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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Alex Kinlaw, Circuit Court Judge

JAMIE MISHOE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-002030

APPENDIX

VICTOR R SEEGER
Appellate Defender

South Carolina Commission on Indigent
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Division of Appellate Defense
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Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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| STATE OF SOUTH CAROLINA |) | COURT OF GENERAL SESSIONS |
| |) | |
| COUNTY OF GREENVILLE |) | Case No(s) .: 2013GS2302717, |
| |) | 2013GS2303357 |
| State of South Carolina, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| -VS- |) | TRANSCRIPT OF RECORD |
| |) | |
| Jamie Mishoe, |) | |
| |) | |
| Defendant. |) | |
| |) | |

November 16, 2016
 Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

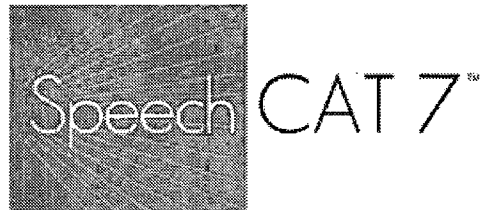
A P P E A R A N C E S:

BRYNA S. SEAY, Esquire
 Attorney for the Plaintiff

CHRISTOPHER D. SCALZO, Esquire
 Attorney for the Defendant

Teresa B. Johnson, CVR-M, CM
 Certified Court Reporter
 P.O. Box 2812
 Greenville, S.C. 29602

Records are
 taken and
 produced via



I N D E X

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EXHIBITS PAGE**NO.****DESCRIPTION****ID EV****PLAINTIFF EXHIBITS**

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

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P R O C E E D I N G S

(Proceedings begin on the 16th day of November,
2016 at approximately 3:52 p.m.)

THE CLERK: Your Honor, this is 2014 -- is
this a plea?

MR. SCALZO: Yes.

THE CLERK: Okay. This is 2014-GS-23-7828,
Jamie Mishoe ---

MR. MISHOE: Mishoe.

THE CLERK: --- Mishoe, indicted for
Threatening a Life, pleading to the same, and
it is a true bill; 2014-23-3357, indicted for
Murder and Possession of a Weapon During the
Commission of a Violent Crime, pleading to
Voluntary Manslaughter and Possession of a
Weapon During the Commission of a Violent
Crime, and it is a true bill; 2013-GS-23-2717,
indicted for Attempted Murder and Possession of
a Weapon During the Commission of a Violent
Crime, pleading to Attempted Murder and
Possession of a Weapon During the Commission of
a Violent Crime, and it is a true bill.
Will you raise your right hand?

(WHEREUPON, the defendant is first duly sworn.)

THE COURT: And the charge that we

1 discussed -- there are two --

2 **MR. SCALZO:** Yes, ma'am.

3 **THE COURT:** -- is it both of them or is it
4 Charles Chambers?

5 **MR. SCALZO:** He would be the victim. I
6 believe that's 605. It's the -- 1740 and 1742,
7 I think, are the warrant numbers.

8 **MS. SEAY:** It's indictment 2013-2717.

9 **THE COURT:** 2717, got it. Mr. Mishoe, is
10 that right?

11 **MR. MISHOE:** Yes.

12 **THE COURT:** You are here today to plead to
13 a charge of Threatening the Life of a Public
14 Official, it carries up to five years;
15 Voluntary Manslaughter that carries up to 30
16 years, that is classified as a violent offense
17 and a most serious offense, so two of your
18 three strikes; and Possession of a Weapon
19 During the Commission of a Violent Crime
20 related to that that carries five years.

21 You're also here to enter what is called an
22 Alford plea as to Possession of a Weapon During
23 the Commission of a Violent Crime that carries
24 five years and Attempted Murder that carries up
25 to 30. That is a charge related to Charles

1 Chambers. Is that your understanding?

2 **MR. MISHOE:** Yes.

3 **THE COURT:** All right. Let's talk about
4 what an Alford plea is to those two charges. An
5 Alford plea means that you're saying the State
6 likely has the evidence to convict you at
7 trial, but you're not necessarily admitting
8 your guilt. Is that your understanding?

