

RECEIVED

Jul 22 2020

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lancaster County

Honorable D. Craig Brown, Circuit Court Judge

RASHAD DEMOND JOHNSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001898

APPENDIX

JESSICA M. SAXON
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

LINDSEY MCCALLISTER
Assistant Attorney General
Rembert Dennis Bldg, Room 519
1000 Assembly Street
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

TRANSCRIPT OF GUILTY PLEA HEARING HELD NOVEMBER 11, 20171

APPLICATION FOR POST-CONVICTION RELIEF40

RETURN AND MOTION FOR MORE DEFINITE STATEMENT.....49

AMENDED APPLICATION FOR POST-CONVICTION RELIEF55

TRANSCRIPT OF POST-CONVICTION RELIEF HEARING HELD JULY 29, 201957

ORDER OF DISMISSAL.....84

INDICTMENTS AND SENTENCING SHEETS96

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 COUNTY OF LANCASTER) 2016-GS-29-0281; 536
)
) **ORIGINAL**
)
 STATE OF SOUTH CAROLINA)
) PLAINTIFF)
 vs.) TRANSCRIPT OF RECORD
)
 RASHAD DEMOND JOHNSON)
) DEFENDANT)

November 11, 2017
 Lancaster, South Carolina

B E F O R E:

THE HONORABLE BRIAN M. GIBBONS, Judge.

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

LISA COLLINS, ESQ.
 Attorney for the State

MICHAEL LIFSEY, ESQ.
 Attorney for the Defendant

APRIL HERRON
 Official Court Reporter

INDEX OF WITNESSES

RASHAD JOHNSON

Examination By The Court 5

There were no exhibits.

» > ○ < «

Sentencing 16

Certificate of Reporter 39

1 THE CLERK: Mr. Johnson, put your left hand on
2 the Bible, raise your right hand.

3 Rashad Johnson, after being duly sworn,
4 testified as follows:

5 MS. COLLINS: May it please the Court?

6 THE COURT: Yes, ma'am.

7 MS. COLLINS: Your Honor, this is The State of
8 South Carolina vs. Rashad Johnson who's present
9 before you on two fact patterns to which he is
10 entering pleas today. The first is 2016-GS-29-1281,
11 a true billed indictment, count one, for murder. And
12 a true billed indictment, count two, for possession
13 of a firearm during the commission of a violent
14 crime. The Defendant, pursuant to a plea agreement,
15 is entering a plea today to the lesser-included
16 offense of voluntary manslaughter. And as charged to
17 possession of a firearm during the commission of a
18 violent crime. This is a straight up plea. With The
19 State being free to ask for the maximum and
20 consecutive time and the defense being free to ask
21 for the minimum and concurrent time.

22 Also, Your Honor, 2017-GS-29-536, an incident on
23 a different date, Rashad Johnson, charged in a true
24 billed indictment with assault and battery by mob
25 second degree. Pursuant to the plea agreement The

RASHAD JOHNSON-EXAMINATION BY THE COURT

1 Defendant is entering a plea today to the lesser
2 offense of assault and battery first degree. We do
3 not believe that technically this is a
4 lesser-included offense. So, on that sentence sheet,
5 The Defendant signed a waiver for presentment to the
6 Grand Jury on that charge. I'll hand up at this time
7 the indictments and the sentence sheets.

8 THE COURT: All right, thank you.

9 Mr. Lifsey, you represent Mr. Johnson?

10 MR. LIFSEY: Yes, sir, I do.

11 THE COURT: And have you had a full opportunity
12 to go over everything with your client?

13 MR. LIFSEY: I have, Your Honor.

14 THE COURT: Based upon your investigation into
15 these matters -- well, in talking with your client,
16 what does he indicate he wishes to do?

17 MR. LIFSEY: Plead guilty, Your Honor.

18 THE COURT: And do you agree with that decision?

19 MR. LIFSEY: I do.

20 THE COURT: Thank you.

21 EXAMINATION

22 BY THE COURT:

23 Q All right, Mr. Johnson, I see you are 29 years
24 of age, sir?

25 A Yes, sir.

RASHAD JOHNSON-EXAMINATION BY THE COURT

1 Q Do you understand why you're in court today?

2 A Yes, sir.

3 Q Do you understand what you're charged with?

4 A Yes, sir.

5 Q Have you been over these offenses you've been
6 charged with, have you been over them with your lawyer?

7 A Yes, sir.

8 Q The manslaughter charge, which is the most
9 serious charge you're here today facing, carries a minimum
10 of two but up to 30 years in prison. Do you understand
11 that?

12 A Yes, sir.

13 Q As to that charge how do you plead?

14 A Guilty, sir.

15 Q The charge of possession of a weapon during a
16 violent crime carries five years, do you understand that?

17 A Yes, sir.

18 Q As to that charge how do you plead?

19 A Guilty, sir.

20 Q The assault and battery first degree charge
21 carries up to 10 years, do you understand that?

22 A Yes, sir.

23 Q As to that charge how do you plead?

24 A Guilty, sir.

25 Q All right, Mr. Johnson, has anybody forced,

RASHAD JOHNSON-EXAMINATION BY THE COURT

1 pressured or coerced or made you plead guilty against your
2 will?

3 A No, sir.

4 Q Has anybody promised you anything or held out
5 any hope of reward to get you to plead guilty to these
6 charges?

7 A No, sir.

8 Q Have you told your lawyer everything you need to
9 tell him?

10 A Yes, sir.

11 Q Has your lawyer answered all your questions?

12 A Yes, sir.

13 Q Are you satisfied with the services of your
14 attorney?

15 A Yes, sir.

16 Q Now, did you and your lawyer go over all your
17 Grand Jury rights as well as your jury trial rights?

18 A Yes, sir.

19 Q Do you understand those rights?

20 A Yes, sir.

21 Q Do you understand that you have a right to a
22 trial by jury of your peers, The State would have to prove
23 you guilty beyond a reasonable doubt of each and every
24 element of the crime charged?

25 A Yes, sir.

RASHAD JOHNSON-EXAMINATION BY THE COURT

1 Q Do you understand that you're presumed innocent
2 until proven guilty?

3 A Yes, sir.

4 Q Do you understand that you have the right to
5 cross-examine The State's witnesses and try to make them
6 look bad or not credible in front of the jury?

7 A Yes, sir.

8 Q You also understand that you have a right to
9 testify if you want to but you don't have to testify
10 because nobody can force you to testify against yourself
11 in the criminal case because that would violate the Fifth
12 Amendment; do you understand that?

13 A Yes, sir.

14 Q So you understand -- you've been over all those
15 rights with your lawyer?

16 A Yes, sir.

17 Q Do you understand that by pleading guilty today
18 you give up those very valuable rights?

19 A Yes, sir.

20 Q Is that what you want to do?

21 A Yes, sir.

22 Q Are you under the influence of anything today
23 that would make you not understand my questions to you?

24 A No, sir.

25 Q Do you understand what's going on?

RASHAD JOHNSON-EXAMINATION BY THE COURT

1 A Yes, sir.

2 Q And lastly, do you understand that you have 10
3 days from today to appeal any sentence which The Court may
4 hand down?

5 A Yes, sir.

6 Q All right. What's going to happen now,
7 Mr. Johnson, is the solicitor here, The State is going to
8 tell me the facts. Or what arose to these charges against
9 you as to what happened, okay?

10 A Yes, sir.

11 THE COURT: So listen carefully to what she
12 tells me you did.

13 Madam Solicitor.

14 MS. COLLINS: Thank you, Your Honor, may it
15 please the Court. Your Honor, had this matter not
16 resolved in a plea, I would note that this case was
17 set for trial first up December 4th of 2017. On 5/29
18 of 2016, The Victim, Deangelo Kirk, a 25 year old,
19 young citizen of Lancaster County was shot and
20 killed, murdered, by The Defendant, Rashad Johnson.
21 The facts had we gone to trial, which would have
22 presented evidence that there's a video tape of them
23 running on Pardue Street at the 1600 block of
24 Palmetto Place Apartments in broad daylight. You can
25 actually see the victim pleading for his life.

1 Let the record reflect that we have, in fact,
2 shown Your Honor that video so that you would have
3 seen that in chambers. We would have played that for
4 the jury. We would have presented testimony from
5 Sergeant Jody Simms, the investigating officer with
6 Lancaster Police Department. In that this did occur
7 within the city limits of Lancaster within Lancaster
8 County, South Carolina. There was an eye witness, a
9 Mr. Craig, who told law enforcement and would have
10 testified that he heard a gunshot. He thought it was
11 a firecracker at first right before they rounded the
12 corner. He saw the victim fleeing from The
13 Defendant, saw The Defendant chasing the victim.

14 At that time Mr. Craig didn't see a firearm in
15 The Defendant's hand. But he heard another gunshot
16 then he heard -- then he saw The Defendant come back
17 the way he had come. And at that point he did see a
18 black handgun in the hand of The Defendant, Rashad
19 Johnson.

20 Upon investigation, as I stated, the video tape
21 recovered from the apartment complex, clearly shows
22 the victim running away from Mr. Rashad Johnson. And
23 Mr. Rashad Johnson pursuing him with a handgun in
24 Mr. Johnson's hand and pointing and aiming it at the
25 victim. You can see in the SLED enhanced video we

1 would have played for the jury had it gone to trial,
2 you can clearly see Mr. Johnson's face for his
3 identity. And you can also see the shot, the fatal
4 shot, as it is engage by The Defendant.

5 I will note, as an officer of the court, you do
6 see in the SLED enhanced video that the victim had a
7 firearm, a pistol, also in his hand. SLED test did
8 come back positive for GSR on the victim's hands.
9 However, I will note that SLED did state that that
10 could be from just picking up a firearm that had been
11 shot previously. And that would have been the
12 testimony from the SLED agent had we gone to trial.
13 But because of the victim also holding a firearm and
14 his kit coming back positive coming back for gunshot
15 residue, we did give him consideration and decided to
16 enter -- to allow The Defendant to plead to voluntary
17 manslaughter. That coupled with you can't hear the
18 first shot that's right around -- you can't see on
19 the video the first shot that's right around the
20 corner.

21 I will tell you that Mr. Craig, the eye witness,
22 said he didn't hear any arguing or anything between
23 the two individuals. Just saw the victim running,
24 heard the gunshots. He -- I will also note that on
25 the video, you see the victim never takes an

1 aggressive stance, he never stops, turns and face
2 Mr. Johnson, the victim never raises his firearm. He
3 is quite simply pleading for his life.

4 After the incident, the firearm that the
5 victim -- you can see in the video had, was not
6 recovered by law enforcement, it had been removed
7 from the scene by someone but there was a .9
8 millimeter bullet in his pocket. There was also a .9
9 millimeter unfired cartridge in the area. So, we
10 believe that that's what the victim had. There were
11 two fired shell casings from a .10 millimeter also
12 recovered by law enforcement in the area. So, had we
13 gone to trial, it would have been our position that
14 The Defendant shot twice. One around the corner and
15 then once that you see on the video.

16 Again, you see The Defendant running away from
17 the scene afterwards. A BOLO was put out for The
18 Defendant. The Defendant was not apprehended until a
19 week later on May 28th. The victim was rushed to
20 Springs Hospital and flown to CMC Charlotte where the
21 victim did die of one gunshot wound to the head that
22 same day. The victim died from laceration of the
23 brain due to that one gunshot wound that entered the
24 back, near the top area just to the right of the
25 midline of his scalp, entered his skull and lacerated

1 the brain. Per the doctor that preformed the
2 autopsy, that was the cause of death.

3 The Defendant did turn himself in on May 28th.
4 But as I stated that was a full week later after the
5 Be On the Lookout bulletins were posted for him to
6 help apprehend him. The Defendant has been in
7 custody since May 28th of 2016, the date that he
8 turned himself in. By my calculation today he would
9 be entitled to 535 days credit on these two offenses.
10 Two which The Defendant turned himself in on 5/28.
11 Your Honor, those are the facts of the case for the
12 voluntary manslaughter and possession of a firearm
13 during the commission of a violent crime.

