

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Horry County

Honorable William H. Seals, Circuit Court Judge

\_\_\_\_\_  
CLISTON JOHN BELLAMY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000279

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

TAYLOR D GILLIAM  
Appellate Defender

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

ATTORNEY FOR PETITIONER

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Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

RECEIVED

DEC 10 2018

S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD  
COUNTY OF HORRY ) CASE NO: 2015-gs-26-3778  
  
(PLEA)

-----  
B E F O R E: The Honorable Thomas W. Cooper  
May 17, 2016  
-----

STATE OF SOUTH CAROLINA,  
Plaintiff,  
vs.  
CLISTON JOHN BELLAMY,  
Defendant.

**ORIGINAL**

-----  
APPEARANCES:

Stephen Grooms, Esq.  
For the State of South Carolina.

Johnny McCoy, Esq.  
For the Defendant.

Court Reporter:  
Natalie Dahl, RPR

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

1  
2 (CLISTON BELLAMY, having been duly sworn, testified as  
3 follows:)

4 MR. GROOMS: State versus Cliston Bellamy, true  
5 bill Indictment 2015-GS-26-03778 charging the  
6 defendant with murder. Your Honor, he's here to plead  
7 guilty to a lesser included of voluntary manslaughter  
8 with a negotiated sentence of 20 years. The victim's  
9 mother is in court and may or may not want to address  
10 the Court at the appropriate time.

11 THE COURT: Thank you. Mr. McCoy, you have  
12 explained to Mr. Bellamy about the nature of these  
13 charges, the significance of his guilty plea to a  
14 violent, most serious, no-parole offense, his  
15 Constitutional rights, including that of a trial; does  
16 he seem to understand all of those things as far as  
17 you know?

18 MR. McCOY: 85 percent?

19 MR. GROOMS: Yes.

20 MR. McCOY: He understands it is 85 percent, yes,  
21 Your Honor.

22 THE COURT: That's right. He indicates he wishes  
23 to plead guilty to voluntary manslaughter?

24 MR. McCOY: Yes, Your Honor.

25 THE COURT: Thank you.

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EXAMINATION

BY THE COURT:

Q Mr. Bellamy, when you plead guilty to voluntary manslaughter, you could get up to 30 years of imprisonment; do you understand that?

A Yes, sir.

Q Voluntary manslaughter is no-parole offense, 85 percent offense, that means that whatever sentence you receive, you have to serve at least 85 percent of it before you will be considered to be released into the community; do you understand that?

A Yes, sir.

Q In the eyes of the law, voluntary manslaughter is also a most serious offense. Today you use up one of the two strikes you have for the most serious offense under our law. When you get out, if you should commit another most serious offense, you would then go to jail for the rest your life, you would never get out of jail. You only get two strikes. You get one free shot and the other puts you in jail for life; do you understand that?

A Yes, sir.

Q When you enter this plea, you have to give up certainly important Constitutional rights. First, you

1 have to give up your right to remain silent. Nobody  
2 can make you testify against yourself, no one can force  
3 you to admit you are guilty, but if you plead guilty,  
4 you have to tell me you are guilty. You give up your  
5 right to remain silent when you plead guilty; do you  
6 understand that?

7 A Yes, sir.

8 Q You have a right to a jury trial to let the jury  
9 decide whether you are guilty or not. You don't have  
10 to try to convince a jury you are not guilty. The  
11 State has to convince a jury you are guilty. All 12  
12 members of the jury have to be convinced beyond a  
13 reasonable doubt that you are guilty before you can be  
14 found guilty; do you understand that?

15 A Yes, sir.

16 Q If you plead guilty, you don't get a jury trial,  
17 you give up that right; you understand that?

18 A Yes, sir.

19 Q If you had a trial, Mr. McCoy to could question  
20 the State's witnesses that the State would call to  
21 testify against you, and you could call witnesses of  
22 your own to testify for you and tell your side of the  
23 story. If you plead guilty, you don't get to question  
24 or call witnesses, you give up that right; do you  
25 understand that?

1 A Yes, sir.

2 Q You may have defenses to these charges, I don't  
3 know whether you do or not, but if you plead guilty,  
4 you give up any defenses you might have; do you  
5 understand that?

6 A Yes, sir.

7 Q Have you understood these rights I just explained  
8 to you?

9 A Yes.

10 Q Do I need to go over any of them again?

11 A No, sir.

12 Q The indictment charges you with murder. It says  
13 that you did here, in Horry County, on or about May 4,  
14 2014 willfully, feloniously and intentionally kill the  
15 victim, Laquan Price (phonetic), with malice  
16 aforethought, expressed or implied, by means of  
17 shooting him. He died as a result of that. You are  
18 charged with murder. You are being allowed to plead  
19 guilty to voluntary manslaughter; do you understand the  
20 charge of voluntary manslaughter?

21 A Yes, sir.

22 Q How do you plead to that charge?

23 A Guilty.

24 Q Other than the fact that the charge has been  
25 reduced from murder to voluntary manslaughter, and a

1 negotiated 20-year sentence has been arrived at, has  
2 anyone promised you anything or held out any hope of  
3 reward to get you to plead guilty to this charge?

4 A No, sir.

5 Q Has anyone threatened you in any way or force you  
6 to plead guilty?

7 A No, sir.

8 Q Are you pleading freely and voluntarily?

9 A Yes, sir.

10 Q Made up your own mind?

11 A Yes, sir.

12 Q Are you satisfied with everything that Mr. McCoy  
13 has done for you as your lawyer?

14 A Yes, sir.

15 Q Has he done everything you have asked him to do?

16 A Yes, sir.

17 Q Have you had enough time to talk to him about  
18 these things?

19 A Yes, sir.

20 Q Have you understood the talks you had with him?

21 A Yes, sir.

22 Q Do you need any more time to talk with him  
23 anymore?

24 A No, sir.

25 Q You have 10 days from today's dates to appeal

1 this to a higher court, but you have to file a paper  
2 with this court within 10 days if you wish to appeal;  
3 do you understand that?

4 A Yes, sir.

5 THE COURT: Mr. Grooms.

6 MR. GROOMS: Thank you, Your Honor. On May 4,  
7 2014 at Smokehouse Billiards, there is a bar there  
8 that is connected to it called Teasers. This  
9 defendant was there, along with other gang members.  
10 The victim in this case was also involved in a gang  
11 rival gang. There was words exchanged. There was bad  
12 blood between the parties. It is believed that this  
13 defendant did bring a gun in through the back,  
14 although that is hearsay. We do know there was  
15 security at the front of the bar and that everyone was  
16 checked on the way in. This defendant did have a gun.

17 There is clear video that shows at the time of  
18 the actual incident that the victim in this case,  
19 Laquan Price, is involved in a fight with members of  
20 a rival gang, but leading up to that, this defendant  
21 is shown on tape several times leading up to it  
22 flashing gang signs, as others were in the bar also.  
23 As the incident leads up to the actual shooting, you  
24 see the defendant talking to a female. As you see the  
25 other parties approaching each other, you see him push

1 her out of the way. You see him with his hand in his  
2 pocket, and as the fight begins, Laquan punches one of  
3 the rival parties. I don't know whether he was in a  
4 gang or not. You see this defendant walk up, shoot  
5 him one time roughly right in this area, and that is  
6 the shot that killed him, Your Honor. He then went on  
7 the run after that and was located a year later in  
8 Columbia.

9 He was indicted for murder, and I do believe we  
10 would have a good chance of convicting him of murder;  
11 however, with those facts, there is also a very good  
12 chance of voluntary manslaughter with there being a  
13 fight, which is the reason for the recommendation for  
14 a negotiated 20 years.

15 The victim's family is here -- a good portion of  
16 his family is here. Ms. Jenerett may wish to speak,  
17 if you would allow.

18 THE COURT: Tell me about his record first and  
19 then I'll hear from the victim's family.

20 MR. GROOMS: He has a possession of marijuana  
21 from 2007 and PWID, Schedule 1 to 3, from 2010.

22 THE COURT: I'll hear now from anyone on behalf  
23 of the victim.

24 MOTHER: I'm Tracey Jenerett.

25 THE COURT: I'll be glad to hear from you, ma'am.

1           MOTHER: Yes, sir. This has been a long, hard  
2 two years. I have two grandsons; one is three, one  
3 never got to see his dad. He was born on June the  
4 3rd. It is just hard. I mean, I feel sorry for them  
5 all, you know, I really do. I appreciate everything  
6 that everybody has done.

7           THE COURT: Thank you, ma'am. Anything further  
8 from the State?

9           MR. GROOMS: In terms of plea negotiations, for  
10 the record and for both parties, this case was  
11 originally indicted as murder. I made a plea offer of  
12 20 to 25 years on voluntary, and it was only after  
13 meeting with Mr. McCoy, as well as Ms. Jenerett's  
14 attorneys, that we agreed to the reduction of 20  
15 years. Earlier today we spoke about 15 to 25, and  
16 Mr. McCoy misunderstood me and thought I said 15 to  
17 20. I just want to put on the record that that was  
18 never the case. 20 years was always the least we were  
19 ever going to concede on this case. Had we gone to  
20 trial, we would have gone for possession of a weapon  
21 during the commission of a violent crime as well.

22           THE COURT: Thank you. You heard him tell me  
23 your record, possession of marijuana in '07 and  
24 possession with intent to distribute in 2010; is that  
25 your record?

1 MR. BELLAMY: Yes, sir.

2 THE COURT: I'll take the plea. You understand  
3 what you are doing. You had the services of a  
4 competent lawyer that you are satisfied with.  
5 Mr. McCoy, I'll hear from you.

6 MR. McCOY: Briefly. May it please the Court,  
7 before you is Cliston Bellamy. I have known him since  
8 junior high school. I graduated with his brother, who  
9 is only two years older than him. His mom, sister and  
10 father are in the courtroom. They are an extremely  
11 good family, Your Honor. He has a marijuana charge on  
12 his record. This was out of character for him. It  
13 was a fight that got out of control. The shooting  
14 someone in a hip has been something that I had to tell  
15 him that someone can die from that, and that is what  
16 happened. It doesn't always seem it is going to be a  
17 murder case when you are in a fight and shoot someone  
18 in that area, but that is what happened and that is  
19 why we're here to plead guilty to voluntary  
20 manslaughter.

21 He leaves behind two kids, six and eight, as he  
22 goes to prison, and his family. I do not wish, as  
23 well as Cliston, to say anything about the victim or  
24 what happened that night or any of the involvement,  
25 fighting or in a gang, because Cliston doesn't want to

1 trample on the victim's grave. So we respectively  
2 request you accept the plea.

