

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Lancaster County

S.C. SUPREME COURT

Honorable D. Craig Brown, Circuit Court Judge

—————
DERRICK LAMONT WADE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-001897

—————
APPENDIX
—————

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1 STATE OF SOUTH CAROLINA

2 -----x

3 STATE,

4 Plaintiff,

5 Case No.

6 -against- 2009-DR-29-11021

7 DERRICK LAMONT WADE,

8 Defendant.

9 -----x

10 October 31, 2016

11 Lancaster, S.C.

12

13 B E F O R E:

14 HONORABLE D. GARRISON Hill

15

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

17 LISA COLLINS,

18 Assistant Solicitor for the State

19

20 LEAH MOODY,

21 Attorney for the Defendant

22

23 Aileen Butler

24 Official Court Reporter

25

1 MS. COLLINS: May it please the Court. The first
2 order of business this morning is Derrick Wade. He is
3 here with his attorney, Miss Moody. Mr. Wade is going
4 to tender a plea to the charge of lynching, 2nd
5 degree. Derrick Wade please.

6 DERRICK WADE, called as a witness, having been
7 duly sworn by the clerk, was examined and testified as
8 follows:

9 MS. COLLINS: May it please the Court.

10 THE COURT: Yes, ma'am.

11 MS. COLLINS: Your Honor, this is the State of
12 South Carolina versus Derrick Lamont Wade. He is
13 present at the bar with appointed counsel Leah Moody.
14 He is before you today on Indictment 2009-GS-29-1113,
15 a true bill indictment for the crime of murder.

16 Pursuant to the plea agreement the defendant is
17 waiving presentment to the Grand Jury and entering a
18 plea to lynching 2nd degree, a law which was in
19 existence at the time of this crime, 3-31-09.

20 As Your Honor knows, under South Carolina Law at
21 that time, 16-3-220, that offense carries potentially
22 a minimum of three years in prison up to a maximum of
23 20 years in prison. It is a nonviolent offense, under
24 16-1-60 code of laws at that time. It is however,
25 classified as a serious offense under 16-25-30 the

1 code of laws in 2009.

2 Your Honor, pursuant to the plea agreement the
3 State is recommending a cap of 15 years in prison. If
4 Your Honor follows the recommendation the defendant's
5 sentence exposure would be a minimum of three years in
6 prison to a maximum of 15 years in prison.

7 I understand that the defendant wants to defer
8 sentencing. We're not opposed to sentencing being
9 deferred so that all of his mitigation witnesses can
10 be present, however, we would respectfully request
11 that the defendant be taken into custody. I
12 understand they want to be heard as to that issue. We
13 ask that he be taken into custody after Your Honor
14 accepts this plea.

15 The family of the victim, Lamario Ford is present.
16 They would like to be heard at the time of sentencing
17 but for the record both of his parents are present,
18 his grandmother and two of his sister's. And we are
19 ready to proceed Your Honor.

20 THE COURT: All right. Thank you. And he has
21 been placed under oath?

22 THE CLERK: Yes, sir, he was.

23 THE COURT: You are Derrick Lamont Wade?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: How old are you?

1 THE DEFENDANT: Thirty-five, Your Honor.

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

3 THE DEFENDANT: I graduated high school, one year
4 of colleague and eight years in the army.

5 THE COURT: Are you under the influence of any
6 alcohol, drugs or medication Mr. Wade.

7 THE DEFENDANT: No, Your Honor. Well, I under my
8 medication for PTSD.

9 THE COURT: Okay. And does any of that medication
10 effect your ability to process information or make
11 rational decisions.

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: Okay. And Miss Moody, you don't have
14 any questions about his competency, do you ma'am?

15 MS. MOODY: No, sir, Your Honor, I do not.

16 THE COURT: All right. Have you had enough time
17 to --

18 MS. MOODY: If I may, Your Honor, I would just
19 like to protect the record and put on the record that
20 I learned this morning that he is on medication for
21 PTSD and that also goes to my reasoning for wanting to
22 defer the sentence, defer sentencing.

23 THE COURT: All right. Thank you. What kind of
24 work do you do, sir?

25 THE DEFENDANT: I work at TMA in Rock Hill

1 building transmissions, manufacturing.

2 THE COURT: How long have you been doing that?

3 THE DEFENDANT: I just started out this year.

4 THE COURT: Have you had enough time to talk to
5 Miss Moody about your case?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Are you satisfied with her services?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And are you entering this plea of your
10 own free will?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Has anyone threatened you or put any
13 pressure on you to get you to come to court today and
14 enter your plea, sir?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: And you understand the maximum
17 sentence for this charge?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And you also understand it carries a
20 mandatory minimum sentence of three years in prison?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And you under it is classified as
23 serious offense?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And you understand the elements of the

1 crime?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: And the State would have to prove this
4 beyond a reasonable doubt. Do you understand that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: As far as it being a serious crime,
7 are you familiar with the two strikes and three
8 strikes law Mr. Wade.

9 THE DEFENDANT: Yes, Your Honor. This would be a
10 strike.

11 THE COURT: So you know if I accept your plea on
12 this you would have one strike because it is a serious
13 offense and if you were ever to be convicted again of
14 a serious or most serious offense you could face a
15 mandatory sentence of life imprisonment without any
16 possibility or hope of parole. Do you understand that
17 sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Knowing that, do you still wish to
20 enter this plea?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Do you understand you have the right
23 to a jury trial and in fact we have a jury panel
24 coming in today at two p.m.?

25 THE DEFENDANT: Yes, sir, Your Honor.

1 THE COURT: And do you understand that at a jury
2 trial you would be presumed innocent. You wouldn't
3 have to prove yourself innocent or prove yourself not
4 guilty. The State would have the burden of proof, do
5 you understand that?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: And at your trial, you could see and
8 hear the witnesses. You could confront the evidence
9 against you. You could have Miss Moody assist you at
10 your trial. You could bring in witnesses using the
11 subpoena power of the Court. You could present any
12 defenses or evidence that you wish to that was
13 relevant. You could testify or you could choose to
14 remain silent and nobody could force you to testify.
15 If you choose to remain silent the Court would tell
16 the jury you have an absolute right by the
17 constitution to remain silent and they could not hold
18 that against you or take into account whatsoever in
19 determining whether you are guilty or not guilty.

20 Do you understand the rights you would have at
21 trial, sir?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: And you understand you can only be
24 convicted if all 12 jurors agreed unanimously that the
25 State had proven each and every element of the crime

1 beyond a reasonable doubt?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: And at your trial you could challenge
4 or contest any of the evidence against you. You could
5 also challenge any statements you may have given to
6 the police or any searches they may have conducted or
7 any testing that was done or should have been done.
8 Do you understand that, sir?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Now understanding all those rights you
11 would have at a jury trial and understanding you must
12 give them up for today in order to plead guilty do you
13 still wish to plead guilty, sir?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Have you understood all my questions?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: All right. And the State is going to
18 set forth a brief summary of the facts at this time.
19 Yes, ma'am, Miss Collins.

20 MS. COLLINS: Thank you, Your Honor, may it please
21 the Court. Had we gone to trial in this matter the
22 State would present testimony and evidence that the
23 defendant did within Lancaster County, South Carolina
24 on March 31, 2009, along with four other co-defendants
25 lure the victim, Lamario Ford to an empty house at

1 Cunningham Street with the intent to all assault him.
2 They did savagely beat him including kicking him about
3 his head after knocking him to the floor. Those other
4 co-defendants were Yusef Abdus-Salaam, Keith Coleman,
5 Dequavious Jamark Blair and also Montrez Clark.

6 Mr. Clark's case has not yet been to trial but the
7 other defendants have plead. But as to the fact
8 pattern at issue, law enforcement traced a motive two
9 days before, the trailer on Still Street in Lancaster
10 where Mr. Wade live and associated with some of the
11 other co-defendants, was the victim of a home invasion
12 and several of those individuals were hurt very
13 terribly and this was believed to be payback or street
14 justice for that or to send a message for people they
15 thought were from Great Falls that had committed that
16 home invasion on Still Street on 3/29/09.

17 Lamario Ford was from Great Falls and they
18 believed that by beating him that they would send a
19 message to the people that had perpetrated the home
20 invasion on 3/29 on the Still Street trailer. The
21 victim did die as a result, ultimately of being shot
22 after he was beaten savagely. Most of the
23 co-defendants left but the testimony would be that
24 Montrez Clark as he was leaving shot Mr. Ford one time
25 in the chest which was the result -- which did result

1 in him dying. He was declared dead at the scene.

2 But again, as to the lynching to which Mr. Wade
3 is pleading that the co-defendants including Mr. Wade
4 had gathered there ahead of time, lured Mr. Ford there
5 with intention of beating him and they did beat him
6 savagely resulting in great bodily injury. He had
7 significant head trauma and that would constitute the
8 crime of lynching, 2nd degree.