9 **MR. MISHOE:** That's part of the
10 negotiation plea, right?

11 **THE COURT:** And is this a negotiated
12 sentence?

13 **MS. SEAY:** Yes, ma'am.

14 **MR. SCALZO:** Yes, ma'am.

15 **THE COURT:** Okay. We're not talking about
16 sentence right now, okay, other than for me to
17 tell you what the possible penalties would have
18 been. I want you to focus on the Alford plea
19 part of it right now. To two of these charges,
20 Possession of a Weapon During the Commission of
21 a Violent Crime and Attempted Murder, you're
22 entering what's called an Alford plea. And I
23 want to explain it to you again just to make
24 sure we're on the same page. An Alford plea
25 means that you're saying that the State has the

1 evidence to convict you at trial, but you're
2 not necessarily admitting your guilt. Is that
3 your understanding?

4 **MR. MISHOE:** Yes.

5 **THE COURT:** And you know that I'll
6 sentence you -- and as you've talked about
7 about the negotiated plea, I'll sentence you
8 just as if you had plead guilty and it will be
9 on your rap sheet and all that, just as if you
10 plead guilty. You know all that. Okay. Is that
11 right?

12 **MR. MISHOE:** Yes, ma'am.

13 **THE COURT:** Okay. It's my understanding
14 that there had been negotiations in this case
15 and that this is a negotiated plea and that my
16 role here is to either accept the plea or
17 reject the plea. In other words, I can't give
18 you another number from that negotiated
19 sentence. You know that?

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

21 **THE COURT:** Okay. Have you discussed these
22 charges with your lawyer?

23 **MR. MISHOE:** Yes, ma'am.

24 **THE COURT:** Are you happy with what your
25 lawyer has done for you?

1 **MR. MISHOE:** Yes, ma'am.

2 **THE COURT:** Are you under the influence of
3 drugs or alcohol here today?

4 **MR. MISHOE:** No, ma'am.

5 **THE COURT:** Has anyone forced you to plead
6 guilty?

7 **MR. MISHOE:** No, ma'am.

8 **THE COURT:** Has anybody promised you
9 anything to get you to plead guilty ---

10 **MR. MISHOE:** No, ma'am.

11 **THE COURT:** --- other than the
12 negotiations that we're going to talk about?

13 **MR. MISHOE:** No, ma'am.

14 **THE COURT:** When you plead guilty or enter
15 an Alford plea to a charge, you give up your
16 right to remain silent about those charges. Do
17 you know that?

18 **MR. MISHOE:** Yes, ma'am.

19 **THE COURT:** Okay. You also give up your
20 right to a jury trial on these charges. At that
21 trial, your attorney could call witnesses for
22 you, cross-examine witnesses against you, and
23 the State would have to prove your guilt beyond
24 a reasonable doubt. But when you plead guilty
25 or enter an Alford plea, you give up your right

1 to a jury trial. You know that?

2 **MR. MISHOE:** Yes, ma'am.

3 **THE COURT:** Okay. Let me double check
4 here. I want to make sure I've got them all.
5 (Pause.)

6 All right. As to the charge of Attempted
7 Murder and Possession of a Weapon during the
8 Commission of a Violent Crime, you still want
9 to enter an Alford plea to that; is that right?

10 **MR. MISHOE:** Yes, ma'am.

11 **THE COURT:** And on Voluntary Manslaughter,
12 Possession of a Weapon During the Commission of
13 a Violent Crime and Threatening the Life of a
14 Public Official, you plead guilty on those
15 charges; is that correct?

16 **MR. MISHOE:** Yes, ma'am.

17 **THE COURT:** On all these charges, you have
18 10 days from today's date to appeal this plea,
19 if you so choose, but you must do so in writing
20 to this court. All right?

21 **MR. MISHOE:** Yes, ma'am.

22 **THE COURT:** Okay. Yes, ma'am.

