notes Applicant must file and serve a notice of appeal within thirty days from post-conviction relief counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on

Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 12th day of June, 2019.



J. CORDELL MADDOX, JR.
Presiding Judge
Second Judicial Circuit

Anderson, South Carolina

WITNESSES

SC Dept. of Public Safety (SCHP)

M J Butler

Law Enforcement Case #:

SBG

ARREST WARRANT NUMBER

H567694

NOV - 10 2016
Luis Padua
C.C.P. & G.S.
SS Aaron Higgins
Deputy Clerk

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury
Date: November 10, 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016GS0202113

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2016

THE STATE

vs.

RAYMOND EDWARD BURNS

CDR #: 2463

Indictment for

**FAILURE TO STOP & RENDER AID OR
INFORMATION AT THE SCENE OF AN
ACCIDENT RESULTING IN DEATH**

§ 56-05-1210(A)(3)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
FAILURE TO STOP & RENDER AID OR
INFORMATION AT THE SCENE OF AN
ACCIDENT RESULTING IN DEATH

§ 56-05-1210(A)(3)

At a Court of General Sessions, convened on November 14, 2016, the Grand Jurors of Aiken County present upon their oath:

That **RAYMOND EDWARD BURNS** did in Aiken County on or about January 3, 2016, being the driver of a vehicle involved in an accident resulting in death to a person, willfully and unlawfully fail to stop and remain at the scene of the accident and fulfill the requirements of Section 56-5-1230 of the Code of Laws of South Carolina (1976), as amended, relative to giving information and rendering aid which is in violation of §56-5-1210 of the Code of Laws of South Carolina (1976), as amended.

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



J. STROM THURMOND, SOLICITOR

WITNESSES

SC Dept. of Public Safety (SCHP)

M J Butler

Law Enforcement Case #:

DOCKET NO. 2017GS0201590

The State of South Carolina

County of Aiken

SBG

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2017

ARREST WARRANT NUMBER

17-DI02-0031

FILED Aug 8 2017

[Signature]
C.C.P. & G.S.

[Signature]
Deputy Clerk

THE STATE

vs.

RAYMOND EDWARD BURNS

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: September 7, 2016

VERDICT

Foreperson of Petit Jury
Date:

CDR #: 3097

Indictment for

RECKLESS HOMICIDE

§ 56-05-2910

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
RECKLESS HOMICIDE

§ 56-05-2910

At a Court of General Sessions, convened on September 11, 2017, the Grand Jurors of Aiken County present upon their oath:

That **RAYMOND EDWARD BURNS** did in Aiken County on or about January 3, 2016, drive a motor vehicle in a reckless disregard of the safety of others, causing mortal wounds of which [REDACTED] did die as a proximate result in Aiken County on January 3, 2016. All in violation of Section 56-5-2910 of the Code of Laws of South Carolina (1976), as amended.

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


J. STROM THURMOND, SOLICITOR