3 THE COURT: Mr. Bellamy, do you have anything you  
4 want to add?

5 MR. BELLAMY: No, sir.

6 THE COURT: The negotiated sentence in this case  
7 is fair and reasonable under the circumstances as they  
8 have been outlined. Mr. Bellamy, you will be  
9 committed to the State Department of Corrections for a  
10 period of 20 years, credit for time you served. Thank  
11 you.

12 (Whereupon, the proceedings concluded.)

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CERTIFICATE OF REPORTER

State of South Carolina)  
County of Horry )

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the matter of the captioned case, relative to appeal, in the Court of General Sessions for Horry County, South Carolina, on the 17th day of May, 2016.

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

December 27, 2016

  
\_\_\_\_\_

Natalie Dahl, RPR.

Court Reporter

July

185  
CIT

FORM 5

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF HORRY )  
 )  
 Clifton John Bellamy # 343259 )  
 Full name and prison number (if any) of Applicant. )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )

IN THE COURT OF COMMON PLEAS

14

6674

APPLICATION FOR  
POST-CONVICTION RELIEF

2019 OCT 19 PM 1:47  
 Horry County

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention MCCS McCormick, SC 29894
2. Name and location of Court which imposed sentence Horry County Court
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) 2015-65-2603728
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) MAY 17, 2016
  - (b) 20 years

- (c) \_\_\_\_\_
- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty yes
  - (b) after a plea of not guilty \_\_\_\_\_
  - (c) after a plea of nolo contendere \_\_\_\_\_
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?  
No
- 8. If you answered "yes" to (7), list:
  - (a) the name of each Court to which you appealed:
    - i. NA
    - ii. NA
    - iii. NA
  - (b) the result in each such Court to which you appealed:
    - i. NA
    - ii. NA
    - iii. NA
  - (c) the date of each such result:
    - i. NA
    - ii. NA
    - iii. NA
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:
    - i. NA
    - ii. NA
    - iii. NA
- 9. If you answered "no" to (7), state your reasons for not so appealing:
  - (a) Counsel failed to file an appeal
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) ineffective assistance of counsel
- (b) ineffective assistance of counsel
- (c) ineffective assistance of counsel

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

- (a) Failure of counsel to advise applicant of right to self defense
- (b) Failure to provide applicant with discovery material
- (c) Failure to file an appeal

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? \_\_\_\_\_
- (c) any petition in the United States Supreme Court for certiorari other than petitions. if any, already specified in (8)? NA
- (d) any other petitions, motions or applications in this or any other Court? NA

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

- (a) the specific nature thereof:
  - i. NA
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. NA
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (c) the disposition thereof:
  - i. NA
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (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? yes

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

(a) the name and address of each attorney who represented you:

i. Mr. John McCoy 1240 21st Ave N, Suite 105 Myrtle Beach, SC 29577

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. Plea / sentencing

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

New trial

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

NO

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. \_\_\_\_\_ N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. \_\_\_\_\_ N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

\_\_\_\_\_ NO

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

(a) which grounds have been presented:

i. \_\_\_\_\_ 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) unavailable opportunity

(b) unavailable opportunity

(c) unavailable opportunity

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

STATE OF SOUTH CAROLINA )  
 )  
County of Horry )

VERIFICATION

16

16:74

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

Cliston Bellus

SWORN to and subscribed before me this 12<sup>th</sup>  
day of October, 2016

Michael Camare  
(L.S.)  
*Notary Public*

My Commission Expires: July 09, 2026

HORRY COUNTY  
2016 OCT 19 PM 1:47  
MELANIE J. ...  
CLERK OF COURT

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

llc

6674

I, CLISTON BELLAMY 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.

Cliston Bellamy  
Applicant

SWORN or affirmed to and subscribed before me this  
12th day of October, 2016  
Michael Carriere  
Notary Public

My Commission Expires: July 09, 2026

MELBOURN COUNTY  
2016 OCT 19 PM 1:47  
CLERK OF COURT

ISSUE I

COUNSEL WAS INEFFECTIVE FOR FAILING TO ADVISE APPLICANT OF HIS RIGHT TO A SELF-DEFENSE INSTRUCTION, WHICH WOULD HAVE PROMPTED THE APPLICANT TO CONTEST THE CHARGE OF MURDER AT A TRIAL AND THERE IS EVIDENCE OF A FIGHT IN A BAR THAT WOULD HAVE SUPPORTED SUCH AN INSTRUCTION.

MEL  
CLERK  
2016 OCT 19 PM 4:17  
JOEY COUNTY

THE APPLICANT'S TRIAL COUNSEL WAS AWARE OF THE FACTS AND EVIDENCE OF THIS CASE. COUNSEL MCCOY KNEW THAT THERE WAS A FIGHT INSIDE THE SMOKEHOUSE BAR WITH A LARGE GROUP OF MEN THAT INVOLVED THE APPLICANT. APPLICANT WAS IN FACT AT THE SMOKEHOUSE BAR WHEN WITH A LARGE GROUP OF MEN THAT INVOLVED THE APPLICANT. APPLICANT WAS IN FACT AT THE SMOKEHOUSE BAR WHEN A FIGHT BROKE OUT AND DID FIRE A WEAPON ONLY TO GET INDIVIDUALS TO BACK UP.

THERE ARE CERTAIN ELEMENTS TO BE MET IS SOUTH CAROLINA SELF-DEFENSE LAW. SEE STATE V. JONES, 786 S.E.2D 132 (2016); STATE V. CURRY, 752 S.E.2D 263 (2013); AND STATE V. MANNING, OP #27664 (2016). THE APPLICANT MEETS THE ELEMENTS, BELIEF HE WAS IN DANGER OF GREAT BODILY HARM, WITHOUT FAULT IN BRINGING ON THE DIFFICULTY, A REASONABLE PERSON WOULD HAVE ACTED THE SAME. S.C. CASTLE DOCTRINE §16-11-440(c) GIVES PEOPLE THE RIGHT TO STAND THEIR GROUND AND PROTECT THEMSELVES, PROPERTY AND OTHER PEOPLE.

COUNSEL MCCOY NEVER DISCUSSED THESE CRITICAL FACTS WITH THE APPLICANT REGARDING HIS RIGHT TO STAND TRIAL WITH A SELF-DEFENSE INSTRUCTION. THE FACT THAT THE VICTIM WAS SHOT IN HIS LOWER TORSO IS A CLEAR MANIFESTATION OF WARNING SHOT AND APPLICANT WAS ONLY TRYING TO GET INDIVIDUALS TO STAND DOWN. THE FACT THAT THE DECEDANT RAN OUT SIDE AND DIED A SHORT TIME AFTER, IT IS POSSIBLE THAT HE HAD A WEAPON ON HIS PERSON THAT WAS PROBABLY REMOVED BY

AN ALLY. REMEMBER THE SHELL CASING THAT WAS INTENTIONALLY  
DISCARDED BY SMOKEHOUSE BAR WORKER.

COUNSEL WAS INEFFECTIVE FOR FAILING TO INFORM APPLICANT OF  
RIGHT TO A SELF-DEFENSE INSTRUCTION. HAD COUNSEL INFORMED  
APPLICANT OF THIS RIGHT, APPLICANT WOULD HAVE EXERCISED HIS SIXTH  
AMENDMENT RIGHT TO A TRIAL BY TWELVE JURORS.

## ISSUE 2

COUNSEL WAS INEFFECTIVE FOR FAILING TO PROVIDE THE APPLICANT WITH DISCOVERY MATERIAL BEFORE APPLICANT PLEAD GUILTY TO TWENTY (20) YEARS, AS THERE IS NOTHING IN THE DISCOVERY TO CONTRADICT SELF-DEFENSE.

---

IT IS RUDIMENTARY AT TRIAL LEVEL FOR ONES TRIAL COUNSEL TO GO OVER AND PROVIDE A DEFENDANT IN A CRIMINAL CHARGE OF MURDER WITH HIS FULL AND COMPLETE DISCOVERY MATERIAL, EVEN WITHOUT THE CLIENT REQUESTING MATTER OF HADDOCK.

THERE WERE NUMEROUS VERBAL REQUEST MADE BY THE APPLICANT FOR HIS DISCOVERY/BRADY MATERIAL, WHICH IS IN ACCORD WITH HIS 14TH AMENDMENT U.S.C.A. APPLICANT HAS JUST RECENTLY OBTAINED HIS FILE IN AUGUST, 2016. TRIAL COUNSEL MCCOY OBTAINED THE FILE FROM THE SOLICITOR'S OFFICE OCTOBER, 2015, AND JUST NOW TURNING IT OVER AFTER APPLICANT HAD WRITTEN HIM STATING HE WOULD WRITE THE SOUTH CAROLINA SUPREME COURT FOR CONTINUOUS FAILURE TO TURN OVER WHAT IS LAWFULLY HIS FILE.

APPLICANT COULD NOT HAVE KNOWINGLY, INTELLIGENTLY MADE AN INFORMED DECISION TO PLEAD TO 20 YEARS WITHOUT FIRST KNOWING WHAT WAS IN THE FILE. SEE SUBER V. STATE, 640 S.E.2D 884 (2007) AND PORTER V. STATE, 629 S.E.2D 353 (2006).

HAD COUNSEL PROVIDED APPLICANT WITH HIS DISCOVERY MATERIAL, APPLICANT AGAIN WOULD HAVE EXERCISED HIS CONSTITUTIONAL RIGHT TO STAND TRIAL.

**Issue 3**

**COUNSEL WAS INEFFECTIVE FOR FAILING TO FILE AN APPEAL WHICH IS FUNDAMENTAL IN JURY TRIALS AND GUILTY PLEAS AFTER A CONVICTION AND SENTENCE.**

---

**SOUTH CAROLINA APPELLATE COURT RULES - 201(B) MAKES CLEAR WHO MAY APPEAL - ONLY A PARTY AGGRIEVED BY AN ORDER, JUDGMENT, SENTENCE OR DECISION MAY APPEAL AND AFTER A GUILTY PLEA OR TRIAL RESULTING IN CONVICTION. THE APPLICANT ASSERTS THAT HIS STATE STATUTE OF LIMITATION PROCEDURAL CLOCK HAS BEEN RUNNING SINCE MAY 17, 2016 WITHOUT AND APPEAL BEING FILED, AND VERY MUCH AGGRIEVED BY THE SENTENCE IMPOSED.**

**COUNSEL'S FAILURE TO FILE AN APPEAL IS A SIXTH AND FOURTEENTH AMENDMENTS VIOLATION.**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
Cliston John Bellamy,	)	Case No.: 2016-CP-26-06674
S.C.D.C. No. 343259,	)	
	)	
Applicant,	)	
	)	<b>RETURN</b>
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

---

In response to the application for post-conviction relief filed by Cliston John Bellamy (Applicant) on October 9, 2016, Respondent would show this Court:

**I.**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the September 2015 term of the Horry County Grand Jury for murder (2015-GS-26-03778). Jonny D. McCoy represented Applicant, and J. Stephen Grooms, of the Fifteenth Circuit Solicitor’s Office, prosecuted the case.