14 THE COURT: All right, let me interject there.

15 BY THE COURT:

16 Q Mr. Johnson, did you hear the solicitor just
17 describe to me the facts underlying the charge of
18 voluntary manslaughter against you as well as the
19 possession of a weapon during the commission of a violent
20 crime?

21 A Yes, sir.

22 Q Did you hear what they said you did?

23 A Yes, sir.

24 Q Is that what you did?

25 MR. LIFSEY: May I say one matter, Judge?

1 THE COURT: Yes.

2 MR. LIFSEY: I don't disagree a lot of what the
3 solicitor said. However, had this case gone to
4 trial, it would have been our -- my client's
5 testimony, we believe supported by the gunshot
6 residue test, that the victim in this case fired
7 first. So, he does not agree at all that he fired
8 the first shot. He certainly agrees that he fired
9 the fatal shot. I'll speak more of my view of the
10 facts --

11 THE COURT: Well, you know, voluntary
12 manslaughter would be defined as the, you know, total
13 disregard for human life, safety, knowingly and
14 intentionally shooting and killing another person.

15 BY THE COURT:

16 Q Did you do that?

17 A Yes, sir.

18 Q Okay. And were you in possession of a deadly
19 weapon when that happened?

20 A Yes, sir.

21 Q Okay. Did that happen in Lancaster County?

22 A Yes, sir.

23 THE COURT: All right. Then I think that in and
24 of itself with the underlining factors, although some
25 of it is disputed, I think that's enough for me to

1 accept his plea as to these charges and I will
2 therefore do so as to those two charges.

3 Listen carefully as she describes to me the
4 third charge against you, which is the assault and
5 battery first degree.

6 Yes, ma'am.

7 MS. COLLINS: Thank you, Judge. This incident
8 happened in Lancaster County, South Carolina
9 January 15, 2017, after The Defendant had been in
10 custody at the detention center for several months,
11 awaiting disposition of the murder charge. He, while
12 an inmate in the Lancaster County Detention Center,
13 along with three other defendants, did assemble and
14 jump on Malcom Belk, who was being processed in and
15 taking in as an inmate himself. This was recorded on
16 video camera at the jail. The -- Malcom Belk, the
17 victim, did have to go to the hospital. He was
18 treated and released. It's my understanding he did
19 have numerous injuries. I did comply with the
20 Victim's Rights Act. Mr. Belk isn't here today. He
21 has not asked for any restitution. But I do know he
22 had at least one chipped tooth and I think had loss
23 at least one tooth during the altercation.

24 We're allowing The Defendant to enter a plea to
25 assault and battery first degree. We're removing the

1 mob, which would be three to 25 years, and allowing
2 him to plead to assault and battery first degree.

3 THE COURT: All right.

4 Is that what happened on that case?

5 MR. JOHNSON: Yes, sir.

6 THE COURT: All right, The Court accepts your
7 plea as to that charge. All right. Now, as to
8 sentencing, I'll be glad to hear from The State
9 first, then I'll defer to you, Mr. Lifsey for
10 mitigation.

11 SENTENCING

12 MS. COLLINS: Thank you, Your Honor. As to The
13 Defendant's prior record, first. The Defendant was
14 convicted of B&E auto, assault and battery, unlawful
15 possession of a pistol and petit larceny in 2002.
16 Convicted of possession of marijuana 2006, also
17 unlawful possession of a weapon concealed by an
18 inmate and unlawful carrying of a weapon. Resisting
19 arrest, as well as in '06. In 2013, he was convicted
20 of possession of marijuana. 2013, a DUS second. He
21 had a prior DUS in 2006 I didn't mention. In 2014,
22 reckless driving, open container. 2015, had a
23 possession of cocaine, second offense. In 2013, he
24 had a felony possession of cocaine in North Carolina
25 conviction. That's the extent of his prior record.

1 At the proper time I'd like to be heard as to
2 sentence.

3 THE COURT: All right.

4 MS. COLLINS: Your Honor, we have complied with
5 the Victim's Rights Act. The family of the victim is
6 of Deangelo Kirk is present. His mother, Tammy
7 Wright, and numerous other family members and friends
8 are here on behalf of Deangelo. And I'd ask that
9 they all stand at this time so Your Honor can see
10 everyone that's here on behalf of Deangelo since he
11 couldn't be here today.

12 Thank you, be seated.

13 Your Honor, as I stated, Mr. Belk was not able
14 to come today but he had expressed to me as to his
15 sentence, he had been asked by the detention center
16 if he felt safe to go back in the area where these
17 inmates were. And he said he actually felt safe
18 because he thought Rashad Johnson was a friend of his
19 and the others were too. And that's why he was like,
20 That's fine, I have no problem going back there. And
21 that he was upset, of course, when he felt that
22 friendship was betrayed. And not just that they hurt
23 him but they did so as a -- they ganged up on him.

24 As to Deangelo Kirk, Your Honor, he was, as I
25 stated, just 25 years old. He was -- what stood out

1 to me when I looked at this is how close in size
 2 these two men were in terms of strength and age. If
 3 anything, Mr. Johnson had about 30 pounds on
 4 Mr. Kirk. But other than that, Mr. Kirk was 6'1,
 5 approximately 155. Mr. Johnson was 6'2, about 188.
 6 Mr. Johnson's 28, Mr. Kirk was 25. And certainly if
 7 they had a dispute as men, there could have been
 8 another way to resolve it other than firearms. But
 9 when firearms entered the picture, there was at that
 10 point, The State feels, just as Your Honor stated, a
 11 total disregard for human life.

12 The -- the victim always wanted children. He
 13 did not live to have the children that he had told
 14 his mom he always hoped one day to have children. In
 15 the video, you can see The Defendant chasing the
 16 victim pass a baby stroller. And as a woman who has
 17 had a child, I can tell you the minute I saw that, of
 18 course, my first reaction was, is there a baby in
 19 that stroller? And there was not. But it is a great
 20 concern to The State that The Defendant acted, we
 21 feel, in a callous, cold-hearted manner expressing
 22 lack of concern for how precious life is.

23 And a total disregard, not only for the life of
 24 the young man, Deangelo Kirk, who will never see
 25 raise his children, see his mother hold his baby on

1 her lap, but also for all the families that lived in
2 that apartment complex. Including the mothers and
3 the children who lived there. It's our understanding
4 that two of the children of The Defendant live in
5 that apartment complex. And the family was told that
6 they actually were out in that area during the time.

7 In fashioning this plea offer, The State
8 considered that had The Defendant been convicted on
9 separate day of assault and battery by mob second
10 degree, that being a most serious offense, even if
11 the jury in this case were to find The Defendant only
12 of voluntary manslaughter, rather than murder, to
13 then be convicted for assault and battery by mob
14 second degree would have exposed The Defendant to
15 life in prison. Separate and apart from the murder
16 charge. And for this Defendant to continue to act in
17 a violent manner and to do so in a way that ganged up
18 with other people, upon someone else, while in the
19 detention center, awaiting disposition of these
20 charges, I would say, Your Honor, cries out for
21 consecutive sentences.

22 I'm going to hand up at this time pictures of
23 Deangelo. Deangelo was in a wedding. He appears to
24 be the best man. I'll show you -- the first picture
25 I'll hand you, he's to the far right. And the second

1 picture to left of the bride and again to the left in
2 the last one. I've shown these to defense counsel.
3 And that allows you to see truly what a fine young
4 man we all also lost on May 21st.

5 This is a doubly tragic case because Tammy
6 Wright, the mother of Deangelo Kirk, had lost another
7 son to a violent shooting just six months before this
8 incident. And we believe that The Defendant was well
9 aware of that. And again, for him to be chasing
10 another son of Tammy Kirk -- now don't get me wrong
11 he was not at involved at all in that first shooting.
12 That was perpetrated by another man, Daniel Peay, who
13 is now serving time in the Department of Corrections
14 for that.

15 But again, I would just state, Your Honor, that
16 I don't always stand here asking for consecutive
17 sentences. I did in the case of Daniel Peay. And I
18 do so today in the case of Rashad Johnson. Because,
19 Your Honor, again, the run in an apartment complex in
20 broad daylight with total disregard with who else was
21 standing nearby, to chase someone, shoot them in the
22 head and then run off. Then wait a week before you
23 turn yourself in. I appreciate that he turned
24 himself in. And then while awaiting charges on that,
25 to then continue to act in a violent fashion and gang

1 up on another man with three other people also
2 ganging up on him. I would submit calls out for
3 consecutive time.

4 And The State respectfully does ask for the
5 maximum. Thirty years on the voluntary manslaughter,
6 five years consecutive on the firearm, possession of
7 firearm during the commission of a violent crime and
8 for 10 years consecutive on the assault and battery
9 first degree. I was told earlier that the family was
10 too emotional, they didn't want to say anything out
11 of place. And they ask that I speak on behalf of
12 them as well as The State. But I do want to turn and
13 give them that opportunity in case they would like to
14 add anything to my remarks.

15 Does anybody want to add anything?

16 Yes, Your Honor. If this young lady would like
17 to come forward with our victim advocate, Drew
18 Clancy. And if you could, please, state your name
19 and state your relationship to Deangelo for The
20 State.

21 MS. BLAKELY: My name is Angela Blakely and I
22 was Deangelo's first cousin. Yesterday was supposed
23 to be a celebration for us. He would have turned 26
24 on yesterday but instead yesterday was a remainder
25 that he's truly not here and he's truly not coming

1 back and we're truly not going to be able to see him
2 again. Mr. Johnson's mom will be able to see him.
3 She will be able to perhaps talk to him but she knows
4 he's living and breathing. We don't have that. We
5 have numerous cousins in our family that have
6 children and we looked forward to the time, we called
7 he Rudy, would have his own children.

8 Rudy was a young man of not many words at all.
9 He smiled if anything. If you said something to him
10 you just got a smile, that's all you got out of him,
11 basically. So, he was that -- that silent cousin but
12 he spoke volumes with he silence. That silence is
13 missed. We've had several occasions within our
14 family within the last few months with weddings and
15 birthdays and different things and, of course, the
16 holidays are coming up. And he's not here. And it's
17 not fair to us for him to not be here. Because
18 someone thought less of him as a person and took him
19 away. So, we ask that you do give the max. It's not
20 going to bring him back but it's justice and that's
21 all.

22 THE COURT: Thank you, ma'am. Thank you for
23 being here.

24 MS. BLAKELY: Thank you.

25 MS. COLLINS: Did anybody else in the family

1 want to speak?

2 And, Your Honor, lastly, Sergeant Jody Simms is
3 here. She was the chief investigating officer for
4 the Lancaster Police Department, she would like to
5 address the court.

6 THE COURT: Yes, ma'am.

7 MS. SIMMS: Judge, I'm Jody Simms. Like she
8 said, I was the lead investigator with the Lancaster
9 Police Department. The family is too emotional to
10 come up and speak on his behalf so I feel it's my
11 place to do so on behalf of them and the Lancaster
12 Police Department. As you see they have been through
13 a great deal in the last couple of years losing two
14 sons. And on there behalf, as well as Lancaster
15 Police Department, I do respectfully ask for the max
16 and consecutive, sir.

17 THE COURT: Thank you.

18 MS. COLLINS: Your Honor, that's all on behalf
19 of The State, thank you.

20 THE COURT: Thank you very much, Madam
21 Solicitor.

22 Mr. Lifsey.

23 MR. LIFSEY: May it please the Court, Your
24 Honor?

25 THE COURT: Yes, sir.

1 MR. LIFSEY: I represent Rashad Johnson. I was
2 appointed shortly after this incident and talked to
3 him and frankly had the pleasure of talking to him.
4 You know, he's been, as far as clients, go one of the
5 easiest clients I ever had to deal with. He's been
6 low maintenance. I've gone to see him a lot because
7 the seriousness of the charge. But he hasn't been
8 very difficult to deal with at all. He's asked
9 intelligent questions about his case. I even got to
10 the point where, I guess, a few months ago I sent him
11 some case law. Which I'm scared to do with clients
12 because some people don't, you know, read cases and
13 interpret them in different ways that you and I would
14 as lawyers. But I thought he had the intelligence to
15 understand the issues at stake. The issues, the
16 interplay between murder and voluntary manslaughter
17 and self-defense law in South Carolina. And so, I
18 sent him stuff. And he's just been a good client to
19 represent.

