

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

R. Ferrell Cothran, Jr., Circuit Court Judge

RECEIVED

MAR 11 2013

S.C. Supreme Court

GEORGE R. LINDSEY, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-209533

APPENDIX

SUSAN B. HACKETT
Appellate Defender
South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

MEGAN HARRIGAN
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
GUILTY PLEA TRANSCRIPT	1
MOTION FOR RECONSIDERATION	43
ORDER DENYING MOTION FOR RECONSIDERATION.....	44
APPLICATION FOR POST-CONVICTION RELIEF	45
NOTICE TO WITHDRAW ISSUES IN ORIGINAL POST-CONVICTION RELIEF APPLICATION	61
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	63
RETURN	71
NOTICE OF MOTION FOR MENTAL EXAMINATION	76
PROPOSED ORDER FOR FUNDING.....	78
MOTION FOR RELIEF FROM ORDER DENYING FUNDING FOR MENTAL EXAMINATION.....	80
POST-CONVICTION RELIEF HEARING TRANSCRIPT	84
ORDER OF DISMISSAL	142
MOTION TO ALTER OR AMEND PURSUANT TO RULES 59(A) (2) AND 59(e)	152
LETTER FROM MARY WILLIAMS TO JUDGE CAMPBELL DATED MARCH 20, 2012	156
INDICTMENT AND SENTENCING SHEET	158

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

State of South Carolina,)
)
 PLAINTIFF,) TRANSCRIPT OF RECORD
) C/A #: 09-GS-43-0108
v.)
)
George Lindsay, Jr.,)
)
 DEFENDANT.)
_____)

June 4, 2009 and June 8,
2009
Sumter, South Carolina

BEFORE:
HONORABLE GEORGE C. JAMES, JR., PRESIDING

APPEARANCES:

Solicitor Harry Connor
Sumter County Solicitor
Sumter; South Carolina

Jack Howle, Esquire
Sumter County Public Defender
Sumter, South Carolina

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

INDEX

	<u>PAGE</u>
Case Called	3
Certificate of Service	42

EXHIBITS

(There were no exhibits marked at this hearing)

1 MR. CONNOR: May it please the Court. This is George R. Lindsay.
2 Junior. He's here on Indictment 2009-0108. He's pleading guilty. He's charged with
3 Murder in the Indictment, Your Honor. and he also ... I have the wrong Indictment.

4 THE COURT: You got the Sentencing Sheet?

5 MR. CONNOR: I have the Sentencing Sheet.

6 THE COURT: All right. You want to ...

7 MR. CONNOR: He's pleading guilty to Voluntary Manslaughter.

8 THE COURT: All right. Do you have ... the Indictment Number on
9 the Sentencing Sheet is 09-GS-43-0108.

10 MR. CONNOR: That's correct. 0108. The code number is 217 so I
11 got Indictment 217 instead of ...

12 THE COURT: We'll go with the Indictment.

13 MR. CONNOR: Let me give you this one back.

14 THE COURT: All right, Mr. Howle, you represent Mr. Lindsay?

15 MR. HOWLE: Yes, Your Honor.

16 THE COURT: All right. Does he understand that ... first of all, does
17 he understand the charge in the Indictment?

18 MR. HOWLE: He does, Your Honor.

19 THE COURT: Does he understand the elements of the crime to which
20 he intends to plead guilty?

21 MR. HOWLE: He does, Your Honor.

22 THE COURT: All right. Have you explained to him his rights ...
23 rights under the Constitution to remain silent, right to a jury trial, and his right to
24 confront witnesses?

25 MR. HOWLE: Yes, sir.

HEARING

1 THE COURT: He understands all of his rights?

2 MR. HOWLE: Yes, sir.

3 THE COURT: Based on your investigation and overall knowledge of
4 the facts and circumstances of this case, do you agree with his decision to enter this
5 plea?

6 MR. HOWLE: I do, Your Honor.

7 THE COURT: Do you think he'd be found guilty of at least Voluntary
8 Manslaughter?

9 MR. HOWLE: Yes, sir.

10 THE COURT: All right. Do you have any concerns of his
11 competency?

12 MR. HOWLE: Your Honor, I do not have any concerns of his
13 competency. I will say that I consulted with Dr. Lakin at length on a couple of
14 occasions in regard to the temporary insanity matter when we looked at that as well
15 and after my conversations with her, she felt that that would not be sufficient to be
16 shown from what she saw in the case and anything else. I explained that to him as
17 well so ... but as far as his competency in understanding my questions and his
18 responses, I have no question about his competency, Your Honor.

19 THE COURT: All right. Your name, sir?

20 MR. Lindsay: George Ralph Lindsay, Junior.

21 THE COURT: All right. Has he been sworn?

22 MR. HOWLE: No, sir.

23 MR. PRINCE: Place your left hand on the Bible and raise your right
24 hand. State your name for me.

25 MR. Lindsay: George Ralph Lindsay, Junior.

1 MR. PRINCE: Do you solemnly swear or affirm the testimony you
2 give this Court will be the truth, the whole truth and nothing but the truth so help you
3 God?

4 MR. Lindsay: Yes, sir.

5 THE COURT: All right, Mr. Lindsay, before I can accept your plea it
6 is necessary that I ask you a series of questions and they are a good many questions
7 and the questions are designed for me to make sure that you're entering this plea
8 freely, voluntarily, knowingly and intelligently. If at any time during the course of
9 this proceeding you want to talk to your lawyer, I'll let you do that. And I certainly
10 won't hold that against you. And if at any time during the course of this proceeding
11 somebody says something that you don't understand or perhaps that you don't agree
12 with, just let Mr. Howle know and he'll bring that to my attention and if we have any
13 confusing things we'll need to clarify them. Do you understand that?

14 MR. Lindsay: Yes, sir.

15 THE COURT: All right. There aren't any right or wrong answers to
16 these questions that I'm going to ask you. They are simply questions that ... that I'm
17 asking ... asking you to provide truthful answers to. All right?

18 MR. Lindsay: Yes, sir.

19 THE COURT: All right. How old are you?

20 MR. Lindsay: 29.

21 THE COURT: Okay. How far did you go in school?

22 MR. Lindsay: I graduated from high school.

23 THE COURT: What high school?

24 MR. LINDSAY: Kingdom Christian Academy.

25 THE COURT: ... In Columbia?

1 MR. Lindsay: ... High School. Yes, sir.

2 THE COURT: All right. What kind of work do you do now?

3 MR. Lindsay: I'm a painter.

4 THE COURT: For a business or for yourself or what?

5 MR. Lindsay: For myself painting houses.

6 THE COURT: Okay. And you completed high school?

7 MR. Lindsay: Yes, sir.

8 THE COURT: All right. Do you have any history of being treated for
9 any alcohol abuse or drug abuse?

10 MR. Lindsay: No, sir.

11 THE COURT: How about mental illness?

12 MR. Lindsay: No, sir.

13 THE COURT: Do you have any mental illnesses?

14 MR. Lindsay: No, sir.

15 THE COURT: Do you take any medications?

16 MR. Lindsay: No, sir.

17 THE COURT: Is there any ... do you have any condition that would
18 make it difficult or impossible for you to understand what you're doing today?

19 MR. Lindsay: No, sir.

20 THE COURT: Have you had any medication or drugs or alcohol in
21 the last 24 hours?

22 MR. Lindsay: No, sir.

23 THE COURT: So, are you under the influence of anything now?

24 MR. Lindsay: No, sir.

25 THE COURT: All right, you heard your lawyer tell me that you

1 understand the charge against you. Do you understand that the Indictment that I hold
2 here has as Count One the Charge of Murder?

3 MR. Lindsay: Yes, sir.

4 THE COURT: And Count Two, Possession of a Firearm or a Knife or
5 Possession of a Weapon During the Commission of a Crime of Violence?

6 MR. Lindsay: Yes, sir.

7 THE COURT: Do you understand that or at least I'm of the
8 understanding that you're intending to enter a plea of Voluntary Manslaughter.

9 MR. Lindsay: Yes, sir.

10 THE COURT: Is there any recommendation in the case?

11 MR. CONNOR: None, Your Honor.

12 THE COURT: Is that correct, Mr. Howle?

13 MR. HOWLE: That's correct, Your Honor.

14 THE COURT: Is that your understanding, too, Mr. Lindsay?

15 MR. Lindsay: Yes, sir.

16 THE COURT: Now, that carries a range of imprisonment for zero to
17 30 years. Do you understand that?

18 MR. Lindsay: Yes, sir.

19 THE COURT: All right. The charge of Murder carries 30 years to
20 life. Do you understand that?

21 MR. Lindsay: Yes, sir.

22 THE COURT: And the crime of Murder carries a sentence of five
23 years unless you were to get a life sentence and then that would basically be rendered
24 inconsequential. Do you understand that?

25 MR. Lindsay: Yes, sir.

1 MR. CONNOR: May it please the Court? On the ... on the last thing
2 you said there you said on the charge of Murder but I think you ...

3 THE COURT: On Possession of a Weapon during a Crime of
4 Violence it carries over five years. However, if you were to get a life sentence there
5 would be no five years.

6 MR. Lindsay: Yes, sir.

7 THE COURT: That's a correct statement, you agree, Mr. Connor?

8 MR. CONNOR: That's correct.

9 THE COURT: Do you agree with that, Mr. Howle?

10 MR. HOWLE: Yes, Your Honor.

11 THE COURT: All right. Now, Voluntary Manslaughter is classified
12 by our law as a ... as a violent crime. do you understand that?

13 MR. Lindsay: Yes, sir.

14 THE COURT: Have you explained to him the ramifications of that,
15 Mr. Howle?

16 MR. HOWLE: Your Honor, we discussed it earlier in the last few
17 times we met. I don't think we've gone back, you know. to ...

18 THE COURT: Okay.

19 MR. HOWLE: ... the ...

20 THE COURT: Do you need to talk to him about that? In other words,
21 did ... go ahead.

22 MR. HOWLE: I was just going to say really it only affects it if have
23 another sentence later it can affect when you come up for probation in regard to the
24 second time. But this would be an 85 percent. I don't know if that's what you were
25 ...

1 THE COURT: Well, I haven't got to the most serious part yet.

2 MR. HOWLE: Yes, sir.

3 THE COURT: Do you understand that the classification of this crime
4 is a violent crime and has ramifications as to how much of your sentence you have to
5 serve?

6 MR. Lindsay: Yes, sir.

7 THE COURT: And along those lines, I don't have anything to do with
8 when you would get out of prison short of serving the entire amount your sentence,
9 do you understand that?

10 MR. Lindsay: Yes, sir.

11 THE COURT: All right. Also, Voluntary Manslaughter is
12 characterized by our law as a most serious offense, do you understand that?

13 MR. Lindsay: Yes, sir.

14 THE COURT: A most serious offense ... you would be convicted of a
15 most serious offense and if during some point later in your life you were convicted of
16 another most serious offense under our law as it stands now, the prosecutor would
17 have no choice and he would have to provide you with notice that the State was
18 seeking a life without parole sentence. Do you understand that?

19 MR. Lindsay: Yes, sir.

20 THE COURT: Okay. You explained all of that to him?

21 MR. HOWLE: We talked about that before.

22 THE COURT: All right. Also, to a lesser extent, if you were ... if you
23 have this on your record, a most serious offense, and later in your life you were to
24 have two serious offense convictions the result could be the same. Do you
25 understand that?

1 MR. Lindsay: Yes, sir.

2 THE COURT: All right. The Indictment in the case, Mr. Lindsay,
3 says that on or about September 18, 2008, you did feloniously, willfully and with
4 malice aforethought kill Lorenzo Smallwood with by means of shooting him and that
5 Mr. Smallwood did die as a proximate result thereof. That's the murder count. Do
6 you understand that?

7 MR. Lindsay: Yes, sir.

8 THE COURT: And the second count says that on or about the same
9 date you were in possession of and did visibly display a firearm or knife during the
10 commission of a violent crime and specifically that weapon was a .32 caliber
11 semiautomatic pistol. Now, Mr. Howle has confirmed that you understand the
12 elements of Voluntary Manslaughter. Do you understand that Voluntary
13 manslaughter is what they call a lesser offense of Murder?

14 MR. Lindsay: Yes, sir.

15 THE COURT: It includes all the elements of the crime of Murder
16 except the malice. Is that correct?

17 MR. HOWLE: That's correct.

18 THE COURT: And also includes the ... and it also includes the
19 element of crime of passion, you understand that?

20 MR. Lindsay: Yes, sir.

21 THE COURT: Did you explain all of that to him, Mr. Howle? All
22 right, so you understand what you're pleading to today?

23 MR. Lindsay: Yes, sir.

24 THE COURT: All right, sir. Now, do you understand that you have a
25 lot of rights that you have to give up when you enter a plea of guilty?

1 MR. Lindsay: Yes, sir.

2 THE COURT: You have the right to remain silent. If the case went to
3 trial and at any other time during the course of the proceedings, you have the right to
4 say nothing. Nobody can make you speak. Do you understand that?

5 MR. Lindsay: Yes, sir.

6 THE COURT: Do you want to give up that right and plead guilty
7 today?

8 MR. Lindsay: Yes, sir.

9 THE COURT: All right. You also have the right to a jury trial. And
10 your right to a jury trial is a significant right and if you wanted a jury trial I
11 understand that it's on the schedule for next week, is that right?

12 MR. HOWLE: That's correct, Your Honor.

13 THE COURT: Okay. 12 people would sit in the courtroom, either
14 this courtroom or the one down the hall and they would listen to all evidence that's
15 presented and they would look at evidence and they would consider all of that
16 evidence and then the Judge would charge them on the law that applies to your
17 particular case. Then they would deliberate. That means they would go into one of
18 these jury rooms and then they would discuss the case and ... and talk. In order for
19 you to be convicted of ... of any charge, whatever it might be, the jury would have to
20 be convinced and it would be all 12 jurors would have to be convinced of your guilt
21 beyond a reasonable doubt and that is a high burden of proof for the State to meet. In
22 other words, the ... the State or the Prosecutor would have to present proof that would
23 leave every juror firmly convinced of your guilt. Do you understand that?

24 MR. Lindsay: Yes, sir.

25 THE COURT: All right. And if all 12 jurors agree that you were not

1 guilty, you would be acquitted on that charge. Do you understand that?

2 MR. Lindsay: Yes, sir.

3 THE COURT: All right. Do you understand completely your right to
4 a jury trial?

5 MR. Lindsay: Yes, sir.

6 THE COURT: All right. Do you want to give up that right and plead
7 guilty today?

8 MR. Lindsay: Yes, sir.

9 THE COURT: You also have the right under the law or under the
10 Constitution to confront and be confronted by witnesses the State calls against you.
11 Which means you have the right to be present when they testify. You have the right
12 to listen to them, look at them and you also have the ... you also have the right to
13 have your lawyer cross examine those witnesses, challenge ... which means to
14 challenge their testimony and you can call your own witnesses. You wouldn't have
15 to. And you could testify yourself even though under the Fifth Amendment you
16 would not have to do that. Do you understand that?

17 MR. Lindsay: Yes, sir.

18 THE COURT: All right. Do you understand all of those rights that I
19 have explained to you?

20 MR. Lindsay: Yes, sir.

21 THE COURT: Do you want to give up each one of those rights and
22 plead guilty to Voluntary Manslaughter today?

23 MR. Lindsay: Yes, sir.

24 THE COURT: All right. Now, if you have any defenses to this charge
25 of Voluntary Manslaughter, do you understand that when you plead guilty you give

1 up those defenses?

2 MR. Lindsay: Yes, sir.

3 THE COURT: If you make any incriminating statements to the police,
4 do you understand that when you plead guilty you give up the right to challenge the
5 admissibility of the statements you made?

6 MR. Lindsay: Yes, sir.

7 THE COURT: All right. Mr. Lindsay, concerning the charge of
8 Voluntary Manslaughter, do you plead guilty or not guilty?

9 MR. Lindsay: I plead guilty.

10 THE COURT: Are you guilty?

11 MR. Lindsay: I am guilty.

12 THE COURT: In a few minutes Mr. Connor is going to tell me the
13 State's contention of what the facts are and I'm going to come back and ask you some
14 specific questions about that and see whether or not you agree with it. But, in
15 essence tell me what you did. What did you do?

16 MR. Lindsay: I shot Lorenzo Smallwood.

17 THE COURT: Okay. And do you know how many times?

18 MR. Lindsay: I think it was seven times. I think.

19 THE COURT: Okay. All right. Where did this take place? Did it
20 take place in Sumter County?

21 MR. Lindsay: Yes, sir.

22 THE COURT: Whereabouts?

23 MR. Lindsay: In Dalzell. Cannery ... I think it's Cannery Road. It was
24 my mother-in-law's house.

25 THE COURT: Now, Mr. Lindsay, in a few minutes, Mr. Connor is

1 going to tell me what the State's contention is so when he talks I want you to listen
2 very carefully, okay?

3 MR. Lindsay: Yes, sir.

4 THE COURT: Do you understand that you don't get a jury trial if this
5 guilty plea goes forward to its conclusion?

6 MR. Lindsay: Yes, I do.

7 THE COURT: All right. Okay. Now, Mr. Lindsay, has anybody
8 promised you anything to get you to plead guilty?

9 MR. Lindsay: No, sir.

10 THE COURT: Has anybody used any threat or force or intimidation?

11 MR. Lindsay: No, sir.

12 THE COURT: All right. Has Mr. Howle made you plead guilty?

13 MR. Lindsay: No, sir.

14 THE COURT: Have you had enough time to make up your mind?

15 MR. Lindsay: Yes, sir.

16 THE COURT: When all is said and done, are you entering this plea
17 based on your own free will?

18 MR. Lindsay: Yes, sir.

19 THE COURT: All right. Are you satisfied with the services of your
20 lawyer?

21 MR. Lindsay: Yes, sir.

22 THE COURT: Have you talked with him long enough and have you
23 talked to him often enough?

24 MR. Lindsay: Yes, sir.

25 THE COURT: Have you understood all of the conversations?

1 MR. Lindsay: Yes, sir.

2 THE COURT: Is there anything you want to talk to him about right
3 now?

4 MR. Lindsay: No, sir.

5 THE COURT: Has he done everything you think he could have done
6 to investigate the case and otherwise adequately represent you?

7 MR. Lindsay: Yes, sir. he has.

8 THE COURT: Has he done anything that you think is inappropriate,
9 misleading or wrong?

10 MR. Lindsay: No, sir.

11 THE COURT: Do you have any complaints about the police, law
12 enforcement or the Solicitor's office?

13 MR. Lindsay: No, sir.

14 THE COURT: All right. You do have ten days to appeal this pleading
15 and the sentence that I give you. Do you understand that?

16 MR. Lindsay: Yes, sir.

17 THE COURT: And right now my last question is have you understood
18 all of my questions?

19 MR. Lindsay: Yes, sir, I have.

20 THE COURT: Okay. All right. Mr. Connor.

21 MR. CONNOR: May it please the Court. This involves a ...a family
22 shooting, Your Honor, and George and his wife, who I believe stands with him now
23 whose name is Jametrius, and her maiden name was English and she's married to
24 George and they have three children. This lady here in the middle is Lakeisha
25 English Smallwood. She is the sister of Jametrius, George's wife, and she was

1 married to the victim whose name was Lorenzo Smallwood. The Smallwoods lived
2 adjacent to the English girls' mother and she's seated over here on the first row. Your
3 Honor. Her name is Janie English. In any event, the children ... they both ... both
4 families have small children. The Lindsays had three children at the time of this
5 incident, an 11 year old, an eight year old boy and a six year old girl named Minor
6 The Smallwoods had two children. They had a five year old daughter and they had a
7 baby, one year old named LJ. The children came home from school and they would
8 get off at Ms. English's house and ... and stay there for a while and then they would
9 go home from there. On the day this thing happened, about 3:30 in the afternoon, the
10 bus dropped them off there and they played around Ms. English's home for a while
11 and then the two little girls, one from the Lindsay family, Minor and the Lauren, the
12 Smallwoods' little girl who I believe was five years old. They went over to the
13 Smallwood home. Lorenzo was at home. They had ... he was doing babysitting care
14 that day and with the ... with his son, LJ. And about 6:00 p.m., Lakeisha came from
15 her job, she works for SAFE here in town and she ... but Minor left the Smallwood
16 home and went back over to Ms. Janie's house and while ... when she got there she
17 told her grandmother, Janie English, that ... that she had a bad taste in her mouth, that
18 her mouth tasted nasty and she was instructed to ... to rinse her mouth out with
19 Listerine. But then she told her grandmother something that was kind of alarming,
20 that she said that Uncle Ro had put it in her ... put it in her mouth. According to the
21 statement we've got she didn't exactly say what it was but she pointed to her crotch
22 and when she was talking about it and she was crying. Shortly afterwards, Ms.
23 English confronted Lorenzo about it. He denied anything of that sort and ...

24 THE COURT: Who confronted him?

25 MR. CONNOR: Ms. English, Your Honor, Janie English. She ... she

1 confronted Lorenzo. He ... he denied it. In fact, he said, "Well, you know, this is my
2 family. I wouldn't do something of that sort." The ... about that time or shortly
3 thereafter Lakeisha and Jametrius learned of these allegations and Jametrius took
4 Minor the little girl, six years old, home to ... they lived over in the Rembert
5 community and she indicated in her statement that about 8:00 p.m. George came in
6 from working and she told him what had happened and so and in his statement in
7 regards to the facts, he indicates that the little girl told him also and that they both
8 indicate that the little girl seemed to be distressed and she had done some crying and
9 did some crying in their presence. Somewhere around 9:00 p.m. or just before 9:00
10 p.m., Lakeisha and Lorenzo set out in their automobile to go over to George
11 Lindsay's house.

12 THE COURT: Lakeisha and Lorenzo?

13 MR. CONNOR: Yes.

14 THE COURT: Mr. Smallwood? Okay.

15 MR. CONNOR: Right. And ... and George and Jametrius, they set
16 out in their car going back the other way to go to Ms. English's house.

17 THE COURT: Which is next door to where Mr. Smallwood lived.

18 MR. CONNOR: That's correct and ... and somewhere in the road they
19 passed and I think Lakeisha indicated she realized that they had passed. In fact, she
20 said she was trying to ... to get them on the telephone, on the cell phone, and said at
21 one point that the Defendant answered the phone and he said to her, said, "Tell Ro
22 he's a dead MF." And they all ended up back at the Cannery Road address where Ms.
23 English lived and George went over to Lorenzo's home with his pistol in his hand
24 and ...