On May 4, 2014, Applicant fired a single gunshot and killed Laquan Price during a fight between rival gangs at “Smokehouse Billiards” or “Teezers,” a bar and gentlemen’s club.<sup>1</sup> Tr. 7, l. 6 – p. 8, l. 6. Applicant was captured about a year later in Columbia, SC. Tr. 8, ll. 6-8. On May 16, 2016, Applicant pled guilty to the lesser-included charge of voluntary manslaughter. The Honorable Thomas W. Cooper, Jr. accepted a negotiated term and sentenced Applicant to imprisonment for a term of 20 years. Applicant did not appeal his plea or sentence.

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<sup>1</sup> The two establishments were immediately adjacent and appear to have shared a single structure. Cursory review via Google suggests that they are no longer in operation.

## II.

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

1. "Ineffective Assistance of Counsel"
  - a. "Counsel was ineffective for failing to advise Applicant of his right to a self-defense instruction, which would have prompted Applicant to contest the charge of murder at a trial and there is evidence of a fight in a bar that would have supported such an instruction."
  - b. "Counsel was ineffective for failing to provide Applicant with discovery materials before Applicant plead guilty to twenty (20) years, as there is nothing in the discovery to contradict self-defense."
  - c. "Counsel was ineffective for failing to file an appeal which is fundamental in jury trials and guilty pleas after a conviction and sentence."
2. Involuntary Guilty Plea
  - a. "Applicant could not have knowingly, intelligently made an informed decision to plead to 20 years without first knowing what was in the file."

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

## III.

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

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

## IV.

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

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4<sup>th</sup> Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)). Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also

Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

#### V.

Applicant's allegation that counsel was ineffective for failing to file a direct appeal is without merit. Following a trial, counsel is required to make certain the defendant is made fully aware of the right to appeal. Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (internal citations omitted). In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in Anders v. California, 386 U.S. 738 (1967). Id. However, the standard for a guilty plea differs. Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Id.

Applicant's allegation that counsel failed to file a direct appeal may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. See Sharper, 279 S.C. 264, 305 S.E.2d 247.

#### VI.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCF; Mangal v. State, Op. No. 27726 (S.C.Sup.Ct. filed July 19, 2017) (Shearouse Adv.Sh.

No. 27 at 47). 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, SCRCF. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCF.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

## VII.

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

*[Conclusion and signature on following page]*

VIII.

WHEREFORE, Respondent respectfully requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel and involuntary guilty plea.

Respectfully submitted,

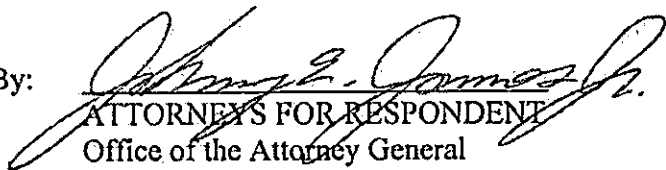
ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
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MEGAN HARRIGAN JAMESON  
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Assistant Attorney General

By:



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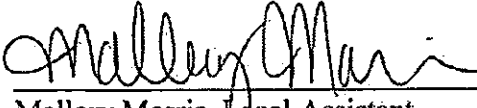
9 Aug., 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF Horry	)	
	)	
	)	2016-CP-26-6674
CLISTON J. BELLAMY, #343259,	)	
	)	
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 e-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 on the above-captioned matter on the following person by e-mail:

**Steven W. Fowler, Esquire**  
**1018 Highway 17 South**  
**North Myrtle Beach, SC 29582**

DATED this 9<sup>th</sup> day of August, 2017.


---

Mallory Morris, Legal Assistant  
For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	2016-CP-26-06674
CLISTON JOHN BELLAMY,	)	
Applicant,	)	<b>Transcript of Record</b>
vs.	)	(Post-Conviction Relief)
STATE OF SOUTH CAROLINA,	)	September 20, 2017
Respondent.	)	

**B E F O R E:**

Honorable William H. Seals  
Horry County Courthouse  
Conway, South Carolina

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

Steven W. Fowler, Esquire  
**Attorney for Applicant**

Johnny E. James, Jr., Esquire  
**Attorney for Respondent**

Kay H. Richardson  
**Circuit Court Reporter**

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E X H I B I T S

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No.IDEV

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(No exhibits were marked or admitted.)

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1 SEPTEMBER 20, 2017

2 MR. JAMES: Your Honor, the state next calls for the  
3 Court's attention the matter of Cliston John Bellamy versus  
4 State of South Carolina. That is docket number 2016-CP-26-  
5 06674. Mr. Bellamy filed this application on October 9th,  
6 2016, and he was -- pled guilty to murder on May 16, 2016 and  
7 accepted a negotiated term of 20 years. My understanding at  
8 this time is that Mr. Bellamy may have a motion to make before  
9 the Court. So, I will give the floor over to them.

10 THE COURT: All right. Yes, sir?

11 MR. FOWLER: Your Honor, I have spoken with my client  
12 previous to today and ---

13 MR. JAMES: If I may interrupt just real quick, I did  
14 make an error just now. He didn't plead to murder; he pled to  
15 the lesser included charge of voluntary manslaughter. That  
16 was my mistake.

17 THE COURT: And got 20 years?

18 MR. JAMES: Yes, Your Honor.

19 THE COURT: All right.

20 MOTION TO CONTINUE:

21 MR. FOWLER: Your Honor, I have spoken with Mr. Bellamy  
22 before today and spoken with the Attorney General about this  
23 case, but the discussions with Mr. Bellamy today, he has  
24 indicated to me that there may be some new evidence that he is  
25 -- possibly could bring to the Court's attention and perhaps

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MOTION TO CONTINUE

4

1 even some witnesses that may -- or a witness that may be  
2 helpful in this matter. He is certainly willing to speak to  
3 the Court. I've spoken with him about it. We would ask --  
4 and this is the first time it's been sent for trial, Your  
5 Honor. So, we would like to have at this time, based on the  
6 information provided to me today, we would like to ask for a  
7 continuance in this matter.

8 THE COURT: All right. Let me hear from the state.

9 MR. FOWLER: And my client would also like to address the  
10 Court at the appropriate time, Your Honor.

11 THE COURT: All right. Let me hear from him first.

12 MR. BELLAMY: Yes, sir. I would like to ask for a  
13 continuance because on the case I have a witness that my  
14 lawyer was supposed to bring a, like, subpoena for but he  
15 didn't, he didn't really -- he really didn't put forth the  
16 effort to subpoena, like bring forth the witness.

17 THE COURT: Did you tell your lawyer here?

18 MR. BELLAMY: Yes, sir.

19 THE COURT: When did you tell him?

20 MR. BELLAMY: I mean, I haven't really had a chance to  
21 speak with him. I just recently spoke with him last week,  
22 last week, well, before I know when I was coming to court, so  
23 I really ain't have the time or the chance to put in for ---

24 THE COURT: All right. Let me hear from the state.

25 MR. JAMES: Your Honor, the state must respectfully

1 oppose this request for a continuance at this time. I don't  
2 know who this witness is, so what we're dealing with is  
3 speculative, newly discovered evidence that's floating out  
4 there and that's not a prima facie showing of newly discovered  
5 evidence sufficient to go forward on that claim or to  
6 necessitate a continuance for that claim.

7 I am present here in the courtroom today ready to  
8 proceed. The state's witness is present here in the courtroom  
9 today ready to proceed. My understanding of this case is that  
10 the facts are such that it can be heard before this court  
11 today.

12 THE COURT: All right. I'm gonna deny the motion.

13 MR. FOWLER: Thank you, Your Honor.

14 THE COURT: I'm ready to proceed when you are, Mr.  
15 Fowler.

16 MR. FOWLER: Yes, Your Honor. Your Honor, I'd like to  
17 call Mr. Cliston Bellamy to the stand, please.

18 And if it's -- I'd like to ask the Court if his shackles  
19 could be undone a little bit so that he could take a look at  
20 his notes.

21 THE COURT: You okay with that? All right.

22 CLISTON JOHN BELLAMY, HAVING BEEN  
23 DULY SWORN, TESTIFIED AS FOLLOWS:

24 CLERK: Have a seat. State your name.

25 MR. BELLAMY: Cliston Bellamy.

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CLISTON JOHN BELLAMY - DIRECT BY FOWLER

6

1 DIRECT EXAMINATION OF CLISTON JOHN BELLAMY BY MR. FOWLER:

2 Q: Mr. Bellamy, you and I have spoke about this previously,  
3 though, right? We have -- we have talked about this case,  
4 right?

5 A: One time on the phone, yes, sir.

6 Q: Very good. And at the time, you mentioned to me that  
7 there were three prevailing issues that you wanted to bring to  
8 the Court's attention, correct?

9 A: Yes, sir.

10 Q: The first issue that's spelled out in your application is  
11 that counsel was ineffective for failing to advise Applicant  
12 of his right to a self-defense instruction; is that correct?

13 A: Yes, sir.

14 Q: All right. Now, let -- talk to me a little bit about  
15 that. So, you're saying that a self-defense plea or defense,  
16 excuse me, defense would be something that you would've  
17 brought up to the Court, potentially?

18 A: Yes, sir.

19 Q: Okay. How is that?

20 A: I mean, if I -- basically going on the Castle Doctrine,  
21 saying you have -- you have a right to defend yourself,  
22 others, and property, you know what I'm saying, at the time of  
23 -- if you feel like yourself you're going to be in great  
24 bodily harm like, you know.

25 Q: And you're looking for what at this point?

1 A: My information on the Castle Doctrine. But basically,  
2 but basically, that's sums it up, going off the Castle  
3 Doctrine.

4 Q: Well, the facts of the case was that there was a large  
5 fight inside a -- the Smokehouse Bar; is that correct?

6 A: Yes, sir.

7 Q: And there were other persons involved in this fight?

8 A: Yes, sir.

9 Q: Okay. Now, you were involved in this fight?

10 A: Yes, sir.

11 Q: Now, in terms of a defense of self-defense, a defense of  
12 self-defense basically, you are saying that -- did you bring  
13 this to your attorney's attention or should he have brought it  
14 to your attention or -- what, what are the facts of the  
15 situation in terms of your discussions with him about this?

16 A: I'm saying he could've brought that to my attention.

17 Q: Okay. So, you relied on his knowledge, his legal  
18 knowledge on this, correct?

19 A: Yes, sir.

20 Q: Okay. Now, in terms of discussions with your attorney --  
21 well, strike that. Because he didn't bring that to your  
22 attention, is that why you took the steps you did in the court  
23 that day in terms of pleading to the Court?

24 A: Yes, sir.

25 Q: Okay. How often did he talk with you before this went

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CLISTON JOHN BELLAMY - DIRECT BY FOWLER

8

1 before the court?