20 He also has a lot of people here for him. I'm
21 going to introduce some of them in a moment to you.
22 I'm actually going to introduce all of them to you
23 but a few of them may wish to speak. And I know he
24 wishes to speak. I want to begin by giving you my
25 version and what we believe the facts would have been

1 had this case gone to trial. Not to retry this case
2 because we're pleading to it and not to in any way
3 say that he's not guilty of voluntary manslaughter.
4 But I want the record clear as far as what we would
5 have produced at trial and why, frankly, so you and
6 anybody else one day that wants to look, will
7 understand why we're entering this plea.

8 The solicitor mentioned the case involving the
9 sibling of the victim in this case. There is a
10 couple of things I would like you to know about that
11 case. First of all, my client had nothing to do with
12 it. He was not charged, was not intimated to be
13 involved in that case. So, while I can't imagine the
14 tragedy of the mother in this case losing two
15 children, my client did not take her other child
16 away. It is however important to know that my client
17 did know The Defendant in that case. My client --
18 the defendant in that case, shortly before he
19 committed the homicide, had been in jail on other
20 charges.

21 If we had gone to trial, we would have presented
22 evidence and we would have done this through multiple
23 witnesses that would have testified that the victim
24 in this case blamed my client for helping him get out
25 on bond. And that we would have had maybe three if

1 not four people sit on that stand that would have
2 described incidents in which the victim threatened my
3 client because of that incident. Which he had
4 nothing to do with but was being blamed because that
5 defendant got out on bond and they blamed my client
6 for doing that.

7 Had we gone to trial you would have had
8 testimony from those prior difficulties. You would
9 have had testimony from my client that the victim in
10 this case fired shots first. That he went out there
11 and a confrontation ensued and the victim pulled out
12 a gun and fired at my client. I think that is a
13 plausible account of what happened based on gunshot
14 residue on the victim's hand. Based on the fact that
15 the victim is clearly armed. And on the video when
16 you see the victim on this case running by, you see
17 the gun is out in his hand. It's not like it's in a
18 waistband or anything like that.

19 Now, here's what happened and here's what my
20 client has told me from the beginning. And here's
21 what he would have had to testify to at trial. He
22 would have testified that when this confrontation
23 with this person who had threatened him before ensued
24 and when that person pulled out a gun and shot him,
25 he was filled with anger and shock at being shot at.

1 So he pulled his own gun out. And the Defendant
2 started running and he chased him and he shot him.
3 Now, I want to make clear and Your Honor watched the
4 video. This is not a lengthy, lengthy time. In some
5 ways when we start describing these incidents up here
6 we make it seem like one thing happened and it was a
7 long delay and the second thing -- this is a real
8 quick endeavor.

9 In fact, as I read the witness, Mr. Craig's
10 written statement, Mr. Craig says he hears what he
11 think is first a firecracker, then believes is a
12 shot. And Craig, according to his written statement,
13 looks out the window and sees my client running.
14 Which to me gives evidence that he, clearly from the
15 video, had to have missed the first person. And is
16 consistent with the victim in this case is running --
17 is in a -- it's a pretty quick thing, okay. So, I
18 guess -- so that would have been the testimony we
19 present at trial.

20 Here's the problem. As if Your Honor knows and
21 quite rightly pointed out earlier, those facts do not
22 amount to self-defense in South Carolina. Because
23 first of all, you have to be, obviously, without
24 fault. But you also have to have no duty, have a
25 duty to retreat in a public place. There's a number

1 of issues that make it not a self-defense case. It
2 does, however, I believe, make it a voluntary
3 manslaughter case. So, from my perspective, and, of
4 course, there's nothing unusual about the solicitor
5 and I disagreeing with things, while the solicitor
6 views this as a murder case, they allowed to plead to
7 voluntary manslaughter. From our perspective, this
8 was a voluntary manslaughter case from the beginning.

9 Just not that plea negotiations matter beyond
10 what you are taking but I will tell you that for the
11 reason this case has taken a long time to resolve
12 itself is that it is only been recently that The
13 State was willing to offer voluntary manslaughter in
14 this case. For which we are grateful. And don't in
15 any way wish to criticize any of that but that's why
16 this case was at the trial posture. Because from the
17 beginning when the position of The State was it was a
18 murder, I mean, we couldn't plead to murder. My
19 client told me he wasn't guilty of murder, and
20 frankly, I thought there was evidence -- now a jury,
21 you know you never know what 12 people of a jury are
22 going to do. But I think there was evidence from
23 which a jury could have concluded voluntary
24 manslaughter.

25 When The State offered voluntary manslaughter in

1 this case, I went to my client, I talked about it.
2 He and I have discussed more times than I can count
3 the differences between murder and voluntarily, the
4 problems with self-defense. And so, when I explained
5 that to him, we were put in a position for which The
6 State was offering what I believe, based on my years
7 of experience as a criminal defense lawyer, would
8 have been the best outcome at trial for us. And
9 that's why he's entering the plea. Having said that,
10 as you know, he's entering this plea without
11 recommendation, The State can ask for anything. I
12 mean, they're certainly, you know, I don't often have
13 people pleading straight up to charges. But I think
14 it's to his credit that he did that. He could have
15 forced the victim's family to go through the trial in
16 this case, he chose not to. And I would ask The
17 Court to take into account your sentencing that he is
18 coming forward and entering a plea. So, that's kind
19 of how we got here.

20 As I said, I represent Rashad Johnson. And he
21 has a lot of support. First of all, I will tell you
22 that I handed up to The Court at the same time
23 Ms. Collins showed the video, which I appreciate her
24 doing, I think it's in everybody's interest to see it
25 in the back--

1 THE COURT: And I haven't read these statements.

2 MR. LIFSEY: -- I handed up, I think, 16 if I
3 counted them correctly, letters from members of the
4 community. I will tell you that I wish I could say I
5 handed up to you a packet of 16 or 20 letters on
6 every criminal case I had but as you know that
7 doesn't happen. I think it speaks well for
8 Mr. Johnson that he has people who care about him and
9 see more to him than this incident.

10 Your Honor, let me introduce to you some of the
11 people here.

12 When I say your name, if you would stand up so
13 The Judge will hear you, see you who you are. His
14 mother, Angela Clinton. That's Ms. Clinton. Janissa
15 Tinsley, who's the mother of one of his children is
16 here. Stephanie Arnold, who is a friend who's been
17 here several times. Lisa Harris who is his
18 godmother. Where's Ms. Harris? That's Ms. Harris.
19 Derrick Johnson, who is his brother. His brother has
20 been involved and talked to him in my office.
21 Ashakie [ph] Crawford, who is a friend. Jason
22 Twitty, who is a friend. Kenyatta Myers, a friend of
23 the family. Miaka [ph] Crawford, who is also a
24 mother of one of his children. Kimberly Moore who is
25 a friend as well. I think I've gotten everybody.

1 Several of those people might wish to speak to you in
2 just a moment, Judge. And I know my client wishes to
3 talk to you.

4 This is a difficult case. And I don't envy
5 judges in having to make difficult decisions on what
6 to sentence people to. But I would urge The Court to
7 take into account that I do believe that this is a
8 voluntary case, not a murder case. I would ask The
9 Court to take into account that my client is 29 years
10 old. He's lived in Lancaster all of his life. I
11 point out that he's 29 because -- and almost 30 years
12 old because I think he is a very different person
13 than sort of the standard, what I would call, the
14 latest round of gun violence in Lancaster. Which I
15 would say is mostly people in the neighborhood of 15
16 to 20 years old. I don't believe this is that case.
17 And I don't think it is typical of those kinds of
18 things. First of all, it predates a lot of it.

19 Secondly, I don't think the unique circumstances
20 in this case -- now he shouldn't have had a gun, I'll
21 talk about guns in a minute. But I don't think this
22 was a case where he is the same -- I don't think he
23 is part of any of what's been going on in Lancaster
24 in the last few months. Your Honor, he had, when I
25 first began representing him, six children. He only

1 has five children now. One of his -- his six
2 year-old son was -- you may have --

3 MR. JOHNSON: Two.

4 MR. LIFSEY: Two, I'm sorry. I couldn't even
5 read my own handwriting, I apologize, I had a note
6 with the number of children. His two year-old son
7 was the young toddler that was killed tragically in
8 the house over in Lancaster, I guess, probably back
9 in August by a gun. Okay. So, there's nothing that
10 you or I could do today, I think, to bring home to
11 Rashad Johnson the message that guns are
12 inappropriate for people to have that are not
13 responsible gun owners. Anymore that what happened
14 to his own child. Any of us who are parents cannot
15 imagine a loss worst than that.

16 Your Honor, as I said, he grew up here in
17 Lancaster. He went to Tims Church at Warner Temple
18 AME Zion. He worked construction. In addition to
19 that church, his mother goes to Mt. Nebo. And
20 Reverend Caughman wanted to be here very much today
21 but he had a funeral he had to go to. But he has
22 been offering some spiritual guidance to the family
23 and to my client. He's worked construction jobs. He
24 worked at Tyson for about three years.

25 Your Honor, I would ask The Court to hear from

1 the family in this case. Then I may have a word or
2 two before my client speaks.

3 THE COURT: All right.

4 MR. LIFSEY: Anybody who wants to speak, please
5 come up.

6 THE COURT: Just step right up to the
7 microphone.

8 MR. LIFSEY: State your name so the court
9 reporter can get it down.

10 MS. LATHAN: I'm Angel Lathan, I'm Rashad's
11 mother. First I want to ask The Court to have mercy.

12 THE COURT REPORTER: I'm sorry, I can't hear
13 her.

14 MR. LIFSEY: She is having difficulty hearing
15 you.

16 THE COURT: If you could slide over so she can.
17 . . .

18 MS. LATHAN: I would ask The Court to have mercy
19 on Rashad and to be as lenient as possible. First, I
20 wanted to apologize to the family for what they're
21 going through. And that y'all would like at my son,
22 not in his weakest ways and not in the weakness. I
23 just ask that The Court please be as lenient as
24 possible on him. Because he has lost a child himself
25 during this whole thing. And he's -- he's not the

1 person that they are painting him to be. He's a
2 person -- he's a kind person, he's made mistakes.
3 He's made mistakes. He's made mistakes in his life
4 but he has changed to become a man that he wants to
5 be. So, I just ask that you, please, be as lenient
6 as you can toward him.

7 THE COURT: Thank you, ma'am.

8 MR. LIFSEY: Anyone else want to speak? Make
9 sure you speak up so the court reporter and everybody
10 can hear you.

11 THE COURT: Yes, ma'am.

12 MS. TINSLEY: My name is Janissa Tinsley. As he
13 stated I am one of Rashad children's mother. I do --
14 I am currently employed with Mecklenburg County.
15 Your Honor, I would first like to sincerely thank you
16 for giving us this opportunity to speak on Rashad's
17 behalf. He and I have always had a special
18 relationship from our childhood years to raising a
19 child of our own. Rashad is the most humble
20 individual that I know, that would give you the shirt
21 off his back if need be.

22 I watched him transform to this hardworking man
23 that always made family his number one priority. I
24 can honestly say Rashad strived daily to be a better
25 person. He even went to church at was stated. He

1 worked hard and being an all around dependable person
2 that we know him as. I watched him build
3 indescribable bonds with each of his children. And I
4 also consider him as a fantastic father. And that
5 they all cherish him at such a young age.