25 THE COURT: Back on Cannery Road.

1 MR. CONNOR: On Cannery Road, right. And actually Lorenzo and
2 Lakeisha got there after George and his wife had gotten there so Lorenzo stayed over
3 at Ms. Janie English's home and ... but, these three women, Jametrius, Lakeisha and
4 Ms. English went up there, they tried to get the pistol away from George and tried to
5 tell him not to do that and in fact they ... they told him both in words and physically
6 wrestled with him to try to get the gun. He wouldn't give us the gun. He ... and he
7 ended up, he ran back over to the house and when he got there Lorenzo was standing
8 outside beside his automobile and he shot him. The ... he shot him with a .32 caliber
9 semiautomatic pistol. Insofar as these people, women, have told me or told the
10 police and I've read the statements, Lorenzo was unarmed. In fact ... and George in
11 his statement says that he ran up and shot him and he didn't say anything to him. He
12 just shot him. And he shot him according to the autopsy report, my reading of it is he
13 shot him nine times. One bullet was fatal and the others were ... were not considered
14 fatal. But he did shoot him in various different parts of his body, his leg, his ... I
15 think he shot him in both legs and shot him in the ... the chest. The one in the chest
16 killed him and shot him in the right arm twice. Shot him in the back twice. All ...
17 and the right leg looks like three times and the left leg once. Anyway, at that point in
18 time the Defendant jumped in his automobile and sped away according to some
19 witnesses who came from a nearby home and he went over to Kershaw County where
20 apparently his mother lives. Some of the family called over there and talked with
21 him and ... and persuaded him or persuaded the mother to talk with him about turning
22 himself in and he did turn himself in and he told where the gun was. They recovered
23 the gun. It was a .32 caliber semiautomatic pistol and the bullets from the autopsy
24 were submitted to SLED and they confirmed that that was the gun that was used in ...
25 in the killing. The ... he did give them a statement in ... in regards to what happened

1 and was cooperative after he was arrested. Your Honor, Gwen Herod interviewed
2 the little six year old daughter of the Defendant, ^{Minor} and she indicated in there
3 that ... that Uncle Ro had put his hand on her private part in the ... in the statement
4 she gave. She did not say that he had put his private part in her mouth. She ... she
5 did indicate at one point in the ... in the interview ... it's a right extensive interview ...
6 and Ms. Herod is real good at that. She indicated that there maybe something that
7 she wasn't telling. And but she ... she didn't ... but, she did seem to talk ... talk with
8 her rather freely and ... and in fact, one of the questions was she asked her whether
9 she saw his private part and she said no. So, I don't know ... based upon what we
10 know here, I don't know what happened in regards to the little girl. I do believe that
11 the Defendant labored under the impression that she had been molested and that
12 Lorenzo had done it. These three women that wrestled with him over this gun, they
13 knew that what he was doing or what he might do was wrong. They wouldn't have
14 been trying to ... to get the gun from him and to persuade him to put the gun down.
15 The Defendant knew that he had done the wrong thing because he jumped in his car
16 and left as soon as he had done it. And he hid the gun. It was over in some grass and
17 weeds wherever he went and he did show them where ... where it was located but I
18 think his actions indicate that he knew he had done wrong and that in retrospect, of
19 course it's a lot easier to stand here today I suppose and speculate on it, the right
20 thing would have been to have called the police and let them investigate any potential
21 wrongdoing and handle it from there. Your Honor, he ... he's been convicted of some
22 minor things in the past. Nothing that I would deem serious. A DUS Second in '99,
23 assaulting a police officer while resisting arrest. He got 18 months suspended for ten
24 days with nine months probation. Animal fighting ...

25 THE COURT: What was that charge?

1 MR. CONNOR: Assault on a police officer while resisting arrest.
2 Animal fighting or betting. He got two years suspended to ten days on that, one year
3 probation. A simple possession of marijuana and a hit and run with minor personal
4 injury. Got one year suspended and one year probation. Your Honor, in talking with
5 Mr. Howle about this matter, I agreed that we would take the plea today and
6 complete the sentencing on Monday.

7 THE COURT: All right. I may have misspoken a little bit earlier. I
8 want to make sure that Mr. Lindsay confirms whether or not he understands the
9 elements of Voluntary Manslaughter. Mr. Lindsay, the State would have to prove
10 that you took a life of another in what is called the sudden heat of passion based on
11 sufficiently legal provocation both of which have to be present at the time of the
12 actual killing to constitute Voluntary Manslaughter. And the law describes sudden
13 heat of passion as a state that affects a person's self control and temporarily disturbs a
14 person's reason and the type that would make an ordinary person unable to coolly
15 reflect on ... on the person's actions and would produce what they call an
16 uncontrollable impulse to do violence. Do you understand all of that?

17 MR. Lindsay: Yes, sir.

18 THE COURT: You understand all of that, sir?

19 MR. Lindsay: Yes, sir.

20 THE COURT: Okay. All right. Now, you heard Mr. Connor recite
21 the facts concerning the passing of the vehicles in the road and you ultimately being
22 at Ms. English's house and then next door at your brother-in-law's house. up to that
23 point is all of that correct?

24 MR. Lindsay: Yes, sir.

25 THE COURT: All right. And is it correct that the ladies attempted to

1 get the gun from you?

2 MR. Lindsay: Yes, sir.

3 THE COURT: How ... how did they do that?

4 MR. Lindsay: They grabbed my hand. They been trying to get the
5 gun. They was grabbing on me. Of course they're ... they're women.

6 THE COURT: What was your state of mind at that time?

7 MR. Lindsay: I wanted to shoot Lorenzo.

8 THE COURT: And then you went ... how far next door was it?

9 MR. Lindsay: It's like ... it's right across the street. And I ... I saw him
10 across the street and I ran across the street.

11 THE COURT: Did you say anything?

12 MR. Lindsay: No, I didn't.

13 THE COURT: Did he see you coming?

14 MR. Lindsay: Yes, he did.

15 THE COURT: Did he say anything?

16 MR. Lindsay: No, he didn't.

17 THE COURT: All right. Was he standing by his vehicle?

18 MR. Lindsay: Yes, he was.

19 THE COURT: And then you shot him with that weapon?

20 MR. Lindsay: Yes, sir.

21 THE COURT: What did you do then?

22 MR. Lindsay: I got into my vehicle and I left.

23 THE COURT: Where did you go?

24 MR. Lindsay: I went to my mother's house.

25 THE COURT: In Camden? Or Kershaw County?

1 MR. Lindsay: Yeah. Yes. Lugoff.

2 THE COURT: Lugoff? All right. I ... I'll accept the plea. There is a
3 substantial factual basis for a Voluntary Manslaughter and Mr. Lindsay is entering
4 freely, voluntarily, knowingly and intelligently and he's represented by a lawyer with
5 whom he is satisfied. Mr. Connor, would the ladies like to say anything, the victims?

6 MR. CONNOR: Well, we've got ...

7 MR. HOWLE: Your Honor, if I may. I thought one of the things we
8 were going to do was we had some people who were going to come and we told them
9 not to come until Monday. That once you decided to take the plea all of that other
10 aspect of it would be done immediately prior to the sentencing. I would just ask the
11 Court ...

12 THE COURT: Is that still correct, Mr. Connor?

13 MR. CONNOR: That's satisfactory with me. I do have the victim's
14 mother ...

15 THE COURT: And I apologize. Mr. Howle, I forgot that that was part
16 of the process that was ... that you all had agreed on. I certainly do apologize for that
17 but I think it was intended for me to either accept or not accept the plea.

18 MR. HOWLE: Yes, sir.

19 THE COURT: All right. Now, what's the State's position? Is it still
20 the same on that, the ladies ...

21 MR. CONNOR: Yes, sir, it's all right with me. We'll do all the
22 talking Monday ...

23 THE COURT: What I'd like to do ...

24 MR. CONNOR: ... but they ... they are here. Lisa Smallwood and
25 Lakeisha Smallwood and this is the mother. Lisa and this is Lakeisha, his wife.

1 THE COURT: First of all, I'll address Ms. Lisa Smallwood. Do you
2 understand that on Monday you'll have the right to be here and speak? Do you
3 understand that?

4 MS. LI. SMALLWOOD: Yes, sir.

5 THE COURT: All right. And Ms. Lakeisha, do you understand the
6 same thing?

7 MS. LA. SMALLWOOD: Yes, sir.

8 THE COURT: Because under the law you do have the right to attend
9 and witness the plea and also speak at the appropriate time and that ... that'll take
10 place on Monday at what time?

11 MR. CONNOR: Well, we could just do it at 9:00 o'clock if the Judge
12 Cothran would qualify a jury and maybe we could do it down here or we could do it
13 at 2:00 o'clock, whichever might suit you best.

14 THE COURT: I'll let you ... you folks work that out and you tell me
15 just as long as Mr. Lindsay and the victims know when to be back. So, you ...

16 MR. CONNOR: Well, listen, why don't we just agree that it's 9:00
17 o'clock.

18 THE COURT: 9:00 o'clock is fine. All right. And Mr. Lindsay will
19 remain out ...

20 MR. CONNOR: He is on house arrest.

21 THE COURT: All right. You understand that, Mr. Lindsay. I'll be
22 sentencing you on Monday ...

23 MR. Lindsay: Yes, sir.

24 THE COURT: ... at 9:00 o'clock or soon thereafter.

25 MR. Lindsay: Yes, sir.

1 THE COURT: All right. Anything else we need to do before we
2 break for the day? Are you going to speak then, too, Mr. Howle?

3 MR. HOWLE: Yes, Your Honor, I'll speak then.

4 THE COURT: All right. Okay. I'll hand the Indictment and
5 Sentencing Sheet back to you, Mr. Connor, or I can keep it whichever you think is
6 appropriate.

7 MR. HOWLE: Why don't we let Pam keep it.

8 THE COURT: All right. I signed it accepting the plea and I will ... I'll
9 meet you folks back here at 9:00 o'clock on Monday.

10 MR. CONNOR: Your Honor, I would like for Mr. Lindsay to know
11 that if he fails to appear on Monday he would be sentenced in his absence.

12 THE COURT: That was the last thing I was going to say. Mr.
13 Lindsay, you ... if you are not present on Monday at 9:00 o'clock, this proceeding will
14 go forward in your absence and you will be sentenced in your absence and then you
15 will be subject to be apprehended and brought back before me and the sentence
16 would be unsealed at that time and you would be handled according to the sentence.
17 Understand that?

18 MR. Lindsay: Yes, sir.

19 THE COURT: You will be here Monday morning?

20 MR. Lindsay: I'll be here.

21 THE COURT: All right. Thank you, Mr. Howle. Thank you, Mr.
22 Connor. Thank you, ladies for coming.

23 MR. HOWLE: Thank you.

24 (OFF THE RECORD).

25 THE COURT: All right, Mr. Connor and Mr. Howle. I believe where

1 we left off Friday was I had accepted the plea and we were going to hear from the
2 victims and then proceed with sentencing, is that right?

3 MR. HOWLE: We are prepared, Your Honor.

4 THE COURT: All right. Under the law, Mr. Connor, the victims have
5 the right to speak. Of course we will need their names and then anyone who does
6 speak will have to direct their comments to me and not to the Defendant. Anything
7 before we begin, Mr. Howle?

8 MR. HOWLE: Your Honor, before sentencing we also have some
9 individuals who want to speak on George's behalf.

10 THE COURT: All right. Okay. Mr. Connor.

11 MR. CONNOR: This is the mother of the victim, Your Honor. Lisa
12 Smallwood.

13 THE COURT: All right, Ms. Smallwood.

14 MS. LI. SMALLWOOD: Well, what I wanted to say in the courtroom
15 this morning was just do my best attempt to explain the pain that my family has
16 endured since this incident has happened. I'm not sure that I have the vocabulary that
17 I can even do that. This has been just a horrific ordeal, Your Honor. You know, this
18 has taken two families that was once so close and destroyed a lot of relationships.
19 Everything is different. Nothing will ever be the same. You know, my
20 grandchildren will never have their father. You know, they will never get to know
21 him. They will never ... he will never be there for them, you know, we won't have
22 Lorenzo. Now Lorenzo, Your Honor, because all you have heard is about --- you
23 know, there's no ... been no humanist to Lorenzo, you know, and I wanted to do that
24 for him today. Lorenzo was not a gangster. He wasn't a thug. And he sure wasn't no
25 pedophile. This man was a provider for his family. He was a proud man. He was a

1 Marine. He continues to provide for his family from the grave. At 26 years old, he
2 has already put in enough work time into the system to provide income for his wife
3 and his children for the rest of their lives. Their medical insurance. Things of that
4 nature. You know, this guy if you ever met him, if you ever shook his hand, if you
5 ever looked in his eyes, you know, you would know that he was a man's man. And
6 from what I've heard from the testimony that the Solicitor has shared, you know,
7 about these allegations, they don't even rhyme together. I don't know what happened
8 that day and I've come to the place where I can accept I probably will never know.
9 The family has never been able to come to me and talk to me honestly. Everything
10 I've heard I've heard in bits and pieces from a report. You know, my family has been
11 robbed. From the day he was shot and I arrived on that scene I never got to hold my
12 son. Never. They wouldn't let me near the body. I couldn't see him at the morgue.
13 That is a horrible thing for a mother to have to endure. My family ... my family will
14 always have an emptiness. There will always be a hole. I've not been able to work.
15 I've not been able to sleep. You know, I have to see a therapist. I have so much
16 anger and resentment and distaste for what Mr. Lindsay did to my son until it is
17 almost unbearable. You know, and I just want the courtroom to know that he will be
18 missed terribly. This was a senseless crime. It didn't have to happen. Your Honor,
19 you know, and it's really sad. It's really sad, Your Honor, and it hurts deeply. Thank
20 you.

21 THE COURT: Thank you, ma'am.

22 MR. CONNOR: This is Gail Smallwood. Your Honor. She's the aunt
23 of the deceased.

24 MS. G. SMALLWOOD: Good morning. My sister has already
25 expressed the deep loss that Lorenzo's death has caused our family. Our family

1 hasn't been able to get any closure about this situation and it's been hard for us to
2 move on because when you lose somebody that you really love and you don't know
3 why and you don't have answers we can never get any answers. Because I know if
4 somebody ... I have a daughter that's 23 years old, she was raised like Lorenzo's
5 sister. I knew ... I, you know, Lorenzo was like my son. My sister was young when
6 she had him. I was older. I took care of him while my sister went to college. I knew
7 his heart. I knew his spirit and ... and the things that they are saying they just don't
8 add up to us, they don't make any sense and we weren't able to get the answers that
9 we needed. I also had to seek counseling and treatment because it ... it's just so hard
10 to deal with it. I beg the Court today that Lorenzo was not armed. If somebody ... if
11 my daughter came to me and told me somebody molested her, the first thing I would
12 do is call the police. Lorenzo never had a chance to defend himself. He never had a
13 chance to answer the allegations against him. Why wasn't the police called that
14 night? As far as I'm concerned George Lindsay should get the maximum that is
15 possible by this Court because he knew when he left where he was that he was going
16 to do what he did. And I pray that this Court does not have mercy on him because
17 nobody has shown our family any mercy whatsoever in ... in this situation. Thank
18 you.

19 THE COURT: Thank you. Anyone else, Mr. Connor?

20 MR. CONNOR: Mr. Smallwood's wife, Lakeisha, is here, Your
21 Honor, but she has indicated to me that she doesn't wish to address the Court.

22 THE COURT: All right.

23 MR. CONNOR: She's the sister of the Defendant's wife.

24 THE COURT: Anything else from the State as far as any reading
25 impact statements or any law enforcement or anything else of that nature?

1 MR. CONNOR: Nothing further, Your Honor, other than what we
2 presented on Friday.

3 THE COURT: All right. Mr. Howle?

4 MR. HOWLE: Thank you, Your Honor. Your Honor, before I ask
5 anybody to speak, I know when we met Friday there was general information that
6 you had. George's age, where he worked and some things like that. He's married. He
7 has four children. Your Honor, just the Thursday before last they lost a child. His
8 wife was a little over six months pregnant and the child was born prematurely and
9 died so they've certainly gone through some very difficult times as well. As I told
10 you, he's a painter and was doing some other things at the time that this happened so
11 he was employed. Your Honor, when ... when he heard this he heard it directly from
12 his daughter and I know we've had a little difference on some time tables but from
13 the time she said something to him until he arrived at that house there was no more
14 than 15 or 20 minutes at the most. So this is not a period of time where someone
15 could reflect on it overnight and do something like that. Obviously a call to the
16 police may have been the prudent thing to do. But his reaction was immediate. And
17 ... and that's simply what happened. There are several things, Your Honor, I wanted
18 to point out. In July, just a few months before this happened, George had gone and
19 spoke to people in the Army about getting into the Army. I have two letters that I
20 want to present to the Court. One. He has some small record that the Court heard on
21 Friday. The Army was well aware of this. They have all those same offenses listed
22 here and the officer, a Captain Samantha Guess, recommends that he go ahead and be
23 submitted ... his name be submitted so he could be sworn into the Army. And I have
24 both the letter in regard to the authorities waiving any problem or limitation that
25 would be and then a second letter that specifically states that it is her

1 recommendation that he be processed in the Army without any limitations
2 whatsoever. The only reason he had not already processed from this point forward
3 and get in the Army was as a child he had an illness that I think was meningitis that
4 they were still waiting for a final medical clearance on him and that was the only
5 thing between him getting into the service and that was still being processed at the
6 time that this happened. As Your Honor knows, George and Lorenzo were married
7 to sisters and even as Lorenzo's mother stated the families were close. Just this same
8 summer of 2008, the two families had gone to Disney World together. They
9 celebrated their anniversaries together. They were very close. When George heard
10 his daughter say what had happened to her he was ... he was overcome and there's no
11 question couldn't control his emotions at that time. And not only that, from that
12 point to going over there, Minor was with him the whole time and she was in the car
13 and she was crying so he was never even removed from her sight until he actually
14 arrived there and ... and the incident happened. If he had time to reflect I'm sure that
15 George would not have handled it this way, would have handled it much different but
16 that's just the way it happened. Your Honor, we've got a number of people who want
17 to talk and I told them that obviously the Court cannot listen to a room full of people.
18 I do have a folder, Your Honor, with a number of letters written from individuals on
19 George's behalf. We just wanted to kind of review some of those but I also have
20 several people who would like to speak.

21 THE COURT: All right.

22 MR. HOWLE: Michael Williams.

23 MR. M. WILLIAMS: How you doing, Your Honor? I am Michael
24 Williams. I just wanted to reflect a little bit on myself and George's relationship. I'm
25 his first cousin and some of the finest times we had were ... were as young children,

1 you know, spending the night over at each other's house and ... and then my
2 grandmother, spending summer time there with her and as I went to school we might
3 have lost contact somewhat but after that we met at different family functions where
4 he was all ... always with his children and the mother of his children and there's
5 where I saw a man who had a great relationship with his kids. You could just see
6 throughout their interaction. And the love that George displayed for his family was
7 ... for his sister, for Aunt Myrna. for his father. George, I can only imagine the love
8 that he had for his kids. And I try to place myself in his situation and I ask myself
9 what ... what would I do. I just want everybody to think if they were to hear that.
10 what would you do. You'd have so many emotions ... you got so many emotions
11 going on. And ... and I know George had so much ... so much life ahead of him. For
12 him to be incarcerated that would be doing injustice to his children and his wife.
13 And I think he just has so much more ahead of him in this life and I just ... I just ...
14 just want people to understand what was going on in his mind and to honestly tell
15 you I don't ... I don't know what I'd do. I don't know what I'd do. And while making
16 your decision I just want you to just think about that and think about what position
17 that he was placed in because this is a provider, this is a man who wants to protect
18 his children and he ... he was stuck between a rock and a hard place on that day and
19 ... and I don't know what I'd do. Thank you.

20 THE COURT: Thank you, Mr. Williams.

21 MR. HOWLE: Janet Williams.

22 MS. WILLIAMS: Good morning, Your Honor.

23 THE COURT: Good morning, Ms. Williams.

24 MS. WILLIAMS: My name is Janet Williams. I'm the aunt of George
25 Lindsay and I pray that the Court would have mercy on him. He comes from a very

1 loving, close knit, Christian family. As Michael said previously, we've done a lot of
2 things together. We celebrated birthdays. Family reunion, all family things and
3 loving things and George loved his family dearly. He's a provider, a protector of his
4 family. He has a loving wife and four beautiful children and I pray that you would
5 have mercy upon him and to be lenient with whatever happens based on all the facts
6 that are here. Thank you.

7 THE COURT: Thank you, Ms. Williams.

8 MR. HOWLE: Courtney.

9 THE COURT: Her name?

10 MR. HOWLE: Courtney Lindsay, Your Honor.

11 MS. Lindsay: Good morning, Your Honor, my name is Courtney
12 Lindsay. George is my brother. He's always been my protector and my friend. He's
13 my ... my motivator, my inspiration. He leads his life by his heart. He protects his
14 kids on a daily basis. I ask you to have mercy on him. He went before God and
15 confessed and asked God's forgiveness for his sin. God has forgiven him. And has
16 washed away his sin. I pray for Lorenzo's family every day that they forgive him.
17 But, Your Honor, today we're fighting for George's life. I ask that you not sentence
18 him. He was there to protect his child. He was called continuously from my
19 mother's house. He was called to come home to Rembert. No one ever told him why
20 he was coming home. When he got home, his daughter told him what had happened.
21 My ... my brother's love for his child, his heart bleeding out. I pray for him. I pray
22 for this family and I ask that you have mercy on him. Just know that he leads by his
23 heart, he's the type of person that loves everyone, he befriends anyone. He makes a
24 friend wherever he goes. This man despite what has gone on with him, he still puts
25 his family first. Thursday he accepted a plea not based off of his decision, my

1 decision of begging him. He based his decision off of his child and his family.
2 When I say his family I say that his daughter, all of his kids, and his wife. He will
3 not fight for himself but we are all here, this courtroom is filled today to fight for him
4 today. I never once ... I pray ... I continue to pray for Lorenzo's mother but before
5 you close this case, Your Honor, there's one question that we so ask, the Lindsay
6 family asks, Lorenzo's family asks, why did someone not call the police. We would
7 not have to be here today. Today we're fighting for George. We're not fighting based
8 off of any assumption but something happened to this child and he's not given justice
9 today. No one took time to research what happened. The facts are not ... no one has
10 the fact on what ... no one ... no one's even asking this child what happened. No one
11 wants to know what happened. So, please have mercy on my brother today. Please
12 take ... take everything into consideration. Things that you have in front of you,
13 things that have not been brought forward but the question that I ask you today, the
14 question that we all want to know is could this have been prevented? Why did
15 someone not call the police? But today, have mercy on my brother. He has a family
16 here. He has people here that love him. And he is the type of person that ... that
17 people --- he's not a thug. He's a loving man, a God fearing man. I ask that you have
18 mercy on him. Out of the love of his child he gave all ... he gave his life for the love
19 of his child. When no one else was there for her, he took it upon himself to protect
20 his child. Who is going to be there to protect his kids now? No one. I just ask that
21 you have mercy on my brother today and I will continue to pray for the family of the
22 victim. I will continue to pray for my brother and I will continue to pray for this
23 child because innocence is lost. We can never get innocence back. This is a child.
24 Your Honor. Despite what ... what has been said, there are facts here that a child ...
25 this child right here, please have mercy on my brother. Just know that he leads by

1 heart. There's nothing that anyone here can say what they would have done in that
2 situation. I just pray for both families and ask that you have forgiveness ... that you
3 have forgiveness on him and have mercy on him today.