2 A: I saw -- I spoke with him one time before I went before  
3 the Court.

4 Q: Was that an in-person type thing?

5 A: Yes, sir.

6 Q: Okay. Where did he meet with you?

7 A: Over there at the county jail.

8 Q: Okay. Now, did he go over, you know, in your application  
9 you mention *State v. Jones*, *State v. Curry*, and *State v.*  
10 *Manning*. In your application you say that there are certain  
11 elements of self-defense; is that correct?

12 A: Yes, sir.

13 Q: Okay. And do you feel like your situation, the facts of  
14 your case met those self-defense elements?

15 A: Yes, sir.

16 Q: Okay. And do you think a reasonable person upon  
17 reflection would've acted the same way you did that night at  
18 the Smokehouse?

19 A: Yes, sir; I do.

20 Q: Okay. And you're saying that he never discussed the  
21 facts with you about how to stand trial with a self-defense  
22 instruction, correct?

23 A: Excuse me, can you say that again?

24 Q: Yeah. Just looking at your application, you state that  
25 Counsel McCoy never discussed these critical facts with the

1 applicate regarding his right to stand trial with a self-  
2 defense instruction. So, you're saying once again that he  
3 never brought the self-defense up to you, correct?

4 A: Yes, sir.

5 Q: Okay. Now, in this fight, you're saying that you were  
6 shot in your lower torso; is that correct?

7 A: Excuse me?

8 Q: You were shot in your lower torso?

9 A: No, I didn't never say that.

10 Q: But the victim, I apologize, the victim was shot in the  
11 lower torso?

12 A: Uh-huh, (affirmative response).

13 Q: And you say that that was a potential defense as well,  
14 correct?

15 A: Yes, sir.

16 Q: Okay. In terms of the communication about the self-  
17 defense charge, you're certainly knowledgeable about it as  
18 that you, in my opinion, as that you brought up several case  
19 laws about the self-defense defense.

20 A: Uh-huh, (affirmative response).

21 Q: When did you find out about these things? How did you  
22 find out about it? I mean, did you -- did Mr. McCoy bring  
23 this to your attention or did you find out about it on your  
24 own or how did you find out the elements of a self-defense?

25 A: Well, after I was sentenced, when I got to my location, I

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CLISTON JOHN BELLAMY - DIRECT BY FOWLER

10

1 hit the law library, I start attending the law library and  
2 doing research myself.

3 Q: So, you weren't aware of these -- once again, you weren't  
4 aware of this self-defense opportunity before sentencing,  
5 correct?

6 A: No.

7 Q: You took it on your own to find this out, right?

8 A: Yes, sir.

9 Q: So, at the time, you weren't knowledgeable about the  
10 self-defense charges and the case law that goes along with it,  
11 correct?

12 A: Right.

13 Q: All right. So, how long did it take you, once you got  
14 sentenced and got to SCDC, how long did it take you to come up  
15 with this information about these cases and the elements of  
16 self-defense?

17 A: Not long.

18 Q: Not long?

19 A: I mean, a couple of like -- I stayed there for -- it's  
20 been a year since I put in my application, so right about a  
21 year I looked over things.

22 Q: All right. But at the time you were relying on your  
23 attorney to use his knowledge to help you, correct?

24 A: Uh-huh, (affirmative response).

25 Q: And did he do that?

1 A: No, sir.

2 Q: Okay. Now, you state also in your application you  
3 would've used your Sixth Amendment right to a trial by 12  
4 jurors?

5 A: Yes, sir.

6 Q: Did you -- did Mr. McCoy go over that with you?

7 A: No, sir.

8 Q: So, so far we've got that you weren't allowed any -- you  
9 weren't notified of self-defense opportunities, correct?

10 A: Uh-huh, (affirmative response).

11 Q: Okay. And you weren't allowed ---

12 THE COURT: You need to say yes or no, not ---

13 A: Yes, sir. Yes, sir.

14 Q: And also you didn't know about your Sixth Amendment trial  
15 -- right to a trial, correct?

16 A: Yes, sir.

17 Q: Another issue that you brought up in your application was  
18 that he was ineffective for failing to provide the applicant  
19 with discovery material before applicant pled guilty to 20  
20 years and there's nothing in the discovery to contradict self-  
21 defense. Are you familiar with what discovery is? What's  
22 that term mean?

23 A: Yes, sir. It's all evidence involved in the case.

24 Q: Okay. So, now, did your attorney provide that  
25 information to you?

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CLISTON JOHN BELLAMY - DIRECT BY FOWLER

12

1 A: No, sir. Well, he did provide it after I was sentenced  
2 and got to my location where I can research -- do my own  
3 research myself, after I, after I sent him a letter.

4 Q: Okay. But the horse was already out of the barn,  
5 figuratively speaking, at that point, correct?

6 A: Yes, sir.

7 Q: All right. So, how long -- was Mr. -- was your attorney  
8 retained or was he through the public defender's office?

9 A: He was retained.

10 Q: Okay. And how far ahead of this sentencing did you and  
11 -- was he retained? How many months or years or what have  
12 you?

13 A: Probably a year before, a year before.

14 Q: Okay. So, you retained him privately about a year before  
15 you went to court; is that correct?

16 A: Yes, sir.

17 Q: All right. And so far, he did not provide you any self-  
18 defense information, correct?

19 A: Right.

20 Q: And he also didn't go over your discovery with you,  
21 right?

22 A: Right.

23 Q: Did he ever at any point say that there was a delay in  
24 the discovery from the solicitor's office?

25 A: No, sir.

1 Q: Okay. Well, now, let's -- let me ask you this question,  
2 were you familiar that you were entitled to discovery before  
3 going to court?

4 A: Not necessarily -- I was, but I -- well, you could say  
5 yeah I was entitled, I was understanding but I was trying to  
6 receive it, you know.

7 Q: So, you were asking him to provide it to you, correct?

8 A: Yeah, yes, sir.

9 Q: And how many times did you ask him to provide it to you?

10 A: It was handful of times. I wrote two or three times and  
11 I just -- I called him almost a daily basis.

12 Q: Okay. So, even though you called him you say on a daily  
13 basis and wrote him several times, he didn't provide the  
14 discovery, right?

15 A: Right.

16 Q: All right. And did he ever indicate -- and I think I  
17 might've asked this but just to be clear. He never indicated,  
18 there was a problem of him getting discovery from the  
19 solicitor's office, right?

20 A: Right.

21 Q: Okay. In your application you state that you received  
22 your file in August, 2016, correct?

23 A: Correct.

24 Q: And that was after your sentence, right?

25 A: Yes, sir.

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CLISTON JOHN BELLAMY - DIRECT BY FOWLER

14

- 1 Q: Okay. And Trial Counsel -- and you state in your  
2 application Trial Counsel McCoy obtained the file from the  
3 solicitor's office in October 2015, correct?
- 4 A: Correct.
- 5 Q: All right. Do you think if you'd received your discovery  
6 information in October of 2015 that that would've made a  
7 difference?
- 8 A: Yes, sir. I would've known what I was going up against.
- 9 Q: Do you think that may've changed your mind in terms of  
10 what you presented to the Court?
- 11 A: Yes, sir.
- 12 Q: Okay. Do you feel like your plea to the Court at the  
13 time was knowingly? I mean, did you know what you were  
14 pleading to?
- 15 A: No, sir. I couldn't have known what I was pleading to if  
16 I didn't have my discovery pack.
- 17 Q: So, because he apparently didn't get you your discovery  
18 in a year, that kind of prohibited you from knowing the true  
19 meaning of what you were pleading to, correct?
- 20 A: Yes, sir.
- 21 Q: All right. Do you feel like you made an informed  
22 decision at the time to plead to the 20 years?
- 23 A: I mean, I -- not necessarily.
- 24 Q: Okay. Why not?
- 25 A: Because I didn't know what -- what was in my discovery

1 pack, I didn't know what evidence was at hand.

2 Q: And when you finally got the discovery after you were  
3 sentenced, what kind of things were in that discovery that you  
4 feel would've changed your mind perhaps in terms of pleading  
5 to the Court?

6 A: Basically like, like knowing ---

7 Q: And do you have it up there with you?

8 A: Excuse me?

9 Q: Do you have your discovery up there with you?

10 A: Yes, sir.

11 Q: Well, I mean, if there's something that -- I mean,  
12 briefly that you could look at mention, that would be great.

13 A: Basically like that, the -- in the discovery pack  
14 knowing, knowing that it was bar fight and, you know, and I  
15 had the rights to protect myself, you know, pretty much.

16 Q: So, that probably would've changed your mind on how you  
17 pled to the Court?

18 A: Yes, sir.

19 Q: And do you think by him not providing you that, the  
20 discovery in a timely manner, apparently, that that disturbed  
21 your constitutional right to stand trial?

22 A: Yes, sir.

23 Q: Also in your application you mention that counsel was  
24 ineffective for failing to file an appeal in terms of this  
25 matter, which -- and you state is -- which is fundamental in a

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16

1 jury trial and guilty pleas after a conviction and sentence.

2 Tell me a little bit about that. You state that he -- well,

3 strike that. Did you ask for an appeal soon after you were

4 sentenced or tell me a little bit about that situation.

5 A: Yes, the same day I got sentenced I asked while we were  
6 in the courtroom if what -- would be able to appeal the case.

7 Q: Okay. But now, you just pled to 20 years, why would you  
8 be interested in appealing the case?

9 A: I mean, because I felt, I felt like not having that  
10 information that I really pled to something I didn't really,  
11 you know, I didn't have knowledge of.

12 Q: So, even though you pled, you still felt like you needed  
13 to appeal the case, correct?

14 A: Uh-huh, (affirmative response).

15 THE COURT: Is that a yes or a no?

16 A: Yes, sir. Yes, sir. Excuse me.

17 Q: And as the Judge has indicated twice, please say yes or  
18 no.

19 A: Excuse me. Excuse me.

20 Q: Okay. Thank you. And in terms of the -- you mentioned  
21 even in -- in your application that the court rules make it  
22 clear you can appeal only -- an aggrieved party or what have  
23 you and that you said that, that -- you assert that this state  
24 statute of limitation has been running since May of 2016  
25 without appeal. But let's talk a little bit more about your

1 relationship with your attorney in terms of the appeal. Did  
2 you -- once again, just to be clear, did you orally tell him  
3 at the sentencing that you wanted to appeal it?

4 A: Yes, sir.

5 Q: Okay. What was his response to you at that time?

6 A: That he would speak with me shortly after. He would come  
7 and see me when I got back to the detention center.

8 Q: Well, did he qualify how soon it would be? I mean, he  
9 said shortly, but I mean did he say tomorrow or this week or  
10 what?