6 Regardless of his past encounters, I ask that
7 you don't look at Rashad as what society portrays him
8 to be. We all fall short and make mistakes in life.
9 But that does not always determine who we are or who
10 we will be. I just ask that you have mercy upon him.
11 And to the victim's family, I do apologize that this
12 has happened and that we all have to be here under
13 these circumstances. I pray and I will continue to
14 pray that you one day find it in the kindness of your
15 heart to forgive Rashad because I know -- I'm sorry.
16 I -- to give him -- thank you.

17 THE COURT: Thank you, ma'am.

18 MR. LIFSEY: I think there may be one more.

19 THE COURT: All right.

20 MR. LIFSEY: I think that's it, Judge.

21 THE COURT: Okay.

22 MR. LIFSEY: I'd ask you to hear from my client
23 in this matter, what his thoughts are, Your Honor.

24 THE COURT: Mr. Johnson.

25 MR. JOHNSON: I'd like to first -- hold on. I'd

1 like to first start off by saying I apologize to the
2 family as well as my family for putting them through
3 the tragic. I had take a person life but as I've
4 been incarcerated, I have rehabilitated myself to
5 become a better person. Like he said, I lost my son
6 to a gun. So, at the end of day I understand their
7 pain. And I ask that one day in their heart that
8 they will forgive me for what I had to do, you know.
9 But I ain't saying that I'm a positive -- a good
10 person but at the end of the day I have changed to
11 become a better person day-by-day. I progress to
12 become a better person.

13 And I ask that you be lenient on me and that one
14 day that when I get out, I want to be a minister to
15 help the younger youth to realize that, you know, you
16 can make bad decisions and always change it, you know
17 what I'm saying, and become a better person is only
18 if you want to become a better person. You know, you
19 have to have it within yourself. You can't -- nobody
20 else can want it for you, you have to want it
21 yourself. Like I say, I want to apologize on my
22 behalf of putting they family through pain and tragic
23 as well as my family.

24 That's all I can say right now. I ask you to be
25 lenient as you can be, you know. Because like I say,

1 I'm not the person that society make me to be. I
2 have become a better person day-by-day and progress
3 myself to become a better man. So, like I say, when
4 I get out, if I have the opportunity to get back out
5 there, I am going to become a minister and help the
6 younger youth to realize that guns and violence is
7 not that way of life.

8 THE COURT: Thank you, Mr. Johnson.

9 MR. JOHNSON: Yes, sir.

10 THE COURT: Mr. Lifsey.

11 MR. LIFSEY: Thank you, Your Honor. I would
12 just ask The Court to consider, in light of -- I
13 mean, this is a tragic, terrible case. But in light
14 of the family support and the community support,
15 consider a sentence in the middle range of the
16 manslaughter scale. I just -- from my view, this is
17 a manslaughter case and I'd ask you to sentence
18 accordingly. Thank you, Judge.

19 THE COURT: This a heartbreak in this courtroom
20 to go around. It's just tragic. The easiest thing
21 to do as a Judge is just to give everybody the
22 maximum penalty. Of course, they're some judges who
23 do that, not that they're wrong, judges have to make
24 tough calls all the time, we're humans, you know.
25 You know, but exacting justice is more than just

1 writing a number on a piece of paper, which is the
2 maximum. You have to balance mercy and compassion
3 for a human being versus vengeance for the victim's
4 of crime and sending a message to the community. You
5 know, what is that? I don't know what it is.
6 Certainly, the tragedy in this situation is profound.
7 God's the ultimate judge. And he knows what's in
8 your heart.

9 MR. JOHNSON: Yes, sir.

10 THE COURT: You've experienced the loss of a
11 child. Every parent's worst nightmare. Okay.

12 Based upon the totality of the circumstances of
13 having pled guilty, and I'm going to ask that
14 everybody in the courtroom please remain silent while
15 I pronounce my sentence. Then we'll take a recess
16 and y'all can discuss it then. After having heard
17 from all sides, the sentence of The Court is as
18 follows. As to Indictment 16-GS-29-1281, count one,
19 pled guilty to voluntary manslaughter, the sentence
20 of The Court is 18 years in the South Carolina
21 Department of Corrections. As to count two of that
22 indictment, the sentence of The Court is five years
23 consecutive. As to Indictment 17-GS-29-536, the
24 sentence of The Court is 10 years in the South
25 Carolina Department of Corrections, concurrent.

1 Giving you 23 years in prison, Mr. Johnson. I hope,
2 certainly hope you change. I certainly hope whenever
3 it is that you get out that you become that person
4 you say you want to be.

5 MR. JOHNSON: Yes, sir, thank you.

6 THE COURT: Good luck to you.

7 All right, that's the Order of The Court. So
8 court will be in recess until 1:30 p.m.

9 MS. COLLINS: Thank you, Judge.

10 (WHEREUPON, the proceedings were concluded.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA)
County of LANCASTER SC)

IN THE COURT OF COMMON PLEAS

2018 CP 29 01087

RASHAD JOHNSON #314730
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

CLERK OF COURT
LANCASTER, SC

2018 SEP 20 PM 12:01

FILED
-11- OF CLERK
OF COURT

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 LIEBER CORR. INST.
2. Name and location of Court which imposed sentence LANCASTER COUNTY
COURTHOUSE P.O. BOX 1809, LAN., S.C. 29721
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2016GS2901281 Court I

(b) _____

(c) _____

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

(a) 11/14/17 - 18 YEARS

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

YES

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

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

i. S.C. COURT OF APPEALS / APPELLATE COURT

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. AFFIRMED / APPEAL DISMISSED

ii. _____

iii. _____

(c) the date of each such result:

i. 12/28/17

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. SUFFICIENT
FAILED TO PROVIDE A SUFFICIENT EXPLANATION AS
REQUIRED BY RULE 203 (d)(1)(B)(iv) (SCACR)

ii. _____

iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) N/A

(b) _____
(c) _____

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

(a) 5TH AND 14TH AMENDMENT VIOLATIONS
(b) 6TH AMENDMENT INSUFFICIENCY REPRESENT
(c) BY LAWYER.

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

(a) BRIEF WILL BE PROVIDED
(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? N/A
(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
(d) any other petitions, motions or applications in this or any other Court? N/A

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. N/A
ii. _____
iii. _____
iv. _____
(b) the name and location of the Court in which each was filed:
i. N/A
ii. _____
iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

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

N/A

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) APPLICANT HAVEN'T HAD AN OPPORTUNITY
- (b) BECAUSE HE'S ONLY JUST COMING TO THE
- (c) KNOWLEDGE OF SUCH VIOLATIONS

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

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

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. Michael H. Litsey P.O. Box 132
CHESTER SC. 29706



ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. MICHAEL H. LITSEY REPRESENTED ME IN A
PLEA ~~AGREEMENT~~ AGREEMENT.



ii. _____

iii. _____

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

I, RASHAD JOHNSON #314730, 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.

Rashad Johnson
Applicant

SWORN or affirmed to and subscribed before me this
10th day of September, 2018.

Linda K. Palma
Notary Public

My Commission Expires: 6-20-20

FILED
CLERK OF COURT
OF COURT

Sept. 2, 2018

cl Raahad Johnson ^{2018 SEP 20 10 12 AM} ^{CLERK OF COURT} writing on my behalf
 cl was back in the Alameda County Detention Center
 on 5-28-16 for Murder and poss of weapon. On 5-21-2016
 they said cl did commit Murder but all they have
 is a video of me and the victim both of us
 running in the same direction. We both have semi-
 auto handguns in our hands we go off camera
 view but cl come back who to say cl was the one
 that shot and kill the victim? And the witness
 that they have never told them that cl was the one
 that shot and kill the victim all the witness
 told them was that he seen was the both of us
 running in the same direction. And when the police
 arrival on the scene the victim gun was taking
 from him so someone was mislead with evidence
 on the crime scene and they had a name of the person
 but couldn't find the gun because he might have
 sold it. When officer Turner arrival on the scene
 he observed 30 people standing behind the building.
 PFC Turner asked several subjects if they had
 seen any suspects? All the subjects individuals
 that they only heard gunshots if cl did shot
 and kill someone in A apartment were a lot
 of people be outside why ain't no eye witness

See me it was 30 people out there? I have one more thing to state on November 14, 2017 I enter a plea deal with Solicitor Lisa Collins and my lawyer Michael H. Lipsev. They both withheld evidence from me to after I had struck my plea she said that the victim ~~Kirk~~ Kirk did test positive for his GSR Kit I never knew that too the day I pleaded guilty. I feel that my lawyer didn't represent me like a lawyer should I feel I should be granted a new trial process or that I be released due to insufficiency of evidence.

Sincerely
Rashad Johnson

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	FOR THE SIXTH JUDICIAL CIRCUIT
)	
Rashad Demond Johnson, # 314730)	
	)	2018-CP-29-1087
Applicant,)	
)	
v.)	
	)	RETURN & MOTION FOR A
State of South Carolina,	)	MORE DEFINITE STATEMENT
)	
Respondent.)	
)	

In response to the application for post-conviction relief (PCR) filed by Rashad Demond Johnson on September 20, 2018, the State files this return:

I. Procedural History

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lancaster County Clerk of Court. Applicant was indicted at the August 2016 term of the Lansater County Grand Jury for murder and possession of a firearm during the commission of a violent crime. (2016-GS-29-1281). On November 11, 2017, Applicant pled guilty before the Honorable Brian M. Gibbons to the lesser included offense of voluntary-manslaughter, and as indicted to the weapons charge. Applicant also waived presentment to the grand jury and pled guilty to first-degree assault and battery. Applicant was represented by Michael H. Lifsey of the Sixth-Circuit Public Defender's Office. Applicant pled without formal sentencing recommendations or negotiations—straight-up. Judge Gibbons accepted Applicant's plea and sentenced him to an aggregate term of imprisonment for twenty-three years.

Plea counsel filed a notice of appeal and statement pursuant to Rule 203(d)(1)(B)(iv), SCACR, and *In re Anonymous Member of the Bar*, 303 S.C. 306, 400 S.E.2d 483 (1991), on November 21, 2017. Applicant filed a *pro se* statement with the court of appeals on December

18, 2018. The court of appeals dismissed the appeal on December 28, 2017, and remitted the case on January 16, 2018. Applicant commenced this PCR action September 20, 2018.

II. Facts

Applicant's murder and weapons charges stem from an incident that occurred May 21, 2016, at Palmetto Place Apartments (Palmetto). The incident was captured by Palmetto's video surveillance system. Applicant shot and killed Deangelo Kirk. The video of the incident was played for the plea court, in chambers, prior to Applicant's plea. (Plea Tr. 8–9).

The video of the event showed: Kirk fleeing from Applicant; Applicant, with his gun drawn, pursuing Kirk; and Applicant shooting Kirk. After shooting Kirk, Applicant fled. He surrendered to law enforcement May 28, 2016. Both Applicant and Kirk were armed during the incident, and Kirk tested positive for gunshot-residue. (Plea Tr. 9–12).

Applicant's first-degree assault and battery charge stems from an incident that occurred January 15, 2017. Applicant was confined in the Lancaster County Detention Center awaiting the disposition of his murder and weapons charges when this incident occurred. Applicant, and three other defendants, "jumped" Malcom Belk. The incident was captured by the detention center's video surveillance. (Plea Tr. 14–15).

On November 11, 2017, Applicant pled guilty to the lesser included offense of voluntary-manslaughter, and as indicted to the weapons charge. Applicant also waived presentment to the grand jury and pled guilty to first-degree assault and battery. Applicant was represented by plea counsel and pled without formal sentencing recommendations or negotiations—straight-up. The plea court accepted Applicant's plea and sentenced him to an aggregate term of imprisonment of twenty-three years.