4 THE COURT: Mr. Howle?

5 MR. HOWLE: Mr. Shepard, Tim Shepard would like to speak.

6 MR. SHEPARD: My name is Tim Shepard. I'm best friends with
7 George and I just want to say George is not a killer, he's not a murderer or nothing
8 like that. He ... this whole courtroom is filled with people friends of his so and I just
9 don't think that half of these people would be here if it was somebody else here. A
10 lot of stuff was going through his head whenever all this happened. I know his
11 daughter personally. She calls me Uncle Tim. I believe everything she said and I'm
12 sure that everybody else do who know her. What happened was ... it was a mistake.
13 I don't ... I don't think it should have went down like that but what would you do?
14 That's a question I want to ask you. I just had a question for you. What would you
15 do in this situation?

16 THE COURT: I'm not here to answer any questions. The question is
17 not what would I do.

18 MR. SHEPARD: I mean, I ... I'm not trying to make a fool of --- I
19 think ... I don't think that this man should be put away in jail for ... for the act that he
20 did seeing all the emotions that he was going through whenever this happened.

21 THE COURT: Thank you, Mr. Shepard.

22 MR. HOWLE: Coming up is George's grandmother.

23 THE COURT: All right. Melba Lindsay?

24 MR. HOWLE: Yes, sir.

25 THE COURT: All right. Ms. Lindsay.

1 MS. Lindsay: Good afternoon. My name is Melba Lindsay. I am
2 George's grandmother. George has always been a lovely child. And he's been good
3 to everybody. His family and everyone who he knew. He's always pleasant
4 whenever you see him. He always have a smile. And he love the Lord and he love
5 his family. And most of all, he would just do anything he can for his wife and
6 children. George is a wonderful, loving child. Whatever you do, please have mercy
7 on him. Thank you.

8 THE COURT: Thank you, Ms. Lindsay.

9 MR. HOWLE: Now, George's mother, Myrna Lindsay, Your Honor.

10 MS. Lindsay: Judge, I ... I'm sorry, I ask this family to forgive. I'm
11 sorry. I'm sorry. If I had any way to prevent that I would have. My son, to know
12 him, he's a loving person. He might have had some difficulty in his life, he went
13 through some changes in his life but as far as to go out and hurt someone, he's not
14 like that. At birth, I struggle with him, he was prematurely two months. I prayed,
15 fighting for his life at birth. The love he has, Your Honor, for his family is the love
16 that my mother, my grandmother instilled in my mother flowed through Godly love.
17 Through my grandmother and my mother, through me and he went through my son.
18 His love ... he just love his family. All I can say is he loved. What happened he did
19 it out of love. He just reacted, I mean, right now I just don't know what to say. I just
20 ... have mercy on him. Have mercy on him. If I could take it back, turn it around, I
21 would. I can't do it. I can't do it. I understand how the victim's mother, she's a
22 mother, too. I'm a mother, too. I'm a mother, too. Just have mercy on my son. Have
23 mercy on him.

24 MR. HOWLE: Your Honor, Mr. Lindsay would like to address the
25 Court.

1 MR. CONNOR: Mr. Howle, there's a lady raising her hand in the
2 back.

3 MR. HOWLE: I'm not sure who this is, Your Honor, but if there's
4 someone else ...

5 THE COURT: Your name, please, ma'am?

6 MS. CANTEY: Joseana(sp) Cantey.

7 THE COURT: And your relation?

8 MS. CANTEY: First cousin with his mother.

9 THE COURT: All right. You want to ...

10 MS. CANTEY: My name is Joseana(sp) Cantey and me and Myrna
11 are first cousins and George is like a nephew to me because I always kept him when
12 she was working at night. The only thing I got to say is that I'm sorry. I'm going to
13 tell you from experience and I'm speaking from experience from my heart. I was in
14 the situation that George was in. I had a five year old daughter and my daughter was
15 molested. Nobody know what goes on when your child has been molested. That's
16 the worst feeling in the world that you can feel. You ... you supposed to be a mother,
17 you're to protect your child and you wasn't there and you still feel ... I'm forty- five
18 years old and I'm still feeling that feeling inside every time I look at her because I've
19 got to be there now and hope and pray that she grows up to be the person that I
20 wanted her to be and I thank God that she did because she could have been anything
21 else when you are being molested by anybody because a rapist is also like a murder.
22 So if you're going to do that, that is not good. You go to court and he went up to ...
23 when I stood in front of the judge and they asked me ...

24 THE COURT: Ma'am, this is ... this is not about ... with all due
25 respect ...

1 MS. CANTEY: I know but --- but like I said this man have kids. If
2 you can find mercy within your heart to give him a second chance. Everybody
3 deserve a second chance. Give him a second chance to raise his kids the way they
4 need to be raised. Give him that opportunity. If you have to give him probation or
5 put him on house arrest, please search your heart. He's not that kind of a person. I
6 can't see him doing that. And I know he's not that type and I know it. It's a hard
7 feeling. Nobody don't know what nobody would do when in that situation. I will tell
8 you it's not a good situation.

9 THE COURT: Thank you, ma'am.

10 MS. CANTEY: You're welcome.

11 THE COURT: All right, Mr. Howle.

12 MR. HOWLE: Your Honor, Mr. Lindsay would like to address the
13 Court.

14 THE COURT: Mr. Lindsay.

15 MR. G. Lindsay: Your Honor, I want to apologize to the Smallwood
16 family. I'm not a bad person. I'm not ... I'm totally not a bad person. We ... we did
17 everything together. Me and my wife and Lorenzo and his family, you know. A
18 month before it happened we just came back from Disney World, you know, stayed
19 in the same condo, had fun together. A week before that happened, we just left Olive
20 Garden celebrating our ... we got married the same month, you know, celebrating.
21 you know, our anniversary. We ate off the same plate that day, me and Lorenzo. He
22 wasn't my enemy. But, when I came home and my daughter told me what he did,
23 that little girl right there, that's ... that's my world. That little girl is my world. And I
24 ... I ... I did blink ... I blinked out. I ... I wish ... I just wish that night that day never
25 happened. Because it ... it tore two sisters down. Me and my sister-in-law had the

1 best relationship in the world. Love her to death. My little niece, Lauren, Lorenzo's
2 daughter, loves me to death. All of us loved each other, you know. And I know it's
3 going to take time for that healing process to happen but I hope, you know,
4 eventually, I would get some forgiveness from the Smallwood family. Your Honor. I
5 just want you to have some leniency on ... on me because I have to be there, you
6 know, my ... just yesterday my oldest daughter, well, when we left here Friday, I went
7 home then and got my kids and I told them that I would be coming up here today and
8 Daddy might not be able to come back home. After we picked our oldest daughter up
9 from school and she told ... she started to cry and my oldest daughter told me, "Well,
10 Daddy, if you do have to go back, can't we go stay at grandma house because you're
11 not going to be home to protect me no more and I want to be around people that are
12 going ... this is what a 12 year old said. My daughter still has night ... my daughter
13 still wakes up at night with nightmares and she looks for me to put her back to sleep.
14 Your Honor, I just ... I want to apologize to the Smallwood family again. And I want
15 to apologize to my family. Just asking any leniency you can ... you can spare for me.

16 THE COURT: Thank you, Mr. Lindsay. Anything else, Mr. Howle?

17 MR. HOWLE: Your Honor, I think you can see the emotion that's in
18 the courtroom. Two families that are obviously ...

19 THE COURT: I don't even know who's speaking or what they're
20 speaking about. I would assume that if anyone wants to speak they'll have to run it
21 through Mr. Howle. This is just not simply a public forum with all due respect.

22 Female Speaker in Audience: Thank you, sir.

23 THE COURT: Yes, ma'am.

24 MR. HOWLE: Your Honor. I mean, you can just see the support that's
25 in the room. Two families that were very close and it's just a moment of not

1 reflecting but being overcome by emotion. Your Honor, we ... we would ask for
2 mercy of the Court.

3 THE COURT: Thank you, Mr. Howle. Mr. Connor, any ... anything
4 else?

5 MR. CONNOR: I don't have anything. I think what we said on
6 Thursday has summed it up and Ms. Smallwood talking this morning has also
7 reinforced that.

8 THE COURT: Any ... any particular position the State has on
9 sentencing? Are you just going to leave it to my discretion?

10 MR. CONNOR: Your Honor, it's your discretion.

11 THE COURT: All right. All right. I'm going to give Mr. Howle the
12 ... Mr. Lindsay and everyone in the courtroom the courtesy of reviewing these letters
13 and I want to make sure everyone understands, particularly the lady who did raise her
14 hand just a moment ago it's ... I'm not attempting to cut you off but the process is a
15 very orderly process and I know everyone in the courtroom has some close
16 connection with both families and I'm not intending to cut you off. I just want to
17 make sure you understand that.

18 Female Speaker in Audience: Thank you, Judge.

19 THE COURT: All right. We'll take a few minutes and I'll be back in.

20 (OFF THE RECORD).

21 THE COURT: All right, I've taken the time to read the ... some I
22 believe 15 or 16 letters, Mr. Howle, and I appreciate that. And these comments aren't
23 directed to anyone in particular but it's the situation where everyone in here
24 connected to this case knows how horrible the situation is. Several people have
25 asked well, I don't know what I would have done or I can't imagine what was going

1 through his mind and in many ways the point is not what would I have done or not
2 what somebody would have done but it's what Mr. Lindsay did. If he had been
3 convicted of Murder, he'd be facing 30 years to life. And a plea to Voluntary
4 Manslaughter exposes him to imprisonment up to 30 years. And Mr. Howle made an
5 excellent point that only some 15 minutes had passed from the time such and such
6 had happened and the time the event occurred. Some would say that's plenty of time
7 for somebody to reflect. Some would say it's not. Nobody knows what they would
8 do in that particular situation. But the law compels someone not to do what Mr.
9 Lindsay did. If you take a drive up to 521 or up 521 to Mr. Smallwood's home some
10 would say that's gracious plenty of time for somebody to cool ... coolly reflect and
11 say, hey, let's ... let's law enforcement take it from here. We don't live in a lawless
12 society. And I think nobody in the world knows that right now better than Mr.
13 Lindsay because if he ... if he had just resisted on acting on that impulse these two
14 families would have probably most of them enjoyed fairly pleasant weekend together
15 after and truly determining what if anything had happened with this young girl. And
16 this is not ... and Mr. Connor I'm sure realizes this, Mr. Howle does, too, this is not a
17 decision making day as to whether or not Mr. Smallwood did what they thought he
18 did. That's not what this case is about. This case is about what Mr. Lindsay did.
19 And everybody connected with the case in a legal fashion knows what the elements
20 of Voluntary Manslaughter are. There is no reason for me to go over that. Now, by
21 the way, on Thursday I did ... we did put on the record the strike ramifications in this.
22 did we not, Mr. Howle? The most serious ...

23 MR. HOWLE: Yes, sir, we did.

24 THE COURT: I want to make sure we did. All right. Just for my
25 purposes and not ... I'm not keeping any score, this has nothing to do with the

1 disposition of the case, but who in the courtroom if you would please stand if you are
2 connected by voice or feelings today with the Defendant's family, if you would please
3 stand for me. All right. So those folk ---

4 MR. HOWLE: For George. Here on George's behalf.

5 THE COURT: All right. Thank you all. You all can have a seat.
6 All right. Here is my instruction in that regard. Once I pronounce sentencing those
7 of you who did just stand you will be the first to exit this courtroom. And my further
8 instruction is the courtroom is a public facility but my instruction is at least
9 temporarily I want you to exit the building as well. And then Mr. Connor, the folks
10 who are with Ms. Smallwood, Lisa Smallwood and the other members of the victim's
11 family, they can depart within the next 15 minutes or so after that. Is that
12 acceptable?

13 MR. CONNOR: That is.

14 THE COURT: Is that acceptable, Mr. Howle?

15 MR. HOWLE: Yes, Your Honor.

16 THE COURT: I just want to make sure that ... that instruction is
17 followed very closely because these uniformed officers will ... are here for everyone.
18 I just want to make sure everybody understands that. All right, Mr. Lindsay, I say
19 this just about every time I sentence someone in a case that has significant prison
20 time as ... as a possibility. I don't like doing this. I get no pleasure in it and the
21 Smallwood family probably is not going to derive any pleasure from any sentence
22 that I give you. But you do ... you do have to go to prison. You're 30 years old?

23 MR. Lindsay: 30 in August.

24 THE COURT: You'll be 30 in August?

25 MR. Lindsay: Yes, sir.

1 THE COURT: By all accounts, everyone who has spoken here, your
2 lawyer made it clear and the letters that I read, made it clear that you are by all
3 accounts an upstanding person. You made a terrible, terrible mistake and took the
4 life of someone who has a family that feels the same about him as your family feels
5 about you. So no sentence like this that I would pass is designed to make it fair, to
6 make everything square because particularly from the victim's families perspective
7 that could never happen. If I gave you a 100 years in prison it wouldn't make them
8 feel any better because insofar as the loss of their loved one is concerned. If I gave ...
9 if I gave you 50 years it wouldn't make them feel any better. The scars that you
10 caused are going to run deep and it's not going to be because of the prison time you
11 do get or you don't get. It's going to be because of what you did. All right, Mr.
12 Lindsay, the sentence of the Court is that you be committed to the State Department
13 of Corrections for a period of 18 years. And I do wish both sides of the families
14 luck. If the folks could exit the courtroom now pursuant to my instructions.
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

This is to certify that the hearing in the matter of State vs. George Ralph Lindsay, Jr., consisting of Forty-One (41) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 5th day of May, 2010.

Melissa R. Singletary

Melissa R. Singletary
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: 3-5-2014

THE STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF SUMTER) THIRD JUDICIAL CIRCUIT

Warrant/Indictment Nos.: 2009-GS-43-108

THE STATE OF SOUTH CAROLINA)
) JUNE 12 2009 12:30

v.

GEORGE RALPH LINDSEY,

DEFENDANT.

JAMES E. DANIEL
 CLERK OF COURT
 SUMTER COUNTY, S.C.

MOTION

FOR

RECONSIDERATION

TO: THE PRESIDING CIRCUIT COURT JUDGE; &
 William H. Conner, Jr., Assistant Third Circuit Solicitor.

PLEASE BE ADVISED AND TAKE NOTICE that the Defendant, George Ralph Lindsey Jr, through His undersigned attorney, hereby moves and request of this Honorable Court that the sentence imposed on the Defendant, George Ralph Lindsey Jr, on June 8, 2009 be reconsidered.

The Defendant was charged with Murder and pled guilty to the a lesser charge of Voluntary Manslaughter before Judge James on June 4, 2009. The court sentenced the Defendant to eighteen (18) years. Defendant was given credit for time served both while incarcerated at the Sumter Lee Regional Detention Center and while on house arrest (September 19, 2008-June 8, 2009).

The Defendant would move for a reconsideration of the sentence for the following reasons:

1. Counsel feels that the Court should review the circumstances surrounding the Defendant's actions in light of the tramatic impact his daughter's statements and emotional outpouring concerning her molestation by Mr. Smallwood had on him during the bried period of time between being told and his confrontation with Mr. Smallwood.

2. Counsel firmly believes that this minimal time period was not sufficient to allow Mr. Lindsey to understand or process the impact of his actions.

WHEREFORE, the Defendant respectfully requests and prays that this Honorable Court do:

1.) Counsel requests that the Court review all of the information available and reconsider a lesser sentence more appropriate to the facts.

Respectfully submitted,

By:

Jack D Howle, Jr., Attorney for the Defendant
 141 North Main Street, Rm # 102
 Sumter, SC 29150
 (803) 436-2424

SUMTER, SC
 Date: June 9, 2009

RECORDED
 2009 JUN 29 AM 11:59
 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF SUMTER) THIRD JUDICIAL CIRCUIT
 JAMES C. CAMPBELL
 CLERK OF COURT
 The State of South Carolina)
 SUMTER COUNTY, S.C.

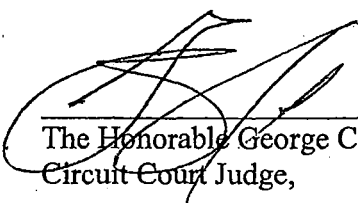
09-GS-43-108

Plaintiff,)
)
 vs)
)
 George Ralph Lindsey,)
)
 Defendant.)
 _____)

ORDER

After considering the issues raised in the defendant's Motion for Reconsideration, the court has concluded that the sentence was appropriate. Therefore, the motion is denied.

AND IT IS SO ORDERED.



 The Honorable George C. James, Jr.
 Circuit Court Judge,

Sumter, South Carolina

June 29, 2009

FORM 5

STATE OF SOUTH CAROLINA

County of SUMTER

RECORDED

IN THE COURT OF COMMON PLEAS

2010 APR -5 PM 4:35

George R. Lindsey, Jr., #317562
Full name and prison number (if any) of ApplicantJAMES J. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.2010-CP-43- TCY

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

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 McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899
2. Name and location of Court which imposed sentence Sumter County Court of General Sessions, Sumter, South Carolina 29150
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2009-GS 43-0108 - Murder

SC Attorney General
RECEIVED

APR 13 2010

Referred to M. Wms
Answered _____

- (b) 2009-GS-43-0108 - Poss. of firearm or knife during commission
 (c) of a crime of violence
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) June 8, 2009 - Eighteen (18) years imprisonment
 (b)
 (c)
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty XXXXXXXX
 (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. N/A
 ii.
 iii.
 (b) the result in each such Court to which you appealed:
 i. N/A
 ii.
 iii.
 (c) the date of each such result:
 i. N/A
 ii.
 iii.
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. N/A
 ii.
 iii.
9. If you answered Ano@ to (7), state your reasons for not so appealing:
 (a) My plea hearing attorney informed me that I could not appeal a

- (b) guilty pleas conviction.
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See Attachment - A
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attachment - A
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. In reference to 12(a), a Motion for Reconsideration was filed;
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Sumter County Court of Common Pleas, Sumter, South Carolina 29150
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:
Motion "denied".

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:
June 29, 2009

i. _____

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) This is the first opportunity the Applicant has had to present these
grounds.
- (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? No trial held
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No appeal filed in this matter.
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
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. Jack D. Howle, Jr., Esquire, Third Circuit Public Defender, 141
North Main Street, Rm. #102, Sumter, SC 29150
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Attorney Howle represented me at 17(a), (c) and (e), which was my
Motion for Reconsideration.
- ii. _____
- iii. _____

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

Vacate the guilty plea in this matter and remand this case to the
Court of General Sessions in Sumter County for a new trial.

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Sumter)

I, George Linley, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

✓ George Linley

SWORN to and subscribed before me this 31
 day of March, 2010.

Joyce L Young (L.S.)
 Notary Public

My Commission Expires: 8-28-2011

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

I, George Ralph Lindsey, #317562, 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.

George Lindsey

Applicant

SWORN or affirmed to and subscribed before me this
31 day of March, 2010.

Joyce L. Young
Notary Public

My Commission Expires: 8 28 2011

Attachment - A

RECORDED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 County of Sumter) 2010 APR - 5 PM 11:35
 Judicial Circuit

George R. Lindsey, #317562,) JAMES CAMPBELL
 Applicant,) CLERK OF COURT
 vs.) SUMTER COUNTY, SC.
) Case No.: 2010-CP-43-789
)
) Memorandum of Law In Support of
 State of South Carolina,) Application for Post-Conviction
 Respondent.) Relief
)

Comes Now, the Applicant named above, who presents to this Court this Memorandum of Law In Support of his Application for Post-Conviction Relief. The Applicant presents this memorandum because his constitutional rights under the United States Constitution, Amendment 14, and the South Carolina Constitution, Article I, §3, to due process of law were violated during his guilty plea proceedings.

Also the Applicant's rights under the United States Constitution, Amendment 6, and Article I, §14 of the South Carolina Constitution to the effective assistance of counsel were violated during the course of this matter.

The Applicant submits that his arguments, facts and reference to relevant case law will justify this Court granting the Applicant the relief he seeks.

Respectfully submitted,

George R. Lindsey, #317562

Date: 03/31/2010

George Lindsey
 MCCI F-3 A-side
 386 Redemption Way
 McCormick, SC 29899
 Applicant

GUILTY PLEAS

The Applicant pleaded guilty in this case. The United State Supreme Court held in Hill v. Lockhart, 474 U.S. 52 (1985), that the two-part standard adopted in Strickland v. Washington, 104 S.Ct. 2052 (1984), for evaluating claims of ineffective assistance of counsel applies, as well, to guilty plea challenges based on ineffective assistance of counsel. To meet the Court's "prejudice" requirement, a criminal defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. The Applicant submits that he has met the prejudice requirement in his arguments as set forth in this application.

As per to 10(a) & 11(a) of the application

COUNSEL WAS INEFFECTIVE DURING THE APPLICANT'S GUILTY PLEA PROCEEDINGS FOR FAILING TO INFORM THE APPLICANT THAT HE FACED A MANDATORY MINIMUM SENTENCE BY PLEADING GUILTY TO VOLUNTARY MANSLAUGHTER.

The Applicant was indicted for murder in this case. During discussions with his attorney in the early stages of the case the Applicant informed his attorney that he wished to go to trial because the only thing he was guilty of was protecting his family. The Applicant felt that if this State has laws that allows a home owner to use deadly force to protect their homes and the property within, then that law also extends to protecting family members. The Applicant felt that in a trial the jury would see that he was not a thug or gangster, just a hard working man who was trying to protect his little girl against evil. This is a situation where no man can ever hypothetically put himself in and say, "if this happens to my little girl, I would do this or that". The plea hearing judge even stated that, "nobody knows what they would do in that particular situation". See plea hearing transcript, (P.H.T.) page 39, lines 7-8. This is a situation that you don't know what you'd do unless it happens to you, and the Applicant wanted to present his case to a jury.