9 THE COURT: All right. Is that what happened sir?

10 MS. MOODY: He's pleading under North Carolina v
11 Alford. We would take the position that's the
12 evidence that the State would present and it could
13 possibly lead to a conviction. Based on the fact that
14 the State made the offer he wanted to accept the
15 offer.

16 THE COURT: All right. Mr. Wade, you are pleading
17 under the North Carolina versus Alford, is that right?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And you understand that means that
20 you're not -- well, you're acknowledging the State's
21 evidence is so strong that it's likely you would be
22 convicted at a trial and you are taking the benefit of
23 this plea bargain in exchange for agreeing to plea
24 under that North Carolina versus Alford decision. Do
25 you understand that? Is that what you want to do?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Any questions of me about North
3 Carolina versus Alford?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: Do you understand if I do accept your
6 plea it has the same force and effect as a plea of
7 guilty or a conviction by a jury; Do you understand
8 that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Okay. And the plea agreement that
11 Miss Collins placed on the record before I started
12 asking you questions is that the entire deal you have
13 with the State?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: You don't have any other promises or
16 negotiations with them?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: Okay. All right. Well, I will accept
19 the plea under the Alford decision and I find there's
20 a factual basis based on the State's representation
21 and I understand we are going to defer the sentencing,
22 is that correct?

23 MS. COLLINS: Yes, Your Honor.

24 THE COURT: Okay. Anything further at this time?

25 MS. MOODY: Your Honor, he does wish to address

1 the Court as to him being taken into custody today.

2 THE COURT: Okay.

3 MS. MOODY: I will turn it over to Mr. Wade.

4 THE COURT: Mr. Wade.

5 THE DEFENDANT: I served eight years and did two
6 tours in Iraq and I get treatment at the VA in
7 Columbia and I know the Lancaster County Detention
8 Center don't have the means to give me what I need as
9 far as therapeutic counseling, but SCDC does. So I
10 was wanting to know could I stay and get my treatment,
11 then when I go to prison I could still receive the
12 treatment that I need?

13 THE COURT: That is something we run into a lot
14 where I'm from in terms of medications for people and
15 what they need. I don't of any reason why Lancaster
16 County Detention Center couldn't provide those as
17 well. The State confident that can happen?

18 MS. COLLINS: Yes, sir. We have medical staff and
19 we have a nurse there at the detention center. If his
20 family provides the medicine I don't see why it can't
21 be provided to him pending the sentencing. And we
22 would be prepared to go forward with sentencing as
23 soon as possible if he's eager to get to the
24 Department of Corrections as soon as he gets his
25 mitigation witnesses here.

1 THE DEFENDANT: I was thinking more of like the
2 therapeutic counseling that I receive with my
3 psychiatrist. Things like that. Not the medication
4 part.

5 THE COURT: Right. I understand that and I
6 understand the challenges you face, but entering a
7 plea to a serious offense such as this my policy is to
8 take the people into custody and then we will have the
9 sentencing at later date. I understand what you are
10 saying. If you do have any problem getting your
11 medications your family or you can use the appropriate
12 channels to make sure they get there.

13 As I said I think it's fairly common, but I'm sure
14 they will make them available to you and hopefully
15 everything will be fine here locally until we can have
16 a sentencing hearing.

17 Thank you sir.

18 MS. MOODY: Thank you, Your Honor.

19 MS. COLLINS: Thank you judge.

20

21 (END OF TRANSCRIPT)

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH 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 in the captioned case, in the Circuit Court for Lancaster County, South Carolina, on the 31th day of October, 2016.

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

September 6, 2018

s/ Aileen Butler

Sentencing

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STATE OF SOUTH CAROLINA
COURT OF GENERAL SESSIONS
COUNTY OF LANCASTER
2009-GS-46-0113

State of South Carolina
vs.
Derrick Lamont Wade

Lancaster, South Carolina
January 13th, 2017

Before the Honorable D. Garrison Hill

APPEARANCES

For the State: Lisa Collins

For the Defendants: Leah Moody

Reported by: Michael C. Watkins

Official Court Reporter

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Certificate: 20

NO EXHIBITS

1 MS. COLLINS: Your Honor, this is the State of South
2 Carolina versus Derrick Lamont Wade who is present before
3 you with appointed counsel, Leah Moody. He is before you
4 at 2009-GS-29-1113, a true billed indictment for murder.
5 On October 31st of 2016 the State was calling this case to
6 trial along with a codefendant and at that time Mr. Wade
7 entered an Alford plea before you to the offense of
8 lynching second degree. Under the old lynching law, as
9 Your Honor knows, that carries a minimum of three years up
10 to a maximum of 20 years in prison, it's an appropriate
11 charge in that this incident happened when that law was in
12 effect, the date of this incident was 3-31-09. It carries
13 three to 20. The State pursuant to a plea agreement with
14 the offense is recommending a cap of 15 years in prison.
15 At the appropriate time we will request the full 15 years
16 but the defense is free to argue in mitigation for a
17 minimal sentence including the actual minimum of three
18 years. We have complied with the Victims Rights Act. The
19 victim was Lamario Ford, he was 26 years old. His mother
20 is here, Cheryl Ford, along with Quantina (phonetically
21 Ford and Lateina (phonetically) Cunningham. One of those,
22 Ms. Cunningham, does wish to address the Court on behalf of
23 the family at the appropriate time. I would like to
24 address the Court as to sentencing at the appropriate time.
25 I do have a brief rendition of facts if you need me to

1 review that again for the record.

2 THE COURT: Thank you, Ms. Collins.

3 MS. COLLINS: Here is the sentencing sheet he
4 previously signed with you. He is entitled to credit for
5 some time. He had previously served some time before he
6 bonded out originally, and then he has been in custody
7 since his plea was entered on 10/31 of last year. And I
8 discussed with Ms. Moody the amount of time, I believe it
9 is 206 days total that he's entitled to credit for. Do you
10 want me to recite the facts at this time?

11 THE COURT: Yes, ma'am, sure.

12 MS. COLLINS: Your Honor, again, this incident
13 happened on 3/31 of 2009 in Lancaster County, South
14 Carolina on Cunningham Street. The victim, Lamario Ford,
15 was lured to a house on Cunningham Street, an abandoned
16 house, was to meet some people that he knew there and
17 ultimately went inside and was beaten by a group of men.
18 There were five men there; Keith Coleman, this defendant,
19 Derrick Wade, Montrez Clark, Yusef Abdus-Salaam and
20 Dequavius Blair. As they were beating Mr. Ford one of them
21 went out and got Ms. Shannon out of the car where she
22 waited, took her at gunpoint inside the house to a room off
23 the room where he was being beaten and held her at gunpoint,
24 but she would have testified had we gone to trial that she
25 had saw him being beaten by this group of men severely.

1 The beating ultimately stopped and the men that had been
2 beating him left, she could hear footsteps leaving and the
3 man that was holding her at gunpoint -- and all of them
4 were hooded, she couldn't see their faces -- he also starts
5 to leave. She hears one set of footsteps leaving, she
6 hears at that point one shot and then she hears the
7 footsteps go on out. Had we gone to trial Dequavius Blair,
8 who has already pled to lynching second degree, would have
9 testified that Mr. Wade was present as was Yusef
10 Abdus-Salaam and Keith Coleman and Montrez Clark, and that
11 Montrez Clark was the actual shooter at the end that shot
12 the victim. Mr. Blair would also testify, I believe, that
13 the plan was never for Mr. Ford to be shot but that that's
14 something that Mr. Clark did, but again, the State would
15 have proceeded under the hand of one is the hand of all on
16 the murder on all of these individuals. We did allow Keith
17 Coleman previously to enter a plea to assault and battery
18 of a high and aggravated under the old ABHAN law in that we
19 had the least evidence against him. As to Mr. Wade, again,
20 Mr. Blair as well as codefendant Yusef Abdus-Salaam
21 originally would have both testified that Mr. Wade was
22 present as well as the others. Mr. Yusef Abdus-Salaam has
23 pled previously to lynching second degree and he was
24 awaiting sentencing pending his testimony as a State's
25 witness, he has been murdered and his murder is still being

1 investigated. Mr. Clark has absconded and we are seeking
2 him, a bench warrant has been issued and we're actively
3 seeking him so that he can be tried. The theory of the
4 State had we gone to trial would have been that this was
5 all linked to a home invasion to a trailer in Lancaster
6 County two days before. The trailer was reputed to be a
7 place where drug sales took place and that Mr. Wade here
8 was standing before you and Yusef Abdus-Salaam both lived
9 there. They as well as Mr. Blair were present at the time
10 of the home invasion on 3/29 and all were hurt very badly,
11 in fact, Mr. Wade was standing in the road bleeding when
12 law enforcement first came up. So our theory would have
13 been that Mr. Wade was also tied in because he lived there,
14 had been beaten and he would have had the motive to take
15 part in this. The thought was that a gang from Great Falls
16 had committed that home invasion against Mr. Wade and these
17 other co-defendants, and that the point of this was to send
18 a message to the people in Great Falls by beating Mr. Ford
19 severely. It's not thought that Mr. Ford was involved with
20 that but that he did know the people from Great Falls and,
21 again, the point was to send a message. An autopsy was
22 done -- the victim was dead at the time law enforcement
23 came, an autopsy was done at MUSC and determined that the
24 victim was severely beaten in the head and resulted in a
25 large amount of blood loss and trauma to his head. The

1 cause of death, however, was the one gunshot wound to the
2 chest. Had we gone to trial Dr. Shandal, who performed the
3 autopsy, would have testified that but for the gunshot
4 wound it's possible that the victim would have died, it's
5 also possible he would have survived and had some
6 significant repercussions from the trauma to his head and I
7 wanted to make you aware of that. Your Honor, so again,
8 that's a brief rendition of facts. The defendant only has
9 one prior record, that's out of York County, it's a
10 possession of schedule one to five controlled substance and
11 he pled to transfer court on that and paid a fine.