11 A: The same day.

12 Q: Really? So, he said he would see you the same day,  
13 correct?

14 A: Uh-huh, (affirmative response).

15 Q: All right.

16 THE COURT: Is that a yes?

17 A: Yes, sir. Excuse me.

18 Q: So, not to lead here, but you're saying that the lack of  
19 information made you think that an appeal was necessary; is  
20 that correct?

21 A: Yes, sir.

22 Q: Okay. Did he file an appeal for you?

23 A: No, sir.

24 Q: Okay. But you asked him to, right?

25 A: Yes, sir.

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18

1 Q: Okay. Did he ever say to you why he didn't file an  
2 appeal?

3 A: No, sir.

4 Q: Okay. Did you have any family members or anybody that  
5 talked with him about your case in terms of encouraging him to  
6 work with you on your case?

7 A: Yes, sir.

8 Q: Okay. Who was that?

9 A: My brother.

10 Q: Okay. And what was his name?

11 A: Clyde Bellamy.

12 Q: Mr. Bellamy, did he ask Mr. McCoy for some information or  
13 to get in touch with you or what was the situation there to  
14 the best of your knowledge?

15 A: To the best of my knowledge, basically, he -- he was the  
16 person I was going through to obtain Mr. McCoy, so he was  
17 doing all of my footwork basically asking about court dates  
18 and my discovery pack and everything, you know, pertaining to  
19 the case.

20 Q: Okay. All right. So, not only did you ask your attorney  
21 for information but your brother did as well, correct?

22 A: Yes, sir.

23 Q: Okay. Would you describe -- how would you describe your  
24 attorney's performance in this matter? Would you say it was  
25 deficient or would you say it was adequate or how would you

1 describe your attorney's performance?

2 A: Ineffective, basically.

3 Q: So, you'd say it was ineffective, right?

4 A: Yes, sir.

5 Q: And because -- would you say that because of his lack of  
6 -- alleged lack of representation, you're in the situation you  
7 are now?

8 A: Yes, sir.

9 Q: Okay. And you mentioned ineffective assistance of  
10 counsel and you've mentioned several things in your  
11 application, is there anything else that you feel like that  
12 within the body of the application that he did not do for you  
13 that was important in your representation?

14 A: Excuse me. Can you repeat that?

15 Q: Is there anything else that he should've done for you as  
16 a client that you feel he was lacking on?

17 A: No, sir, except for those things I have listed.

18 Q: So, the application stands on itself, correct?

19 A: Yes, sir.

20 Q: I have no further questions.

21 THE COURT: All right.

22 State?

23 MR. JAMES: Briefly, Your Honor.

24 CROSS EXAMINATION OF CLISTON JOHN BELLAMY BY MR. JAMES:

25 Q: Mr. Bellamy.

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20

- 1 A: Yes, sir.
- 2 Q: Do you recall reviewing the elements of murder with your  
3 attorney?
- 4 A: No, sir.
- 5 Q: Do you recall reviewing any of the defenses that might  
6 have been available to you on these charges?
- 7 A: No, sir.
- 8 Q: Did you go over any potential leads or witnesses to  
9 follow-up on?
- 10 A: No, sir.
- 11 Q: Whose decision was it to plea?
- 12 A: Well, he brought a plea to me that last time I saw him  
13 before I went to court. So, he said it was in my best  
14 interest to take this plea or get arraigned for trial, so ---
- 15 Q: But you took that plea?
- 16 A: Yes, sir.
- 17 Q: All right. Do you recall waiving your constitutional  
18 rights at that guilty plea?
- 19 A: Yes, sir.
- 20 Q: Your right to remain silent?
- 21 A: Yes, sir.
- 22 Q: And your right to a jury trial?
- 23 A: Yes, sir.
- 24 Q: And your right to confront your accusers against you?
- 25 A: Yes, sir.

1 Q: Do you recall telling the Court at that time that you  
2 were satisfied with your lawyer?

3 A: Yes, sir.

4 MR. JAMES: No further questions for this witness.

5 THE COURT: All right. Any redirect?

6 REDIRECT EXAMINATION OF CLISTON JOHN BELLAMY BY MR. FOWLER:

7 Q: The state on cross examine that -- whose decision was it,  
8 were you relying on your lawyer's legal op to enter into any  
9 kind of sentence with the Court?

10 A: Yes, sir.

11 Q: Why was that?

12 A: Because that's what I obtained a lawyer for.

13 Q: So ---

14 A: I didn't really have -- I didn't have knowledge of any  
15 legal work by any law practice.

16 Q: Okay. So, once again, you were relying on his judgment  
17 to do what you did in court, correct?

18 A: Yes, sir.

19 Q: And you've shown today that -- or you testified to the  
20 Court today that he didn't provide the discovery for you,  
21 correct?

22 A: Yes, sir.

23 Q: And that he did not go over the self-defense  
24 opportunities with you; that's correct? Is that right?

25 A: Yes, sir.

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CLISTON JOHN BELLAMY - REDIRECT BY FOWLER

22

1 Q: And also that he did not file an appeal after you  
2 requested it, correct?

3 A: Yes, sir.

4 Q: Okay. And also, you said that you were satisfied with  
5 your lawyer at that time, but you've done a lot of research  
6 after you were sentenced, correct?

7 A: Yes, sir.

8 Q: Okay. And so after you got to SCDC, you have researched  
9 what a proper attorney/client relationship should be, correct?

10 A: Yes, sir.

11 Q: And ---

12 MR. JAMES: Your Honor, I must object. It's a lot of  
13 leading questions here.

14 THE COURT: Sustained.

15 BY MR. FOWLER:

16 Q: Well, since you went to SCDC, have you done legal  
17 research?

18 A: Yes, sir.

19 Q: Okay. And would you say that that legal research since  
20 you got to SCDC has changed your mind about the satis -- your  
21 satisfaction with your lawyer at the time?

22 A: Yes, sir.

23 Q: Okay. No further questions, Your Honor.

24 THE COURT: All right.

25 MR. JAMES: Nothing else, Your Honor.

1 THE COURT: You may step down. Thank you.

2 A: Thank you.

3 THE COURT: If you'll call your next witness.

4 MR. FOWLER: If I may speak with my client for a moment,  
5 Your Honor.

6 THE COURT: Okay.

7 (REPORTER'S NOTE: Mr. Fowler confers with Applicant.)

8 MR. FOWLER: Your Honor, we have no further witnesses but  
9 we would like to preserve a closing argument if the Court so  
10 desires.

11 THE COURT: Anything from the state?

12 MR. JAMES: Yes, Your Honor. The state would call Jonny  
13 D. McCoy.

14 JONATHON D. MCCOY, HAVING BEEN DULY  
15 SWORN, TESTIFIED AS FOLLOWS:

16 CLERK: State your name.

17 MR. MCCOY: Jonathon McCoy, people call me Jonny.

18 DIRECT EXAMINATION OF JONATHON D. MCCOY BY MR. JAMES:

19 Q: Good morning, Mr. McCoy.

20 A: Good morning.

21 Q: How are you doing today?

22 A: Pretty good. How are you?

23 Q: Oh, can't complain. How long -- you're a licensed  
24 attorney, correct?

25 A: Yes, sir.

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24

1 Q: How long have you been doing this?

2 A: Since I was -- 2008 was when I think I had got sworn in,  
3 November of 2008.

4 Q: So, about nine years?

5 A: I've been doing communicate for eight. One year less. I  
6 was at AIG and Travelers doing corporate defense and staring  
7 at cubicles for a year. I've been doing criminal since.  
8 Everything from several murders to rape, all the way down to,  
9 you know, I've got a couple of littering charges on my roster  
10 now.

11 Q: So, it sounds to me like you went from 0 to 60 in your  
12 criminal practice?

13 A: My third -- my third day, I won a burglary first trial,  
14 LWOP, I didn't even know where to stand in the courtroom,  
15 third day.

16 Q: Do you recall your client, Mr. Cliston Bellamy?

17 A: I do. I know Cliston very well, his brother and family.

18 Q: Did you represent him on the charges that we're  
19 discussing today?

20 A: We -- I did.

21 Q: About how many times did you meet with Mr. Bellamy in the  
22 course of your representation?

23 A: I'd say it would -- I mean, at the jail, probably five,  
24 phone several times, here several -- well, here, twice,  
25 because we tried to get bond. I mean, we had hearings on this

1 thing. And also, there was a lawsuit so I had to communicate  
2 with him on whether or not he could help out with the lawsuit.  
3 There was a lot going on with this case. That was, you know,  
4 and Cliston -- I'll put in quotes -- ran for eight months.  
5 So, I was retained by his brother while he was, quote, on the  
6 run. And then they got him -- I think it was eight months. I  
7 can't remember, but it was a long time.

8 MR. FOWLER: Your Honor, I'd like to object to the answer  
9 being relevant.

10 A: Just stating when I was hired. So, I was hired without  
11 being able to talk to him.

12 THE COURT: Overruled. Go ahead.

13 BY MR. JAMES:

14 Q: You mentioned -- scratch that. You filed motions for  
15 discovery pursuant to Rule 5 and *Brady*?

16 A: Yes, sir.

17 Q: And to your knowledge, did you receive everything you  
18 were supposed to receive in response to those motions?

19 A: I think we did, yes, sir.

20 Q: And did you review those materials?

21 A: I did.

22 Q: All right. And did you review those materials with Mr.  
23 Bellamy?

24 A: I did.

25 Q: And did you explain all that to him?

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1 A: I did.

2 Q: All right. What all was the state's evidence against Mr.  
3 Bellamy?

4 A: I mean, the main evidence, I think he'd already seen just  
5 like the majority, quote, the streets, end quote, prior to me  
6 even seeing it. It was about five camera angles in a video.  
7 The fight, which started before the incident, was on video.  
8 The five minutes while the fight was still going on or kind of  
9 bickering was on the video, and then clear as day was  
10 Cliston's shooting the guy on video as well. And I mean, that  
11 was the majority of the evidence there that I had to work  
12 with. I mean, they found a couple of other things that we can  
13 talk about if you want to, but I mean he was aware of the  
14 video. According to what he said to me, he saw it during the  
15 eight months while he was on the run and then I brought still  
16 shots of everything just to make sure. I said, this is you.  
17 I mean, even at his -- he doesn't contend that he didn't shoot  
18 the guy. I mean, from day one, he told me from the moment  
19 before I got hired he ---

20 Q: Well, let's break our questions in half and get to that  
21 point. What all did Mr. Bellamy tell you about what happened?

22 A: Said he shot somebody at Smokehouse Billiards.

23 Q: Did he expand upon it at all or ---

24 A: No.

25 Q: Today he said that it was a bar brawl.

1 A: I mean, he ---

2 Q: Was it a bar brawl?

3 A: It was a fight, yeah.

4 Q: Okay. And was he engaged in that fight?

5 A: No.

6 Q: All right. So, he wasn't engaged in that fight while it  
7 was occurring?

8 A: No, he never threw a punch and he never got hit with a  
9 punch. He never even -- there was no -- Cliston was not  
10 involved in the fight.