The Applicant's attorney had other plans, counsel convinced the Applicant that a guilty plea would be the best course of action to take in the instant case. Counsel assured the Applicant that the judge would be lenient in light of the circumstances surrounding this case. Although counsel never said it, the Applicant believed that he could receive a probationary sentence

because he was not aware of any mandatory minimum sentence requirement for a conviction for voluntary manslaughter.

The Applicant's thoughts of a chance at probation and being with his family was enhanced when the plea hearing judge stated that:

THE COURT: Do you understand that or at least I'm of the understanding that you're intending to enter a plea of Voluntary Manslaughter.

MR. Lindsay: Yes, sir.

THE COURT: Is there any recommendation in the case?

MR. CONNOR: None, Your Honor.

THE COURT: Is that correct, Mr. Howle?

MR. HOWLE: That's correct. Your Honor.

THE COURT: Is that your understanding, too, Mr. Lindsay?

MR. Lindsay: Yes, sir.

THE COURT: Now that carries a range of imprisonment for zero to 30 years. ~~Do you understand that?~~ (emphasis added).

MR. Lindsay: Yes, sir.

See plea hearing transcript, page 7, lines 7-18.

When the plea hearing judge stated that he could give the Applicant zero amount of incarceration time, this firmly induced the Applicant to believe that he was making the right decision, because he based his decision to plead guilty on what the judge and his attorney told him the law was as related to voluntary manslaughter. The Applicant relied on their version of the law in deciding to plead guilty.

The Applicant has learned since being incarcerated within the Department of Corrections that he had no chance at walking

out of the Courthouse and going home with his family after sentencing. The Applicant learned that the plea hearing judge was required by law to sentence the Applicant to a "minimum of two-years" of incarceration, and not more than thirty (30) years. In South Carolina Criminal Law Manual 2003, S.C. Code Ann. §16-3-50, reads as follows:

Manslaughter: A person convicted of manslaughter, or the unlawful killing of another without malice, expressed or implied, must be imprisoned not more than thirty years or less than "two" years. (emphasis added).

The Due Process Clause requires guilty pleas be entered into voluntarily, knowingly, and intelligently. Boykin v. Alabama, 395 U.S. 242 (1969). Before a court can accept a guilty plea, a defendant must be advised of the constitutional rights he or she is waiving. In addition to the requirements of Boykin, a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived. State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980)(emphasis added); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In State v. Armstrong, 263 S.C. 549, 211 S.E.2d 889 (1975), the South Carolina Supreme Court held that, before a guilty plea may be accepted, the court must be certain the defendant understands the charges and the consequences of the plea.

Here, the Applicant did not know the consequences of pleading guilty to voluntary manslaughter meant certain jail time, otherwise, he would not have pleaded guilty and would have insisted on going to trial.

After the plea hearing judge stated that the Applicant faced zero to thirty years, counsel did nothing to correct this statement, it seemed to have been a conspiracy between the judge and counsel to hoodwink the Applicant into pleading guilty without the Applicant or his family knowing that he was on his way to prison for a minimum of two years.

For the foregoing reasons the Applicant ask this Court to find Attorney Howle ineffective, vacate his guilty plea and remand this case for a new trial because, if not for counsel's deficient performance in the guilty plea process, the Applicant would not have pleaded guilty and would have insisted on going to trial. See Hill v. Lockhart, 474 U.S. 52 (1985); Kerrigan v. State, 406 S.E.2d 160 (1991).

Answer to 10(b) & 11(b) of the application

COUNSEL WAS INEFFECTIVE DURING APPLICANT'S GUILTY PLEA PROCEEDINGS WHEN HE FAILED TO ADVISE THE APPLICANT THAT HAD HE PROCEEDED TO TRIAL IN THIS MATTER, HE COULD HAVE REQUESTED A CHARGE ON "INVOLUNTARY MANSLAUGHTER", WHICH RENDERED THE PLEA OF GUILTY IN THIS CASE NOT KNOWINGLY AND VOLUNTARILY MADE.

§ 16-3-60 (2003), states that: With regards to involuntary manslaughter, criminal negligence is defined as the reckless disregard of the safety of others. A person charged with the crime of involuntary manslaughter may be convicted only upon a showing of criminal negligence as defined in this section. A person convicted of involuntary manslaughter must be imprisoned not more than five years.

In the instant case, the circumstances surrounding this case could have resulted in a conviction for "involuntary manslaughter". There is evidence that the Applicant acted recklessly with disregard for the safety of others. The Solicitor stated at the guilty plea hearing that the Applicant had a gun and "physically wrestled with three women who was trying to get it away from him. See plea hearing transcript, page 18, lines 1-6. The Applicant was in a rage because of the allegations concerning his little girl. Evidence would have been presented during a trial which would have required the trial judge to instruct the jury on the lesser included offense of involuntary manslaughter. The law to be charged is to be determined from evidence presented at trial. See State v. Lee, 298 S.C. 362, 380 S.E.2d 835 (1989).

A similar situation occurred in Kerrigan v. State, 406

S.E.2d 160 (1991), trial counsel failed to inform the accused that if he went to trial he could request a charge on a lesser offense (temporary use of an automobile) on a charge of grand larceny of a motor vehicle. This resulted in the guilty plea was not knowing and intelligent.

The Applicant may have been able to convince a jury that he was only guilty of involuntary manslaughter. The prejudicial effects of counsel's actions/inactions is underscored when it is shown that it is likely that the Applicant could have received a maximum of a five (5) year sentence for involuntary manslaughter as opposed to being exposed to a possibility of receiving a thirty (30) year sentence for voluntary manslaughter.

Counsel even believed that the Applicant acted in a manner that did not deserve a lengthy prison sentence, this was shown when counsel filed a "Motion for Reconsideration" asking the Court to reconsider the eighteen (18) year prison sentence imposed on the Applicant. See Exhibit - A, attached.

The Applicant really did not want to kill the victim in this case, this was shown by only one of the nine bullets being fatal, the Applicant was in an uncontrollable rage and only wanted to defend his daughter.

Had the Applicant known that he could have requested, in a trial, a charge on involuntary manslaughter, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, supra; Kerrigan v. State, supra.

CONCLUSION

Because counsel denied the Applicant his Sixth Amendment right to the effective assistance of counsel during his guilty plea proceedings, the Applicant ask that this Court convene an evidentiary hearing in this matter. See Sharper v. State, 279 S.C. 264, 304 S.E.2d 247 (1983).

The Applicant request this Honorable Court appoint counsel to represent him in this matter. See Rule 71.1 (d) of the South Carolina Rules of Civil Procedure.

Date: 03/31/2010

Respectfully submitted,

George R. Lindsey, Jr., #317562

George Lindsey
McCI F-3 A-side
386 Redemption Way
McCormick, SC 29899
Applicant

STATE OF SOUTH CAROLINA RECORDED COURT OF COMMON PLEAS
 COUNTY OF SUMTER 2010 SEP -9 AM 10:48 THIRD JUDICIAL CIRCUIT

George R. Lindsey, 317562 JAMES H. HUBBELL
 Applicant CLERK OF COURT Case No. 2010-CP-43-109
 SUMTER COUNTY, S.C.

vs

NOTICE TO WITHDRAW ISSUES IN
 ORIGINAL POST CONVICTION
 APPLICATION

State of South Carolina

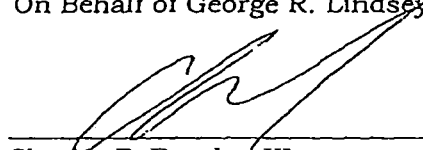
Respondent

Please take notice that the above named, George R. Lindsey, by and through his
 Attorney Charles T. Brooks, III, wishes to file the attached:

**NOTICE TO WITHDRAW ISSUES IN THE ORIGINAL
 POST CONVICTION RELIEF APPLICATION**

Respectfully Submitted

On Behalf of George R. Lindsey


 Charles T. Brooks, III
 Law Office of Charles T. Brooks, III
 309 Broad Street
 Post Office Box 3512
 Sumter, South Carolina 29151
 (803) 418-5708

Sumter, SC
 September 3, 2010

State of South Carolina **RECORDED** In The Court of Common Pleas
 County of Sumter 2010 SEP -9 AM 10:49

George R. Lindsey #317562)
 Applicant,) CLERK OF COURT
 SUMTER COUNTY, S.C.)

v.)

State of South Carolina)
 Respondent.)

Notice to Withdraw Issues in the
 Original Post-Conviction Application

To Respondent:

Now comes the Applicant's move before this Honorable Court on the following matters:

Through the applicant's undersigned attorney Charles T. Brooks request and Notice to Withdraw Issues in the original Post-Conviction Application.

Those issues which were submitted into the memorandum of law which are frivolous issues.

s/ George R. Lindsey 317562
 George R. Lindsey #317562
 386 Redemption Way F3-A
 McCormick, S.C. 29899

Aug. 31 2010.

STATE OF SOUTH CAROLINA **RECORDED** COURT OF COMMON PLEAS
 COUNTY OF SUMTER 2010 SEP -9 AM 10:30 THIRD JUDICIAL CIRCUIT

George R. Lindsey

Applicant

JAMES C. BROWN III
 CLERK OF COURT
 SUMTER COUNTY, S.C.

Case No. 2010-CP-43-109

vs

NOTICE AMENDED AND SUPPLEMENTAL
 PLEADINGS Rule 15(A)

State of South Carolina

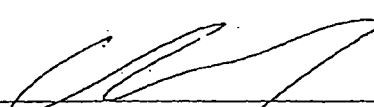
Respondent

Please take notice that the above named, George R. Lindsey, 317562, by and through his attorney, Charles T. Brooks, III, wishes to file the attached:

NOTICE AMENDED AND SUPPLEMENTAL PLEADINGS RULE 15(A)

Respectfully Submitted

On Behalf of George R. Lindsey


 Charles T. Brooks, III
 Law Office of Charles T. Brooks, III
 309 Broad Street
 Post Office Box 3512
 Sumter, South Carolina 29151
 (803) 418-5708

Sumter, SC
 September 3, 2010

State of South Carolina)
County of Sumter)

RECORDED
2010 SEP -9 AM 10:50

George R. Lindsey #317562)
Applicant,)

JAMES C. ... B.C.R. #2010-CP-43-109
CLERK OF COURT
SUMTER COUNTY, S.C.

v.)

Notice Amended and Supplemental
Pleadings Rule 15(A)

State of South Carolina)
Respondent.)

To Respondent:

Now comes the applicant in the above captioned case, acting by and through undersigned Counsel, respectfully moving to contain, amend his application for Post-Conviction Relief to contain the following specific allegations of ineffective assistance of counsel:

Statement of the Facts

In the applicant's case, he pulled into his yard from work to be confronted by his wife telling him they needed to go to her mother's house. His daughter then told him that her uncle "Smallwood" put his thing in her mouth. Upon arriving to his mother-in-law's house, his mother-in-law repeatedly told him that Smallwood had put his private part into his daughter's mouth and she had a nasty taste in her mouth. Immediately he saw Smallwood and could only visualize this 200 lb plus pound man standing over his 6 year old daughter making her perform oral sex on him. At this point the applicant lost control and shot Smallwood.

Argument (1)

Counsel was ineffective for failing to communicate plea bargain for 7 to 10 years cap with defendant.

In the applicant's case counsel's failure to communicate the plea bargain for 7 to 10 years plea bargain that was not brought to the defendant's attention before the applicant plead guilty to an open plea of 18 years.

In fact, South Carolina prisoners have been successful on such appeals in their post-conviction case. see, e.g. *Davie v. State*, Opinion No. 26608, ____ S.C. ____, ____ S.E. 2d ____, 2009 S.C. Lexis ____, 2009 WL ____ (S.C. March 9, 2009) (Ineffectiveness from failure to communicate proposed plea deal: "Based on the foregoing, we find that counsel was deficient in failing to communicate the State's fifteen year plea offer to Petitioner. Given that both Petitioner and plea counsel testified Petitioner would have accepted the fifteen year offer, an offer that was twelve years less than what Petitioner received, we conclude Petitioner has proven that he was prejudiced by counsel's deficient performance.

Under *Strickland v. Washington*, 466 U.S. 668, 104, S.Ct. 2052, 80 L Ed 2d 674(1984) (Applicable to guilty pleas under *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 88 both deficient performance and prejudice to prevail on an ineffective assistance of counsel claim.

Argument(2)

Trial counsel was ineffective assistance of counsel for failing to request for a mental examination to see was defendant insane at the time of the shooting and was the applicant incompetent to enter a guilty plea.

The applicant was insane at the time of the shooting of the murder in 2008 and was mentally incompetent at the time of the guilty plea in the year of 2009. And was allowed to plea guilty in violation of the South Carolina Constitution and the Federal Constitution's 14th amendment due process clause.

Incorporated into the allegation is that applicant was denied effective assistance of counsel and due process of law at his 2009 guilty plea for murder.

In the applicant's case, he pulled into his yard from work to be confronted by his wife telling him they needed to go to her mother's house. His daughter then told him that her uncle "Smallwood" put his thing in her mouth. Upon arriving to his mother-in-law's house, his mother-in-law repeatedly told him that Smallwood had put his private part into his daughter's mouth and she had a nasty taste in her mouth. Immediately he saw Smallwood and could only visualize the 200 lb plus pound man standing over his 6 years old daughter making her perform oral sex on him. At this point the applicant lost control and shot Smallwood.

Due process footnote 4 prohibits the conviction of a person who is mentally incompetent. Bishop v. United States, 350 U.S. 981, 76 S.Ct. 440, 100 L Ed 835(1956), "This constitutional right can not be waived by the incompetent by guilty plea or other wise... Carroll v. Beto 421 F2d 1065, 1067(5th Cir. 1970).

While a guilty plea may be attacked on the basis that it was not knowing and voluntary. [I]t is contradictory to argue that and a defendant may be incompetent, 'Waive' his right[s]... Pate v. Robinson, 383 U.S. 375, 384, 86 S.Ct 836, 841 is LE 2d 815 1966).

Pate v. Robinson 383 U.S. 375 86 S.Ct. 836 15 L.E. 2d 815(1996). Makes it clear that conviction of an accused person who is not mentally competent to stand trial violates due process this constitution a right can not be waived be the incompetent by guilty plea or otherwise and this it must be protected by adequate State procedures.

XXX when a prisoner, either State or Federal, seeking post-conviction relief, asserts with substantial fact to back up his allegation, that at the time of the guilty plea he was not mentally competent to stand trial, and that there was no resolution of that precise issue before he was tried, convicted

and sentenced, the protection of the constitution requires that such conviction and sentence be set aside unless adequate hearing it is shown that he was mentally competent to stand trial," (386 F2d at 105). See Adams v. Wainwright 764 F2d 1386 as a matter of procedural due process criminal defendant is entitled to an evidentiary hearing on a claim of mental incompetency if he presents clear and convincing evidence to create a real, substantial and legitimate doubt as to his mental capacity to meaningfully participate and cooperate with counsel.

Petitioner's claims of incompetency to stand trial, insanity at time of act, and an unknowing and involuntary guilty plea were not barred by the procedural default rule of Wainwright v. Sikes. cites at Horace v. Wainwright 781 F2d 1558 111 Cir. 1986).

The petitioner argues his counsel was ineffective for failing to request a mental examination which may have formed the basis of an insanity defense or a determination that he was not competent to stand trial. cite a Jeter v. State cite as 417 S.E. 2d 594 (S.C. 1992)

Under Strickland v. Washington, 466 U.S. 668 104, S.Ct. 2052, 80 L.E. 2d 674(1984)(Applicable to guilty plea under Hill v. Lochart, 474 U.S. 52 106 S.Ct. 366, 88 both deficient performance and prejudice to prevail on an ineffective assistance of counsel claim.

Argument (3)

Ineffective Assistance of Counsel.

Counsel was ineffective when he failed to file the notice for a direct appeal.

After plea hearing, applicant informed counsel that he wished to file an appeal. Whereas counsel informed applicant's family he could not file an appeal.

A criminal defendant has a constitutional right to be fully aware of the steps necessary to perfect an appeal. Moreover, in the defendant to pursue an appeal in his behalf a belated appeal should be granted, in which the statute of limitation does not apply. Garner v. State 636 S.E.2d 860(2006).

The fourth circuit of appeals was held that an attorney was a duty in all cases to advise of the right to appeal after a guilty plea. It has also recognized that extraordinary circumstances might establish that the omission of advice actually denied a defendant due process of law. Carzy v. Leyerette 605 F2d 745(4th Circuit 1979).

Furthermore, the United States Supreme Court provides better practice is for counsel routinely to consult with defendant regarding the possibility of appeal.

Counsel was ineffective for not investigating key witnesses, (wife, mother-in-law, daughter, sister-in-law), and had he investigated key witnesses it would have shown his mental state at the time and he would have went to trial.

Trial Counsel was ineffective for failing to prepare and to conduct a proper pre-trial Investigation.

The Petitioner submits that he received ineffective assistance of counsel prior to and during his trial. The sixth amendment to the United States Constitution guarantees that every criminal defendant is entitled to the effective assistance of counsel in presenting their defense. See also, S.C. Const. Art. 1 Section 14. The Supreme Court has stated, "Right to Counsel is a fundamental right of criminal defendants; it assures the fairness, and thus the Legitimacy of our adversary process". Kimmelman v. Morrison, 477 U.S. 365(1986). Furthermore, the Supreme Court has recognized that "The Right to counsel is the right to effective assistance of counsel." McMann v. Richardson, 397 U.S. 759, 771(1970).

To see whether counsel has fallen below the minimum standard needed for effective assistance of counsel under the sixth amendment to the constitution, a two prong test must be met. In Strickland v. Washington, 466 U.S. 668, 688-694(1984). The Supreme Court held that a determination of ineffective assistance of counsel would be conditioned on two factors:

- (1. Counsel's performance must have fallen below an objective standard of reasonableness; and
- (2. There must be a reasonable probability that but for counsel's errors, the results of the proceedings would probably have been different.

South Carolina has adopted the Strickland standard. See, e.g. Cherry v. State, 386 S.E. 2d 624(1989). The right to effective assistance of counsel may be violated by even an isolated error of counsel if the error is sufficiently egregious and prejudicial. Murray v. Carrier, 477 U.S. 478(1986). "It is the client's right to expect that his lawyer will use every skill, expend every energy, and tap every legitimate resource in the exercise of independent professional judgement on behalf of the client and in undertaking representation of the client's interests". Frazer v. United States, 18 F3d 778, 785(9th Cir. 1994). "Defense counsel must do his utmost to bring his legal acumen to bear on behalf of the defendant; keep the defendant fully informed of developments in the case and consult with the defendant on all major decisions to be made; conduct a reasonable pre-trial investigation, which should include contacting potential witnesses; prepare adequately and professionally for; trials conduct the trial to the best of his ability; and, at the bottom, serve as a vigorous and devoted advocate of the defendant's cause".

United States Ex Rel. Partee v. Lane, 926 F.2d 694, 702(7th Cir. 1991).

- (A) Counsel was ineffective for failing to conduct an adequate pretrial investigation.

As the Supreme Court also recognized in Strickland, "Counsel bears a duty to make a 'Reasonable' investigation of the law and facts in his client's case." Strickland, 466 U.S. at 691. Additionally, The A.B.A. Standards relating to the administration of criminal justice provide:

It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case

and the penalty in the event of conviction.

The investigation should always include efforts to secure information in the possession of the prosecution and law enforcement authorities.

The duty to investigate exists regardless of the accused's admissions or statements to the lawyer of facts constituting guilt or the accused's stated desire to plead guilty.

A defendant's right to effective assistance of counsel confers a duty on counsel to conduct an adequate pre-trial investigation. When a lawyer fails to conduct a substantial investigation into any of his clients' plausible lines of defense, the lawyer has failed to render effective assistance of counsel. Cobbs v. State, 408 S.E. 2d 223(1991). Pre-trial preparation, principally because it provides a basis upon which most of the defense's case must rest, is, perhaps, the most critical stage of a lawyer's preparation. Id. failure to investigate evidence that would be helpful to the defense is also an indication of ineffective assistance of counsel. Id.

Conclusion

Wherefore the Applicant's 6th amendment and 14th amendment has been violated and Due process of law ineffective assistance of counsel under standard Strickland v. Washington, and the applicant's sentence should be vacated.

s/ George R. Lindsey 317562
George R. Lindsey #317562

386 Redemption Way

McCormick, S.C. 29899

Date Aug. 31 2010.

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

2010-CP-43-0709

George R. Lindsey, Jr., #317562,
Applicant,

v.

State of South Carolina,
Respondent.

RETURN
(Appointment of Counsel Requested)

The Respondent, making its Return to the application for post conviction relief (PCR) filed April 5, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted for (1) Murder and (2) Possession of a Firearm or Knife During Commission of a Crime of Violence (2009-GS-43-0108). Applicant was represented by Jack Howle, Esquire. On June 4, 2009, the Applicant pled guilty before the Honorable George C. James, Jr. to the lesser offense of Voluntary Manslaughter. On June 8, 2009, Applicant was sentenced to eighteen (18) years incarceration. Applicant did not appeal his conviction and sentence.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. "...failing to inform the Applicant that he faced a mandatory minimum sentence by pleading guilty to voluntary manslaughter."
 - b. "...failed to advise the Applicant that had he proceeded to trial in this matter, he could have requested a charge on 'involuntary manslaughter,' which rendered the plea of guilty in this case not knowingly and voluntarily made."

On September 9, 2010, Applicant filed a "Notice to Withdraw Issues in Original Post Conviction Application" and a "Notice of Amended and Supplemental Pleadings Rule 15(a)." In his amended pleading, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. "...failing to communicate plea bargain for 7 to 10 years cap with defendant."
 - b. "...failing to request for a mental examination to see was defendant insane at the time of the shooting and was applicant incompetent to enter a guilty plea."
 - c. "...failed to file the notice for a direct appeal."
 - d. "...not investigating key witnesses, (wife, mother-in-law, daughter, sister-in-law), and had he investigated key witnesses it would have shown his mental state at the time and he would have went to trial."
 - e. "...failing to prepare and to conduct a proper pre-trial investigation."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

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, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

January 13, 2011.

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS

2010-CP-43-0709

GEORGE R. LINDSEY, JR., 317562)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

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:

Charles T. Brooks, III, Esquire
Law Office of Charles T. Brooks, III
309 Broad Street
Sumter SC 29150

DATED this 13th day of January, 2011.

Lauren Meara

Lauren Meara, Legal Assistant
For Respondent

RECORDED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER 2011 FEB 28 PM 12:23 1709

Case No.: 2010-CP-43-109

George Lindsey, 317562 JAMES O. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Petitioner,)

vs.)