12 THE COURT: Thank you, Ms. Collins. Okay. Ms. Moody,
13 yes, ma'am?

14 MS. MOODY: Thank, Your Honor. May it please the
15 Court? Again, this is Derrick Wade and he is at this time
16 35 years old, at the time of this incident he was 28. And
17 as the State has indicated he has no significant prior
18 record. He is a life-long resident of Lancaster and
19 attended and graduated from Lancaster High School. He also
20 attended Midlands Tech. and his major there was marketing,
21 and he went there for one year in 1999. Subsequent to
22 that, Your Honor, he entered into the military and he
23 served actively for six years and four years inactive from
24 2000 to 2008. Had he not gotten this charge he would have
25 been going back into the military, Your Honor, he would

1 have been serving the country. As I understand he served
2 our country two tours in Iraq and again he would have been
3 going back in to serve, but after he received these
4 charges, Your Honor, he has remained gainfully employed.
5 He has not picked up any other charges or violated bond or
6 done anything out of the way that would be a threat to the
7 community to cause him to be back before the Court. He
8 worked for Transaxle in Rock Hill at the time of this
9 sentencing and he' been working there for a year and a
10 half. He's also worked at USC for a half a year, and then
11 he worked at Rytechs for a year and a half and Sale Guard
12 for three years. So, Your Honor, he's been gainfully
13 employed. In addition he also has children, he has four
14 boys and two daughters that he has the responsibility of
15 providing support for, and I think that has something to do
16 with the fact that he was going to -- well, that's part of
17 the reason he was going to go back into the military so he
18 could support his family. Your Honor, as far as my
19 interaction with Mr. Wade, I was appointed to his case
20 after he had been represented for an approximate time by
21 Gerald Malloy, and during my representation every time I
22 have asked him to meet with me to discuss this case to help
23 me prepare his defense to go to trial he has done so. He
24 has asked enough questions, he has answered enough
25 questions, Your Honor, that I feel that his plea here --

1 well, his plea back in October was knowingly and
2 intelligent. But I also think that there is something
3 about him, he came to court in a tie, he came to court
4 prepared to accept responsibility even though he has
5 maintained his innocence. He does know the individuals and
6 I recognize the State's position that there was motive,
7 however, Your Honor, in that situation he did call law
8 enforcement, he did not try to go after the individuals and
9 handle it on his own. I understand there would have been
10 testimony but we would have had an opportunity to cross
11 examine each of those individuals and determine the
12 credibility of their testimony and as to whether it was Mr.
13 Wade there on that night. And the reason being is because
14 Mr. Wade indicated to me that there was another individual
15 with the same first name, and that that individual was
16 there and that he was getting confused, so that would have
17 been what we would have tried to present to the Court, or
18 the jury I should say in this case. But after a long
19 discussion with him and understanding what the outcome
20 could be with the jury and what might have been said and,
21 you know, what the jury might have believed in terms of
22 what the witnesses were testifying that he ran a real risk
23 of getting convicted. Given the fact that he has kids,
24 given the fact he's never spent any time in jail I think he
25 understood the severity of the situation. In the

1 courtroom, Your Honor, is his father Joe Wade, his uncle
2 Ron Wade, and his uncle Rick Wade. They are here and they
3 would like -- well, Mr. Wade, Rick Wade, would like to
4 address the Court if he may. I would ask Your Honor for
5 the minimum, of course, which is three years. And I have
6 discussed with my client that the hand of one is the hand
7 of all and that's what the State would be proceeding on and
8 so we would ask in light of that, Your Honor, that you
9 would give him the same sentence that his codefendant
10 received. I recognize that his codefendant that pled to
11 another charge that would have carried ten years, however I
12 would say that if they were all in this and their testimony
13 would have been that he was there, I think that it is only
14 reasonable and fair that this individual, who has not had
15 any significant criminal activity or record, that he
16 receive the similar sentence. I have discussed that with
17 my client and he understands that that is the very
18 likelihood of the case. I've also discussed with him that
19 the State is asking for 15 years. And I would also say,
20 Your Honor, we do not take light of this situation, someone
21 is deceased and from looking at the evidence it was a
22 pretty bad beating, so we recognize that. We recognize the
23 consequences of that beating and what could have happened
24 in terms of that individual, and so we would ask, Your
25 Honor, that given his prior record -- lack of prior record

1 and just the service that he has given to our country that
2 the Court would consider giving him the same as his
3 codefendant. At this time, Your Honor, I would ask if Rick
4 Wade could come forward.

5 THE COURT: Is there anybody from the victim's
6 families?

7 MS. COLLINS: Yes. Do you want them to speak first?

8 THE COURT: Let's hear from them first and then I will
9 be glad to hear from Mr. Wade and anybody else who wishes
10 to speak.

11 MS. COLLINS: Lateina (phonetically) Cunningham. Ms.
12 Cunningham, if you'll come forward to where the microphone
13 is. She is accompanied by our victim's advocate, Jennifer
14 Faulkenberry. Lateina Cunningham is the sister of the
15 victim, Lamario Ford. Ms. Cunningham?

16 THE SPEAKER: Good morning, Your Honor. On behalf of
17 my family I would like to say that --

18 THE COURT: Hold on. Let me move right here so I can
19 see you. Yes, ma'am, Ms. Cunningham?

20 THE SPEAKER: On behalf of my family and I I would
21 like to say on Wednesday, January the 11th my brother would
22 have turned 34, but all we could do was put a poster on
23 Facebook saying "Happy Happy Birthday to my brother." On
24 Christmas my mom, she works two jobs and I also work two
25 jobs, so my niece and nephews, we had to help their mom get

1 their Christmas that they wanted, not what they needed but,
2 you know, kids want things for Christmas so we had to help
3 their mom get them what they needed because their dad is
4 not there. So Mr. Wade, along with four others, took our
5 brother away from us, so I'm asking you to give Mr. Wade
6 the highest sentence you could give him for his plea.

7 Thanks.

8 THE COURT: Thank you, ma'am.

9 MS. COLLINS: Thank you. And Ms. Cunningham, as well
10 his mother, mother of the victim and Cheryl Ford and the
11 other sister, Quintina Ford, have met with me numerous
12 times and they have always been here when it's time to have
13 a matter in this case and they've always looked forward to
14 this day to have justice on behalf of their family, on
15 behalf of their loved one, Lamario Ford. On behalf of the
16 State, Your Honor, and recognizing that the victim was just
17 26 years of age, and again, we are asking for the full 15.
18 The defendant was originally charged on the hand of one,
19 hand of all with the murder, which you know carries 30
20 years up to life in prison, he was allowed under a plea
21 agreement to enter a plea to lynching second degree which
22 carries three to 20, we reduced that further and
23 recommended a 15 year cap on that in consideration of the
24 defendant pleading. We would submit respectfully that he
25 has received more than adequate consideration for him

1 accepting responsibility. Your Honor, this was not merely,
2 you know, a group of guys beating up one guy behind the
3 bleachers of a football stadium after a game went bad, this
4 was a significant beating where the victim was lured to the
5 home with intention to beat him severely to send a message.
6 And again, the doctor who performed the autopsy would have
7 testified again that he had significant trauma to his head,
8 that it's possible he could have died just from that alone,
9 but if not he certainly would have had some severe
10 repercussions from that, and we are asking for the full 15
11 years. Thank you.