Plea counsel filed a notice of appeal and statement pursuant to Rule 203(d)(1)(B)(iv), SCACR, and *In re Anonymous Member of the Bar*, 303 S.C. 306, 400 S.E.2d 483 (1991), on November 21, 2017. Applicant filed a *pro se* statement with the court of appeals on December 18, 2018. The court of appeals dismissed the appeal on December 28, 2017 and remitted the case January 16, 2018. Applicant commenced this PCR action September 20, 2018.

III. Current Application

Applicant alleges he is being held in custody unlawfully due to ineffective assistance of counsel. Applicant requests relief in the form of a new trial.

Attached to this return and incorporated herein are the Lancaster County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the plea transcript, Applicant's direct appeal records, and the records of this current PCR action.

IV. Motion for a More Definite Statement

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

V. Response to Allegation of Ineffective Assistance of Counsel

Applicant's allegation of ineffective assistance of counsel is without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell

below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). “The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985).

A defendant who entered a guilty plea with the advice of counsel, may only attack the voluntary and intelligent nature of the plea. *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). A defendant “must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). To prove prejudice, the applicant must show a reasonable probability he would not have pled guilty and would have insisted on going to trial absent plea counsel's alleged deficiency. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

The record likely does not directly dispute Applicant's allegations of ineffective assistance of counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues once, as requested above, Applicant provides a more definite statement. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

VI. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed

by the State at an evidentiary hearing pursuant to the Uniform Post-Conviction Relief Act¹ and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)–(b), SCRCPP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCPP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCPP.

VII. Response to Any and All Other Allegations

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

VIII. Request for an Evidentiary Hearing

WHEREFORE, the State requests an evidentiary hearing be held once Applicant provides a more definite statement.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

SAMUEL L. KEY
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

March 12, 2019


¹ S.C. Code Ann. §§ 17–27–10 to –160.

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER)	
)	
	)	2018-CP-29-1087
)	
RASHAD JOHNSON, #314730)	
)	
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 and Motion for a More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Donae Alecia Minor
Minor Law Offices LLC
1750 Highway 160 West Suite 101 #259
Fort Mill, South Carolina 29708

DATED this the 12th day of March, 2019.



 Carmen A. Nord, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOR THE 6 th JUDICIAL CIRCUIT
COUNTY OF LANCASTER	)	Case No.: 2018-CP-29-1087
)	
Rashad Johnson (#314730),)	
)	
Applicant,	)	AMENDED POST-CONVICTION
	)	RELIEF APPLICATION
v.)	
)	
State of South Carolina.)	
_____)	

The Applicant, Rashad Johnson (#314730), by and through his undersigned attorney, hereby supplements his PCR application filed on September 20, 2018 and states the following:

Ineffective Assistance of Counsel as to Michael Lifsey, Esquire:

Counsel failed to properly explained strengths and weaknesses of all evidence sought against Applicant so that Applicant could make an informed decision as to whether to proceed with a trial in lieu of a plea.

Counsel's conduct constitutes a failure to render reasonable and effective assistance under prevailing norms.

Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application and this Amended Application. Amendments should be liberally allowed when no prejudice to the opposing party will result. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,

By 
Donae A. Minor
Attorney for Applicant
1750 Highway 160
Suite 101 #259
Fort Mill SC 29708
Telephone: 844-878-2015
Email: donae@attorneyminor.com
South Carolina Bar No.: 102550

7-15- 2019

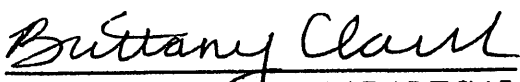
CERTIFICATE OF SERVICE

I certify that I have served this document Amended Post Conviction Relief Application Rashad Johnson (314730), via email and United States Postal Service mail to:

Samuel Key
Assistant Attorney General
Skey@scag.gov

S.C. Attorney General's Office
Rembert C. Dennis Building
Post Office Box 11549
Columbia, South Carolina 29211

This 15th of July, 2019.


BRITTANY CLARK, PARALEGAL
Minor Law Offices

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF LANCASTER
2018-CP-29-01087

Rashad D. Johnson

Vs.

State of South Carolina

Lancaster, South Carolina

July 29, 2019

Before the Honorable D. Craig Brown

APPEARANCES

For the State: Lindsey A. McCallister

For the Applicant: Donae A. Minor

Reported by: Michael C. Watkins

Official Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

Rashad Johnson:	4
Michael Lifsey:	15
Certificate:	27

NO EXHIBITS

1 MS. MCCALLISTER: This is Rashad Johnson versus the
2 State of South Carolina, 2018-CP-29-1087. Mr. Johnson was
3 indicted in August of 2016 by the Lancaster County Grand
4 Jury for murder and possession of a firearm during the
5 commission of a violent crime. On November 11, 2017, he
6 pleaded guilty before Judge Gibbons to the lesser included
7 offense of voluntary manslaughter and as indicted on the
8 weapons charge. At that time he also waived presentment to
9 the grand jury and pleaded guilty to first degree assault
10 and battery. He was represented on those charges by Michael
11 Lifsey. He pleaded guilty without any formal sentencing
12 recommendation or negotiation. Judge Gibbons accepted the
13 plea and sentenced him to an aggregate term of 23 years,
14 Your Honor, I believe it was 18 years on the voluntary
15 manslaughter, five years consecutive on the possession of a
16 weapon, and ten years on the assault and battery concurrent.
17 He filed a notice of appeal and an explanation of appeal
18 pursuant to Rule 203D of the South Carolina Appellate Court
19 Rules, and that appeal was dismissed on December 28th, 2017
20 and remitted on January 16th, 2018. He commenced this PCR
21 application -- I'm sorry, he commenced this PCR action on
22 September 20th, 2018. He is present in the courtroom today
23 and he is represented by Ms. Donae Minor. And, Your Honor,
24 I believe actually the State originally filed a return and a
25 motion for a more definite statement and Ms. Minor did file

RASHAD JOHNSON - DIRECT

1 some amended allegations in this case, and so it's those
2 amended allegations that we are going forward on here today
3 is my understanding. And you should have those in your
4 packet, I believe. There's an attachment to the original
5 application and the amended amendment filed by Ms. Minor.

6 THE COURT: Yes, ma'am?

7 MS. MINOR: Your Honor, I would like to call Mr. Rashad
8 Johnson to the stand.

9 THE COURT: Sir, if you would come around and be sworn,
10 please.

11 The witness, RASHAD JOHNSON, was first duly sworn and
12 Testified as follows:

13 THE COURT: Yes, ma'am?

14 DIRECT EXAMINATION

15 BY MS. MINOR:

16 Q Please state your name for the record.

17 A Rashad Johnson.

18 Q And Mr. Johnson, you pled guilty to assault and battery
19 first, firearm provisions and voluntary manslaughter; is
20 that correct?

21 A Yes, ma'am.

22 Q And you entered the guilty plea where Mike Lifsey was
23 your attorney; is that correct?

24 A Yes, ma'am.

25 Q And was Michael Lifsey a hired attorney or an appointed

RASHAD JOHNSON - DIRECT

1 attorney?

2 A Appointed.

3 Q Okay. And today you are claiming ineffective
4 assistance of counsel against Mr. Lifsey; is that correct?

5 A Yes, ma'am.

6 Q And your claims for ineffective assistance of counsel
7 are primarily based on his failure to sufficiently counsel
8 you on the evidence sought against you so that you could
9 make a decision as to whether to take your plea -- take the
10 plea?

11 A Yes, ma'am.

12 Q As well as his failure to discuss and investigate some
13 of the evidence; is that correct?

14 A Yes, ma'am.

15 Q Let's start with the first ground. Did you ever meet
16 with Mr. Lifsey to discuss your case?

17 A Yes. But not like I should have being that I had a
18 murder charge.

19 Q So how many times did you meet with him?

20 A Prior to me taking the plea he maybe came one time in
21 like December. I had been in the county already like eight
22 months before I seen him and that's when he gave me my
23 motion, he gave me my motion discovery and that was it. And
24 then he came back probably like a few months after that and
25 we talked about the case and he asked me what I wanted to do

RASHAD JOHNSON - DIRECT

1 and I told him that I wanted to know that the GSR kit, did
2 it test positive or negative, and if he tested positive I
3 was going to go to trial because I felt like I had a better
4 chance at trial being that if he tests positive for the GSR
5 kit, but he never gave me the GSR kit in my motion of
6 discovery. I only knew that he test positive ones I entered
7 the plea, I had already entered the plea, I had signed it
8 and all, and then the solicitor told me that he had test
9 positive, that was my first time ever knowing it.

10 Q Okay. So based on your recollection, how many times
11 did he meet with you to discuss your case?

12 A Probably seven or eight times.

13 Q Seven times? And do you believe that that -- you don't
14 believe that was sufficient time.

15 A No, ma'am.

16 Q Did you ever -- I'm sorry.

17 A Not being that I had a murder charge.

18 Q Did you ever request that he meet with you additional
19 times?

20 A I wrote him and asked him to come see me. One week he
21 said he couldn't make it because he had court in Chester,
22 and he came, though, like two weeks later. But I still,
23 like I say, I feel like he wasn't representing me as he
24 should have being that he was the head solicitor (sic).

25 Q Okay. So when he met with you, was that in person?

RASHAD JOHNSON - DIRECT

1 A Yes, ma'am.

2 Q And earlier you mentioned that -- you mentioned
3 discovery. Did Mr. Lifsey provide you with that discovery?

4 A Yes, after I was in the county for eight months.

5 Q Okay. And when he provided you with that discovery,
6 did you review that discovery with him?

7 A No, I reviewed it by myself.

8 Q Did you ask him to review it with you?

9 A Yes. I asked him to help me with certain parts of it
10 because I didn't really understand why they didn't have the
11 GSR kit in the motion. It just said they took it and never
12 gave me that he tested positive or negative for it.

13 Q And when you asked that question what was his response?

14 A He didn't know -- he did not know if he tested positive
15 or negative. He was going to let me know as soon as he
16 knew, and he never let me know period until I entered the
17 plea that day in November of 2017.

18 Q So he had informed you of the question you had of the
19 GSR kit after you pled guilty, is that your testimony?

20 A Yes. Well, he never really told me. Solicitor
21 Collins, she told me once I had signed the plea and was
22 already entering the plea, and once she got her chance to
23 speak is when she told me that the victim tested positive
24 for gunpowder residue.

25 Q Okay. And with this information did you ever write him

RASHAD JOHNSON - DIRECT

1 to ask him about that?

2 A Well, he -- no. I had already -- that was the day that
3 I entered the plea, it was over with, wasn't no -- I was
4 going down the road the next couple of days.

5 Q So in addition to that information regarding the GSR
6 kit, did you go over all of the discovery with Mr. Lifsey?

7 A We never really went over the discovery. He just asked
8 me questions like what do I think or -- like he asked me
9 what do I want to do, and I told him as soon as he told me
10 that they had did the GSR kit I tell him if the victim test
11 positive I want to go to trial. And that's why I feel like
12 he ain't represent me in his best ability being he was the
13 head solicitor (sic), because if he would have gave me that
14 before I entered the plea I would have never took the plea.

15 Q Okay. Did you discuss anything else? I know that you
16 mentioned that you reviewed your own discovery and you just
17 simply asked Mr. Lifsey questions. Other than the GSR kit,
18 what other questions did you ask him about your discovery?

19 A I asked him what all kind of evidence they had and
20 stuff like that. He showed me the videos and all of that
21 that they had against me and stuff like that. But like I
22 said, I still did not feel like that he represented me at
23 his best ability being that he was the head solicitor (sic).

24 Q So he did show you the videos --

25 A Yes, ma'am.

RASHAD JOHNSON - DIRECT

1 Q -- the video evidence in discovery?

2 A Yes, ma'am.

3 Q And he did show you -- you did discuss, I guess, the
4 other evidence that was in the discovery file.

5 A Yes, ma'am.

6 Q But you just believed that it wasn't sufficiently
7 discussed --

8 A Yes, ma'am.

9 Q -- so that you could make an informed decision.

10 A A better decision on the plea.

11 Q Did Mr. Lifsey discuss the strengths and the weaknesses
12 of the evidence?

13 A No, ma'am.

14 Q Did he discuss the sentence that you would be facing by
15 pleading guilty or going to trial?

16 A Yeah. He told me if I pled guilty that the plea was
17 zero to 30. And he was like if I go to trial they was
18 pushing for a life sentence being that I had the assault and
19 battery by mob pending.