NOTICE FOR MOTION

MENTAL EXAMINATION

State of South Carolina)

Respondent)

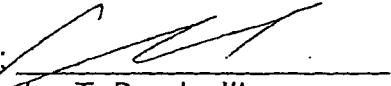
The Applicant moves before the honorable court on the following matter in support of Post Conviction Relief:

Applicant, George Lindsey is in the custody of the South Carolina Department of Corrections at McCormick Correctional Institution at 386 Redemption Way, McCormick, South Carolina serving a eighteen (18) year sentence for manslaughter, which the applicant pled guilty before the Honorable George James, Jr.

Applicant is in need of Counsel to Motion this Court for a mental examination to support his defense of insanity that at the time of the shooting the defendant was insane and incompetent to stand trial. Trial recorder and incident report will support defense of insanity and counsel moves before this court a request for a mental examination and request if a mental examination has not been done by April, 2011, the applicant would request a continuance in this matter.

RESPECTFULLY SUBMITTED

On behalf of George Lindsey

BY: 

Charles T. Brooks III
Attorney for the Petitioner
309 Broad Street
Post Office Box 3512
Sumter, South Carolina 29151
(803) 418-5708

February 3, 2011

Sumter, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	
	)	CASE NO.: 2010-CP-43-109
George Lindsey, 317562	)	
Applicant	)	
vs	)	ORDER FOR FUNDING
	)	
State of South Carolina	)	
	)	
Defendant	)	
	)	

This matter comes before me on a Motion from the Applicant, by and through his undersigned attorney, requesting that the services of an expert in the filed of psychiatry and related services. The Applicant further requests that the funds be approved to compensate the expert at an estimated rate of Fifty (\$50.00) dollars per hour out of funds available to the Office of Indigent Defense (OID) to be applied toward payment of such expenses as may be necessarily incurred.

Mr. Brooks seeks approval to contract for experts in psychiatry, which he believes is necessary to the preparation of this case.

As grounds for this motion, the Applicant submits the following, which he believes to be based upon information and belief:

1. That Charles T. Brooks, III, was properly appointed by this Court on May 11, 2010.
2. That the Applicant pled guilty to Voluntary Manslaughter.
3. This is a serious crime. However, applicant feels that he is in need of funds to secure an expert for a Competency Evaluation prior to his PCR Hearing.

IT IS SO ORDERED:

That this Court authorizes the payment of approximately Fifty (\$50.00) dollars per hour for the Applicant to contract an expert in psychiatry.

W. Jeffrey Young
Chief Administrative Judge
Third Judicial Circuit

Date: _____

Motion Denied

W. Jeffrey Young
Judge

State of South Carolina
County of Sumter

In The Court of Common Pleas

George Lindsey, #317562
Petitioner,

Case No. # 2010-CP-43-709

vs

NOTICE AND MOTION

Attorney Charles T. Brooks, III
and The State

FOR

60(b) MOTION

Respondents.

NOW COMES the above named Petitioner pro-se and or by his NEW appointed counsel who moves this Hon. Court in the above entitled matter per. S.C.R.C.P. Rule 60(b)(3) FRAUD, to relieve Petitioner from and or set aside the judgment of Judge Young's ruling in the above entitled case, denying funding of mental examination.

[Here, Attorney Charles T. Brooks was appointed to Petitioner's P.C.R. case.]

Counsel Charles T. Brooks III, clearly undermined my "Due Process" when his motion "did not" address my real legal issues. Although Mr. Brooks had asked and I had informed counsel many times as to why I needed this Mental Exam/Funding. My reasons being #1. No Attorney should be able to determine if I was confident/sane at the time of my crime without having had a Mental Examination due to the nature of the incident and traumatic impact my daughter's statements and emotional outpouring concerning her molestation had on me. #2. My plea Attorney, Mr. Howle took upon himself to determine my mental state without having the examination done. #3. No Attorney or Doctor can determine amongst themselves my mental state without the Doctor evaluating me herself first. #4. I ask that the examination be that of the Full McNaghten Examination. After seeing that Mr. Brooks "had not" put my facts before the court but his own, which were: #1. That Charles T. Brooks, III, was properly appointed by this Court on May 11, 2010. #2. That the Applicant pled guilty to

SC Attorney General
RECEIVED

SEP 19 2011

Referred to

M. Wms.

Answered

Voluntary Manslaughter. #3. This is a serious crime, however Applicant feels that he is in need of funds to secure an expert for a Competency Evaluation prior to his P.C.R. Hearing.

As you see, Mr. Brooks clearly undermines and fraudulently submits issues that are not of mine, nor do they have anything at all to do with reasons for an evaluation. At ~~this~~^{that} point, I respectfully asked Mr. Brooks to re-submit his proposed order/motion but Mr. Brooks did nothing. Counsel Brooks knew that my motion/request for funding/costs upon the Mental Examination was very, very important because my trial counsel submitted a motion to reconsider my case on the mental issue.

The Petitioner asserts that counsel Brooks' actions as an officer of the court, subverts any chance Petitioner had of having this claim of ineffective assistance of counsel and his guilty plea being proven not voluntarily and intelligently entered.

Which can only be reviewed as knowingly willful and deliberate intent; Counsel Brooks defrauded the Court and Petitioner's only defense. Which did indeed harm Petitioner per. Judge Young's ruling, and the integrity of the judicial process by denying Petitioner of due process in this action SEE: The Bill of Rights to the Fed. Constitution, as guaranteed by the 14th Amendments to the U.S. and Article I Sec. 3 and See 14 of the S.C. Const. Thus, due to counsel Brooks extrinsic fraud, Judge Young's ruling denying Mental Evaluation/Funding and Cost must be set aside.

WHEREFORE: based on the foregoing argument, Petitioner is entitled to be relieved from and set aside Judge Young's ruling denying Mental Evaluation/Funding and Cost.

Respectfully submitted,

s/ Deey Limby #317562

Date: Sept. 15, 2011

State of South Carolina
County of Sumter

In The Court of Common Pleas

George Lindsey, #317562
Petitioner,

Case No. # 2010-CP-43-709

vs

SUMMONS

Attorney Charles T. Brooks, III
et. al.
Respondents.

TO: THE NAMED RESPONDENT

YOU ARE HEREBY SUMMONED and required to answer the 60(b) motion herein, a copy of which is herewith served upon you, and you are to serve a copy of your answer to this 60(b) motion upon the subscriber at the address shown below and the Clerk of Court within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer, judgment by default will be rendered against you for the relief demanded in the 60(b) motion.

s/ George Lindsey #317562

McCormick Corr. Inst. Unit F-3

386 Redemption Way

McCormick, S.C. 29899

McCormick, S.C.

Date Sept. 15, 2011

CERTIFICATE OF SERVICE

I, George Lindsey, do hereby certify that on this 15 day of Sept 2011, I served the foregoing 60(b) motion upon the below persons. By depositing the above said in McCormick Corr. Inst. mail room with postage prepaid to be placed in the U.S. mail.

s/ George Lindsey #317562

James C. Campbell
Clerk of Court
Courthouse, Room 308
Sumter, South Carolina 29150

Charles T. Brooks, III, Esquire
Law Office of Charles T. Brooks, III
309 Broad Street
Sumter, S.C. 29150

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

Sworn to and subscribed before
me this 15th of Sept. 2011

Penny G. Marton

Notary Public of S.C.
My Commission Expires Feb 28, 2018

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Court of Common Pleas
2010-CP-43-00709

George R. Lindsay

-vs-

State of South Carolina

:
:
: Transcript of Record
:
:

Monday, October 24, 2011
Sumter, South Carolina

B E F O R E:

The Honorable R. Ferrell Cothran, Jr., Judge.

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

Charles T. Brooks, III, Esquire
Attorney for the Applicant

Robert D. Corney, Assistant Attorney General
Attorney for the State

Dianne A. Rutledge
Circuit Court Reporter

I N D E X

1				
2	WITNESS	DIRECT	CROSS	REDIRECT RECROSS
3	George R. Lindsay			
4	Mr. Brooks	20		
5	Mr. Corney		31	
6	Jack D. Howle, Jr.			
7	Mr. Brooks	45		55
8	Mr. Corney		54	
9	Certificate of Court Reporter			58
10				
11				
12				
13				
14				
15				
16				
17				
18				
19	(No exhibits were introduced during the hearing.)			
20				
21				
22				
23				
24				
25				

1 MR. CORNEY: May it please The Court, Your Honor.

2 THE COURT: Yes, sir.

3 MR. CORNEY: This is George Lindsay, docket no. 2010-CP-
4 43-0709. Mr. Lindsay was indicted in January of 2009 in the
5 Sumter County grand jury for murder and possession of a
6 firearm or knife during the commission of a violent crime.

7 He pled guilty June 4, 2009 before Judge James to the
8 lesser-included of voluntary manslaughter and was sentenced
9 to 18 years. And the possession charge was nol prossed
10 pursuant to that plea.

11 He filed a timely P.C.R. application April 5, 2010 and
12 amended September 9, 2010. And he's represented by Mr.
13 Brooks here today.

14 THE COURT: Okay. Yes, sir.

15 MR. BROOKS: May it please The Court, Judge. My client
16 had several motions that need to be addressed first.

17 One was in this particular guilty plea my client had
18 requested motions to be given funding to pay for an
19 evaluation. Judge Young had actually denied it as the chief
20 administrative judge one time.

21 After that first time, my client then sent in a pro se
22 motion to have me relieved as counsel, which has never been
23 taken up.

24 In addition to that, I went back to submit a motion
25 again for funding to have somebody paid to do an evaluation

1 -- mental evaluation.

2 And Judge Young sent that back. I got it in my box last
3 week denying it again.

4 I wanted to raise those issues before Your Honor before
5 we begin. One is, obviously, a motion for funding. But I
6 think maybe the first motion may be a motion to have the
7 evaluation. Obviously, dependent on what you do with those
8 motions, obviously may necessitate this matter being
9 continued.

10 THE COURT: Well ---

11 MR. BROOKS: And my client ---

12 THE COURT: --- how is that a P.C.R. issue and how can
13 I override Judge Young?

14 MR. BROOKS: I just wanted to present it to you, Judge.
15 And my client had asked me to address The Court.

16 THE COURT: All right.

17 MR. LINDSAY: Your Honor, what I have here is my -- this
18 is my motion to dismiss, Your Honor, Counsel Brooks, recorded
19 with the clerk of court April 26, 2011. This motion -- it
20 basically stated that Mr. Brooks submitted a proposed order
21 slash motion for funding regarding -- and I have a conflict
22 too.

23 Like I said, it basically state Mr. Brooks submitted in
24 the proposed order slash motion for funding regarding a
25 competency evaluation from Judge George C. James, Jr., to

1 sign March 22, 2011. Here, counsel order slash motion did
2 not address my real legal issues and the rights as to why I
3 need this evaluation prior to my guilty plea. As a matter of
4 fact, Mr. Brooks' order slash motion undermined my only real
5 claim upon my mental competency. Mr. Brooks order slash
6 motion only touched on during my plea, not before.

7 Which the Honorable Judge W. Jeffrey Young denied
8 counsel's motion undated.

9 Mr. Brooks informed me of this matter by letter which
10 was dated March 11, 2011, which I received March 14, 2011.

11 Mr. Brooks had requested and I had informed him many
12 times as to why I needed this evaluation slash funding. My
13 number one reason was no attorney should be able to determine
14 if I was confident (sic) slash sane at the time of my crime
15 without having had a mental examination due to the nature of
16 the incident and traumatic impact my daughter's statement and
17 emotional outpouring her molestation had on me.

18 Number two. My attorney Mr. Howle took upon himself to
19 determine my mental state without having my examination done.

20 Number three. No attorney and or doctor can determine
21 amongst themselves my mental state without examining me
22 first.

23 And number four. I ask that the examination be that of
24 a full McNaughten examination.

25 Mr. Brooks did not put my facts before The Court, Your

1 Honor. Although, counsel did send my pro se motion I sent
2 him to the court for reviewing knowing that I'm not entitled
3 to represent -- I'm not entitled to be represented by counsel
4 and submit anything pro se, which I had copied that motion
5 from an another inmate anyway.

6 On April 6, 2011 I respectfully asked Mr. Brooks to
7 resubmit his proposed order upon the grounds I requested as
8 stated before the judge sign his order slash motion, but Mr.
9 Brooks did nothing.

10 Therefore, I move for Counsel Brooks to be dismissed
11 from my P.C.R. because he has pre-judged (sic) my case and
12 our conflict of interest cannot be repaired -- be repaired.

13 Your Honor, also I amended the P.C.R. This is my
14 amended P.C.R. and has been sent to the court June 3, 2011.
15 It basically states here I am not claiming ineffective
16 assistance of P.C.R. counsel, Charles T. Brooks, III, because
17 one does not have the right to counsel in a P.C.R. matter.
18 Although, I have a constitutional right to due process in a
19 P.C.R. matter.

20 Counsel Brooks clearly violated when he submitted a
21 proposed order motion for funding regarding a competency
22 evaluation for me, which Judge W. Jeffrey Young denied.

23 Counsel Brooks' motion undermined my due process because
24 his motion did not address my real legal issues prior to my
25 guilty plea. Brooks' motion only touched on my guilty plea,

1 not before.

2 Although Mr. Brooks had asked and I informed counsel
3 many times as to why I needed this evaluation.

4 Also, Your Honor, I have a 60 (B) motion.

5 (Pause.)

6 MR. LINDSAY: My 60 (B) motion, Your Honor, against Mr.
7 Brooks about the same issues. It was served to Mr. Brooks
8 and Attorney General's Office and the clerk of court. I had
9 -- it has a certificate of service and everything. So I'm
10 pretty sure everybody did get it.

11 Here it just states, Counsel Charles T. Brooks, III,
12 clearly undermined my due process when his motion did not
13 address my real legal issues. Although Mr. Brooks had asked
14 and I had informed counsel many times as to why I needed this
15 mental evaluation. My reason being, as I stated before, no
16 attorney should be able to determine if I was confident (sic)
17 slash sane at the time of my crime without having had a
18 mental examination due to the nature of the incident and
19 traumatic impact my daughter's statement and emotional
20 outpouring concerning her molestation had on me.

21 Number two. My plea attorney, Mr. Howle, took upon
22 himself to determine my mental state without having had
23 examination done.

24 Number three. No attorney or doctor can determine
25 amongst themselves my mental state without a doctor

1 examining (phonetic) me hisself -- I mean, examining me
2 herself first.

3 Number four. I ask that the examination be that of the
4 full McNaughten examination.

5 After seeing that Mr. Brooks had not put my facts before
6 the court but his own, which were -- his number one reason
7 that Charles T. Brooks, III, was properly appointed to --
8 number one, excuse me, that Charles T. Brooks, III, was
9 properly appointed by the courts on March 11, 2010.

10 Number two. That the appointed -- I mean, I'm sorry.
11 Number two. That the applicant pled guilty to voluntary
12 manslaughter.

13 Number three. This is a serious crime, however
14 applicant feels that he is in need of funds to secure an
15 expert for a competency evaluation prior to his P.C.R.
16 hearing.

17 As you can see, Your Honor, Mr. Brooks clearly
18 undermines and fraudulently submits issues that are not mine,
19 nor do they have anything to do at all with the reason why I
20 need this evaluation. At that point, I respectfully ask Mr.
21 Brooks to re-submit his proposed order slash motion. But Mr.
22 Brooks did nothing. Counsel Brooks knew that my motion slash
23 request for funding slash costs upon the mental examination
24 was very, very important because my trial counsel submitted
25 a motion to reconsider my case on the mental issue.

1 The petitioner asserts that Counsel Brooks' actions as
2 an officer of the court subverts any chance petitioner had of
3 having these claims of ineffective assistance of counsel and
4 his guilty plea being proven not voluntary or intelligently
5 entered, which can only be reviewed as knowingly, wilful, and
6 deliberate intent.

7 Counsel Brooks defrauded The Court and petitioner's only
8 defense which I indeed -- which did indeed harm petitioner
9 per Judge Young's ruling, and the integrity of the judicial
10 process by denying petitioner of due process in the action.

11 Wherefore, based on the foregoing argument, petitioner
12 is entitled to be relieved from and set aside Judge Young's
13 ruling denying mental evaluation slash funding.

14 THE COURT: Okay.

15 MR. LINDSAY: Your Honor, I also ---

16 THE COURT: You say in here that Attorney Brooks
17 undermined your due process because he did not address your
18 real legal issues. What real legal issues do you think he
19 needed to address on a funding issue?

20 MR. LINDSAY: Excuse me?

21 THE COURT: What real legal issues did he not address?

22 MR. LINDSAY: Your Honor, the issues Mr. Brooks
23 submitted were -- first, let me tell you my issues that I
24 asked him to submit. We correspond with each other, and I
25 told him that I wanted a evaluation. He asked why did I feel

1 I needed a evaluation. So I wrote him, I told him my
2 reasons were being that -- here as I stated, number one. No
3 attorney should be able to determine if I was confident (sic)
4 slash sane at the time of my crime due to my daughter's
5 statement.

6 Number two. Mr. Howle took upon hisself to determine my
7 mental state without having had the evaluation done.

8 And so forth, three and four.

9 Now, where me and Mr. Brooks have a problem was where he
10 submitted his own issues being, number one, that Charles --
11 as a matter of fact, I have the paper he submitted. I can
12 just read to Your Honor.

13 THE COURT: Well, wait a minute. Let me ask you
14 something. He -- do you have any history of mental illness?

15 MR. LINDSAY: Your Honor, yes, I have been in -- when I
16 was younger I had a problem.

17 THE COURT: And when your case went to court, did you
18 plead guilty or did you go to trial? You pled guilty, right,
19 to manslaughter?

20 MR. LINDSAY: Yes, sir, Your Honor. On that note we
21 were going to trial the whole time -- up until the day we got
22 -- we was supposed to be getting my evaluation and everything
23 and it was supposed to be on track for that, Your Honor.
24 When we get here, Mr. Howle, he basically stated that he had
25 talked to Dr. Lakin -- I think that was the name. And they

1 decided that my mental state wasn't going to play a factor.

2 And at that point I was like, well, I still want to go
3 to trial.

4 But he was -- he told me that he didn't think that it
5 would be in my best interest if he had -- I think Dr. Lakin
6 said that doctor -- well, he did say that Dr. Lakin was on
7 vacation during this time. And he stated that he didn't
8 think that it would be in my best interest if he called Dr.
9 Lakin to come off of vacation to come to trial saying
10 something that she would be any help, and she is not going to
11 help you. So ---

12 THE COURT: So let's go back to Mr. Brooks. What is
13 your complaint, that he didn't present some real issues to
14 Judge Young?

15 MR. LINDSAY: Yes, sir. Those are all -- those -- those
16 are my issues, Your Honor.

17 THE COURT: So your only complaint against ---

18 MR. LINDSAY: He -- when he -- I'm sorry.

19 THE COURT: Your only complaint against him was he
20 didn't present these issues to Judge Young when Judge Young
21 didn't issue an order granting you funding?

22 MR. LINDSAY: No, sir. I mean, I have more issues than
23 that. It's just that was my -- that was -- that was my case
24 based around that evaluation. I only wanted -- that's what
25 I had. And when I asked him to do it and gave him my reason,

1 I knew when he -- when he sent me my paper showing me what he
2 had submitted to the judge, I knew just like he knew the
3 judge was going to deny him. Him being my attorney has
4 nothing to do with me getting a evaluation; that's just
5 number one reason.

6 Number two reason. It's a serious crime. That has
7 nothing to do with me getting a evaluation. Any judge is
8 going to deny that. If I was the judge, I would have denied
9 it. Those -- those facts have nothing to do with my case,
10 Your Honor.

11 THE COURT: Okay. So what factors did have to do with
12 your case?

13 MR. LINDSAY: We needed that evaluation to go forth with
14 everything else.

15 THE COURT: I understand that. But you said we need
16 evaluation. But how is Judge Young supposed to know you
17 needed an evaluation? I mean, you didn't give him any
18 history of mental illness, any reason why you didn't. You
19 pled guilty. You told -- what judge did you plead in front
20 of?

21 MR. LINDSAY: James.

22 THE COURT: Okay. Did you tell Judge James you need the
23 mental evaluation?

24 MR. LINDSAY: No, Your Honor. But my -- my -- my lawyer
25 knew that. But for whatever reason he decided that he didn't

1 think I should get it.

2 MR. BROOKS: May I interject, Your Honor?

3 THE COURT: Yes.

4 MR. BROOKS: It's not that Judge Young said he can't
5 have the evaluation. It's that Judge Young was not going to
6 authorize the state. And I went to him for the second time
7 and he asked me for the transcript, which I gave him. And
8 that's when he said -- he didn't write it up in an order. He
9 just put down, denied. He didn't write it up in a formal
10 order. But he indicated to me in a verbal response, your man
11 can pay for whatever he wants to pay for. I'm not -- I don't
12 feel -- this is Judge Young talking -- I don't feel that the
13 state needs to pay for it.

14 And that's what I communicated back to my client, not
15 that he can't have it, but the judge is not going to
16 authorize the state to pay for it.

17 THE COURT: And I can't change Judge Young's order.

18 MR. LINDSAY: No. I understand that, Your Honor. In my
19 60 (B) where I also have -- I have another motion sent in for
20 Judge -- Judge Young's ruling to be -- because -- and the
21 reason I did that was because when I first started trying to
22 get Mr. Brooks off my case back in the early part of the
23 year, I wrote the court asking me telling me why they
24 couldn't do it. So I wrote the judge about it. And come to
25 find out that he was the one appointed him to me. So I felt

1 that after -- after they kept telling me that they couldn't
2 give me another appointed attorney, I felt like it was a
3 conflict of interest between the Judge and me because he was
4 the one who appointed Mr. Brooks to my case. And by me
5 already having to ask him to relieve Mr. Brooks from my case
6 and then come back ask him to change the ruling on that, I
7 thought it would just be best for him to take this up
8 completely out of the case.

9 THE COURT: Okay. So you don't want Mr. Brooks
10 representing you, you want to represent yourself?

11 MR. LINDSAY: I'm not a lawyer. Well, Your Honor, I
12 can't represent myself.

13 THE COURT: Well, I understand that. But you've been
14 provided a lawyer and you don't like him. And you're using
15 this lawyer because you don't -- you're going against the
16 lawyer that represented you in trial and/or plea. So, I
17 mean, you don't get to pick -- you don't get every lawyer in
18 the state until you find one you like. And you don't like
19 Mr. Brooks because the judge denied your motion.

20 MR. LINDSAY: Oh, no, sir. Your Honor, I don't have a
21 problem with Mr. Brooks. I'm pretty sure he'd tell you that
22 when I talked to him back there. It was just that I felt
23 like it was more than he should have done with my case prior
24 to this point.