12 THE COURT: And if you can, can you explain how Mr.
13 Wade's case is different from the codefendant?

14 MS. COLLINS: I'll gladly do that. Keith Coleman --
15 again, we had the least evidence against him. Keith
16 Coleman actually had a potential alibi but that alibi
17 witness had died prior to the case being called to trial.
18 We were going to allow his statement to come in out of
19 fairness to the defendant, that the case had been delayed
20 coming to trial, he was represented by Mike Lifsey of the
21 circuit public defender's office, so we were going to allow
22 that alibi witness' statement to be read to the jury. As
23 to -- Keith Coleman was not there at the time of the home
24 invasion of 3/29 that we felt was the motivation for this.
25 On 3/29 there were three people there at that trailer that

1 was the subject of that home invasion and they were beaten,
2 that included -- there were other people there too, but Mr.
3 Coleman was not. Mr. Wade, again, was -- he did call law
4 enforcement, he was out in the road bleeding when they came
5 up. I will -- on behalf of the State I will say that had
6 we gone to trial my understanding is from law enforcement
7 that later, a few weeks to a month later that Mr. Wade did
8 not want to continue to pursue trying to find those people
9 and tried to have the Great Falls gang prosecuted, he
10 ceased his cooperation with law enforcement about a month
11 or so later, we would have brought that up. But I
12 certainly understand at that point he was extremely
13 cooperative and he did cooperate and he did call the police
14 and speak with them that night. So again we would have had
15 more of a motive with him, again, we didn't have Keith
16 Coleman there that night. Also Mr. Wade and Yusef
17 Abdus-Salaam actually lived at that trailer, that was their
18 residence that was invaded and the subject of that.
19 Finally as to the possible mistaken identity the defense
20 would have been presented, again, we had two individuals,
21 co-defendants, Mr. Blair who is still alive and is still
22 willing to testify against Mr. Clark who would -- and Mr.
23 Yusef Abdus-Salaam who has passed away now, but they gave
24 statements to law enforcement that Mr. Wade was there. And
25 again, remember, Yusef lived with him at that trailer that

1 was invaded on 3/29, they were all there when it was
2 invaded. So two days later when this occurs to say that
3 these two individuals didn't know that this was the man
4 that was with them two days before that was the subject of
5 the home invasion I find just -- I don't believe that jury
6 would have bought that. We also would have had testimony
7 from Dequavius Blair's girlfriend that after the shooting
8 they come over to where Blair and the girlfriend lived and
9 that she -- Derrick Wade was one of them that came in there
10 as they were talking about what happened and that she knew
11 Derrick Wade and that it was him. Now, she did later try
12 to recant that and say she might have been confused, she
13 was pregnant at the time, she was upset at the time, but at
14 that time she indicated that it was him and that she knew
15 him.

16 MS. MOODY: Your Honor, if I may?

17 THE COURT: Yes.

18 MS. MOODY: I would say that all that is is what
19 the -- that's their position obviously and that's the
20 information they presented to us. At the end of the day my
21 client was the person who was going to be facing 30 years
22 and I think that some of those things had some impact on my
23 advice to my client. However, I think just as one version
24 of it of how it could have gone down is -- I could have
25 presented something that could answer some of those things

1 and it would have been up to a jury to determine. But
2 again, they would have been going forward on the ultimate
3 result of what happened, the beating of this -- Mr. Ford
4 and unfortunate as it is, and it's tragic that we lost a
5 life in this earth. However, I would say if you're going
6 under the hand of one is the hand of all then I would argue
7 that it's quite fair to give my client the same sentence as
8 his codefendant, while he was not the person who actually
9 shot the individual if they all participated in that
10 beating the ultimate result was they beat this guy
11 severely. And so given the fact that he has a lack of a
12 prior record, I'm not sure what the other individual's
13 prior record is, and that's not trying to compare their
14 character or anything like that, I'm just saying that I
15 think given the circumstances that it would be fair to give
16 him the same sentence. Also his reasoning for not going
17 forward, we don't know as to why he chose not to proceed on
18 those charges where he, in fact, contacted law enforcement
19 about the robbery, the home invasion, we just don't have
20 that information. I have not talked to law enforcement
21 that would have discussed with him the likelihood of them
22 capturing the individuals who committed the crime of
23 robbing them at their trailer, I don't know why he didn't
24 specifically go forward at that point in time. For all we
25 know law enforcement might have said that they were going

1 to close the case, which happens. So I don't think that
2 that's any bearing as to -- or goes to his motive of trying
3 to lure the defendant to the house and that's a sign of
4 that. And I guess the State is going to present the other
5 guy's prior record.

6 MS. COLLINS: Oh, yes. The other fellow, Keith
7 Coleman, his only prior record was a simple possession of
8 marijuana first offense.

9 THE COURT: Okay. All right.

10 MS. MOODY: Your Honor, at this time I would ask Mr.
11 Wade, Rick Wade, be allowed to address the Court.

12 THE COURT: Okay. Yes, sir, Mr. Wade.

13 THE SPEAKER: Thank you, Your Honor. I'm Rick Wade, I
14 am the uncle of Derrick Wade, and joining me is his father
15 Joe Wade, my brother, and thank you for just a moment to
16 make a remark on behalf of Joe and our family. I don't
17 know all the details of this case but obviously it's a very
18 serious case, but I do know Derrick Lamont Wade and I
19 wanted to speak to the Derrick that I know. Like any uncle
20 I tried to be there for Derrick as with all of my nephews.
21 As a boy he played football and baseball, did well in
22 school, he graduated from Lancaster High School and
23 proceeded on as admission to the United States Army where
24 he did two tours of duty in Iraq. But on the other hand I
25 remember very vividly when he witnessed his mother

1 struggling with cancer, she passed in the early 90's and
2 that was very traumatizing to him, and not only him, his
3 sister. I do believe that people are the sum total of
4 their experiences in their life, Your Honor, and
5 unfortunately behavior is manifested, sometimes people make
6 wrong turns and wrong decisions, wrong friends. This is
7 not about making excuses, Your Honor, but it is about our
8 asking you to have some degree of mercy on him in your
9 decision. Thank you.

10 THE COURT: Thank you, Mr. Wade. Thank you for your
11 service, too, sir.

12 THE SPEAKER: Thank you.

13 THE COURT: Okay. Mr. Derrick Wade, anything you
14 would like to say, sir?

15 THE DEFENDANT: Yes, sir, Your Honor. I just want to
16 apologize for the situation. You know, for eight years I
17 served this country off the Army values of integrity, and
18 never when I was in war was I questioned on my integrity or
19 anything and I completed the mission and task. You know, I
20 was there protecting and serving my country, right now I'm
21 asking that my country see the same in me. And that's
22 about it, Your Honor.

23 THE COURT: Thank you, sir. Well, I have tried to
24 listen very carefully to everyone's statements and the
25 evidence in this case, and I appreciate the remarks that

1 were made. I'm taking into account the fact that you don't
2 have any significant prior record, certainly not any kind
3 of felony or violent offense. I'm taking into account your
4 service in the Army in Iraq. I am taking into account your
5 relatively stable employment record, your family situation,
6 the statements made on your behalf and the excellent
7 representation you received from Ms. Moody to the point of
8 the lesser-offense. I understand the State's position and
9 their recommendation, and I understand also Ms.
10 Cunningham's statements, although I don't pretend to
11 understand the depth or extent of her loss or her family's
12 loss. This was a very aggravated crime, a horrific
13 incident. I'm taking all of that into account. I also am
14 taking into account the medical evidence about the
15 possibility of the cause of death, and also understand that
16 there was an intervening act by another codefendant who I
17 understand is still to be brought before the Court. So
18 taking all of that into account the sentence is you be
19 committed to the department of corrections for 10 years,
20 credit for 362 days. Good luck, sir.

21 MS. MOODY: Thank you, Your Honor.

22 (End of the hearing.)

23

24

25

1 I, the undersigned, Michael C. Watkins,
2 Official Court Reporter for the Sixth Judicial
3 Circuit of the State of South Carolina, do hereby
4 certify that the foregoing is a true, accurate and
5 complete transcript of the proceedings had and
6 evidence introduced in the trial of the captioned
7 case relative to appeal in the Court of General
8 Sessions for Lancaster County, South Carolina, on
9 the 13th day of January, 2017.

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

12


13

March 23, 2018

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Michael C. Watkins

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Court Reporter

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FORM 5

STATE OF SOUTH CAROLINA)
)
County of Lancaster)

IN THE COURT OF COMMON PLEAS

2017 CP 29 01324

Derrick Lament Wade 00371065)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

2017 DEC 11 AM 10:13
CLERK OF COURT
LANCASTER, SC

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention MacDonagall CT
1516 Old Colliard Rd. Bidgeville SC 29472
2. Name and location of Court which imposed sentence Sixth Judicial Circuit
P.O. Box 607 Lancaster, SC 29721
3. Name(s) of co-defendant(s) (if any) Keith Coleman Montrez Clark
Jamarcus Blair Yusef Abdus Saltam
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2009052901113

(b) 2009GS290113

(c) _____

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

(a) January 13, 2017

(b) Non-Violent Serious

(c) 10 years

6. Check whether a finding of guilty was made:

(a) after a plea of guilty yes

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

No

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

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

i. _____

ii. _____

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 Ano@ to (7), state your reasons for not so appealing:

(a) Wasn't informed by Counsel

(b) _____

(c) _____

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

(a) ineffective Counsel

(b) Breach of Plea Agreement

(c) _____

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

(a) Attorney failed to present case properly

(b) Plea Agreement is not what's in place in Classification in

(c) the Department of Corrections

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)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

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) This is my first appeal
- (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? _____
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

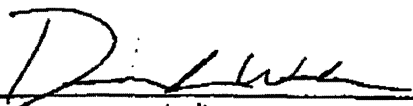
18. If you answered Ayes@ to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Leah Moody, Rock Hill, SC 29730
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Arraignment, plea, and sentencing
 - ii. _____
 - iii. _____

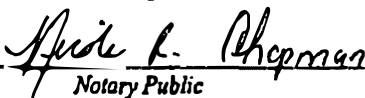
APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Derrick Lamont Wade, 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.