11 Q: How did he come about getting involved in shooting the  
12 guy?

13 A: There -- the people were fighting and when there was a  
14 break from the victim and the guy he was fighting with, about  
15 a minute -- about a second and half, two seconds, Cliston  
16 walked up -- walked up and shot him.

17 MR. FOWLER: Objection, Your Honor. He's going over  
18 facts that are not in evidence.

19 A: I'm putting it in the ---

20 MR. JAMES: He -- the applicant has alleged that he  
21 didn't review the facts of the case and didn't review the  
22 discovery in the case and has alleged that he's innocent, I  
23 think the underlying facts of the case are a little relevant  
24 to ---

25 THE COURT: I agree. Overruled.

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1 MR. JAMES: --- analysis of this.

2 A: So, then he walked up casually and shot him in the side.  
3 And then he exited out the screen south -- well, I call it  
4 south but downwards while everybody else was heading towards a  
5 different exit.

6 BY MR. JAMES:

7 Q: So, did those facts influence your analysis of what  
8 defenses were available to Mr. Bellamy?

9 A: Well, his -- are we talking about the self-defense?

10 Q: I can clarify the question. Did you conceive of any  
11 defenses available to Mr. Bellamy?

12 A: I can always conceive of maybe a one, or two, or three  
13 percent chance of something -- especially when your client is  
14 like, look, we just need to get this plea down, which was what  
15 we talked about from the get-go. But in this case, you have  
16 to have something -- in every case, including cases where I've  
17 had other instances where the entire crime was caught on  
18 video, you have come up with something to get it from murder  
19 to manslaughter. So, I decided to come up with and discuss in  
20 detail with Cliston Bellamy that self-defense actually  
21 transfers and you step into the shoes of your friend. I came  
22 up with that. This wasn't -- as Cliston has stated, he  
23 doesn't know anything about self -- he didn't know about the  
24 law of self-defense but I was the one who said who is this guy  
25 that he punched, although it was a weak argument, maybe we

1 could say that this guy was in fear for his life and thought  
2 he was about to get killed and then you would step into his  
3 shoes. Me and Cliston talked about that guy a lot. And he  
4 got back to me. On the third time, I went out there to see  
5 him and said the guy who got punched by the guy, the deceased  
6 guy -- deceased guy hit the guy in the blue hat. I take  
7 Cliston a picture of guy-in-blue-hat and I say who is guy-in-  
8 blue-hat? We got to find out if this guy was in fear of  
9 eminent bodily injury, et cetera. He said, I think he said  
10 that he knew him or that he was part his friends or cousin or  
11 something like that. And I'm guessing that's the witness  
12 because that was the guy who I said if we -- if this guy was  
13 in fear of deadly harm from this one punch that the deceased  
14 man threw and hit him with, maybe you can step into his shoes  
15 but I don't -- I highly doubt a jury would buy it.

16 Q: Did you ever find that guy?

17 A: Well, I mean, Cliston told me kinda who he was but  
18 Cliston's brother Clyde and I are extremely close, we  
19 graduated together and my office is across the street from  
20 their house. I said at any moment if anybody needs anything,  
21 you come here, which all my clients know, including the  
22 witness, which I asked him, you know, to have the guy come by  
23 and tell me whether or not he was eminent bodily injury,  
24 eminent bodily danger, thought he was gonna die from the one  
25 punch that he accepted to the face. But the real problem was

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1 the guy who got punched was -- he was throwing punches, too.  
2 I mean, you know, you want to talk about stepping into  
3 someone's shoes, he would've had to step into that guy's  
4 shoes. And as I told Cliston, you can't -- that guy could not  
5 have brought about the controversy. But, Cliston wasn't in  
6 the fight. So, I couldn't -- there was no self-defense, so I  
7 had to make it self-defense of others. And we talked about  
8 that ad nauseam, because it was ---

9 Q: Just to be specific, did you go over -- first, did you go  
10 over the elements of murder with Mr. Bellamy?

11 A: Of course.

12 Q: And did you go over the elements of voluntary  
13 manslaughter with Mr. Bellamy?

14 A: I did.

15 Q: And did you go over the elements of self-defense with Mr.  
16 Bellamy?

17 A: Of course.

18 Q: Okay.

19 A: Self-defense and self-defense of others. And mainly the  
20 self-defense of others was not something I thought we could  
21 win at trial. I mean, I've won a stand-your-ground -- I've  
22 hand stand-your-ground hearings and been successful, it's  
23 something that I am very familiar with and that I do, that I  
24 look for, but the problem was, you know, we couldn't get past  
25 phase one of the first element, which was did not bring about

1 the controversy. The fight started five minutes before the  
2 shooting. So, you've got a fight in the back between two  
3 other guys, then a middle-of-the-road fight and then it  
4 erupted again. And at that time, the guy who got shot had  
5 engaged with the guy in the blue hat and he punched him and  
6 then right after he punched him, about a second and a half  
7 later, the guy-in-blue-hat runs out the door and Cliston  
8 shoots the guy in the side and then walks away.

9 Q: Okay. Did Mr. Bellamy provide you any leads or witnesses  
10 to track down?

11 A: No, no. I mean, I mean I asked who the guy in the blue  
12 hat was but that was all -- that was all me.

13 Q: Okay. What sort of independent investigation into this  
14 case did you perform, if any?

15 A: Well, I mean, I represented another guy who was in the  
16 fight for simple assault, so I had discovery from him, I had  
17 all the witnesses in his case, I talked to him about what  
18 happened. I mean, he was right there.

19 Q: Now, just to be clear, when you say another guy, not the  
20 victim?

21 A: Correct. I represented Cliston's best friend, one of my  
22 best friends, I mean, all of our friend, for simple assault.  
23 And I -- you know, I would've done whatever it took including  
24 come up with self-defense of others in a case where you're not  
25 even involved in the fight and the guy ran out of the room

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1 with just a broken nose, but there was just nothing there.

2 Q: Okay. How did you go about getting the plea offer that  
3 you communicated to Mr. Bellamy?

4 A: Well, we started out at murder because it was pretty high  
5 profile case. It happened at Smokehouse Billiards, it ended  
6 up closing down the bar entirely. And I believe that the  
7 victim was related to somebody in politics and in North Myrtle  
8 Beach or Atlantic Beach area. So, from the outset, the  
9 solicitor's office obviously has to deal with the victim's  
10 advocate. And when you have that amount of pressure from the  
11 family, the deceased's family showing up, any open plea or any  
12 conviction where the family gets to talk, you're running the  
13 risk of adding, you know, another dozen years at least. So,  
14 what I did was I met with the solicitor, got it down to  
15 manslaughter straight up, 0 to 30. I figured a judge would  
16 probably give him 25. So, Cliston said he wanted somewhere  
17 around 15. So, I got -- I got the solicitor down to 20 by  
18 just basically what I told you, look, the guy threw a punch,  
19 he was a violent guy, a jury may not like that, this, that,  
20 and the other. But really, you know, it, it -- I thought, I  
21 thought it was a more than fair plea. So, once I met with  
22 Cliston during the final plea negotiation stage when we got it  
23 down and extra five years from 25 to 5, and it was either that  
24 or do an arraignment, he and I were both in agreement that the  
25 plea was in his best interest.

1 Q: And you kind of hinted at it and then skipped on, how  
2 long was the first plea offer for murder?

3 A: Well, it was -- I think it was murder no offer at first.

4 Q: Okay.

5 A: I mean, it was just a standard, you know, murder, and  
6 then it was manslaughter ---

7 Q: But essentially they first told you is well, he could  
8 plea straight up?

9 A: Yeah, I mean, right off -- right off the bat, like I said  
10 in the very beginning of this case, he was on the run for  
11 eight months. The family wasn't -- you got to understand,  
12 when you have a family who's scared for eight months and, you  
13 know, people are talking about gang situations and stuff like  
14 that, the solicitor and I met several times and there's not a  
15 whole lot you can do as a prosecutor when your victim's family  
16 is that heavily crushed, hurt, and involved in a case.  
17 Particularly when, you know, eight months goes by and they  
18 were like, how come you can't find this guy, they were blaming  
19 them. So, that came into account, too.

20 Q: Especially in a case where the victim died.

21 A: Right, and I ---

22 MR. FOWLER: Objection, Your Honor, leading question.

23 THE COURT: Sustained.

24 BY MR. JAMES:

25 Q: We can move on ---

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1 A: Especially in a case where somebody died, I would say  
2 that.

3 Q: We can move on from that. Did you discuss with Mr.  
4 Bellamy all of his constitutional rights?

5 A: I did.

6 Q: Right to remain silent?

7 A: Right.

8 Q: And right to a jury trial?

9 A: I did. And the Judge did, of course.

10 Q: Whose decision was it to plead guilty?

11 A: His and mine. I was in agreement of it for sure.

12 Q: Okay. Mr. Bellamy had insisted on taking this matter to  
13 trial, would you or could you have been prepared to do so?

14 A: Oh, absolutely.

15 Q: Okay.

16 A: I've tried murder or attempted murder cases, rape cases.

17 Q: Did Mr. Bellamy ever ask you to file an appeal after the  
18 guilty plea?

19 A: No, he didn't. And I -- what I -- I was listening and he  
20 said I was satisfied with him on the date of the plea, he did  
21 great, so I was satisfied with him, and then I went and did  
22 research and found out that I had an appeal, so I'm confused  
23 as to how he was satisfied and then later does research to  
24 find an appeal but he told -- somehow he was satisfied and  
25 then told me he wanted an appeal, which I mean he never did.

1 And his brother and I talked on the phone that day, the next  
2 day, I mean, I -- you know, the family knows me extremely  
3 well.

4 Q: Okay. Independent of whether or not he asked for you an  
5 appeal, did you in your own professional capacity see any  
6 reason why an appeal would be a good decision?

7 A: No, I thought an appeal would be a bad decision. I mean,  
8 and I think this PCR, if it gets overturned, I think he'll get  
9 -- he'll be found guilty of murder, I mean, but whatever.

10 Q: No further questions for this witness, Your Honor.  
11 Please answer any questions Mr. Fowler may have.

12 A: Right. Thank you.

13 THE COURT: Mr. Fowler.

14 CROSS EXAMINATION OF JONATHON D. MCCOY BY MR. FOWLER:

15 Q: You state how -- you went out there several times to the  
16 jail and on the phone and at your office, do you have any kind  
17 of paper trail in terms of showing how many times you went out  
18 to the jail?

19 A: No.

20 Q: So, do you have any kind of phone logs that show how many  
21 times you spoke with him by phone?

22 A: No.

23 Q: And do you have -- how many times did you -- you said  
24 there was a bond hearing, how many times did you meet with him  
25 at the courthouse?