25 THE COURT: Well, I understand that. But you're either

1 stuck with Mr. Brooks or you can represent yourself. I'm not
2 going to appoint another lawyer to represent you. So you can
3 have him on this P.C.R. or you can represent yourself. Which
4 one do you want to do?

5 MR. LINDSAY: Okay. Well, I'm not equipped to represent
6 to myself, so I would have to go with Mr. Brooks.

7 THE COURT: Okay.

8 MR. LINDSAY: But on that note, Your Honor, I still ask
9 for a continuance because we don't even have the witnesses
10 here that we would need.

11 THE COURT: What's the state's position on a
12 continuance?

13 MR. CORNEY: Your Honor, I'm ready to go forward today.
14 I would oppose it. I mean, we've got Mr. Howle here. Mr.
15 Howle can get up and testify as to his mental evaluation, why
16 he didn't proceed with that.

17 THE COURT: Okay. Yes, sir.

18 MR. BROOKS: Judge, I would ask for one minute. Even
19 though, Judge, I ask for a brief one minute recess to talk to
20 my client, particularly his family behind us -- because even
21 though the judge denied the funding, the family may have
22 resources to go out and hire a doctor to do this mental
23 evaluation. And if that be the case, then, obviously, we
24 would -- we would ---

25 THE COURT: I'll give you 5 minutes.

1 (Pause.)

2 MR. BROOKS: Okay.

3 THE COURT: Yes, sir.

4 MR. BROOKS: Judge, during that brief recess I was
5 explaining to the family the financial obligation of hiring
6 a doctor to doing an evaluation of George. And the family
7 understands. I gave them kind of a ballpark figure of what
8 they would be looking at financially based on my knowledge of
9 certain doctors. They said they were willing to commit to
10 that should the judge grant him a continuance to allow him
11 and allow the family to get a doctor to do an evaluation of
12 him.

13 And based on that, Judge, I would respectfully ask The
14 Court to do that. This is a 2010 case, so it's not very old.
15 Mr. Howle is the public defender here, so he's always going
16 to be around I would venture to guess.

17 So we don't feel it would very prejudicial to the state,
18 considering the next term of court is in March. I explained
19 to the family that we would need to -- resources would need
20 to be in place. I would contact the doctor immediately, get
21 the necessary fees that he would -- he or she would require
22 and relay that to the family. And then they would hopefully
23 have somebody in place retained by the end of the year, and
24 then that person could do a an evaluation in preparation for
25 coming up the next term of court.

1 THE COURT: What's the state's position?

2 MR. CORNEY: Your Honor, I would still object to it.
3 And if I may just very briefly just flush out some of the
4 facts here as to what all -- all I would like to bring The
5 Court's attention to.

6 We're not talking about a competency issue to stand
7 trial here. We're talking about a heat of passion, temporary
8 insanity-type situation for a crime that occurred three years
9 ago.

10 I think -- I won't testify for Mr. Howle. But I think
11 if we went forward with the P.C.R. and he presented his
12 testimony, it would be much different from what Mr. Lindsay
13 is saying. This was never looked in to and no doctor was
14 spoken to.

15 I don't think that is the case here, Your Honor. This
16 is thoroughly investigated, spoke with doctors. And there's
17 a reason there was no mental evaluation done here. And so I
18 think that that's important to know that this is an issue.

19 I understand he wants to have the evaluation done for
20 the prejudice prong under Strickler v. Washington. But I
21 don't think we're going to ever get to the prejudice prong
22 because there's no deficiency here. This is something that
23 Mr. Howle clearly investigated, spoke with doctors about and
24 determined based on the facts of the case that this is not a
25 strategy they could go over. It was not going to work. And

1 there was no competency issue at the time of this crime. So
2 I think that that's important for The Court to know.

3 But I do understand why he's asking to get an evaluation
4 done to prove prejudice on that. I don't think we will ever
5 get to that stage of the evaluation based on my discussions
6 with Mr. Howle. And I don't want to testify for him. But if
7 we go forward, I think he -- if we went forward today -- the
8 state would like to -- I think we would be able to flush it
9 out pretty fairly to show there was a reason no evaluation
10 was done in this case. And I don't think an evaluation would
11 be able to give information as to a crime that happened three
12 years ago and his state of mind in that 15 or 20 minutes this
13 crime occurred.

14 So that would be the state's position on it, Your Honor.

15 THE COURT: Okay. What I'm proposing, maybe, we'll
16 proceed with the hearing. And then after Mr. Howle testifies
17 based on what comes into the record, and at that point I may
18 or may not grant you a continuance. And we could continue
19 the hearing if an evaluation is warranted and have the
20 evaluation and we'll re-convene the hearing in March.

21 MR. CORNEY: Your Honor, the state wouldn't oppose
22 leaving the record open to enter a mental evaluation done
23 after the fact as part of this record today.

24 THE COURT: I understand.

25 MR. BROOKS: To make sure I understand your ruling,

1 Judge. We're going forward with the caveat that the Judge
2 after listening to the testimony may or may not allow us
3 to ---

4 THE COURT: Correct.

5 MR. BROOKS: Okay.

6 THE COURT: Based on what's in the testimony and, you
7 know, whether there's any mental issues at all and whether an
8 evaluation would be helpful. And if I determine an
9 evaluation would be helpful, I may grant you, you know, a
10 continuance at least part way through it to have one. If
11 there's no issue at all of an evaluation, then I may not.
12 Okay?

13 MR. BROOKS: I understand, Judge.

14 THE COURT: All right.

15 MR. BROOKS: Give me one minute.

16 (Pause.)

17 MR. CORNEY: And, Your Honor, just to put on the record,
18 I know he said something before, but on page 6 of the plea
19 transcript, Mr. Lindsay does tell The Court he does not have
20 any history of any mental illness of any sort. And I know a
21 minute ago he said he did have a mental history. I just
22 wanted to bring that to your attention.

23 (Pause.)

24 MR. CORNEY: Let me put it on the record, just on page
25 6 where Mr. Lindsay when Judge James asked him about history

George Lindsay — Direct by Mr. Brooks

20

1 of mental illness and Mr. Lindsay just told The Court he
2 doesn't have any history of mental illness. He mentioned
3 something about that a minute ago.

4 (Pause.)

5 MR. BROOKS: Your Honor.

6 THE COURT: Yes, sir.

7 MR. BROOKS: If you're ready, I'll go ahead and call my
8 client.

9 THE COURT: Okay.

10 MR. BROOKS: We call Mr. George Lindsay to the stand.

11 George R. Lindsay, being first
12 duly sworn, testified as follows:

13 CLERK: State your name please, and spell your last name
14 for the record.

15 MR. LINDSAY: George Ralph Lindsay, Jr. The last name
16 is spelled L-i-n-d-s-a-y. For the record, it's spelled e-y
17 on my paperwork for some reason.

18 MR. BROOKS: Ready, Judge?

19 THE COURT: Yes, sir.

20 DIRECT EXAMINATION BY MR. BROOKS:

21 Q All right. Now, George, I'm going to ask you a few
22 questions. I know you don't come to court and testify as
23 often as lawyers deal with these cases. So I want you to
24 take a deep breath. Okay. Kind of relax. You were
25 represented in this matter by Jack Howle; is that correct?

1 A Yes, sir.

2 Q And he was court appointed; is that correct?

3 A Yes, sir.

4 Q Okay. And you ended up pleading guilty to voluntary
5 manslaughter; is that right?

6 A Yes, sir.

7 Q And you received an 18-year sentence?

8 A Yes, sir.

9 Q Now, just some of the things that you and I discussed in
10 our conversation -- I want to make sure we fully understand
11 what it is we're doing. You were originally charged with
12 murder?

13 A Yes, sir.

14 Q And that carries a maximum punishment of life. You're
15 aware of that?

16 A Yes, sir.

17 Q And if Judge Cothran grants you a post conviction
18 relief, the only remedy you could get is to get a new trial
19 and run the risk of facing life. You understand that?

20 A Yes, sir.

21 Q And you and I have discussed that?

22 A Yes, sir.

23 Q And you have chosen that you still want to go forward
24 and ask for a new trial; is that correct?

25 A Going forward with a new trial, that would be -- you

1 know, on my original charges all over again, right?

2 Q That's correct.

3 A Yes, sir, I'm aware.

4 Q You and I discussed it. You decided that's what you
5 want to do; is that correct?

6 A Yes, sir.

7 Q Okay. Now, in this particular case you ended up
8 pleading guilty, yet you said that you wanted to go to trial.
9 Tell The Court how -- how you believe that this guilty plea
10 came about?

11 A Well, Mr. Brooks, the whole time I was corresponding
12 with Mr. Howle -- me and my wife, we were going -- we were
13 going to trial. There was no doubt about it. It was never
14 a issue that we weren't the whole time he was supposed to be
15 getting me a psychiatric evaluation and everything. So
16 everything was -- everything that he was going over with me
17 was leading up to going to trial.

18 The week -- the week -- the week before we had to be
19 here, my wife went into labor and she had -- she had our baby
20 at home, which our baby was stillborn. And so I called Mr.
21 Howle and I talked to his secretary and I asked him, I said,
22 could you -- she said -- she said that he was in court.

23 I asked her could she ask him to at least postpone me
24 going to court at least a week or two in the fact I had just
25 lost my child and everything that just had happened.

1 She called. I was at the hospital. She called back and
2 she said that he said he wasn't going to be able to do it.
3 So to make a long story short, the next week we came onto
4 court.

5 Q Let me ask you. You say we came onto court. You were
6 out on bond?

7 A Yes, I was out on bond.

8 Q Okay. Do you recall how long you'd been out on bond
9 before you pled guilty?

10 A I got out a week before Thanksgiving. And we went to
11 court June -- the beginning of the year, I think it may have
12 been May -- March -- May -- I'm not sure exactly.

13 Q That's fine. So you were out several months ---

14 A Yes.

15 Q --- before pleading guilty?

16 A Yes.

17 Q Is that correct?

18 A Yes.

19 Q Okay. Go ahead and finish what you were getting ready
20 to say?

21 A When we got here to court, Mr. Howle asked me did I
22 still want to go onto trial. I told him yes. We -- we had
23 some kind of something -- something happened. They was
24 supposed to do it -- they was supposed to bring me up within
25 like 2 hours. So we left. He told me, well, you go ahead

1 and leave and you come back, then we go on with the process.

2 You tell the judge we're going to trial.

3 Q Okay.

4 A So when we came back, we were sitting there. And my
5 sister-in-law and wife and I, we decided to go outside and
6 have a prayer. So when we did that, after we got finished
7 praying, I looked back and Mr. Howle was standing in the
8 door. And my wife and my sister-in-law, they -- they came on
9 in the courtroom. And as I was coming, he was like, well,
10 George, are you still going to put your family through that?

11 And, you know, I just kind of -- you know, acknowledge
12 what he said. And I walked -- I came on in the courtroom.

13 He -- Mr. Howle came back. I think he went to the judge
14 chambers and talked with the judge or whatever, I guess to
15 let him know that he was going on with trial.

16 And while I was sitting there like -- like I said, he
17 had told him before that he wasn't going to be able to get me
18 the evaluation. He advised me that it wouldn't have been in
19 my best interest to call Dr. Lakin -- I think that was her
20 name -- off of vacation to come to a trial. She would be in
21 a bad mood; and that's not going to be good for you going to
22 court.

23 Basically he was saying basically what I got from that
24 is that he wasn't trying to help me at that point.

25 Q Okay.

1 A And ---

2 Q Let's go back a bit, George, and let's talk about the
3 whole facts and circumstances, because you haven't had a
4 chance to tell Judge Cothran about that. What happened in
5 this case?

6 A I -- I was coming home from work, and I pulled into my
7 yard and ---

8 Q Where did you work?

9 A I was self-employed during the time, me and a few of my
10 friends.

11 Q Okay.

12 A And I pulled into my yard. My wife -- I didn't -- my
13 wife's car was sitting there. Excuse me. So I pulled on in
14 my yard and I was getting out of the car. I heard somebody
15 blowing the horn. So I looked back at my wife's car, and I
16 saw she was in the car. So I walked over to the car. She
17 was in the car crying.

18 So I was like, what's wrong with you?

19 She was like, I need you to carry me to mama's. So I'm
20 like, why do we need to go to mama's? She's crying. She's
21 like, come on, we got to go to mama's.

22 So her grandmother stayed in front of her mother, so I'm
23 thinking maybe her grandmother had passed or something. At
24 the time my daughter was in the backseat.

25 So I get in the car ---

- 1 Q How old is your daughter?
- 2 A She was 6 at the time.
- 3 Q Okay. Go ahead.
- 4 A So I told her to get on the passenger side. And as I
- 5 got in the car, meme, just let me know what's going on before
- 6 we go. And she got to crying. She got real ecstatic
- 7 (phonetic). So I'm like, ^{Minor} what's wrong with mama?
- 8 She was like -- I said, why mama crying?
- 9 She like, because of me.
- 10 I was like, baby, what do you mean because of you?
- 11 She was like because of me.
- 12 So I'm like, meme, what's going on?
- 13 She was like, ^{Minor} tell daddy what happened.
- 14 So my daughter say, Uncle Ro stuck his thing in my
- 15 mouth.
- 16 So I'm looking at my wife like ^{Minor} didn't just say what
- 17 I think she said. So ^{Minor} got to crying. She got to crying.
- 18 So I just pulled off. So I went to my sister-in-law's
- 19 house, who was married to the guy, the victim. And -- to
- 20 confront him about what was going on.
- 21 So when I got there, I run over there to his house. I'm
- 22 bawling on the door. And my mother-in-law, my sister-in-law,
- 23 and my wife, they -- at this point I had a gun. And ---
- 24 Q You had a gun in the car?
- 25 A Yeah.

1 Q Okay.

2 A They -- they was -- they was telling me -- they was
3 fussing with me about the gun. So I was like, I just need to
4 talk to Lorenzo. I need to find out what's going on. I was
5 like, mama, tell me what's going on -- I'm talking to my
6 mother-in-law. I'm like, mama, tell me what's going on.

7 Q And you said Lorenzo, that's the victim?

8 A Yes.

9 Q Okay.

10 A Like I was said, I was saying, mama, tell me what's
11 going on. She was like, ^{Minor} just kept telling she had a
12 nasty taste in my mouth. ^{Minor} kept telling me she had a nasty
13 taste in her mouth. So it's like she just kept repeating it.
14 And it's like I caught of a visual of this 200-some-pound man
15 standing over my 90-some-pound daughter with his penis in her
16 mouth. And at that point I turned around and I seen him.
17 And he may have been from here to the bench right there. And
18 I just -- I ran over there and I shot him.

19 Q All right. And after that you were arrested by the
20 police; is that correct?

21 A Well, no. After I got that shot, I got in the car. I
22 knew I had need to go to my mother, so I could turn myself
23 in. So I went to my mother's house. My mother, some of my
24 aunts, we came back to Sumter, and I turned myself in.

25 Q Okay. Now, I may ask you a couple other questions about

1 this, George. You and I talked about this back -- you ended
2 up pleading guilty to voluntary manslaughter, which I believe
3 carries a minimum of 2 years and a max. of 30; is that
4 correct? Is that what you knew it to be?

5 A Yes, sir.

6 Q All right. Knowing -- here, again, knowing if Judge
7 Cothran grants your post conviction relief -- grants today or
8 gives us the opportunity to have an evaluation done and
9 granted in the future, you understand you could -- if you
10 went back through the process and went to trial and was found
11 guilty on voluntary manslaughter, you could receive 30 years
12 as a maximum?

13 A Yes, sir. Yes, sir.

14 Q All right. Now, you're telling this court that it was
15 never your intent to plead guilty to this; is that correct?

16 A No, sir. I was going to trial. It was -- it was no
17 doubt about it, I was going to trial. It was just at that
18 point it was like, what else -- there's nothing else to do.
19 I don't know -- I didn't know what to do. And he just kept
20 telling me, you know, don't -- I don't want to bring Dr.
21 Lakin in off of vacation.

22 Q You feel that the evaluation would have been critical in
23 your case?

24 A Of course.

25 Q And you think that that would have helped in even on a

1 plea, that would also help Judge James understand what your
2 state of mind was; is that correct?

3 A Yes, sir. Yes, sir. It's no -- it would have been no
4 doubt about it.

5 Q And is that why you feel like you should have gotten a
6 mental evaluation done?

7 A Yes, sir.

8 Q Okay. And it's still your desire to at least have that
9 done as a part of your P.C.R.; is that correct?

10 A Yes, sir.

11 Q Okay. Is there anything else that we haven't covered?

12 A (No response.)

13 Q Anything else you want to say that I haven't asked you
14 for today that you want to tell Judge Cothran?

15 A I -- yeah, I just feel that it was -- it was -- it was
16 better for me to have had that psychiatric evaluation from
17 the start. I feel that evaluation would have changed my case
18 tremendously. Anybody that -- if -- if anybody -- judge, or
19 anybody wants to read the facts that everybody have, they
20 will see clearly that I did have a period of insanity. It's
21 no doubt about it. I -- I lost control at the whole thing.
22 And as far as -- as far as with my guilty plea, anybody
23 that -- that looks into that and knows everything that was
24 going on at that time, know that I wasn't confident (sic) to
25 even make a plea during that time. Like I say, I was dealing

George Lindsay - Direct by Mr. Brooks

30

1 with the -- I mean, this guy -- this guy -- this guy that I
2 -- this guy that I shot, he wasn't just any average person in
3 the street. This was -- this was at the time he was a family
4 member. He was someone that -- this is my brother-in-law,
5 this is someone that I deal with on a daily basis. It was a
6 lot of emotion and stuff going on right there. This is my
7 sister-in-law. Me and this guy just came back off of
8 vacation in Disney World three weeks prior to that. We
9 vacation together every year.

10 I mean, it wasn't -- and then on top of that, my -- my
11 wife -- we -- my wife just lost my child. Yeah, she had my
12 baby at home, and my baby died right there. I was going
13 through a lot during that time. And Mr. Howle knew this.
14 And I asked him if it wasn't nothing but for me to get a week
15 postponement.

16 I don't know why he wasn't able to do that. I don't
17 know if he asked for it, but I felt like that would have been
18 the better judgment with everything going on. You all would
19 have had time to process everything that was going on, think
20 about everything that's going on.

21 Q Anything else you want to tell us?

22 A No, sir.

23 MR. BROOKS: All right. Answer any questions of the
24 attorney general.

25 MR. CORNEY: Your Honor, I just realized I have not

1 handed the packet to you. I have a copy of the plea
2 transcript. I'm going to hand it up to you at this time.

3 (Pause.)

4 CROSS EXAMINATION BY MR. CORNEY:

5 Q Mr. Lindsey, at the plea hearing Judge James reviewed
6 the range of sentences you were facing on the murder charge,
7 right?

8 A Say that again, sir.

9 Q He reviewed the potential sentence you were facing at
10 the plea hearing, Judge James did?

11 A Yes, sir.

12 Q Okay. And you knew it was zero to 30 -- zero to 30
13 years on the voluntary manslaughter charge, right?

14 A Yes, sir.

15 Q And up to life on the murder charge?

16 A Yes, sir.

17 Q Okay. And you told him at that plea hearing that you
18 understood that there wasn't going to be any recommendations
19 from the state as to what they were going to sentence you to,
20 right?

21 A Yes, sir.

22 Q Okay. So you knew when you entered this plea there was
23 no guarantee as to any sentence you were going to receive,
24 right?

25 A No. I'm -- I'm -- I'm not going to agree with you on

1 that. Mr. Howle -- Mr. Howle -- I specifically asked Mr.
2 Howle, I said, when we -- if we go with that plea, well,
3 what's going -- what's happening? I said, man, I say -- I
4 asked him when he -- when he came to me with the plea, he
5 said it would be a open plea. And when I asked him to
6 explain it, he told me what was a open plea. You could get
7 from here to here.

8 And my response to him was, that's too wide of a range.
9 Maybe you can go get a cap. So to speed up to where you're
10 trying to get me to, when his words with me, Mr. Lindsay, I
11 don't see you getting no more than 7 to 10; that -- I don't
12 see with Judge James, he has -- I think he said two daughters
13 around the same age your daughter -- any man that would snap
14 -- I was under the impression that I wasn't going to get what
15 I got. I was going to be in the range of 7 to 10.

16 Q Mr. Howle gave you his impressions of what he thought
17 you might get. But in the end Judge James during the plea
18 hearing said, here's the potential range you're looking at.
19 The state's made no recommendations. You can get anywhere in
20 this time frame. And you said you understood that during the
21 plea hearing, right? Aside from what Mr. Howle said his
22 personal feelings might be, hey, this could happen, this
23 could happen, you knew the range and that the state wasn't
24 recommending any sentence, right?

25 A Well, I didn't think -- with -- with him telling me that

1 it was going to be from 7 to 10, this is something I felt
2 that he probably had already whatever lawyers and judges do
3 -- whatever they do. The way he came at me with it, is like,
4 George, you ain't getting no more than 10. I felt -- that's
5 the way he came to me. So, yes, I thought I was going to get
6 10 years. I didn't think I was ---

7 Q Okay. So when you told the judge that you knew there
8 was no recommendations and that you knew what the maximum and
9 minimum sentence was, why didn't you speak up to the judge
10 and say, Judge, I know what it is because Mr. Howle told me
11 I'm not getting but 10 years. You said, yeah, I understand
12 all of that. You didn't mention anything about, oh, yeah,
13 I've been promised 10 years though?

14 A Because I was with my lawyer. I have -- I had nothing
15 then or now against Mr. Howle. He will tell you I was very
16 respectful of him in his office. We -- we got along good
17 when I went to see him. So when -- when he told me that, I
18 didn't think that I would have to say that to the judge
19 because I felt like that's what it was going to be; that was
20 my lawyer. So whatever my lawyer -- whatever my lawyer said
21 to me was -- I felt like was gold at the time.

22 Q Okay. But after Judge James went through all of that
23 with you, the potential sentences, the state didn't recommend
24 a potential sentence, you told the judge you wanted to give
25 up your right to a trial, you wanted to plead guilty at the

1 time, right? You told him that on the record?

2 A Say again?

3 Q You told Judge James on the record after he reviewed
4 that with you that you wanted to give up your right to jury
5 trial and plead guilty at that time, right?

6 A Yeah.

7 Q Okay. And that was your decision to plead guilty. I
8 mean, Mr. Howle wasn't charged with murder here. It was you
9 that was charged with murder. So it was your decision to
10 enter this plea, right?

11 A No, that wasn't -- it was not my decision. I feel like
12 I was forced to choose between the two evils. I mean, it was
13 like -- you have to understand the whole way that went.