Applicant

SWORN or affirmed to and subscribed before me this
30th day of November, 2017.


Notary Public

My Commission Expires: 12-22-2020

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER)	FOR THE SIXTH JUDICIAL CIRCUIT
)	
Derrick Lamont Wade, 371065)	
)	2017-CP-29-1324
Applicant,)	
)	
v.)	
)	RETURN
State of South Carolina,)	
)	
Respondent.)	
)	

The State, making its return to the application for post-conviction relief (PCR) filed on December 11, 2017, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lancaster County Clerk of Court. In July of 2009, the Lancaster County Grand Jury indicted Applicant for murder (2009-GS-29-1113). Leah Moody, Esquire, represented Applicant. Lisa Collins, Esquire, prosecuted the case. On October 31, 2016, Applicant pled guilty to lynching 2nd degree before the Honorable D. Garrison Hill. Applicant entered his guilty plea pursuant to *Alford v. North Carolina*, 400 US. 25 (1970). Sentencing was deferred. On January 13, 2017, Applicant appeared before Judge Hill for sentencing. Judge Hill sentenced Applicant to ten years imprisonment for lynching. Applicant did not appeal his sentence or conviction.

II. Facts

On March 31, 2009 in Lancaster County, South Carolina, Applicant along with four other co-defendants lured the victim to an empty house with the intent to all assault him. They did savagely beat him including kicking him about his head after knocking him to the floor. The

victim did die as a result, ultimately of being shot after he was savagely beaten. (Plea Tr. pg. 8-10).

III. Current Application

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

1. Ineffective Counsel
 - a. Attorney failed to present case properly
2. Breach of Plea Agreement
 - a. Plea agreement is not what's in place in classification in the Department of Corrections.

Attached to this return and incorporated by reference are the records of the Lancaster County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the plea and sentencing transcripts. The State reserves the right to amend this return upon receipt of any relevant materials.

IV. Response to Ineffective Assistance of Counsel

The State interprets both of Applicant's allegations as ineffective assistance of counsel and submit they are without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing *Griffin v. Martin*, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the proceeding "cannot be relied upon as having produced a just result." *Id.* (citing *Strickland v. Washington*, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Id.* (citing *Strickland*, 466 U.S. at 687; *Turner v. Bass*, 753 F.2d 342 (4th Cir. 1985); *Marzullo v. Maryland*, 561 F.2d 540 (4th Cir.

1977)). The court strongly presumes counsel 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 in order to receive relief. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. *Id.* at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. *Id.* Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Id.* (citing *Strickland*, 466 U.S. at 688). 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." *Id.* at 117-18, 386 S.E.2d at 625.

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

V. Any Future Amendments

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* Rule 15(a)–(b), SCRCPP. 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, SCRCPP. *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.

VI. All Other Allegations

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

VII. Conclusion

WHEREFORE, having made its Return, Respondent requests an evidentiary hearing be held on any claims so requiring one.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

SAMUEL L. KEY
Assistant Attorney General

By: 
~~ATTORNEYS FOR RESPONDENT~~

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

November 29, 2018

STATE OF SOUTH CAROLINA)
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 COUNTY OF LANCASTER)
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 DERRICK LAMONT WADE, 371065)
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 Applicant,)
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 vs)
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)
 STATE OF SOUTH CAROLINA,)
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)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2017-CP-29-1324

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:

Donae A. Minor, Esquire
Minor Law Offices, LLC
1750 Highway 160 W; Suite 101 #259
Fort Mill SC 29708

DATED this 29th day of November, 2018.


 Judy A. C. Carey, Legal Assistant
 For Respondent

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF LANCASTER
2017-CP-29-01324

Derrick L. Wade

Vs.

State of South Carolina

Lancaster, South Carolina

July 29, 2019

Before the Honorable D. Craig Brown

APPEARANCES

For the State: Lindsey A. McCallister

For the Applicant: Donae A. Minor

Reported by: Michael C. Watkins

Official Court Reporter

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Derrick Wade:	4
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Certificate:	18

NO EXHIBITS

1 MS. MCCALLISTER: This is Derrick Lamont Wade versus
2 State of South Carolina, 2017-CP-29-1324. In July of 2009
3 the Lancaster County Grand Jury indicted Mr. Wade for
4 murder. He was represented on that charge by Leah Moody.
5 Lisa Collins from the solicitor's office prosecuted the case
6 for the State. On October 31, 2016 Mr. Wade pleaded guilty
7 to lynching in the second degree before Judge D. Garrison
8 Hill, he entered that guilty plea pursuant to Alford v.
9 North Carolina, and sentencing was deferred for several
10 months. On January 13, 2017 Judge Hill sentenced Mr. Wade
11 to ten years imprisonment, he did not appeal that sentence
12 or conviction. He timely filed this application for post
13 conviction relief on December 11th of 2017. He has been --
14 Ms. Donae Minor has been appointed to represent him, Ms.
15 Minor and Mr. Wade are present in the courtroom today, Your
16 Honor, and I believe we just have a single allegation that
17 we're going forward on, Your Honor.

18 MS. MINOR: That's correct, Your Honor.

19 THE COURT: Yes, ma'am, Ms. Minor?

20 MS. MINOR: I call Mr. Derrick Wade.

21 THE COURT: As he's approaching, what's the single
22 allegation?

23 MS. MINOR: The allegation is ineffective assistance of
24 counsel as to applicant was informed he was pleading to a
25 non-violent offense also indicated on his sentencing sheet

DERRICK WADE - DIRECT

1 per counsel.

2 THE COURT: Okay.

3 MS. MINOR: Per advisement of counsel.

4 The witness, DERRICK WADE, was first duly sworn and
5 Testified as follows:

6 DIRECT EXAMINATION

7 BY MS. MINOR:

8 Q Would you state your name for the record?

9 A Derrick Lamont Wade.

10 Q And Mr. Wade, you are currently incarcerated at Chester
11 County Correctional Center; is that correct?

12 A Yes, that's correct.

13 Q And you're serving a sentence of ten years for lynching
14 second degree; is that correct?

15 A Yes, that's correct.

16 Q And you pled guilty to that charge.

17 A Yes.

18 Q And when you pled guilty to that charge, was Leah Moody
19 your attorney?

20 A Yes, she was.

21 Q And was she hired counsel or was she appointed?

22 A Appointed.

23 Q And today we're here for a PCR claim against Ms. Moody
24 where you have indicated that you were informed by Ms. Moody
25 that you were pleading to a non-violent offense, which that

DERRICK WADE - DIRECT

1 was also indicated on your sentencing sheet; is that
2 correct?

3 A Yes, that's correct.

4 Q And what discussions did you have leading up to your
5 plea about the classification of the offense?

6 A That it would be non-violent and that I would be
7 serving a non-violent sentence, and when I got to the
8 department of corrections they told me that I will be
9 serving a violent sentence.

10 Q Did she explain to you what serving a non-violent
11 sentence means?

12 A From what I understood non-violent was 65 percent and
13 work credits and things like that.

14 Q And that's what you understood you were pleading to.

15 A Yeah.

16 Q Did she go over what a violent offense -- the
17 difference between non-violent and a violence offense?

18 A No, we never talked about violent offense.

19 Q And is that because you only discussed non-violent
20 offense?

21 A Yeah, that's correct.

22 Q And how many times would you say that you and Ms. Moody
23 discussed your plea?

24 A We probably met three or four times.

25 Q And what was the nature of those discussions? What did

DERRICK WADE - DIRECT

1 you discuss?