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1 A: I have no idea.

2 Q: Okay. But you said that you met with him here at a bond  
3 hearing, correct?

4 A: More than once I've met with him at a courthouse for a  
5 bond hearing.

6 Q: But you don't have any documentation to verifying, that,  
7 correct, or any kind of records in your office -- you don't  
8 have any kind of business records showing how many times you  
9 met with him, correct?

10 A: Of cour -- no.

11 Q: Okay. You said you met with his -- there was a lawsuit;  
12 what was that about?

13 A: That was about ---

14 MR. JAMES: Objection, relevance.

15 MR. FOWLER: He mentioned it on ---

16 THE COURT: He did. Go ahead. Overruled.

17 BY MR. FOWLER:

18 Q: You mentioned on direct examination there was a lawsuit.  
19 Tell me briefly about that lawsuit.

20 A: Well, as you're -- if you're -- you might want to ask  
21 your client because he and I met with the plaintiff's  
22 attorneys who asked for Cliston's help. And we in return said  
23 if you will ask the family to be more lenient so that, you  
24 know, then he'll be willing to talk. However, in talking to  
25 Cliston, the family sued the restaurant or the bar for lack of

1 security. The problem was there was a metal detector at the  
2 door and they needed to prove as a plaintiff, they needed to  
3 prove that Cliston snuck the gun in through the side because  
4 it was a faulty security company. Cliston, however, told me I  
5 walked straight through the front door with my gun. So, after  
6 meeting with them, I told them that he would be no help  
7 regardless, I'm sorry.

8 Q: How did that civil lawsuit wind up?

9 A: I have no clue. I do criminal and personal injury and  
10 civil rights.

11 Q: But you were knowledgeable about the lawsuit.

12 A: And Cliston was too and he was involved in the talk ---

13 Q: But the question was you were knowledgeable about the  
14 lawsuit going on?

15 A: And -- yes, myself and Cliston was as well because we met  
16 so many times, he knew about every facet of the case.

17 Q: Okay. All right. Were you retained by any -- well,  
18 strike that. You said you spoke with his brother and that you  
19 were good friends, you were still good friends with his  
20 brother; is that correct?

21 A: Correct.

22 Q: All right. So, did -- how many times did you meet with  
23 his brother?

24 A: As many times as he wanted.

25 Q: Okay. Do you have any documentation showing how many

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JONATHON D. MCCOY - CROSS BY FOWLER

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1 times you met with the brother?

2 A: No.

3 Q: Okay. But now you were retained by my client, correct?

4 A: His brother paid me while your client was on the run for  
5 eight months.

6 Q: Well, but the attorney/client privilege goes to ---

7 A: Correct, but his brother retained me, that was correct.

8 The attorney/client privilege is me and Cliston. Me and his  
9 brother never talked about the case other than, hey, he might  
10 want to turn himself in.

11 Q: But you said that you spoke with his brother several  
12 times about the case, right?

13 A: Correct.

14 Q: So, was that a violation of attorney/client privilege to  
15 Cliston?

16 A: No, not to say, hey, we have court tomorrow. Hey, I saw  
17 your brother, he's doing well. Hey, this is the plea offer  
18 from the state, no. Public information is not attorney/client  
19 privilege.

20 Q: Okay. Well, I was just confused because it sounded like  
21 you spoke with the brother ---

22 A: That's okay.

23 Q: --- more about the case than you did Cliston.

24 A: I don't understand how you can say that. I never told  
25 the brother about the lawsuit, I never told the brother about

1 anything that was involved in the video, I never told the  
2 brother about how Cliston never mentioned that he even saw the  
3 victim punch anybody.

4 Q: Well, I guess my ---

5 A: --- but -- let me finish ---

6 Q: You can finish, I just -- I would like a response to my  
7 question. It sounded like on direct exam that ---

8 THE COURT: Why don't you let him finish and then if you  
9 don't have a response then you can follow up. Why don't we do  
10 that.

11 A: So, I talked to Cliston about every aspect of the case.  
12 I'm talking about how Cliston never mentioned to me -- I had  
13 to come up with finding somebody that the victim punched.  
14 Cliston never said, hey I saw them punch some guy, hey he  
15 punched me. I came up with all that stuff. So, I discussed  
16 that with Cliston. I never discussed it with Clyde. The only  
17 thing I ever discussed with Clyde was, hey, your brother is in  
18 -- you know, he's in trouble, he's on the run right now. I  
19 don't want him to get gunned down by the U.S. Marshalls. That  
20 was the discussions I had with his brother. Then, after that  
21 took place, hey, I'm here if you ever need me, text me.  
22 There's a hearing on this date, hearing on that date. The way  
23 that you're wording is I had more communication with the  
24 brother but that's because you were listening to what your  
25 client said and not what I'm saying under oath, sworn as an

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1 officer of the court and my hand on the Bible. I met with  
2 Cliston and discussed with him ad nauseam the facts of the  
3 case, which -- which were mainly the video.

4 Q: Okay. But -- okay. When did you show the video to  
5 Cliston?

6 A: Cliston had already seen the video, so I brought him  
7 still shots and said, is that you.

8 Q: Well, I guess my question is, so you -- well, let me  
9 rephrase that. So, you never showed him the video, did you?

10 A: He never -- I don't think -- I don't think you -- no.

11 Q: Well, so you're saying there was a video with I think you  
12 said five camera angles.

13 A: I think it was -- yeah, four or five.

14 Q: Yeah. So, he never saw any of those camera angles,  
15 right?

16 A: That's incorrect.

17 Q: But you said you didn't -- he didn't see the video.

18 A: That's right. I did not show it to him. He saw it  
19 during the eight months while he was on the run just like  
20 everybody else.

21 Q: Well, you know, ---

22 A: And then when I asked him if he wanted to see it, he said  
23 I seen it, let's try to get this thing down to 15 years.

24 Q: Okay.

25 A: So, then I brought him still shots in the video and

1 showed him a picture and asked him if it was him.

2 Q: Just lean back a little.

3 A: I'm sorry. My voice is like starting to go.

4 Q: Well, earlier you said -- okay. But earlier on direct  
5 examination you said Cliston came up, he shot the guy or what  
6 have you, I think that's your testimony. You're saying that  
7 he never saw that video, correct?

8 A: No. I'm not saying that. That's why I keep getting  
9 closer, I -- he saw the video.

10 Q: But you're saying -- but you earlier said that you did  
11 not show him the video.

12 A: Correct. Just because I didn't show him the rain outside  
13 doesn't mean he doesn't get wet. He saw the video and said I  
14 don't need to see it again. I need -- I already -- we never  
15 -- he never even really wanted to discuss defenses. I came up  
16 with all the defenses. I'm the one who brought the still  
17 shots and said, this is you, right? This is Marcus, another  
18 guy I'm representing, right, who also, you know, put him  
19 there.

20 Q: Okay. So, you're saying you came up with self-defense,  
21 correct?

22 A: Right. Well, I said that was the only thing that you  
23 could even remotely -- I mean, it still -- it's still a  
24 horrible defense but, yeah, I came up with it and went over it  
25 with him.

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JONATHON D. MCCOY - CROSS BY FOWLER

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1 Q: But as your attorney, you're supposed to come up with  
2 those defenses, correct?

3 A: If you're a good criminal attorney, yes.

4 Q: Okay. Did you ever send him any kind of memorandum  
5 explaining these ---

6 A: Send him a memorandum to the jail?

7 Q: Yeah, I mean, just something that spells out what his  
8 options were, I mean something in writing, to Cliston to kind  
9 of go to your file?

10 A: No, no, absolutely not.

11 Q: Okay. All right. In terms of -- you said earlier that  
12 you were trying to find this guy, I believe it was the blue-  
13 hat-guy or something, you said you mentioned this to Cliston.  
14 Tell me a little bit about that. You were trying to find the  
15 guy that you could've -- he could've stepped into the shoes  
16 of; is that correct?

17 A: Right. The defense that I came up with of self-defense  
18 and went through it with Cliston, correct.

19 Q: Okay. So, did you talk with that -- about that with the  
20 brother?

21 A: No.

22 Q: Okay.

23 (To the Court) If I may have a moment?

24 THE COURT: You may.

25 BY MR. FOWLER:

1 Q: All right. Just to be clear, so you're saying you went  
2 over the self-defense with my client?

3 A: Went over self-defense with him and self-defense of  
4 others, ad nauseam.

5 Q: Okay. But once again, you don't have any kind of records  
6 showing that you went over either time log or documentation,  
7 correct?

8 A: I've been practicing law for eight years and I've never  
9 written down the times that I went over the elements of crimes  
10 like -- no, I don't keep a ledger of what -- no.

11 Q: Okay. And in terms of the discovery, when did you  
12 provide that to him?

13 A: When I first went out there and met with him.

14 Q: Okay. Did you send it -- did you hand it to him or did  
15 you send it by mail?

16 A: When we were in the -- you're in a room when you go out  
17 there and sit with them. I had my discovery and I always have  
18 a second packet.

19 Q: Okay. And does that second -- so, you kept the packet,  
20 right?

21 A: What -- I kept my ---

22 Q: You kept your copy, right?

23 A: Right.

24 Q: Okay. All right. All right. So, you gave it to him in  
25 person you say, right?

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1 A: Yes.

2 Q: Okay. And about the appeal, he mentioned -- on the stand  
3 earlier he mentioned that he wanted you to file an appeal.  
4 Why did you not do that?

5 A: Because he didn't ask me to.

6 Q: Okay. But now with the situation it was, he had some  
7 time to file the appeal and it's a very short window to file  
8 an appeal.

9 A: Ten days.

10 Q: Ten days, right. And he's saying he asked you at the  
11 hearing, correct?

12 A: He's saying that to you, yes.

13 Q: Okay. He said that to the Court as well.

14 A: Okay. He's saying that to the Court, yes.

15 Q: Okay. Do you normally file appeals for clients?

16 A: I have if they ask me to.

17 Q: Okay. All right. I have no further questions.

18 THE COURT: All right. Anything further from the state?

19 MR. JAMES: Very briefly, Your Honor.

20 REDIRECT EXAMINATION OF JONATHON D. MCCOY BY MR. JAMES:

21 Q: Just to clarify, it was a little bit of muddied answer  
22 there. You gave a copy of the discovery to Mr. Bellamy?

23 A: Cliston, Cliston had everything.

24 Q: Okay. And you also kept a separate copy for yourself?

25 A: Yes.

1 Q: Okay. Is there any doubt in your mind that -- about the  
2 number of times that you met with Mr. Bellamy?

3 A: You mean, yeah, there's doubt in my mind. I know it was  
4 a handful, that's why. I mean, I'd remember if it was only  
5 one time.