20 Q So the day that you pled guilty, did you make that
21 decision the same day that you were going to --

22 A Yes, ma'am.

23 Q Okay. And what type of discussions did you have with
24 Mr. Lifsey on that day?

25 A He just asked me that -- he asked me did I want to

RASHAD JOHNSON - DIRECT

1 plead guilty and I was like I do. Because like I said, he
2 never -- I never knew that the victim tested positive for
3 the gunpowder residue, so that's the only reason why I
4 really entered the plea. If he would have told me that he
5 tested positive I would have never took the plea because
6 that's what I had already told him before we even went --
7 before the plea came about itself period. They was never
8 going to drop my charge from murder to voluntary, but came
9 November I was going -- supposed to be going to trial in
10 December because that was when he started to coming to see
11 me more. Because I told him, I was like I wasn't going to
12 take the plea, I wanted to go to trial, and he was like, "If
13 you go to trial they're going to give you life, know what I
14 mean, being that you were found guilty." He was like that
15 we have a good case, but at the same time it's a 50/50
16 chance.

17 Q So did you ask him about the results of the GSR kit on
18 the day --

19 A Of the plea and he told me he didn't have it.

20 Q So again, based off of Mr. Lifsey's failure to
21 sufficiently explain the strengths and weaknesses of your
22 case as well as for him to provide the information about the
23 GSR kits, based on those that was -- this is your reason why
24 you are pursuing this PCR against him.

25 A Yes, ma'am.

RASHAD JOHNSON - DIRECT

1 Q Do you feel like you were pressured to take your plea
2 on the day that you pled?

3 A Yes, ma'am.

4 Q And you did appeal the case; is that correct?

5 A Yes, ma'am.

6 Q And what was the result of that appeal?

7 A They denied it at first. He did it for me and he never
8 put no claims -- he never told me that I had to write no
9 claims so I never really knew. When I did the appeal I just
10 went off what I kind of knew being that I was at R and E I
11 couldn't really go to the law library and study the laws.

12 Q Okay. So the appeal was denied.

13 A Yes, ma'am.

14 Q Is there anything else that you would like the Judge to
15 know regarding Mr. Lifsey's ineffective assistance of
16 counsel?

17 A No, ma'am.

18 MS. MINOR: Beg the Court's indulgence.

19 THE COURT: Yes, ma'am.

20 (Break in proceedings.)

21 MS. MINOR: Nothing further, Your Honor.

22 THE COURT: Ms. McCallister, cross examination?

23 MS. MCCALLISTER: Thank you, Your Honor.

24 CROSS EXAMINATION

25 BY MS. MCCALLISTER:

RASHAD JOHNSON - CROSS

1 Q Mr. Johnson, let's just back up for a minute and
2 clarify something. Your two -- you pled to three different
3 charges on the same day, correct?

4 A Yes, ma'am.

5 Q The voluntary manslaughter, possession of a weapon and
6 the assault and battery, correct?

7 A Yes, ma'am.

8 Q But those were two separate incidents, correct?

9 A Yes, ma'am.

10 Q Okay. And you actually got the assault and battery
11 charge once you had already been arrested and were in jail
12 awaiting disposition of the murder issue, correct?

13 A Yes, ma'am.

14 Q And you actually were originally charged with assault
15 and battery by mob, correct?

16 A Yes, ma'am.

17 Q Okay. And so then as part of this plea agreement to
18 resolve everything the State reduced the charge to assault
19 and battery first and let you plead to them at the same
20 time, correct?

21 A Right.

22 Q And your understanding is that -- or did you understand
23 that if you had pled separately and the State had pursued
24 the assault and battery by mob that they could have sought a
25 life without parole against you.

RASHAD JOHNSON - CROSS

1 A Yes, ma'am.

2 Q Okay. But going back to this issue on the murder
3 charge, your contention here today is that you entered this
4 guilty plea because you were unaware of the results of the
5 gunshot residue test on the victim, correct?

6 A Yes, ma'am.

7 Q And is it your testimony that you didn't find out that
8 that test was positive until you were already in the
9 courtroom?

10 A Yes, ma'am.

11 Q Okay. But at that time the solicitor did include that
12 as part of the recitation of her facts when she was telling
13 the Court what happened, correct? She informed the Court
14 that the victim's gunshot residue test was positive.

15 A Yes, ma'am.

16 Q And at that time you did not stop -- you didn't object,
17 you did not tell the Judge that you didn't want to enter a
18 plea if that was the case, correct?

19 A Yes, ma'am.

20 Q And you continued on with the plea after that. The
21 Judge asked was that correct, is that what happened and you
22 continued on with the plea, correct?

23 A Yes, ma'am. But I never knew that I could object
24 because I really didn't have a chance to talk until after
25 everything was over with, you know, until it was my turn

RASHAD JOHNSON - CROSS

1 after my lawyer gave his opinion of the case.

2 Q Okay. But then you did talk to the Judge, correct?

3 A Yes, ma'am.

4 Q Okay. And you didn't bring it up then.

5 A No. Because I never knew -- I really didn't know -- I
6 didn't know that I could, like I said, objected in being
7 that I was entering the plea and I had already signed the
8 plea downstairs, so it wasn't like I had already signed the
9 name on the paper.

10 Q Okay. But you didn't ask to stop, you didn't ask to
11 talk to your attorney, you didn't ask -- you just went along
12 with it.

13 A I asked him why didn't he tell me that the victim had
14 tested positive for gunpowder residue and he said he never
15 knew.

16 Q So when you went into the courtroom that day you
17 thought you just didn't know the answer to that question,
18 correct?

19 A Yes, ma'am.

20 Q And so you were going to plead guilty without knowing
21 the answer to the question.

22 A Yes, ma'am.

23 Q Okay.

24 MS. MCCALLISTER: Beg the Court's indulgence, Your
25 Honor.

RASHAD JOHNSON - CROSS

1 (Break in proceedings.)

2 Q Okay. And do you recall the Judge asking you if your
3 attorney had done everything that you had asked him to do?
4 Do you remember having a conversation about whether you were
5 satisfied with Mr. Lifsey's services with the Judge?

6 A Yes, ma'am.

7 Q Okay. And you never told the Judge that you had asked
8 him to find out about these GSR test results and he hadn't
9 done that.

10 A No, ma'am.

11 Q In fact, you told the Judge that Mr. Lifsey had done
12 everything you had asked him to do.

13 A I didn't never say he did everything I asked him to do
14 but I said he represented me.

15 Q Okay.

16 MS. MCCALLISTER: I think that's all of the questions I
17 have, Your Honor.

18 THE COURT: Any redirect?

19 MS. MINOR: No, Your Honor.

20 THE COURT: Sir, you may step down, thank you.

21 Anything further, Ms. Minor?

22 MS. MINOR: Yes. I call Michael Lifsey.

23 The witness, MICHAEL LIFSEY, was first duly sworn and

24 Testified as follows:

25 DIRECT EXAMINATION

MICHAEL LIFSEY - DIRECT

1 BY MS. MINOR:

2 Q Mr. Lifsey, where are you employed?

3 A I'm the circuit public defender for the Sixth Judicial
4 Circuit.

5 Q And how long have you been employed there?

6 A Since March 1st of 2009.

7 Q And did you have that same title when you were Mr.
8 Johnson's counsel?

9 A Yes, ma'am, I did.

10 Q And do you recall how many times you met with Mr.
11 Johnson?

12 A From my notes I can document -- I can document 11
13 meetings at the jail. I believe there's a -- I have notes
14 that I think reflect a 12th meeting that are undated but I
15 can't say that with 100 percent certainty. But I can
16 document 11 separate meetings with him at the jail.

17 Q And during those meetings, would you say that you fully
18 explained the evidence that was sought against him?

19 A Yes, ma'am.

20 Q Along with any consequences that he might be facing?

21 A Yes, ma'am, I did.

22 Q Did you look into any defenses for his case?

23 A I did.

24 Q Did you discuss those with him?

25 A Yes, ma'am.

MICHAEL LIFSEY - DIRECT

1 Q What were those defenses?

2 A Self-defense was the whole issue. From the moment I
3 began talking to him about this case Mr. Johnson alleged he
4 was defending himself. So we had many, many discussions on
5 the legal definition of self-defense in South Carolina and
6 on the differences between murder and voluntary manslaughter
7 in South Carolina, so we had multiple conversations,
8 including I think I sent him some case law at his request on
9 that issue, the interplay between murder, voluntary, and
10 self-defense.

11 Q And do you believe that he understood those?

12 A I do.

13 Q And he discussed the -- Mr. Johnson in his testimony
14 discussed the GSR kit results, and he testified that he
15 asked you about those results. Do you recall him asking you
16 any questions about those results?

17 A I do know that those were results we were waiting on a
18 long time, and I do know that the GSR was an issue that he
19 and I discussed, or what those results would be at pretty
20 good length.

21 Q Okay. So do you recall him stating that if the results
22 are positive he would want to have a trial?

23 A No. I do recall us discussing that if those results
24 were positive that would be good for our case and good for
25 our argument. But the way I recall this whole thing is

MICHAEL LIFSEY - DIRECT

1 that -- and I apologize if I'm answering more than you're
2 asking me, but the way I recall this whole thing is the
3 State would not come off murder. They believed they --
4 because this whole incident was basically video recorded
5 they believed they had a very strong murder case and would
6 not come off the murder. The positive GSR was the factor
7 that got the State to offer voluntary manslaughter and so
8 that was the importance of it, in which they -- it came in
9 late. It came in -- my notes discuss -- my notes say he and
10 I discussed it, the plea offer, on November 6th, so it was
11 the date we really discussed the full plea offer, but it
12 could have been November 2nd because I met with him on the
13 2nd as well. So my memory is those results came -- they
14 were going to trial in December, those results came in in
15 November. They were positive for us -- I mean, positive GSR
16 results, they were helpful to us, which is what finally
17 prompted the log jam to break, the State finally offered
18 voluntary.

19 Q So you received those results prior to him entering the
20 guilty plea.

21 A Yes, ma'am, or I knew about those results.

22 Q You knew about those results.

23 A Correct.

24 Q And did you tell him about those results?

25 A Yes, ma'am. That was the explanation for why they had

MICHAEL LIFSEY - DIRECT

1 finally come off of murder.

2 Q And what was the response once you informed him of
3 those results?

4 A I don't recall any response specifically to the GSR
5 other than that was good for us. The whole discussion was
6 was he going to take the voluntary that had now finally been
7 offered that frankly I believed was the appropriate
8 outcome -- at least would have been a much more likely
9 outcome than self-defense had we gone to trial.

10 Q And do you believe that explaining the -- well,
11 providing the results and explaining those outcomes that his
12 decision was an informed one?

13 A Oh, yes, ma'am. I believe he had a better grasp of the
14 interplay between voluntary and self-defense and murder than
15 a lot of my clients had, because frankly he and I discussed
16 it a lot. And he is not an unintelligent man at all. He
17 had a pretty good -- not probably -- not highly educated in
18 the formal sense, but he seemed to me to be an intelligent
19 guy who could adequately understand it and he and I
20 discussed this at length and those legal issues at play.

21 MS. MINOR: No further questions of this witness, Your
22 Honor.

23 THE COURT: Cross examination?

24 MS. MCCALLISTER: Thank you, Your Honor.

25 CROSS EXAMINATION

MICHAEL LIFSEY - CROSS

1 BY MS. MCCALLISTER:

2 Q Mr. Lifsey, could you just sort of briefly explain the
3 sort of the facts of the murder case and what evidence the
4 State had?