2 A Whether to go to trial or to take the plea, basically
3 that was it.

4 Q And so you opted based off of those discussions to take
5 the plea.

6 A Yes, take the plea.

7 Q Did you ask her any questions regarding the
8 classification of violent and non-violent offenses?

9 A No.

10 Q And had you known that you were pleading to a violent
11 crime, would you have opted for a trial?

12 A Yes, I would have considered it.

13 MS. MINOR: Your Honor, may I approach the witness?

14 THE COURT: Yes.

15 Q Mr. Wade, can you tell me what I have just handed you?

16 A Yes, that's my sentencing sheet.

17 Q Okay. And what -- can you tell me what the sentencing
18 sheet states?

19 A It has a X in non-violent and a X in serious.

20 Q So based off of the sentencing sheet, when was the
21 sentencing sheet shown to you?

22 A It was shown to me I want to say at the -- I'm not for
23 sure but I want to say at the preliminary hearing.

24 Q Okay. So based off of the classification on
25 non-violence in the sentencing sheet and the information

DERRICK WADE - CROSS

1 that you were told by Ms. Moody, you believe that you were
2 pleading to a non-violent offense.

3 A Yes, that's correct.

4 Q Was anyone else present when you had discussions
5 regarding the classification of the offense?

6 A My father was there.

7 Q What's your father's name?

8 A Joe Wade.

9 Q And besides what you've testified, is there anything
10 else that you would like the Judge to know regarding
11 discussions about the classification of the crime or
12 discussions you've had with Leah Moody?

13 A No, that's about it.

14 MS. MINOR: No further questions, Your Honor.

15 THE COURT: Ms. McCallister?

16 MS. MCCALLISTER: Thank you, Your Honor.

17 CROSS EXAMINATION

18 BY MS. MCCALLISTER:

19 Q Mr. Wade, you were originally charged with murder,
20 correct?

21 A Correct.

22 Q And the plea that you entered, though, was for lynching
23 in the second degree, correct?

24 A Correct.

25 Q And did you understand that that charge carried a

DERRICK WADE - CROSS

1 sentencing range of three to 20 years?

2 A Yes, correct.

3 Q So the maximum sentence if the Judge wanted to he could
4 have given you 20 years, correct?

5 A Correct.

6 Q Okay. And Ms. Moody explained that to you, correct?

7 A Yeah, that's correct.

8 Q Okay. And she also -- you said she told you this was a
9 non-violent offense, correct?

10 A Correct.

11 Q But you didn't have any discussions about what that
12 meant.

13 A No. I was under the assumption when it was brought to
14 me that it was a non-violent offense and that was the best
15 offer I was going to get, that I should take it.

16 Q Okay.

17 MS. MCCALLISTER: May I approach the witness, Your
18 Honor?

19 THE COURT: You may.

20 Q I will hand you a piece of paper. Have you ever seen
21 that before? Do you know what this is?

22 A No, I've never seen it before.

23 Q But that's you, correct, and that's your information on
24 that sheet? Your name and --

25 A Yes.

DERRICK WADE - CROSS

1 Q -- your SCDC number?

2 A Uh-huh.

3 Q Okay. And do you see there under where it says current
4 offenses there's a section that says D/NV and underneath
5 that there's an N, correct?

6 A Correct.

7 Q And they've got on here from -- it shows that you have
8 had some -- you've earned some work credits and you've
9 earned some education credits, correct, in your time at
10 SCDC?

11 A I don't see --

12 Q Do you see down at the bottom where it has got some
13 jobs listed that you've had since you've been in SCDC?

14 A Yes.

15 Q Okay. So in SCDC you've been able to work, correct?

16 A Yes, I've been able to work.

17 Q Okay. And you've had the opportunity to take some
18 classes and earn some education credits, correct?

19 A It doesn't say that.

20 Q Okay. You don't see down at the bottom where it says
21 earned education credits?

22 A Yeah, but it doesn't say what I earned.

23 Q Okay. But you had the opportunity to, correct? That's
24 okay, I withdraw that question. Do you see under the D and
25 NV where it has an N written for you, correct?

DERRICK WADE - CROSS

1 A Correct.

2 Q So this sheet indicates that you are serving a
3 non-violent sentence, correct?

4 A When I got to SCDC my caseworker told me that I was
5 serving a violent 85, she said that I wasn't serving a
6 non-violent sentence.

7 Q Okay. But you agree that that's not what is reflected
8 here.

9 A Right. A non-violent sentence from my understanding
10 from my caseworker is not 85 percent.

11 Q Did Ms. Moody ever tell you what percentage of your
12 sentence you were going to be serving? Did she give you a
13 number of years or something that you were going serve? Did
14 she promise you a number?

15 A No, I can't remember.

16 Q Okay. Did she give you -- did she tell you 65 percent?

17 A I just remember a non-violent sentence.

18 Q Did anyone at the plea ever tell you that you were
19 going to only serve 65 percent?

20 A Not that I recall.

21 Q Okay. All they said was that it was non-violent.

22 A Non-violent.

23 Q Okay. And is it your testimony that Ms. Moody never
24 explained to you how you could have a non-violent sentence
25 and serve more than 65 percent?

JOE WADE - DIRECT

1 A Not that I recall.

2 Q Okay.

3 MS. MCCALLISTER: Thank you, Your Honor. That's all of
4 the questions I have.

5 MS. MINOR: Nothing further.

6 THE COURT: Sir, you may step down. Ms. Minor?

7 MS. MINOR: I would like to call Mr. Joe Wade.

8 The witness, JOE WADE, was first duly sworn and
9 Testified as follows:

10 THE COURT: State your full name for the record.

11 THE WITNESS: Joe Wade.

12 THE COURT: Spell your last name for me, please.

13 THE WITNESS: W-a-d-e.

14 THE COURT: Thank you, sir. Ms. Minor?

15 DIRECT EXAMINATION

16 BY MS. MINOR:

17 Q Mr. Wade, where do you reside?

18 A [REDACTED] Garden Trail Lane, that's Lancaster, South
19 Carolina.

20 Q And are you familiar with my client, Mr. Derrick Wade?

21 A Yes, ma'am.

22 Q What is your relationship to Mr. Derrick Wade?

23 A I am his father.

24 Q And earlier you heard him testify about plea
25 discussions he had with his former attorney, Leah Moody; is

JOE WADE - DIRECT

1 that correct?

2 A That's correct.

3 Q Were you present during any of those discussions?

4 A I was.

5 Q Can you tell the Court what you recall about those
6 discussions?

7 MS. MCCALLISTER: Your Honor, I'm going to object to
8 that on the basis of hearsay.

9 MS. MINOR: Your Honor, Leah Moody is here.

10 THE COURT: I'm going to allow him to testify. Go
11 ahead.

12 Q Can you please provide the Court what was discussed
13 during those plea discussions with Leah Moody?

14 A Yes, there were several things. One that stood out to
15 me, because we were back in the room in the back, was the
16 85 percent, I heard that, and non-violent. And I was
17 encouraging him to take it, that you should take the deal.
18 So I did hear that.

19 Q Based on those discussions and your recollection, do
20 you recall her stating that it would be 85 percent?

21 A I heard that number but she didn't promise 85, but --

22 Q She didn't promise 85?

23 A No.

24 Q So other than hearing the mentioning of 85 percent you
25 don't recall anything else.

LEAH MOODY - DIRECT

1 A No, because this is new to me.

2 MS. MINOR: No further questions, Your Honor.

3 MS. MCCALLISTER: Nothing from the State, Your Honor.

4 THE COURT: Hold on, Mr. Wade.

5 MS. MCCALLISTER: I have no questions, Your Honor.

6 THE COURT: Now you may step down, Mr. Wade. Thank
7 you, sir. Ms. Minor, anyone else?

8 MS. MINOR: Yes, Your Honor, Ms. Leah Moody.

9 The witness, LEAH MOODY, was first duly sworn and
10 Testified as follows:

11 DIRECT EXAMINATION

12 BY MS. MINOR:

13 Q Ms. Moody, do you recall representing Mr. Derrick Wade?

14 A I do.

15 Q And during the course of your representation, do you
16 recall having discussions regarding him taking a plea?

17 A I do.

18 Q Can you tell us about those discussions that you had
19 with him regarding the plea, specifically the sentencing
20 date that he could be facing?