6 Q: Okay.

7 A: This is Clyde's brother, I wouldn't -- I mean, this is --  
8 this wasn't a small case to me. This was -- I care about  
9 Cliston even right now. That's why I don't want this PCR to  
10 get overturned because he'll go to jail for 30 years or more.

11 MR. JAMES: I have no further questions, Your Honor.

12 THE COURT: All right. You may step down.

13 MR. MCCOY: Thank you, Your Honor.

14 THE COURT: Thank you.

15 Any other witnesses?

16 MR. JAMES: No, Your Honor.

17 BY THE COURT:

18 THE COURT: All right. I will take the matter under  
19 advisement and let you know something soon.

20 Thank you.

21 MR. JAMES: Thank you, Your Honor.

22 (ADJOURNED.)

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Cliston John Bellamy v. State of South Carolina, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on September 20, 2017.

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



Kay H. Richardson  
Official Court Reporter

July 9, 2018.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
Cliston John Bellamy,	)	Case No.: 2016-CP-26-06674
S.C.D.C. No. 343259,	)	
Applicant,	)	
v.	)	<b>ORDER OF DISMISSAL</b>
State of South Carolina,	)	
Respondent.	)	

FILED  
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CLERK OF COURT  
HORRY COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed by Cliston John Bellamy ("Applicant") on October 9, 2016. Respondent made its return on or about August 9, 2017. The Court convened an evidentiary hearing into the matter on Wednesday, September 20, 2017, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by Steven W. Fowler, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Jonathan D. McCoy, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Horry County Clerk of Court regarding the subject convictions, and the pleadings. The Court finds as follows:

#### I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the September 2015 term of the Horry County Grand Jury for murder (2015-GS-26-03778). Jonathan D.

McCoy, Esq. represented Applicant, and J. Stephen Grooms, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On May 16, 2016, Applicant pled guilty to the lesser-included offense of voluntary manslaughter. The Honorable Thomas W. Cooper, Jr. accepted the terms negotiated between Applicant and the State and sentenced Applicant to imprisonment for a term of 20 years. Applicant did not appeal his plea or sentence.

### **Present Application**

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

1. "Ineffective Assistance of Counsel"
  - a. "Counsel was ineffective for failing to advise Applicant of his right to a self-defense instruction, which would have prompted Applicant to contest the charge of murder at a trial and there is evidence of a fight in a bar that would have supported such an instruction."
  - b. "Counsel was ineffective for failing to provide Applicant with discovery materials before Applicant plead guilty to twenty (20) years, as there is nothing in the discovery to contradict self-defense."
  - c. "Counsel was ineffective for failing to file an appeal which is fundamental in jury trials and guilty pleas after a conviction and sentence."
2. Involuntary guilty plea, in that:
  - a. "Applicant could not have knowingly, intelligently made an informed decision to plead to 20 years without first knowing what was in the file."

### **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

### A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she 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." Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this

prong, attorney performance is measured by its "reasonableness under professional norms." Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

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

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

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not

invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)). Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

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

***IAC Allegation #1 – Failure to Advise Applicant Regarding Self-Defense Strategy***

Applicant alleges Counsel was ineffective for failing to advise him "of his right to a self-defense instruction[.]" "If there is any evidence of record from which it can be reasonably inferred that an accused justifiably inflicted a wound in self-defense, then the accused is entitled to a charge on the law of self-defense." State v. Jackson, 384 S.C. 29, 35, 681 S.E.2d 17, 20 (Ct. App. 2009) (quoting State v. Wigington, 375 S.C. 25, 31, 649 S.E.2d 185, 188 (Ct. App. 2007)). "When any evidence in the record entitles the accused to a jury charge on self-defense, a trial judge's refusal to give the charge is reversible error." Id. (quoting State v. Muller, 282 S.C. 10, 10, 316 S.E.2d 409, 409 (1984)). However, "[a] self-defense charge is only required when the

evidence supports it.” Id. (quoting State v. Slater, 373 S.C. 66, 69, 644 S.E.2d 50, 52 (2007)).

To establish self-defense in South Carolina, four elements must be present:

- (1) The defendant must be without fault in bringing on the difficulty;
- (2) The defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury;
- (3) If his defense is based upon his belief of imminent danger, defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or the loss of his life; and
- (4) The defendant had no other probable means of avoiding the danger.

Id. (quoting Slater, 373 S.C. at 69-70, 644 S.E.2d at 52). “[W]hen a defendant claims self-defense, the State is required to disprove the elements of self-defense beyond a reasonable doubt.” State v. Dickey, 394 S.C. 491, 716 S.E.2d 97 (2011) (quoting State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006)).

At the guilty plea proceeding, the plea judge asked Applicant if he understood that by pleading guilty he was giving up any defenses he may have, to which Applicant replied that he understood. Tr. 5, ll. 2-6. In mitigation, Counsel argued to the court that the shooting was out of Applicant’s character and the result of “a fight that got out of control.” Tr. 10, ll. 12-13.

At the evidentiary hearing, Applicant testified Counsel did not talk to him about self-defense or the defense of others. Applicant claimed to discover “self-defense” after visiting the law library in jail. Applicant asserted Counsel should have brought “Castle Doctrine” to his attention. Applicant testified he only spoke to Counsel once before going to court, despite retaining him a year prior. Applicant claimed Counsel did not review any potential defenses with him. Applicant testified the shooting occurred as part of a bar fight and that he was protecting himself.

Counsel testified that Applicant was on the lam for around eight months before his capture. Counsel recalled meeting Applicant five times in jail, several times in court appearances, and several times by phone. Counsel further testified that he met with Applicant's brother, with Applicant's consent, regularly. Counsel explained that the nightclub in which the shooting took place had five different angles of the killing recorded on security video. By the time Counsel met with Applicant, Applicant had already seen the nightclub's security video of the incident, and declined to watch it again. Regardless, Counsel showed Applicant a number of still frames. Counsel testified the self-defense strategy, namely defense of others, was his idea and he explained it to Applicant. Counsel explained that the victim punched another individual in the club in the course of a fight, and that Applicant casually walked up to the victim and shot him. Counsel estimated that the strategy was not likely to win at trial, as they could not get over the first element of being "without fault" in bringing on the difficulty.

The Court finds no deficiency on the part of counsel, nor prejudice therefrom. Based upon this Court's observations of Applicant at the hearing and the near total inconsistency of his testimony with any other part of the record before this Court, the Court finds Applicant's testimony not credible. Conversely, the Court finds Counsel's testimony credible. Counsel identified a strategy of self-defense and communicated it to Applicant. Counsel thoroughly explained that strategy to Applicant, including its strengths and, given the facts of the case, considerable weaknesses. Applicant knew of the potential self-defense strategy and knowingly waived it at the plea proceeding. Applicant knowingly, willingly, and voluntarily pled guilty with full awareness of his potential defenses. Accordingly, Applicant's request for relief by way of this allegation is DENIED.

***IAC Allegation #2 – Failure to Provide Discovery***

Applicant also alleges Counsel was ineffective by failing to provide and review with him the discovery in his case. The Court incorporates and largely relies upon testimony already explored in Section II.A.1 above, and finds no deficiency on the part of Counsel or prejudice therefrom. This Court finds Applicant's testimony not credible and, in particular, gives no weight to his claim that Counsel never shared or reviewed with him the discovery in his case. Counsel credibly testified that he took discovery to Applicant and reviewed materials with his client to the extent that applicant was willing. Applicant knowingly, willingly, and voluntarily pled guilty with full awareness of the case against him. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

***IAC Allegation #3 – Failure to File Notice of Appeal***

Applicant alleges Counsel was ineffective by failing to file a notice of appeal after his guilty plea. Though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a *trial*, a different standard applies to a guilty plea:

Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.

Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (citations omitted). At the plea proceeding, the court informed Applicant in no uncertain terms that he had 10 days to appeal to a higher court, to which Applicant affirmed that he understood. Tr. 6-7.

At the evidentiary hearing, Applicant testified that he asked Counsel to file an appeal the same day he was sentenced. Applicant argued he had wanted to appeal because he did not have all of the information. Counsel, on the other hand, testified that Applicant never asked for an appeal. Counsel saw no reason to appeal the plea or sentence.

The Court finds no deficiency on the part of Counsel or prejudice therefrom. The Court relies upon the credibility findings already set forth in both Sections II.A.1 and A.2, above, and finds Applicant never asked for an appeal and no other reason existed for Counsel to believe Applicant wanted or would want an appeal. Applicant's assertion at the evidentiary hearing that he wished to appeal based upon some known-unknown, to borrow a designation from former Secretary of Defense Donald Rumsfeld, only reaffirms this Court's finding that Applicant's attestations of ignorance in his plea are entirely without evidentiary support and not credible. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

### III. CONCLUSION

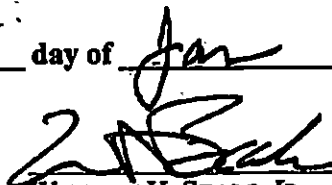
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED this 5 day of Jan, 2018.

  
WILLIAM H. SEALS, JR.  
Presiding Judge  
Fifteenth Judicial Circuit

Mauri, South Carolina

C

DOCKET NO. 2015-GS-26-03778

The State of South Carolina  
County of Horry

J. Stephen Grooms 15H02031

COURT OF GENERAL SESSIONS

SEPTEMBER, 2015 TERM

THE STATE

vs.

Clifton Bellamy  
B/M



ATTORNEY: Jonny D. McCoy

Indictment for

MURDER

Jimmy A. Richardson, II, Solicitor

ORIGINAL

WITNESSES

Jeffery Cauble Horry County Police Department

ARREST WARRANT NUMBER

2014A2610201136  
CDR: 0116 16-03-0010, 0020  
DOA: 5/5/2015

ACTION OF GRAND JURY

TRUE BILL

*Jan Smith*  
Foreperson of Grand Jury  
Date: SEP 17 2015

VERDICT

Foreperson of Petit Jury  
Date:

FILED  
HORRY COUNTY

2015 SEP 18 PM 1:08

MEGAN L. HUGGINS-WALKER  
CLERK OF COURT

DATE RECEIVED FROM  
GRAND JURY

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

INDICTMENT


At a Court of General Sessions, convened on September 17, 2015, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Cliston Bellamy did in Horry County, on or about May 4, 2014, willfully, feloniously, and intentionally kill the victim, Jaquann Price, with malice aforethought, either express or implied, by means of shooting, and the victim did die as a proximate result thereof on or about May 4, 2014 in Horry County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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

  
JIMMY A. RICHARDSON, II  
FIFTEENTH CIRCUIT SOLICITOR

FILED  
HORRY COUNTY  
2016 MAY 17 PM 4:35  
MELANIE BISHOP-WARD  
CLERK OF COURT  
COURT DATE  
PLED GUILTY/TRIAL