5 A Well, yes, ma'am. This murder occurred in an apartment
6 complex here in Lancaster. There were surveillance cameras
7 all over the apartment complex, and the surveillance cameras
8 basically caught the crime as it happened. There were two
9 different camera angles. There was one angle where you
10 could clearly see the victim running around a corner, like a
11 corner of the apartment complex, in very short order shortly
12 behind him you see my client chasing him, okay? When that
13 video was enhanced by SLED you saw that both my client and
14 the victim had firearms in their hands, which, of course,
15 you know, victim with a firearm is also good for us. The
16 negative problem for us is my guy is chasing him, okay? So
17 that is sort of the close-up angle. Then they go off the
18 camera there. Then you have a very distant angle where you
19 can see one of the two individuals raise his arm, you can
20 see a slight puff of smoke, or what appears to be smoke, and
21 then you could see the other individual drop to the ground.
22 So you basically had a murder committed on video because you
23 had my client chasing him and then shooting him. There's no
24 question the victim was shot. So those were, I guess, the
25 bad facts, I guess, okay? The good facts is you had the

MICHAEL LIFSEY - CROSS

1 victim himself with a firearm, okay? That's good for us.
2 And you had GSR results that indicate at some point, or at
3 least we would have argued, the State argued differently as
4 you can read in the transcript, but we would have argued it
5 indicated that the victim had fired a weapon. You also had
6 a witness statement that hear -- a witness who says he hears
7 what he thought is a fire cracker, okay? Then he sees two
8 people running by his apartment, that is consistent with the
9 video of the running, and then he hears more noise and
10 another shot, okay? So it was our theory as to what
11 happened in this case that -- he and the victim, there's a
12 long -- in fact, it's kind of tangentially related to
13 another murder I think the PCR is scheduled for today. But
14 the victim in this case, his brother, the -- the brother of
15 the victim in this case was murdered. We believed -- our
16 theory, had we gone to trial, would have been that the
17 victim in this case was mad at my client for helping bond
18 that guy out, okay? So had we gone to trial what Rashad's
19 testimony would have been is that the guy threatened him
20 prior, and we would have had some people who say there were
21 threats, and then the day of this confrontation that he
22 fired a gun at him. Obviously he didn't strike my client
23 because my client didn't have any gunshots on him, but we
24 would have argued that prompted my client to fire back at
25 him, but the problem is you got my guy chasing him. So it

MICHAEL LIFSEY - CROSS

1 just -- I thought we had an argument that it was a voluntary
2 manslaughter case based on heat of passion, the gunshot
3 being, we would argue, sufficient legal provocation. So we
4 have an argument for voluntary but we didn't really have a
5 good argument for self-defense because I don't know how you
6 get around the duty to retreat when you've got my client not
7 only not retreating but actually physically chasing the soon
8 to be victim.

9 Q Okay. And the video was sufficiently clear that -- the
10 players were identifiable on the video.

11 A They were identifiable on the close-up where you see
12 them running, okay?

13 Q So it was clearly the victim running and clearly Mr.
14 Johnson chasing.

15 A Yes, ma'am.

16 Q And all of this that you've just sort of described,
17 these issues with the self-defense and voluntary
18 manslaughter, those are the discussions that you had with
19 Mr. Johnson.

20 A Yes, ma'am.

21 Q And so y'all had a defense prepared that he helped you
22 prepare, I assume.

23 A Yes, ma'am. He, like a lot of people who aren't
24 lawyers, have sort of what I would call a street definition
25 of self-defense, which I get. But one of the things I find

MICHAEL LIFSEY - CROSS

1 myself very often having to do is explain to people that
2 while you and I may think you had a right to defend
3 yourself, it has got to fit within South Carolina's legal
4 definition of self-defense. And so, yeah, we had many
5 discussions on the elements of self-defense, how that
6 relates to voluntary, voluntary versus the malice, absence
7 of malice, voluntary versus murder, we had many, many
8 discussions. We were going to argue self-defense in this
9 trial had this case gone to trial. I didn't think we had a
10 very good chance of self-defense being the likely verdict, I
11 thought voluntary -- I thought we had a decent shot to get
12 voluntary. I didn't -- you know, it's not a certainty but I
13 thought we had a shot at getting voluntary. But he had a
14 full understanding and he and I discussed it at length, more
15 than a lot of people I represent.

16 Q Okay. And until the State made that plea offer that
17 you talk in early November there were no other offers from
18 the State.

19 A Not that I'm aware of. The solicitor talked about some
20 kind of cap. But the problem, you know, with murder is
21 murder is a minimum of 30, so you're talking -- and it's a
22 day for day 30. So, you know, it's hard -- and I can't
23 remember Mr. Johnson's age, but he was not an 18 or 19 year
24 old kid, he was more like 30ish I remember, so that's a
25 tough pill for somebody to swallow. And he had -- he was

MICHAEL LIFSEY - CROSS

1 pretty definite from the very beginning he was not going to
2 plead to murder, so I don't think they ever made a real
3 formal offer. They may have floated the idea of some like
4 30 or 35, 40, something like that, but it was not -- he
5 didn't want to plead to murder so there never was really a
6 formal murder offer.

7 Q Okay. So the only plea that you seriously -- you and
8 Mr. Johnson seriously considered was when they dropped it
9 down to voluntary manslaughter.

10 A Yes. Once they dropped it to voluntary then I thought
11 that was something that he really did need to consider. We
12 had discussed that, too, that if they offered it that was
13 something he would have to think about, but they had never
14 offered it until the GSR -- frankly I had hoped when the
15 SLED enhanced video that came back that showed the victim
16 running with a gun, I had hoped that would have convinced
17 them to go down to voluntary but it didn't. The GSR results
18 were what finally pushed Solicitor Collins to offer that.

19 Q Okay. And you were aware that that was the State's
20 reasoning for making the voluntary offer.

21 A Yes, ma'am.

22 Q And you explained that to Mr. Johnson.

23 A Yes, ma'am.

24 Q And whose decision was it to accept the pleas?

25 A It was his.

1 Q And did you feel that he understood what he was doing
2 when he made that decision?

3 A I did. I think it was a good decision.

4 MS. MCCALLISTER: That's all of the questions I have.

5 THE COURT: Any redirect?

6 MS. MINOR: No, Your Honor.

7 THE COURT: Sir, you may step down. Anything further,
8 Ms. Monroe? Anything further, Ms. Minor? I'm sorry.

9 MS. MINOR: Nothing, Your Honor.

10 THE COURT: Ms. McCallister?

11 MS. MCCALLISTER: Your Honor, nothing from the State.

12 THE COURT: All right. Under a post conviction relief
13 action the applicant bears the burden of proving that
14 counsel's performance failed below an objective standard of
15 reasonableness, and that the applicant sustained prejudice
16 as a result of counsel's deficient performance. This Court
17 finds based upon what it has heard here today and based upon
18 its review of the application, return, transcript as well
19 the amended post conviction relief application that the
20 applicant has failed to meet his burden as to either
21 requirement under Strickland v. Washington. Furthermore the
22 Court finds that the defendant has failed to illustrate or
23 show that his plea was not voluntarily entered into and
24 intelligently entered into as well, therefore the Court
25 respectfully is denying such relief. Ms. McCallister, if

1 you will you get me an order to that effect, please.

2 MS. MCCALLISTER: Yes, Your Honor.

3 (End of the hearing.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

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

12

13

January 27, 2020

14

15


Michael C. Watkins

16

17

Court Reporter

18

19

20

21

22

23

24

25

RECEIVED
JAN 27 2020
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	FOR THE SIXTH JUDICIAL CIRCUIT
Rashad Demond Johnson, #314730,	)	C.A. No. 2018-CP-29-1087
Applicant,)	
v.	)	ORDER OF DISMISSAL
State of South Carolina,)	
Respondent.)	

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Rashad Demond Johnson (Applicant) on September 20, 2018. Respondent made its Return and Motion for a More Definite Statement on March 12, 2019. An evidentiary hearing into the matter was convened on July 29, 2019, at the Lancaster County Courthouse before the undersigned. Donae A. Minor, Esquire, represented Applicant. Assistant Attorney General Lindsey A. McCallister represented Respondent.

Applicant testified on his own behalf. Michael H. Lifsey, Applicant's plea counsel, testified on behalf of Respondent. This Court had before it a copy of the records of the Lancaster County Clerk of Court, records from the South Carolina Department of Corrections, the PCR application, Respondent's Return, and the plea transcript. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application for relief.

FILED
 CLERK
 OF COURT
 NOV - 8 AM 11:47
 COUNTY OF COURT
 LANCASTER, SC

DCB
p. 18/12

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lancaster County Clerk of Court. In August 2016, the Lancaster county Grand Jury indicted Applicant for murder and possession of a firearm during the commission of a violent crime (2016-GS-29-1281). Michael H. Lifsey, Esquire (Counsel), represented Applicant. On November 11, 2017, Applicant pleaded guilty, without recommendation or negotiation, before the Honorable Brian M. Gibbons to the lesser-included offense of voluntary-manslaughter and as indicted to the weapons charge. Applicant also waived presentment to the grand jury and pleaded guilty to first-degree assault and battery for an unrelated incident. Judge Gibbons accepted Applicant's plea and sentenced him to an aggregate term of imprisonment of twenty-three years.

Plea counsel filed a notice of appeal and statement pursuant to Rule 203(d)(1)(B)(iv), SCACR, and In re Anonymous Member of the Bar, 303 S.C. 306, 400 S.E.2d 483 (1991), on November 21, 2017. Applicant filed a pro se statement with the Court of Appeals on December 18, 2018. The Court of Appeals dismissed the appeal on December 28, 2017, and remitted the case on January 16, 2018. Applicant commenced this PCR action September 20, 2018.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel

PCR
p. 2 of 12

Through PCR counsel, Applicant amended his application on July 19, 2019, to include an allegation plea counsel "failed to properly explained (sic) the strength and weaknesses of all evidence sought against Applicant so that Applicant could make an informed decision as to whether to proceed with a trial in lieu of a plea." At the evidentiary hearing, PCR counsel explained Applicant's allegation is that plea counsel failed to investigate and failed to adequately explain the evidence to Applicant, leading to Applicant's entry of an involuntary guilty plea.

SUMMARY OF FACTS ADDUCED AT PLEA

Applicant's murder and weapons charges stem from an incident that occurred May 21, 2016, at Palmetto Place Apartments (Palmetto). The incident was captured by Palmetto's video surveillance system. Applicant shot and killed Deangelo Kirk. The video of the incident was played for the plea court, in chambers, prior to Applicant's plea. Plea Tr. 8-9.

The video of the event showed Kirk fleeing from Applicant; Applicant, with his gun drawn, pursuing Kirk; and Applicant shooting Kirk. After shooting Kirk, Applicant fled. He surrendered to law enforcement May 28, 2016. Both Applicant and Kirk were armed during the incident, and Kirk tested positive for gunshot-residue (GSR). Plea Tr. 9-12.

Applicant's first-degree assault and battery charge stems from an incident that occurred January 15, 2017. Applicant was confined in the Lancaster County Detention Center awaiting the disposition of his murder and weapons charges when this incident occurred. Applicant and three other defendants "jumped" Malcom Belk. The incident was captured by the detention center's video surveillance system. Plea Tr. 14-15.

SUMMARY OF TESTIMONY AT EVIDENTIARY HEARING

Applicant testified it took eight months for Counsel to visit Applicant in the county jail. Applicant agreed Counsel brought the discovery for Applicant at their first meeting, but Applicant testified he and Counsel did not review it together; Applicant reviewed it on his own. Applicant stated Counsel "came back later," and Applicant asked if the victim had tested positive for GSR. Applicant testified Counsel never gave him the GSR kit, and he only found out about the results during the plea. Applicant testified he and Counsel met approximately seven times, but Applicant stated he did not think that was enough since he was charged with murder. Applicant testified he wrote Counsel a letter requesting a visit, and Counsel visited two weeks later. However, Applicant testified he felt Counsel did not represent him as Counsel should have.