21 A So we went back and forth. I started representing him
22 after Gerald Malloy was his attorney and I got appointed to
23 his case because Mr. Malloy could not do the case any
24 further. So I received a copy of the file from the
25 Lancaster County Solicitor's Office, and I went through all

LEAH MOODY - DIRECT

1 of the statements. Initially it was going to be a trial is
2 what he wanted, so I went through all of the documents, all
3 of the witness statements that had been taken and met with
4 him. I believe we met more than three times. And so in the
5 process we were talking about whether he should plead or
6 not. It was my opinion that he should plead but I had not
7 received an offer from Lisa Collins as of yet. He indicated
8 that he wanted to take a lie detector test, which he did and
9 it was not successful for him, so at that time we indicated
10 to Ms. Collins that we would entertain a plea. They were
11 calling it for trial, there were co-defendants in this case.
12 I got a plea offer, and I sent a letter to him on I want to
13 say March 1st, 2016, I think you have a copy of that letter,
14 where I indicated to him that the State was willing to allow
15 him to plead to a lynching versus the murder. There was a
16 cap on the sentencing and it was going to be three to 15
17 years, it carried three to 20 so that took him from 30 to
18 life. So I advised him that he needed to take the plea
19 because we were going to go to trial, and I think one of the
20 co-defendants was not -- the codefendant was on the run or
21 something like that. And so we sat back in not this
22 courtroom's conference room but the other courtroom's
23 conference room with his father and his uncle, Rick Wade,
24 and we went through whether or not he should plea or not.
25 Now, that was not the first time that I discussed with him

LEAH MOODY - DIRECT

1 whether or not he should plea, but I felt that was, you
2 know, that the plea was the best deal for him, so he decided
3 he wanted to plea. I think the testimony from his father,
4 the discussion of 85 percent, we did discuss what were the
5 consequences, because we had discussed the consequences
6 based on the sentencing sheet. The sentencing sheet does
7 have on it non-violent, I think most defendants get it
8 confused when they ask for non-violent that that somehow
9 adjusts the amount of time that they may serve. However,
10 this was an offense, lynching, pleading to that, carried up
11 to 20 years, so anything 20 years and above you're going to
12 serve 85 percent, but he got non-violent. I think his
13 concern at the time was more so non-violent than anything
14 outside of being -- outside of facing 30 to life. So I
15 advised him that he should take the plea and he said he
16 wanted to take the plea, his father said the same as well
17 and his uncle was there, so his family was in support of
18 that and we went forward with the plea.

19 Q Is it your testimony that he was aware of the
20 85 percent? Based off of what you just said, was he aware
21 of the 85 percent sentencing?

22 A In a different context I would say. So like a
23 non-violent, it's not you get a certain amount of time.
24 Based on this particular case he has a non-violent sentence,
25 but the charge itself under the classification it carries up

1 to 20 years. Anything that carries 20 years or above you're
2 going to serve 85 percent, that's by statute, that's not
3 something I can explain away or do anything with. But he
4 requested non-violent time and he got non-violent time -- I
5 mean, he got a non-violent charge as opposed to the violent
6 murder.

7 Q Okay. And that was explained to him during your
8 discussions.

9 A I can't specifically say all of that was just like that
10 was explained, but we did go over his plea. We did go
11 thoroughly over whether or not he should take his plea.

12 Q And you felt like based off of that information of what
13 you discussed that he fully understood.

14 A Yes.

15 MS. MINOR: No other questions, Your Honor.

16 THE COURT: Cross examination?

17 MS. MCCALLISTER: Your Honor, I don't have any
18 questions for Ms. Moody.

19 THE COURT: Ma'am, you may step down, thank you.
20 Anything else, Ms. Minor?

21 MS. MINOR: Nothing further, Your Honor.

22 THE COURT: Ms. McCallister?

23 MS. MCCALLISTER: Your Honor, nothing further. The
24 SCDC sheet that I was using earlier I believe Your Honor
25 should have in the packet, it does indicate that he is

1 serving a non-violent sentence, he is classified as
2 non-violent in SCDC.

3 THE COURT: Based upon the testimony heard by the Court
4 here today and based upon the Court's review of all
5 submissions in the packet handed up by the attorney
6 general's office, I do see the classification summary of the
7 report on this defendant which indicates on the
8 classification summary that it is a non-violent ten year
9 sentence. I do find based upon what I've heard here today,
10 based upon my review of the Court's packet of information
11 the defendant, or the applicant has failed to meet either
12 prong of Strickland v. Washington as it relates to
13 ineffective assistance of counsel, the Court respectfully
14 denies such petition. If you would get me on order to that
15 effect.

16 (End of the hearing.)

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1 I, the undersigned, Michael C. Watkins,
2 Official Court Reporter for the Sixth Judicial
3 Circuit of the State of South Carolina, do hereby
4 certify that the foregoing is a true, accurate and
5 complete transcript of the proceedings had and
6 evidence introduced in the trial of the captioned
7 case relative to appeal in Court of Common Pleas for
8 Lancaster County, South Carolina, on the 29th day of
9 July, 2019.

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


12

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January 28, 2020

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Michael C. Watkins

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Court Reporter

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STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS)
FOR THE SIXTH JUDICIAL CIRCUIT)

Derrick Lamont Wade, #371065,)

C.A. No. 2017-CP-29-1324)

Applicant,)

ORDER OF DISMISSAL)

v.)

State of South Carolina,)

Respondent.)

2019 NOV -8 AM 11:44
CLERK OF COURT
LANCASTER, SC
FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Derrick Lamont Wade (Applicant) on December 11, 2017. Respondent made its Return on November 29, 2018. An evidentiary hearing into the matter was convened on July 29, 2019, at the Lancaster County Courthouse before the undersigned. Donae A. Minor, Esquire, represented Applicant. Assistant Attorney General Lindsey A. McCallister represented Respondent.

Applicant testified on his own behalf, and his father, Joe Wade, also testified. Leah B. Moody, Esquire, Applicant's plea counsel, testified on behalf of Respondent. This Court had before it a copy of the records of the Lancaster County Clerk of Court, records from the South Carolina Department of Corrections, the PCR application, Respondent's Return, and the plea transcript. 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 for relief.

PCR
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PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lancaster County Clerk of Court. In July of 2009, the Lancaster County Grand Jury indicted Applicant for murder (2009-GS-29-1113). Leah B. Moody (Counsel), Esquire, represented Applicant. Lisa Collins, Esquire, prosecuted the case. On October 31, 2016, Applicant pleaded guilty to second-degree lynching before the Honorable D. Garrison Hill. Applicant entered his guilty plea pursuant to Alford v. North Carolina, 400 US. 25 (1970). Sentencing was deferred until January 13, 2017, at which time Applicant again appeared before Judge Hill. Judge Hill sentenced Applicant to ten years' imprisonment for lynching. Applicant did not appeal his sentence or conviction.

ALLEGATIONS

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

1. Ineffective Counsel
 - a. Attorney failed to present case properly
2. Breach of Plea Agreement
 - a. Plea agreement is not what's in place in classification in the Department of Corrections.

Through PCR counsel, Applicant amended his application on July 8, 2019, to allege a single claim as follows:

Applicant was advised by Leah Moody that his plea offer consisted of a non-violent offense, which is also indicated on his sentencing sheet. Upon starting his sentence, Applicant was informed the contrary. Applicant was informed that he pled to a violent offense, which requires him to complete at least 85% of his prison term due to the offense classification. Had Applicant known his plea was a violent offense, he would have opted for a trial instead of his plea.

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To the extent the allegations in Applicant's original application can be construed as separate claims from those set forth in the amended application, this Court finds Applicant waived those claims, and they are hereby denied and dismissed with prejudice.

SUMMARY OF FACTS SUPPORTING GUILTY PLEA

On March 31, 2009, Applicant, along with four other co-defendants, lured the victim to an empty house with the intent to assault him. They savagely beat the victim, kicking him in the head after knocking him to the floor. Ultimately, one of Applicant's co-defendant's shot the victim, who died from the gunshot wound. Tr. pp. 8-10.

SUMMARY OF TESTIMONY AT EVIDENTIARY HEARING

Applicant testified he pleaded guilty to second-degree lynching, which was non-violent offense. Applicant further testified Counsel was appointed to represent him in this matter. Applicant testified he met with Counsel three or four times, and they discussed the State's plea offer, which Applicant understand would carry a non-violent sentence. Applicant stated the sentencing sheet is marked for a non-violent offense. Applicant testified he believed a non-violent sentence would require the service of sixty-five percent of the time before he became parole eligible, and he would be able to earn work and other credits as well. Applicant testified he is serving a violent sentence instead. Applicant stated if he had known he was pleading to a violent offense, he would have considered going to trial.

On cross-examination, Applicant indicated he understood he pleaded guilty to second-degree lynching, and he could have received a sentence up to twenty years absent the State's recommendation of a fifteen-year cap. After reviewing his records from SCDC, Applicant agreed

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he had received the opportunity to earn some work and education credits, but he testified he did not believe the documents showed everything he had earned. Applicant testified someone at SCDC told him he was not serving a non-violent sentence because a non-violent sentence is not classified as an eighty-five percent sentence. Applicant further testified Counsel never promised him he would only serve a specific amount of years or told him this sentence would be classified as parole eligible after the service of sixty-five percent of the time. Applicant also agreed no one indicated at the plea hearing that this was a sixty-five percent sentence, and instead, it was only referred to as a non-violent sentence.

Applicant's father, Joe Wade (Wade), also testified. Wade testified he advised Applicant to accept the State's plea offer and stated he never heard Counsel promise Applicant he would serve sixty-five percent.

Counsel testified she was appointed to Applicant's case and received a copy of the file from the Lancaster County Solicitor's Office. According to Counsel, Applicant originally wanted a trial, and she advised him he should plead guilty instead, but they had not received any offer from the State at that time. Counsel testified the State then noticed Applicant's case for trial and offered lynching instead of murder with a sentencing cap of three-to-fifteen years. Counsel explained this plea offer reduced Applicant's sentencing exposure down from thirty-years-to-life in prison.