14 Q Right. Mr. Howle ---

15 A When your lawyer tells you that he doesn't want to pull
16 a psychiatrist off of vacation because she's going to be mad
17 that she has come and testify to your mental state ---

18 Q Well, I'm glad you brought that up ---

19 A --- what do you do?

20 Q I apologize. I didn't mean to speak over you. Were you
21 finished?

22 A What do you do at that point when -- when your lawyer
23 tells you he doesn't want to get the psychiatrist off her
24 vacation because she's going to be in a bad mood. When --
25 when someone tells me something like that -- I already build

1 in my mind that, okay, he's telling me that she's not going
2 to rule with you. She's mad because she's at the beach, she
3 doesn't want to leave the beach with her family to come back
4 to Sumter to say that you had a brief period of insanity.
5 And she has to do that, guaranteed that she's not going to do
6 that; that's the impression that I got.

7 Q Okay. Do you recall during that plea hearing where the
8 judge asked Mr. Howle if he had any concerns about your
9 mental competency at that time?

10 A I'm pretty sure it did happen. It's been three years.

11 Q Okay. And I think I've got an extra copy of the
12 transcript right here. If I could hand it up to you just
13 real quick. Look at page 4. Go through lines 13 through 18
14 on page 4.

15 MR. CORNEY: If I may approach the witness, Your Honor?

16 THE COURT: Yes, sir.

17 Q If you would, just look at page (sic) 13 through 18. I
18 apologize. Right there on page 4. And if you could just
19 read loud.

20 A Do you want me to read 13 through 18?

21 Q If you would, yes. 12 through 18 will make it more
22 complete, if you would do that. I apologize.

23 A (Reading.) Your Honor, I do not have any concerns of
24 his competency. I will say that I consulted with Dr. Lakin
25 on a couple of occasions in regard to the temporary insanity

1 matter. When he looked at -- we looked at that as well. And
2 after my conversations with her, she felt that that would not
3 be sufficient to be shown from what she saw in the case and
4 anything else. I explained to him as well.

5 Q That's fine. You can stop right there.

6 A Can I -- can I say something real quick?

7 Q Yeah, you can go ahead and say if there's something you
8 need to say about that.

9 A Yeah, that -- that -- that was my -- that was exactly
10 what I was getting at. It's -- how can -- how can a doctor
11 -- how can you and a doctor tell me whether I was insane or
12 not without the doctor talking to me? That's my exact point.

13 You -- you would not be able to take this paperwork right
14 here and present to that doctor right there just looking
15 there without talking to me and say whether I was crazy or
16 not.

17 Q Okay. But you don't deny Mr. Howle put on the record
18 that he had talked to Dr. Lakin several times and you had
19 discussed Dr. Lakin's discussions with Mr. Howle with Mr.
20 Howle as well. You all had talked about it. He had talked
21 to Dr. Lakin and said, I don't think this is going to work at
22 trial if he decides to present this, right?

23 A I don't know if he talked to her or not.

24 Q He didn't say in the record right there ---

25 A Yeah, he said. I mean, I -- I -- I hope he didn't lie,

1 but I don't know if he talked to her.

2 Q Okay. Later on in the transcript you say you're totally
3 satisfied with Mr. Howle's representation. You said, we've
4 discussed everything we needed to. We went over everything.
5 Why didn't you say anything at that time and say, hey, Mr.
6 Howle said earlier he talked to Dr. Lakin and spoke to me
7 about it, we never discussed any of that?

8 A As I stated before, with talking to Mr. Howle, I took
9 everything he said to me as being what he said like he told
10 me.

11 Q Okay.

12 A I -- I don't see you getting but -- I don't see you
13 doing -- I don't see you getting no time like this. I don't
14 see this happen to you. The judge is going to -- the judge
15 has kids of his own. Any -- any man would consider the fact
16 that what happened. Everybody know that you had a -- that
17 you went crazy. I mean, that's what you do. You go with
18 what your lawyer say. I don't know law.

19 Q Okay. But you told Judge James that you didn't have a
20 history of mental illness, right, on the record on page 6, if
21 you recall off your memory and not look through the
22 transcript?

23 A No. Going back through my transcript, I recall reading
24 that -- like I say, it was so much going on. I should have
25 mentioned it, I didn't. But at that point it was so much

1 going on, I didn't..

2 Q Okay. So you told him that you didn't. Today you told
3 Judge Cothran that you did in fact have a history of mental
4 illness?

5 A Yes.

6 Q So you mis-spoke on the record before?

7 A Yes.

8 Q And you're under oath that day, right, when you talked
9 to Judge James during your plea hearing?

10 A Excuse me?

11 Q You were under oath that day when you were talking to
12 Judge James?

13 A No -- yes, I was under oath. I wouldn't take that as --
14 I wouldn't -- I wouldn't say like you just said that I had a
15 mis-hap on the record. That was just the fact that I had so
16 much going on and I never been in trouble like this before.
17 So when -- of course, when -- when a person of my statute --
18 like I say, I was a married man with four kids. I don't get
19 it. I don't do this trouble, court thing. I don't get into
20 no trouble, period. So when you put a person like me on the
21 stage -- I mean, in a courtroom up on the stand and get that,
22 yes, I'm scared. I'm fumbling over my words. I might say
23 something that I don't even mean to say because I don't --
24 this is not -- I'm not a career criminal. I'm not a
25 criminal, period. So ---

1 Q You don't deny that you got up there on the stand that
2 you don't really mean? I mean, you did it at the plea
3 hearing. It could happen today. You could be saying
4 something you don't really mean. You're under a lot of
5 pressure ---

6 A Oh, no. I'm prepared today. There's no way I would say
7 anything I don't mean today.

8 Q Okay. Judge James at one point in the plea explained to
9 you that by entering this plea you were going to give up any
10 defenses that you had to the charges that you could present
11 at trial, right?

12 A Could you explain that one more time?

13 Q Judge James at the plea hearing went through with you
14 and said, you know, if you plead guilty to this, you're
15 waiving any potential defenses you could bring at trial,
16 right? Didn't he say on page 12, lines 24 through 25. You
17 can look if you need to refresh your memory. But I'll submit
18 to you, that's in that transcript.

19 A If I take the plea I'm waiving ---

20 Q That you were going to waive any defenses you could
21 bring at trial -- any defenses against the charges, you were
22 waiving them? You were giving up that right?

23 A Yeah, I don't -- I didn't know what none of that meant.

24 Q Okay. You said you understood it and that you wanted to
25 go forward with it on the next page, on page 13, line 2. You

1 said, I understand I'm waiving that and I still want to go
2 forward with it, right?

3 A Like I said ---

4 Q Another time you mis-spoke on the record, is that what
5 that is?

6 A No, I didn't say that. What I was going to say was,
7 when -- it -- it was just what was going on during at the
8 time. I mean, I didn't -- like I say, I never been in
9 nothing like this before. So -- and I had every -- like I
10 say, the week before I lost my job. I mean, you can only
11 imagine what was going on in my head. My 6 year daughter had
12 just been molested. I just had shot my brother-in-law for 6
13 years. I just had got married, only been married a year. I
14 mean, and I'm in court maybe get a life sentence, and you can
15 only imagine what's going on in my mind.

16 Q Okay. You told Judge James also during that plea
17 hearing that Mr. Howle wasn't forcing you to plead guilty or
18 making you plead guilty in any way. You were doing it
19 yourself. Right? Page 14 lines 12 through 13. You said in
20 that part, yeah, I'm doing this on my own. This is my
21 choice, right?

22 (Pause.)

23 Q Look on page 14, lines 12 through 13. And I'm not
24 quoting it exactly when I say that's what you said.

25 A Page 14.

1 Q Tell me if that's your recollection that you said Mr.

2 Howle wasn't forcing you to plead guilty?

3 A Page 14, lines?

4 Q 12 and 13.

5 A 12 and 13. Right here it said I said, no, sir.

6 Q And he wasn't forcing you to plead guilty? You said
7 that yourself?

8 A Yes, sir, that's what it say.

9 Q And you didn't speak at that time and say, you know
10 what, I've got defenses, I've got things I want to raise at
11 trial. You know what, he is pressuring me to plead guilty.
12 I don't think I should do this. You didn't say that. You
13 just said, no, sir, he's not. He's not forcing this. This
14 is my decision, right?

15 A That's what I read.

16 Q Okay. From the time you heard this disturbing news from
17 your daughter and the time the actual shooting occurred, how
18 long did that drive take you from your house to your brother-
19 in-law's house?

20 A Maybe 10 minutes.

21 Q Is it fair to say that some -- that in the record they
22 said maybe 15 to 20 minutes, that drive, is that pretty
23 close?

24 A About -- yeah, about 10 minutes.

25 Q Okay. So the jury could have found based on your

1 discussions with Mr. Howle, do you think a jury probably
2 would have found that you had sufficient time to calm down?
3 You weren't still in the heat of passion at that point,
4 right?

5 A No. I think even what Mr. Connor would have been the
6 solicitor at the time. Even Mr. -- all I know even Mr.
7 Connor said that he had discussed that with whoever, and he
8 didn't feel that time frame was long enough for me to
9 whatever.

10 Q Was that something you discussed with Mr. Howle, you
11 talked to him about the time?

12 A No. That was said.

13 Q Yeah, that's what it says on page 4, that I had you read
14 before, that he discussed that with you, he didn't think the
15 time was long enough -- or was too long to still be in the
16 heat of passion, right? Mr. Howle never -- I had you read in
17 the record before on page 4. Mr. Howle says, we discussed it
18 and I don't think it's close enough time to raise ---

19 A No. I was saying that even the solicitor said that it
20 wasn't enough time for me to -- to process what was going on.

21 Q So if all these people were saying that, you think it's
22 such a great defense, why did you go in that court that day
23 and tell Judge James you wanted to enter this plea?

24 A I don't know law.

25 Q Okay. Mr. Howle spoke with your family members, though,

1 didn't he? About all these charges, wasn't he in pretty good
2 contact with your family?

3 A No. He was -- the only person that he probably -- I
4 think he probably spoke to was my wife; and that was when I
5 was there. And my sister had a couple of emails, which we
6 have back and forth where she told him that she felt like he
7 was incompetent, and that it got a little more in depth than
8 that when they was going back and forth with what was going
9 on. But to say that they talked about anything going on with
10 my case, no. That was more -- the only person he would have
11 talked to would have been me and my wife when we were there.

12 Q Do you recall whether he submitted any letters on your
13 behalf to the court that day at your plea?

14 A Submit some letters?

15 Q Submit letters on behalf of family members of anyone
16 saying, hey, Mr. Lindsey is a great guy, you know. Have some
17 mercy on him in your sentencing?

18 A Oh, I think my mother did give him some letters.

19 Q All right. So he talked to your mom at least about
20 that. I think he turned in somewhere around a dozen or more
21 of those letters from your family members, people in your
22 community that knew you. So he was in contact with your mom
23 in order to get those letters, right?

24 A No. She brought them with her up there when she came to
25 court. It was -- I don't think it was no -- anywhere they

1 would be in contact. This was something that she just
2 brought with her and asked -- to my recollection --
3 recollection that they had any contact, period, besides the
4 day that she came to court.

5 Q You can testify that this day you shot Mr. Smallwood
6 roughly 7 times and killed him at that point, right? You
7 don't contest that?

8 A Well, I didn't know how many times I had shot him until
9 we got to court.

10 Q Okay. But you don't contest that this happened, you
11 shot him, he died as a result of that, right?

12 A Oh, no, I don't contest that.

13 MR. CORNEY: I believe that's all I have, Your Honor.

14 THE COURT: Okay. Anything further?

15 MR. BROOKS: No other questions, Judge.

16 THE COURT: Okay. Thank you, sir. You can step down.

17 (The witness leaves the witness stand.)

18 MR. BROOKS: We will call Jack Howle to the stand.

19 Jack D. Howle, Jr., being first
20 duly sworn, testified as follows:

21 CLERK: State your name please, and spell your last name
22 for the record.

23 MR. HOWLE: Jack Delbert Howle, Jr. H-o-w-l-e.

24 MR. BROOKS: Ready, Judge?

25 THE COURT: Yes, sir.

1 DIRECT EXAMINATION BY MR. BROOKS:

2 Q Mr. Howle.

3 A Yes, sir.

4 Q How are you today?

5 A I'm doing fine, thank you.

6 Q You were appointed to represent George?

7 A I was.

8 Q And he ended up pleading guilty?

9 A Yes, sir.

10 Q In the transcript you talk about talking with Dr. Lakin?

11 A Yes, sir.

12 Q Can you tell me about that conversation?

13 A I talked with Dr. Lakin several times. The concern we
14 had -- when I first looked at it, I did not feel it was a
15 murder charge. Manslaughter was probably appropriate if we
16 didn't have temporary insanity or something of that nature;
17 and that's why that contact with her. I talked with her
18 several times.

19 She looked over what had happened. I don't think she
20 ever actually interview George. And after she had reviewed
21 all of that, she told me that -- that she looked at what the
22 manslaughter was, the heat of passion. It was a heat of
23 passion and not a temporary insanity that would be a true
24 defense for him.

25 We had planned the trial all along, hoping that that

1 would materialize.

2 She indicated that she did not think if she took the
3 stand that she really could not say that she felt that was
4 the case.

5 Now, I will say this, I don't recall at all telling
6 George it would be an inconvenience to call her back from her
7 vacation. And she may have been on vacation. But I
8 certainly would have had no problem whatsoever subpoenaing
9 her if we felt that that was where we wanted to go if we were
10 going to go forward. And I don't think that would have
11 changed her testimony. I mean, that she would have come in
12 angry that she'd been called up for vacation and then
13 suddenly given some testimony different than what she had
14 told me.

15 Q But she never interviewed him?

16 A Mr. Brooks, I don't think so. And why I'm saying that,
17 the system we have now -- and I don't agree with this. It's
18 because of space as much as anything. Once a file is a
19 certain age, we scan it and it's shredded. The file I had on
20 her was not in my file, because this is not my file. It was
21 a considerable box of stuff that was there. And that was
22 scanned and then shredded. Apparently, my correspondence and
23 notes with her were in that independent file. And going
24 through my scans, it does not appear it was scanned. So
25 apparently it was in the box and got shredded before it got

1 scanned. So I don't have my individual notes and my
2 correspondence with her to know if there was any personal
3 contact that she may have had with George. But I know I did
4 talk with her a number of times now. There's no question
5 about that.

6 Q But you don't have anything to dispute his testimony
7 about having not talked to her?

8 A About actually being interviewed by her? No, I do not.

9 Q Okay. Now, how did this go from a trial to a plea?

10 A Harry Connor was the solicitor, and Harry -- Harry did
11 not really give you offers very often. If he did, it was
12 virtually the maximum that he wanted you to plead to.

13 I'd gone to Harry a number of times and told him that at
14 best I thought it was a manslaughter and that we needed to
15 talk about that possibility.

16 It was not the day of trial that Harry told me that,
17 because I maybe even asked him for a consideration.

18 I tell you this, I don't tell clients what I think
19 they're going to get. Now, I may well have said your minimum
20 for murder is 30 and a plea of manslaughter -- because I
21 think that's more -- I agree would be more appropriate thing
22 to not go to trial on manslaughter. If we went to trial, it
23 would be on murder. Now, the jury may still come back and
24 find manslaughter as a lesser-included.

25 I said if we can plea to that -- and George even asked

1 me if I could get a certain number of time -- of years. This
2 7 to 10 -- I don't tell clients that.

3 Now, George had written a letter to the solicitor after
4 all this happened and wanted to know if we discussed the 7 to
5 10 sentence.

6 And Mr. Connor called my office and told me that he
7 never made an offer of 7 to 10, that I never asked him for 7
8 to 10, that he knew that if it was manslaughter, it was going
9 to be a plea to manslaughter, period, and the judge could
10 determine what it would be.

11 As a matter of fact, what Mr. Connor said was the family
12 of the deceased was not interested in manslaughter. They
13 wanted it to go forward as a murder charge. And we were
14 preparing to try and at least bring up the lesser-included
15 offense as a possibility.

16 Q Now, do you think it would have been beneficial for
17 sentencing for Judge James to have had some type of
18 psychological report about Mr. Lindsay's perhaps state of
19 mind during the events?

20 A Well, there's no question a lot was going on with George
21 with the loss of the child and hearing this and everything
22 else.

23 In my talk to Dr. Lakin, she did not feel that it would.
24 Mr. Brooks, you can always look back on it and say, well, if
25 we had, would that have changed anything.

1 Based on my talks with her, she did not think it would.

2 And as George put on the record himself, there was no
3 history of any mental illness in response to the questions
4 the judge asked him. And Judge James asked the litany of
5 questions in regard to competency and do you know what you're
6 doing and what you can get. George answered all of those in
7 the affirmative.

8 Now, I will tell you that one thing that was unusual
9 about this plea, and probably gave the family as well as me
10 some encouragement that it would have been a sentence that
11 ended up lesser than the 18 that he got -- when we began the
12 plea. We pled on a Thursday. And there was some people that
13 we wanted to have there that didn't have enough notice and
14 that were not there.

15 And Judge James said, I'll tell you what, we'll go ahead
16 and take the plea and I won't do the sentencing until Monday.
17 And he let George go home. He didn't put him in jail until
18 Monday. He let him go home.

19 And when we pled, there were a number of family members
20 who actually spoke on his behalf. Michael Williams. Janet
21 Williams. Courtney Lindsay. Tim Shepard. Melvin Lindsay.
22 Myrna Lindsay. And Josanna (phonetic) Kenny. So we had a
23 number of people that spoke.

24 And I had about 15 or 16 letters. Judge James stopped
25 the plea. Took the letters back in his chamber and read all

1 of them, and then came back.

2 So I think between letting him go home and all of these
3 letters and people that were saying good things about George
4 and what a good father he'd been and all, was going to give
5 us a sentence that I personally thought was less than 18 --
6 would have been less than 18. But, still, I did not tell
7 George, hey, this is what you're going to get. I don't never
8 tell clients that, because you just don't know what it's
9 going to be. It was certainly less than the 30 he could have
10 gotten.

11 Q After the sentencing, you filed a motion for
12 reconsideration?

13 A Filed a motion for reconsideration. And then I received
14 an order from Judge James, just a one-liner, basically, that
15 said I considered it. I think everything was proper. It was
16 within the guidelines. And your motion is denied. And I
17 sent that to George.

18 MR. BROOKS: Beg The Court's indulgence.

19 THE COURT: Yes, sir.

20 (Pause.)

21 Q Mr. Howle, when you submitted the motion for
22 reconsideration, you never submitted a report from Dr. Lakin?

23 A No, there was no attachment as a memorandum or something
24 else in regard to ---

25 Q Did Dr. -- did Dr. Lakin ever submit anything to you in

1 writing?

2 A Well, I'm sure she did. And quite honestly, that's the
3 problem we have. That was in an independent file. And that
4 file when it was scanned was not scanned with it. And
5 apparently it was shredded when the entire file was shredded
6 later.

7 Q So she may have, but you would no longer have it?

8 A That is true.

9 MR. BROOKS: All right.

10 (Pause.)

11 MR. BROOKS: No other questions, Judge.

12 THE COURT: This doctor -- Dr. Lakin?

13 MR. HOWLE: L-a-k-i-n, I think is how it's spelled.

14 THE COURT: Is that state appointed or privately hired?
15 Does she work at the state hospital?

16 MR. HOWLE: I think she was at the state hospital, I'm
17 not ---

18 THE COURT: Do you know the answer to that?

19 MR. BROOKS: I don't know. I never dealt with Dr.
20 Lakin, so I don't know where she -- I would presume Mr. Howle
21 submitted a motion like I submitted to get funding and it was
22 granted then; is that correct?

23 MR. HOWLE: Yes, sir.

24 MR. BROOKS: Which is the standard motion we always
25 file; is that correct?

1 MR. HOWLE: For funding for evaluation.

2 THE COURT: Okay. And did this doctor ever do anything?

3 MR. BROOKS: Well, according to Mr. Howle, she gave --
4 well, what ---

5 MR. HOWLE: Either in a letter form or a conversation
6 with me. Like I said, without having the file, I cannot say
7 for certain what the extent of her comments were or whether
8 it was in a formal response as an evaluation would be or not,
9 because I don't have it.

10 THE COURT: In the clerk of court's file is there an
11 order for evaluation signed by a judge? Does anybody know an
12 answer to that?

13 MR. BROOKS: There was an order for funding.

14 MR. HOWLE: And that goes to OID.

15 MR. BROOKS: That just deals with paying someone.

16 THE COURT: Right. So there's an order for funding for
17 an evaluation. But that order of funding was dealt with a
18 private doctor or ---

19 MR. CORNEY: They never submitted that. When we got the
20 clerk's records, they never sent that. But, obviously, Mr.
21 Howle says it's in existence somewhere.

22 THE COURT: Okay. So did this doctor ever evaluate your
23 client? When I say that, did the doctor ever talk to the
24 client?

25 MR. BROOKS: No.

1 THE COURT: Is that your understanding?

2 MR. HOWLE: I don't think she actually did sit down and
3 interview him.

4 THE COURT: Okay. Was she -- do you have any
5 information of what she was asked to do? Was she asked to do
6 a McNaughten, a competency, or just talk with him to see what
7 his state of mind was. What was this doctor supposed to do?

8 MR. BROOKS: I ---

9 MR. HOWLE: Your Honor, I would certainly think that
10 that was what I had inquired her to look at. But like I say,
11 if she didn't actually interview him -- I don't know without
12 having that.

13 THE COURT: Okay. Has anybody contacted her office to
14 see if she has a copy of any kind of report and is she still
15 in the state?

16 MR. BROOKS: Judge, that's why my client wanted to get
17 this evaluation done, that's why he was so persistent in
18 this.

19 MR. CORNEY: Your Honor, I feel like -- and I don't want
20 to mislead the court in any way. But I feel like somewhere
21 in here I saw she was with the Department of Mental Health.
22 But I don't know if that's true. I might be confused with
23 another doctor on another case, but I feel like I saw that
24 somewhere. But I might not be correct, I'm not sure.

25 MR. HOWLE: And that may well be. It may be that we did

1 that rather than order funding, that it was a state doctor
2 that we spoke directly to in regard to that. I just don't
3 know, Mr. Brooks.

4 THE COURT: Okay. I don't have any further questions.
5 Thank you.

6 MR. CORNEY: Judge, if I could cross Mr. Howle very
7 quickly, Your Honor.

8 THE COURT: All right.

9 CROSS EXAMINATION BY MR. CORNEY:

10 Q Mr. Howle, you heard Mr. Lindsay a minute ago give his
11 version of the facts with these charges. Would you say that
12 was a pretty fair representation of the facts in this case?