Applicant testified he asked Counsel about parts of the discovery, but Counsel did not have the answers and never let Applicant know the results of the GSR test until Applicant entered the plea. According to Applicant, he found out about the results of the GSR test when the solicitor informed the plea court of the positive result during the plea hearing. Applicant testified Counsel did not review the discovery with him, and Counsel just asked Applicant what he wanted to do — meaning go to trial or accept a plea. Applicant stated he asked Counsel what evidence the State had against him, and Counsel showed him the videos of the shooting. However, Applicant testified Counsel did not discuss the strengths and weaknesses of the case with him. Applicant further testified Counsel told him he would be facing a zero-to-thirty-year sentence if he pleaded guilty, but the State would push for a life sentence if Applicant went to trial because he had another charge

pending. Applicant testified Counsel told him the State would not drop his charge from murder to voluntary manslaughter, and Applicant would receive a life sentence if he lost at trial.

On cross-examination, Applicant explained he was charged with assault by mob in a separate incident, and he indicated he understood the State could have pursued life without parole if they resolved that case separately. Applicant reiterated his testimony he did not know the result of the GSR test until the assistant solicitor explained the factual basis for the plea during the hearing. Applicant agreed he continued with the plea and never told the plea court he wanted to change his mind; Applicant testified he did not know he could do that. Applicant further agreed he was willing to plead guilty without knowing the results of the GSR test.

Counsel testified he has been the Chief Public Defender in the Sixth Circuit since March 2009. Counsel recalled representing Applicant and testified he met with Applicant at least eleven times, based on the notes in his file. Counsel testified, during those meetings, he fully explained the evidence against Applicant and the potential consequences Applicant was facing. Counsel testified he investigated potential defenses, specifically self-defense, and he and Applicant had multiple conversations about self-defense, murder, and voluntary manslaughter. Counsel testified he believed Applicant understood the differences and the issues involved, and Applicant had a better grasp of the legal issues than most of Counsel's clients. Counsel explained Applicant "had a street definition of self-defense," but the facts of the case did not fit the legal definition, although Counsel would have argued self-defense had the case gone to trial. Counsel stated he felt Applicant stood a decent chance of being convicted of the lesser-included offense of voluntary manslaughter rather than murder, and he explained all of this to Applicant.

Counsel explained the shooting was captured by two different video cameras. Counsel stated the video clearly showed the victim running around the corner of the apartment building, and Applicant chasing him. Counsel explained when the videos were enhanced by SLED, they showed both the victim and Applicant had firearms, but Applicant was clearly chasing the victim. Counsel also explained the video showed one man raise his arm, a puff of smoke, and then the other man dropped to the ground. Counsel stated there were some good facts for the defense – mainly that the victim had a gun, and GSR results indicated the victim had fired a weapon at some point. Counsel explained they also had a witness statement who heard a “firecracker,” then saw the two men running past him, and then heard more noise. Counsel explained the defense theory was the victim was angry at Applicant because Applicant helped bond out the man accused of murdering the victim’s brother, so the victim shot at Applicant first. However, Counsel stated the problem was Applicant chased the victim after the victim fled. Counsel testified both the victim and Applicant were identifiable on the video, and Applicant was clearly the pursuer and shooter.

Counsel further testified the State refused to make any offer to Applicant for a long time because they felt they had a murder captured on video, and both sides were waiting on the GSR results for months. Counsel testified he and Applicant discussed the GSR issue at length, and he remembered explaining if those results were positive, it would help Applicant’s case. Counsel further explained the positive GSR result was the factor that prompted the State to offer voluntary manslaughter. Counsel testified the GSR results came in sometime in November, and the case was scheduled for trial in December. Counsel testified he knew about the GSR results, and he informed

DCB
p. 6712

Applicant about them. Counsel reiterated those results were the reason the State extended a plea offer other than a plea to the murder charge, and he explained that reasoning to Applicant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's

DCB
1-7-12

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

Involuntary Guilty Plea

Applicant alleges Counsel's ineffective assistance in failing to properly investigate the case and prepare a defense, as well as "threatening [him] with a life sentence," led to Applicant entering an involuntary and unknowing guilty plea. This Court disagrees and finds the combined record from the plea hearing and the evidentiary hearing clearly establishes Applicant pleaded guilty freely and voluntarily. Therefore, for the reasons set forth below, this Court denies relief and dismisses these allegations with prejudice.

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). An applicant who pleads guilty with the advice of counsel may collaterally attack the plea only by showing (1) counsel was deficient and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419

DCB
p. 8 of 12

(2001) (citing Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994); Lockhart, 474 U.S. at 52). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56.

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

Dcb
P 9/12

The plea transcript reflects Applicant told the plea court he understood why he was in court, the charges against him, and that he had reviewed his case with his attorney. Tr. pp. 4-5. The plea court explained each charge individually, and Applicant indicated he understood each one and wished to plead guilty. Tr. p. 5. The plea court also explained the State's burden of proof beyond a reasonable doubt and Applicant's presumption of innocence at trial, Applicant's right to have a jury trial, and, specifically, Applicant's right to call witnesses and present a defense. Tr. pp. 6-7. Applicant indicated he understood those rights and wished to give them up in order to plead guilty. Tr. pp. 6-7. Applicant further stated Counsel had reviewed these rights with him as well. Tr. p. 7. Importantly, Applicant informed the plea court he had enough time to talk with his attorney, and he understood the discussions Counsel had with him. Tr. p. 6.

Further, the Court finds Counsel's testimony on these issues to be credible, while Applicant's was not. The Court finds Counsel met with Applicant on several occasions and reviewed with him the evidence and discovery in the case. Counsel and Applicant engaged in in-depth discussions of the State's evidence; Applicant's potential defense of self-defense; and the interplay of self-defense, murder, and voluntary manslaughter. This Court finds Applicant ultimately chose to plead guilty in order to avail himself of a favorable plea offer and to resolve both sets of charges at the same time in order to avoid a potential life sentence at trial or on a subsequent case, and this decision was made freely and voluntarily.

In any event, Applicant did not present any witnesses or evidence to support his claim Counsel failed to investigate and failed to adequately explain the discovery to Applicant, and therefore, this claim must fail on the prejudice prong as well. See, e.g., Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (finding trial counsel not ineffective for failing to timely

DCB
p. 10 of 12

request discovery because the contents of the documents were not presented at the PCR hearing); Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (holding a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice); Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 217, 481 S.E.2d 129, 133 (1997) (finding applicant was not entitled to relief where no evidence was presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

Accordingly, based on the combined record of the plea transcript and the testimony presented at the evidentiary hearing, this Court finds Counsel's representation of Applicant was not deficient, nor was Applicant prejudiced by his representation. Counsel met with Applicant on multiple occasions to review discovery, discuss the facts of the case, explore potential defenses, and explain Applicant's constitutional rights and options for resolving the case. Further, the plea transcript reflects Applicant understood the proceedings, interacted intelligently with the plea court, and entered his guilty plea knowingly and voluntarily. For all of these reasons, this Court finds Applicant's decision to enter the guilty plea was made freely and voluntarily. Therefore, this Court denies relief and dismisses this allegation with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation.

PCR
1.11.12

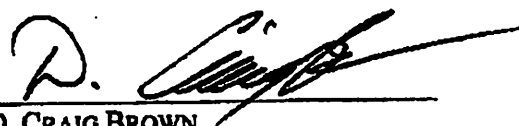
Therefore, this application for post-conviction relief is denied, and Applicant's claims are dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED.



D. CRAIG BROWN
Presiding Circuit Court Judge
Sixth Judicial Circuit

11-4, 2019

DCB
P. 12/07/12

FILED
OFFICE OF CLERK
OF COURT
2016 AUG 18 PM 3:32
CLERK OF COURT
LANCASTER, SC

DOCKET NO. 2016-GS-29-1281

The State of South Carolina
County of Lancaster

COURT OF GENERAL SESSIONS

AUGUST TERM 2016

THE STATE
vs.

Rashad Demond Johnson

Indictment for

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

Count II
Possession of a Firearm During the
Commission of a Violent Crime
S. C. Code: § 16-23-490
CDR Code: 0549
Class: Felony, F

WITNESSES

J. Sims - LPD #16-7119

B. Small

ARREST WARRANT NUMBER/DOA

Count I
2016A2920300278 (DOA-5-28-16)

Count II
2016A2920300279

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: AUG 18 2016

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on August 18, 2016, the Grand Jurors of Lancaster County present upon their oath:

COUNT I

MURDER


That Rashad Demond Johnson did at 1600 block of Palmetto Place, Lancaster, South Carolina, in Lancaster County, South Carolina, on or about May 21, 2016, feloniously, willfully, and with malice aforethought kill and murder the victim Deangelo Kirk by shooting the victim which constituted the proximate cause of the death of the victim on May 21, 2016, in violation of Section 16-3-10 of the *Code of Laws of South Carolina*.

COUNT II

POSSESSION OF FIREARM DURING COMMISSION OF A VIOLENT CRIME

That Rashad Demond Johnson did in Lancaster County, South Carolina, on or about May 21, 2016, possess or visibly display a firearm, to wit: a handgun during his commission of a violent crime, to wit: Murder of Deangelo Kirk, in violation of §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.


 Randy E. Newman, Jr., SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF 98 Lancaster
STATE VS. Rashad Demond Johnson
AKA:
Race: BLACK Sex: M Age: 29
DOB: SS#:
Address:
City, State, Zip: Lancaster, SC 29720
DL#: SID#:

INDICTMENT/CASE#: 2016GS2901281 Court II
A/W#: 2016A2920300279
Date of Offense: 5/21/2016
S.C. Code § : 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

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

ATTEST: Collins, Lisa SC Bar# 07892 Defendant Rashad Johnson Attorney for Defendant SC Bar# 015154

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

CONCURRENT or CONSECUTIVE to sentence on: 16-65-29-1281
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Recipient:

Table with 3 columns: Description, Amount, Total. Rows include assessments, surcharges, and fees like DUI Assessment (\$12), DUI Breath Test (\$25), Public Def/Probation (\$500), etc.

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk: April
Court Reporter:
SCCA/217 (07/2016)

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

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

Presiding Judge:
Judge Code:
Sentence Date: 11/14/17

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

99

COUNTY OF Lancaster
STATE VS.

INDICTMENT/CASE#: 2016GS2901281 Count I

Rashad Demond Johnson

A/W#: 2016A2920300278

AKA:

Date of Offense: 5/21/2016

Race: BLACK Sex: M Age: 29

S.C. Code § : 16-03-0010; 16-03-0020

DOB: SS#:

CDR Code #: 0116

Address:

City, State, Zip: Lancaster, SC 29720

DL#: SID#:

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was TO: Manslaughter / Voluntary manslaughter

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Collins, Lisa SC Bar# 07892 Defendant Rashad Johnson Attorney for Defendant SC Bar# 015154

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 18 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

CONCURRENT or CONSECUTIVE to sentence on: The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP days/hours Public Service Employment Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing

Total: \$ plus 20% fee: \$ Payment Terms: Set by SCDPPPS Recipient: *Fine: § 14-1-206 (Assessments 107.5 %) § 14-1-211(A)(1) (Conv. Surcharge) \$100 § 14-1-211(A)(2) (DUI Surcharge) \$100 § 56-5-2995 (DUI Assessment) \$12 § 56-1-286 (DUI Breath Test) \$25 Proviso 61.6 (Public Def/Probation) \$500 § 14-1-212 (Law Enforce. Funding) \$25 § 14-1-213 (Drug Court Surcharge) \$150 § 50-21-114(BUI Breath Test Fee) \$50 § 56-5-2942(J) (Vehicle Assessment) \$40/ea 3% to County (if paid in installments) \$

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund Other:

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk Court Reporter: SCCA/217 (07/2016) Presiding Judge Judge Code: Sentence Date: 11/14/17