Counsel testified she and Applicant discussed whether he should plead guilty or not, and they ultimately concluded the plea was the best course of action for him. Counsel testified she and Applicant discussed that his sentence would be non-violent and eighty-five percent. Counsel

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testified she knew from experience that most defendants get confused that non-violent means sixty-five percent, but any sentence of twenty years and above carries eighty-five percent. Counsel testified Applicant's concern, other than reducing his sentence exposure down from murder, was receiving a non-violent sentence. Counsel testified Applicant's family was in support of Applicant's decision to plead guilty. Counsel further testified Applicant was aware his sentence would require him to serve eighty-five percent of his time, even though it was a non-violent sentence. Counsel stated she and Applicant thoroughly reviewed the plea bargain.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise

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of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 U.S. at 688 (1984)). 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." Id. at 117-18, 386 S.E.2d at 625. When there has been a guilty plea, the applicant must prove counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

However, the standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the petitioner as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 688.

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Involuntary Guilty Plea

Applicant asserts Counsel was constitutionally ineffective assistance because she allegedly advised him he was pleading to non-violent offense and would be require to serve only sixty-five percent of his sentence, rather than the eighty-five percent he is currently serving, and this incorrect advice led to Applicant entering an involuntary and unknowing guilty plea. This Court disagrees and finds the combined record from the plea hearing and the evidentiary hearing clearly establishes Counsel correctly advised Applicant, and Applicant pleaded guilty freely and voluntarily. Therefore, because Counsel was not deficient, this Court finds Applicant has failed to meet his burden of proof, denies relief, and dismisses these allegations with prejudice.

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). An applicant who pleads guilty with the advice of counsel may collaterally attack the plea only by showing (1) counsel was deficient and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994); Lockhart, 474 U.S. at 52). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him.

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Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." Harres v. Leek, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harres, 282 S.C. at 133, 318 S.E.2d at 361. However, statements made during a guilty plea should be considered conclusive, unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir. 1975), overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985).

The plea transcript reflects Applicant indicated he understood the charge he was pleading guilty to, the sentencing range, and the fact it would be considered a serious strike on his record. Tr. pp. 5-6. The plea court also explained the State's burden of proof beyond a reasonable doubt and Applicant's presumption of innocence at trial, Applicant's right to have a jury trial, and, specifically, Applicant's right to call witnesses and present a defense. Tr. pp. 5-8. Applicant indicated he understood those rights and wished to give them up in order to plead guilty. Tr. p. 8. Importantly, Applicant informed the plea court he had enough time to talk with his attorney, and he was satisfied with her representation. Tr. p. 6. Applicant then averred he was pleading guilty of

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his own free will and had not been threatened or promised anything to induce his plea. Tr. p. 5. Applicant did not ask the plea court how much of his sentence he would be required to serve before he became parole eligible, nor did the plea court, the assistant solicitor, or Counsel ever indicated Applicant's sentence would fall under the sixty-five percent parole eligibility classification.

Further, the Court finds credible Counsel's testimony she explained Applicant's sentence would be non-violent but still require the service of eighty-five percent of the sentence. The Court finds Counsel met with Applicant on several occasions and discussed Applicant's options for resolving the case. Counsel credibly testified she and Applicant engaged in an in-depth discussion about whether he should accept the State's plea offer, and specifically, she explained this was a non-violent sentence that still carried a requirement to serve eighty-five percent because the penalty is up to twenty years. This was the correct advice pursuant to statute, and therefore, this Court finds Counsel was not deficient. See S.C. Code Ann. § 16-3-220 (" (Any person found guilty of lynching in the second degree shall be confined at hard labor in the State Penitentiary for a term not exceeding twenty years nor less than three years, at the discretion of the presiding judge.)" (2009); S.C. Code Ann. § 24-13-100 ("[A] 'no-parole' offense means a class A, B, or C felony or an offense exempt from classification as enumerated in Section 16-1-10(d), which is punishable by a maximum term of imprisonment for twenty years or more.") (2009).

In any event, at the evidentiary hearing, Applicant testified only that he would have *considered* proceeding to trial if he had known he would have to serve eighty-five percent of his sentence. This Court finds that testimony is insufficient to meet Applicant's burden of proving prejudice. Hill, 474 U.S. at 58-59 (holding the applicant must prove that, but for counsel's unprofessional errors, there is a reasonable probability he would not have pleaded guilty and would

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8.9.11

have insisted on going to trial). This Court finds Applicant ultimately chose to plead guilty in order to avail himself of a favorable plea offer which capped his sentencing exposure at fifteen years rather than life and gave him the benefits in SCDC of a non-violent sentence, and this decision was made freely and voluntarily.

Accordingly, based on the combined record of the plea transcript and the testimony presented at the evidentiary hearing, this Court finds Counsel's representation of Applicant was not deficient, nor was Applicant prejudiced by her representation. Counsel met with Applicant on multiple occasions and explained Applicant's constitutional rights and options for resolving the case. Further, the plea transcript reflects Applicant understood the proceedings, interacted intelligently with the plea court, and entered his guilty plea knowingly and voluntarily. Importantly, Applicant himself testified Counsel never told him he would only have to serve sixty-five percent of his sentence, but he made his own assumption because he pleaded to a non-violent charge. For all of these reasons, this Court finds Applicant's decision to enter the guilty plea was made freely and voluntarily. Therefore, this Court denies relief and dismisses this allegation with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, this application for post-conviction relief is denied, and Applicant's claims are dismissed with prejudice.


DCB
p. 10 of 11

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR (providing the appropriate procedure to perfect an appeal). 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. Further, Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for the appropriate procedures for appealing a judgment in a PCR action.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief is denied, and Applicant's claims are dismissed with prejudice; and
2. Applicant shall be remanded to the custody of the Respondent.

AND IT IS SO ORDERED.


D. CRAIG BROWN
Presiding Circuit Court Judge
Sixth Judicial Circuit

11-4, 2019

DCH
8-11-11

DOCKET NO. 2009-GS-23- 1113

FILED
OFFICE OF CLERK
OF COURT

2009 JUL 16 P 3:11

CLERK OF COURT
LANCASTER, SC

WITNESSES

Parsons - LPD #09-5187

B. Huxley

The State of South Carolina
County of Lancaster

COURT OF GENERAL SESSIONS

JULY TERM 2009

ARREST WARRANT NUMBER/DOA

K277692 (DOA-4-6-09)

THE STATE
vs.

Derrick Lamont Wade

Abdus Salaam

Blair

Capri

Chad

ACTION OF GRAND JURY

TRUE BILL

Russell C. Harmon
Foreperson of Grand Jury

Date: JUL 16 2009

VERDICT

Indictment for

Murder

SC Code: §16-3-10
CDR Code: 0116
Class: Felony, EXM

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

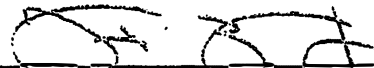
INDICTMENT

At a Court of General Sessions, convened on July 16, 2009, the Grand Jurors of Lancaster County present upon their oath:

MURDER

That Derrick Lamont Wade did at [REDACTED], in Lancaster County on or about March 31, 2009, feloniously, willfully, and of his malice aforethought kill and murder Lamario D. Ford by beating and shooting him and the victim did die as the proximate cause thereof on March 31, 2009, in violation of Section 16-3-10 of the *Code of Laws of South Carolina*.

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



Douglas A. Barfield, Jr., SOLICITOR

COUNTY OF Lancaster
STATE VS.
Derrick Lamont Wade
AKA:
Race: BLACK Sex: M Age: 35
DOB: -1981 SS#
Address:
City, State, Zip: Lancaster, SC 29720
DL#: SID#

INDICTMENT/CASE#: 2009GS2901113
A/W#: K277692
Date of Offense: 3/31/2009
S.C. Code § : 16-03-0010; 16-03-0020
CDR Code #: 0116

Possible sentence: Min. 3 yrs to Max. 20 yrs
SENTENCE SHEET
ALFORD

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Lynching / Lynching - Second degree (3yrs. to 15 years cap) (3-20 yrs. max)

in violation of § 16-03-0220 of the S.C. Code of Laws, bearing CDR Code # 0313
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. x12 (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Collins, Lisa 07892 SC Bar# Defendant Heath B. Noy 12141 Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 262 DAYS
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
 Set by SCDPPPS

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

Recipient: _____
*Fine:
§ 14-1-206 (Assessments 107.5 %) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 61.6 (Public Def/Probation) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
3% to County (if paid in installments) \$
TOTAL \$ 128.75

Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk: [Signature]
Court Reporter: [Signature]
§CCA/217 (07/2016)
Alford Plea accepted 10/31/16. Sentence...

Presiding Judge: [Signature]
Judge Code: 2138
Sentence Date: JANUARY 13, 2017