13 A Yes, sir.

14 Q All right. There was never any doubt that Mr. Lindsay
15 shot and killed the victim in this case, right?

16 A No, sir.

17 Q Okay. Do you know whether there ever conclusively was
18 proven whether this alleged molestation of his daughter
19 occurred or not?

20 A No. And that was one thing that we tried to kind of
21 look in to. And with him being deceased, I don't want to say
22 the police didn't really care about looking in to it, since
23 there wasn't anyone to prosecute even if it happened, but we
24 didn't seem to get much help in regard to determining if that
25 were factually true.

1 Q So the facts surrounding this temporary insanity defense
2 that maybe could have been presented -- they were never
3 proven anyway, right? It was just her words to him that that
4 took place?

5 A That's correct.

6 Q Do you feel Mr. Lindsay had sufficient information and
7 advice from you to make an intelligent and voluntary plea?

8 A Yes, sir.

9 Q And it was his decision to enter this plea?

10 A It was.

11 Q Irregardless of the temporary insanity defense or not,
12 it was his decision to enter this plea?

13 A Yes, sir.

14 Q And to waive that temporary insanity defense when he
15 entered the plea?

16 A Well, he knew. I mean, the judge specifically asked
17 him, when you plea, you waive any defenses that you might
18 otherwise have.

19 MR. CORNEY: That's all I have, Your Honor.

20 MR. BROOKS: Just briefly.

21 REDIRECT EXAMINATION BY MR. BROOKS:

22 Q There was a forensic interview done of the child?

23 A Mr. Brooks, I don't know what the police did. That was
24 one of the questions that we had when we were preparing this.
25 And it seemed like once all this had happened, the police

1 didn't seem to be concerned about it. We did not ask for a
2 forensic interview of the child.

3 Q What was that last part?

4 A I said, I did not ask for a forensic interview of the
5 child.

6 MR. BROOKS: All right. No other questions.

7 THE COURT: You can step down. Thank you.

8 (The witness leaves the witness stand.)

9 THE COURT: Any other testimony from anybody else?

10 MR. CORNEY: Nothing from the state, Your Honor.

11 THE COURT: Okay. Anything else?

12 MR. CORNEY: I'm sorry. I should have let Mr. Brooks.

13 (Pause.)

14 MR. BROOKS: Your Honor, that is the applicant's case
15 with exception that we still would like to have the
16 opportunity to have some type of psychiatric evaluation,
17 since there's nothing written. And as we said at the outset,
18 the family is committed to hiring a doctor to look in to that
19 matter for purposes of my client's state of mind, which we
20 would say at the very least would have had an impact on his
21 sentence.

22 THE COURT: Okay. All right. I will think about this
23 and let you all know whether based on the record that's
24 before me, whether I think an evaluation would benefit the
25 court in making its decision. And if I do, then I'll allow

1 you some time to hire one and get that evaluation. Or I'll
2 rule based on what's in the record.

3 But I'll let you all know in a day or so.

4 MR. BROOKS: Thank you.

5 THE COURT: Thank you.

6 MR. CORNEY: Thank you, Your Honor.

7 --- End of transcript of record ---

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 I, the undersigned Dianne A. Rutledge, official court
2 reporter for the Fifth Judicial Circuit of The State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate, and complete transcript of the record of the
5 proceedings had and evidence introduced in the hearing of the
6 captioned case, relative to appeal, in the Circuit Court for
7 Sumter County, South Carolina on the 24th day of October
8 2011.

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

11

12

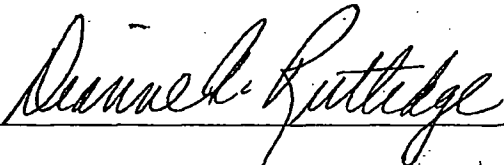
October 10, 2012

13

14

15

16


Court Reporter

17

18

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT
2012 FEB 29 PM 12:28

George R. Lindsey, Jr., # 317562,

) 2010-CP-43-0709
)
) CLERK OF COURT
) SUMTER COUNTY, S.C.

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

CERTIFIED TRUE COPY
OF ORIGINAL FILED

[Signature]
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 5, 2010. The Respondent made its Return on January 13, 2011. An evidentiary hearing into the matter was convened on Monday, October 24, 2011, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, Jack D. Howle, Esquire ("counsel"). This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Sumter County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted for (1) Murder and (2) Possession of a Firearm or Knife During Commission of a Crime of Violence (2009-GS-43-0108). Applicant

was represented by Jack Howle, Esquire. On June 4, 2009, the Applicant pled guilty before the Honorable George C. James, Jr. to the lesser offense of Voluntary Manslaughter. On June 8, 2009, Applicant was sentenced to eighteen (18) years incarceration. Applicant did not appeal his conviction and sentence.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. "...failing to inform the Applicant that he faced a mandatory minimum sentence by pleading guilty to voluntary manslaughter."
 - b. "...failed to advise the Applicant that had he proceeded to trial in this matter, he could have requested a charge on 'involuntary manslaughter,' which rendered the plea of guilty in this case not knowingly and voluntarily made."

On September 9, 2010, Applicant filed a "Notice to Withdraw Issues in Original Post Conviction Application" and a "Notice of Amended and Supplemental Pleadings Rule 15(a)." In his amended pleading, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. "...failing to communicate plea bargain for 7 to 10 years cap with defendant."
 - b. "...failing to request for a mental examination to see was defendant insane at the time of the shooting and was applicant incompetent to enter a guilty plea."
 - c. "...failed to file the notice for a direct appeal."
 - d. "...not investigating key witnesses, (wife, mother-in-law, daughter, sister-in-law), and had he investigated key witnesses it would have shown his mental state at the time and he would have went to trial."
 - e. "...failing to prepare and to conduct a proper pre-trial investigation."

At the start of the PCR hearing, Applicant presented two motions upon which this Court ruled prior to receiving any testimony on the merits of the application. First, Applicant requested the court relieve his PCR counsel, Charles Brooks, III, Esquire. Additionally, Applicant made a renewed motion (previously submitted and denied twice by the Honorable W. Jeffrey Young) for funding for a mental evaluation to determine his state of mind on the day of the shooting, as well as a motion for continuance to allow time to procure the evaluation. This Court, having heard all arguments presented by Applicant, denied the motion to relieve counsel as well as the motion for continuance, but agreed to leave the record open for a short period to allow Applicant to submit any relevant information in support of his motion for mental evaluation. This Court, having received no such information from Applicant for three (3) months, hereby denies that motion and moves forward to the merits of the application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington,

466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985). In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to

trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Ineffective Assistance of Counsel

Applicant alleges that counsel was ineffective in his representation based on the following several areas.

Failure to Procure Mental Evaluation Prior to Plea

Applicant's first allegation is counsel's performance was deficient when he failed to have Applicant mentally evaluated to determine his mental state at the time of the shooting to mitigate the murder charge. Applicant testified he planned on pursuing a jury trial from the outset of the charges, during the preparation for which he was supposed have a mental evaluation done. He went on to say counsel told Applicant an evaluation would not be done prior to Applicant's appearance at the June hearing, and that he didn't want to discuss the case with Dr. Larkin, a doctor Applicant alleges would have been critical in establishing a temporary insanity defense, as Dr. Larkin was on vacation at the time and he did not want to "inconvenience" her. Applicant did not contest he drove roughly twenty (20) minutes to his brother-in-law's house where he shot him to death as alleged, but claims it was due to a temporary period of insanity based on his daughter's statement that the brother-in-law had molested her. Applicant confirmed he has no

history of mental illness as reflected in the plea transcript. Applicant testified counsel had advised him of the potential range of sentences he was facing under the plea, and acknowledged he understood he was pleading "straight up" without recommendations or negotiations from the state. Applicant said he believed he would get no more than seven (7) to ten (10) years in prison under the plea as counsel had advised him of such. Applicant finished by saying he didn't know why he pled guilty rather than proceed to trial, but that is was ultimately his decision to enter the plea as a result of his "choice between two evils".

Counsel testified he was appointed to represent Applicant on the charge. He stated he had spoken with Dr. Larkin several times in preparation for trial in an attempt to establish voluntary manslaughter as a more appropriate charge due to Applicant's temporary insanity based on the theory of "heat of passion". Counsel stated he did not recall ever telling Applicant Dr. Larkin was on vacation, and went on to say he certainly would have called her if need be even if she had been on vacation at the time. Counsel said Dr. Larkin ultimately didn't think she could offer any medical evidence that would help Applicant's defense as she could not definitively say Applicant was temporarily insane, nor would an evaluation of Applicant have changed her position based on the circumstances and timing of the incident. Counsel also noted the allegations of molestation by Applicant's daughter have never been conclusively proven. Counsel testified he never tells his clients to expect to receive a particular sentence, and he did not advise Applicant he should expect to receive seven (7) to ten (10) years as Applicant now alleges. Counsel finished by saying it was ultimately Applicant's decision to enter the plea and waive the potential defenses that could have been raised at trial, a decision Applicant made after being fully informed of the consequences of such.

After a thorough review of the record and the testimony presented at the PCR hearing, I find Applicant has failed to prove that counsel was ineffective in his representation of Applicant on the charge.

First, I find counsel was not ineffective in failing to secure a mental evaluation of Applicant by Dr. Larkin. As a preliminary matter, I find counsel's testimony to be credible while conversely finding counsel's testimony to not be credible. Counsel testified he did in fact speak with Dr. Larkin about Applicant's case several times, during which it became clear to him that Dr. Larkin could not make a medical finding which would support Applicant's theory of temporary insanity. Whether it was the substantial passage of time between the daughter's statement and the shooting, or the lack of subsequent investigation into the truth of the daughter's statements, Dr. Larkin was able to evaluate the matter and determine a temporary insanity or "heat of passion" medical finding was not probable, which she related to counsel. Counsel made reasonable and diligent efforts to investigate and develop such a defense to no avail as the facts and circumstances did not support such a defense. Therefore, I find counsel's performance was not deficient in this regard. Further, Applicant has failed to prove resulting prejudice as he has failed to prove to this Court that the results of such an evaluation would have reasonably had an effect of the outcome at trial had one been done. Applicant failed to present the results of such an evaluation, or the testimony of any experts, that may have proven resulting prejudice to this Court. Therefore, this allegation is denied and dismissed with prejudice.

Further, the allegation raised by Applicant that he was misadvised as to the sentence he would receive under the plea and the facts leading to the charges are markedly similar to Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367. In Wolfe, the defendant was charged with Assault and Battery with Intent to Kill after he shot a man he believed was sexually abusing his girlfriend's

young daughter. Wolfe subsequently entered a guilty plea after having his pre-trial motion for a continuance for time to get a mental evaluation denied by the trial judge. In a PCR application, Wolfe alleged plea counsel was ineffective in advising him that he would receive a reduced sentence under an open-ended plea. Wolfe's plea counsel testified at the PCR he *hoped* the plea judge would give him a reduced sentence, but never ensured Wolfe of such a result. After reviewing this testimony with Wolfe's responses to the plea judge's questions, the Court found Wolfe had voluntarily and intelligently entered his plea and any alleged sentencing advice given by counsel had been cured by Wolfe's plea colloquy with the plea judge on the record where the terms of the plea were reviewed. Likewise, in the matter at hand, Applicant has failed to prove counsel was ineffective in advising Applicant of the sentence he should expect to receive upon entry of his plea. Counsel plainly testified he never advises his clients to expect a certain sentence when entering a plea, and did not do so in Applicant's case. Therefore, I find counsel was not deficient in his representation of Applicant in this regard. Further, any erroneous advice Applicant alleges was clearly cured by the plea colloquy Applicant engaged in with the plea judge. Applicant assured the judge he would give truthful answers during the plea, at which Applicant acknowledged he was facing up to thirty (30) years imprisonment under the voluntary manslaughter plea, conceded that no recommendations had been made by the state as to sentence, and assured the court he had not been promised anything in return for his guilty plea. Based on the testimony provided along with a review of the plea record, I find Applicant made a voluntary and intelligent decision to enter this guilty plea after being fully and adequately advised of all relevant issues by competent legal counsel acting within the range of reasonableness required of criminal defense attorneys.

CONCLUSION

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

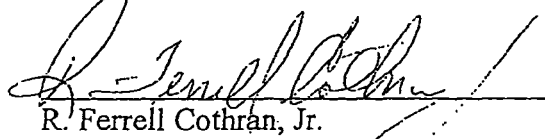
Except as discussed above, this Court finds that the Applicant failed to raise any other allegations cognizable in PCR at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

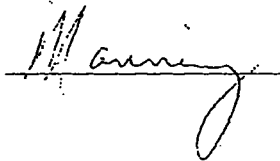
This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 22 day of Feb., 2012.


R. Ferrell Cothran, Jr.
Presiding Judge
Third Judicial Circuit

, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

George Lindsey #317562
Applicant

Case# 2010 CP 4300709

vs.

NOTICE OF MOTION AND MOTION
FOR REHEARING PURSUANT TO

The State
Respondent

59(a)(2) AND 59(e) SC Attorney General

RECEIVED

MAR 09 2012

Referred to M. Wm.

NOW COMES the above named Applicant who moves this Honorable Court in the above entitled matter to direct the entry of a new judgement per. 59(a)(2) and 59(e) to alter, amend, and reconsider the findings of facts and conclusions of law to each issue per. 17-27-80.

The Applicant received a signed copy of the Final Order of Dismissal March 5, 2012, which was signed by Judge R. Ferrell Cothran, Jr.

ARGUMENT

In Marler vs. State 653 SE2d 266 the Supreme Court made it clear that a P.C.R. Judge must make specific findings of fact and state expressly the conclusions of law relating to each issue. Also see: Bryson vs. State 493 SE2d 500; Pruitt vs. State 423 SE2d 127; and McCary vs. State 408 SE2d 24.

The Applicant would direct this Courts attention to the following:

Applicants Order of Dismissal states that the P.C.R. Judge agreed to leave the record open for a short period to allow Applicant to submit any relevant information in support of his motion for mental evaluation, and that this Court having received

no such information from Applicant for (3) months, hereby denies that motion for mental evaluation.

The Applicant claims that on October 24, 2011, the P.C.R. Judge of the evidentiary hearing stated he would rule on "if" Applicant would be allowed to get an mental evaluation, even allowed Applicant's attorney, Charles T. Brooks III, to ask Applicant's family in open Court if he (P.C.R. Judge) did rule on Applicant to get the mental evaluation and the Court was not going to fund it, would the family be willing to pay for it themselves, which family agreed and were waiting for the ruling from him to be allowed to do so. It was never said in Court by the Judge that he would be waiting or giving Applicant time to get the evaluation, then Judge would rule.

Also Order of Dismissal states; Applicant did not contest he drove roughly twenty (20) minutes to his brother-in-law's house where he shot him. It was said and proven in Court by Sumter County investigator prior that the mileage from Applicant's house to brother-in-law's house was clocked at (14) miles and would have only taken (10) minutes, not allowing him time to think about what he was doing.

Also Order of Dismissal states: "Counsel also noted that the allegations of molestation by Applicant's daughter have never been conclusively proven", when indeed there are video tape footage of Applicant's daughter with Doctors from Victim's Advocate of what happen to her and prior it was said in Court by Prosecutor Mr. Connor on June 4, 2009, in open Court that from him himself viewing the tape, it could not be ruled out that the molestation did not happen and he indeed felt something did happen. (see transcript from June 4, 2009)

Respectfully submitted,

Date: March 7, 2012

s/ Heon Lim # 317562

PROOF OF SERVICE

I, George Lindsey #317562 certify that I have served my 59(a)(2) / 59(e) upon the below persons, by placing the above said in the McCormick Corr. Inst. mail room on this 7 day of March, 2012, to be placed in the U.S. mail with postage prepaid.

s/ George Lindsey

Atty. Gen.'s Office
Henry D. McMaster
P.O. Box 11549
Columbia, S.C. 29201

Honorable Judge
R.F. Cothran Jr.
16 North Brook st.
Manning, S.C. 29102

The Honorable Clerk of Court
James C. Campbell
Courthouse, Room 308
Sumter, S.C. 29150

Sworn and subscribed before me this
7 day of March 2012

s/ George Lindsey #317562
Applicant

Joyce L Young

Notary Public

My Commission Expires:

10-11-2021

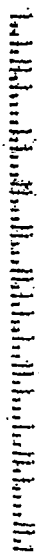
George Lindsey #319562
 386 Redemption Way
 McCormick, S.C., 29899

AUGUSTA GA 306
 US MAIL TABLE PM 2-1



Atty. Gen.'s Office
 Henry D. McMaster
 P.O. Box 11549
 Columbia, S.C. 29201

2921131549





ALAN WILSON
ATTORNEY GENERAL

March 20, 2012

RECEIVED

MAR 20 2012

The Honorable James C. Campbell
Clerk of Court, Sumter County
141 North Main Street
Sumter SC 29150

SC OFFICE OF
APPELLATE DEFENSE

Re: George Lindsey, 317562 v. State of South Carolina
2010-CP-43-0709

Dear Mr. Campbell:

I received a copy of the *pro se* document entitled "Notice of Motion and Motion for Rehearing Pursuant to 59(a)(2) and 59(e)" in the aforementioned post-conviction relief matter.

Please be advised that Rule 11, SCRCP, requires every pleading, motion, or other paper of a party represented by counsel to be signed by at least one attorney of record who is an active member of the South Carolina Bar. If a pleading, motion, or other paper is not signed, "it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant." Rule 11, SCRCP. *See, e.g., Jones v. State*, 348 S.C. 13, 558 S.E.2d 517 (2002); *Foster v. State*, 298 S.C. 306, 379 S.E.2d 907 (1989).

The Respondent is fully aware of our Court's recent ruling that "Rule 11 of the South Carolina Rules of Civil Procedure does not apply to PCR proceedings." *Hiott v. State*, 2009 WL 649785, 4 (S.C.) (2009). However, the Respondent interprets the *Hiott* decision to be narrowly tailored to the issue(s) presented in *Hiott* and not to negate any and all applicability of Rule 11(a) for PCR proceedings. The Respondent, respectfully, does not interpret *Hiott* to implicitly abrogate *Jones v. State*, 348 S.C. 13, 558 S.E.2d 517, (2002), see also *Foster v. State*, 298 S.C. 306, 307, 379 S.E.2d 907, 907 (1989).

Page Two
The Honorable James C. Campbell
March 20, 2012

Therefore, the State does not consider this *pro se* document a part of this action. According to our records, Inmate George Lindsey is represented by the Office of Appellate Defense, in this matter. By copy of this letter, I am notifying opposing counsel of the State's position.

Sincerely,



Mary S. Williams
Assistant Attorney General

MSW/lm

cc: Office of Appellate Defense (Enclosure)

SAB?

WITNESSES

SCSO

Wesley J. Gardner

ARREST WARRANT NUMBER

M190818

D/A: 09/19/08

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 31 DECEMBER 2008

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-43-0108

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

JANUARY TERM 2009

THE STATE

vs.

GEORGE R. LINDSEY, JR.

Indictment for

MURDER, POSSESSION OF A
FIREARM DURING COMMISSION OF A
CRIME OF VIOLENCE

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

INDICTMENT FOR

MURDER, POSSESSION OF A FIREARM
 DURING COMMISSION OF A CRIME OF
 VIOLENCE

At a Court of General Sessions, convened on December 31, 2008, the Grand
 Jurors of SUMTER County present upon their oath:

COUNT ONE – MURDER

That GEORGE R. LINDSEY, JR. did in Sumter County on or about September 18, 2008, feloniously, wilfully and with malice aforethought, either expressed or implied, kill one Lorenzo Smallwood by means of shooting him, and that the said Lorenzo Smallwood did die as a proximate result thereof.

COUNT TWO – POSSESSION OF A FIREARM OR KNIFE DURING COMMISSION OF
 A CRIME OF VIOLENCE

That GEORGE R. LINDSEY, JR. did in Sumter County on or about September 18, 2008, was in possession of and did visibly display a firearm or knife during the commission of a violent crime, to-wit: a .32 caliber semi-automatic pistol, in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

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

P. Kelly Jackson
 SOLICITOR

160 STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SUMTER)
STATE VS.) INDICTMENT/CASE#: 2009-GS-43-0108
GEORGE R. LINDSEY JR.) AWW# M190818
AKA) Date of Offense: September 18, 2008
Race: Black Sex: Male Age) S.C. Code §: 16-03-0010 0020
DOB: August 22, 1979 SS#) CDR Code #: 0116
Address:)
DL#) SID#)

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO
TO Voluntary Manslaughter
In violation of S. 16-003L-0050 of the S.C. Code of Laws, bearing CDR Code # 012
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (GSC) ☐ §17-25-45
W/mhd or Levy Act

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

W. H. G. [Signature] Defendant [Signature] Attorney for Defendant [Signature] SC Bar # 2725

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center
for a determinate term of 18 months years or ☐ under the Youthful Offender Act not to exceed 18 months years
and/or to pay a fine of \$ 2500, provided that upon the service of 30 days/months/years and/or payment of \$ 2500 plus
costs and assessments as applicable, the balance is suspended with probation for 30 months/years and subject to South
Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

SPECIAL CONDITIONS:
☐ RESTITUTION ☐ Deferred ☐ Defendant Waives Hearing ☐ Ordered PTUP
Total \$ 2500 plus 20% fee \$ 500 days/hours Public Service Employment
Payment Terms: Obtain GED
☐ Set by SCDPPPS 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 \$ 2500 beginning
\$ 2500 paid to Public Defender Fund
Other:
☐ Appointed PD or appointed other counsel §35-13-TP
Requires \$500 be paid to Clerk during probation.

Recipient: James C. Campbell II
*Fine: \$14-1-206 (Assessments 107.5%) \$ 100
\$14-1-211(A)(1) (Conv. Surcharge) \$ 100
\$14-1-211(A)(2) (DUI Surcharge) \$ 100
\$56-5-2995 (DUI Assessment) \$ 12
\$35-13 (Public Def/Prob) \$ 500
\$73-3, 1B TP (Law Enforce. Funding) \$ 25
\$33-7, 1B TP (Drug Court Surcharge) \$ 100
\$50-21-114 (BUI Breath Test Fee) \$ 50
\$56-5-2942(J) (Vehicle Assessment) \$ 40/ea
3% to County (if paid in installments) \$ 390
\$90-11 TP (SCCJA Surcharge) \$ 5
TOTAL \$ 13390
Clerk of Court/Deputy Clerk
Court Reporter: Melissa Singletary
PRESIDING JUDGE [Signature]
Judge Code: 2
Sentence Date: 6/8/09
Plea date 6/4/09