23 **MS. SEAY:** Thank you, Your Honor. May it
24 please the Court. As to the Attempted Murder,
25 on December 18th, 2012, the Greenville County

1 Sheriff's Office responded to the attempted
2 murder at [REDACTED] Centre Boulevard in Greenville
3 County. Upon their arrival, they found EMS
4 treating the victim, Charles Chambers, who
5 advised that he was in his living room with the
6 main door open and the glass storm door closed
7 and unlocked when an unknown black male came
8 onto the front porch and opened the glass storm
9 door. The victim got up and the male then shot
10 him in the stomach and ran away on foot. The
11 victim required surgery and hospitalization to
12 treat his injuries, and he was later able to
13 identify this defendant in a photographic
14 lineup.

15 As the voluntary manslaughter, on February
16 23rd, 2013, deputies with the Greenville County
17 Sheriff's Office responded to a 911 call at [REDACTED]
18 Centre Boulevard in Greenville County. Upon
19 their arrival, they found the victim, 21-year-
20 old John Zimeri, deceased of an apparent
21 gunshot wound.

22 Officers spoke with the complainant who
23 called 911, the defendant's mother, who gave
24 them a story about an unknown white male who
25 had come from out of nowhere shot and killed

1 the victim and then vanished. She told deputies
2 that the victim was a friend of the family who
3 had been inside playing video games shortly
4 before the incident.

5 There were several other individuals there,
6 Jordan Sullivan, who was not related, but was
7 like family; Labraski Mishoe, the defendant's
8 brother; Ebony Morris, Labraski's fiancé;
9 Kenosha Jackson-Mishoe, the defendant's sister;
10 and Kareem Cotton, the defendant's cousin.
11 Deputies spoke to all of these witnesses on
12 scene. All of them stated they did not know who
13 had shot the victim. All parties were asked to
14 go to the Law Enforcement Center for follow-up
15 interviews with investigators. All of the
16 witnesses later recanted their first statements
17 to law enforcement and then gave statements
18 implicating Jamie Mishoe in the death of John
19 Zimeri.

20 Investigators also interviewed another
21 person who witnessed the shooting, Justin
22 Robinson, who advised that prior to the
23 incident, the victim was having sexual
24 relations with the defendant's sister. He
25 stated that the defendant walked into the

1 bedroom and observed this, and that an argument
2 ensued between the victim and the defendant.
3 According to the witness, the defendant told
4 the victim to get out of the house.

5 As the victim was leaving, the argument
6 continued. As the victim walked through the
7 kitchen area, he reportedly made a smart remark
8 to the defendant and laughed at him. The
9 defendant then said, so you think this is funny
10 and fired at the victim. The victim died of a
11 single gunshot wound of the chest.

12 As to the threatening a life charge, on
13 July 17th, 2014, while the defendant was an
14 inmate at the Greenville County Detention
15 Center, he threatened the life of Joshua Thomas
16 who was performing his official duties as an
17 officer at that time. The defendant, further,
18 threatened the life of Officer Thomas' family.
19 These incidents occurred at McGee Street in
20 Greenville County.

21 The negotiation in this case, Your Honor,
22 is -- do you want to hear that now?

23 **THE COURT:** Please.

24 **MS. SEAY:** On the voluntary manslaughter
25 and the attempted murder charges, 20 years

1 concurrent and five years on the weapons
2 charges. On the threatening a life charge, five
3 years consecutive suspended to five years
4 probation to follow.

5 Carmen Zimeri, the victim's mother on the
6 voluntary manslaughter case, is here and would
7 like to address you at the appropriate time.

8 **THE COURT:** Would you tell me how long he
9 served in jail?

10 **MS. SEAY:** She may or may not. I'm not
11 certain.

12 **THE COURT:** I understand. I understand.

13 **MR. SCALZO:** February 24th, 2013, I
14 believe, is the date of the arrest.

15 **THE COURT:** And he's been incarcerated
16 continuously?

17 **MR. SCALZO:** Yes, ma'am. I think that's
18 1353 days, if I did it correctly.

19 **THE COURT:** Okay.

20 **MR. SCALZO:** I think that's where we are.

21 **THE COURT:** Let's see here. I've got a...

22 **MR. SCALZO:** Maybe it's longer.

23 **MS. SEAY:** What did you say you have?

24 **MR. SCALZO:** I have 1353, but I think it
25 might be a little longer.

1 **THE COURT:** It is. It's 1362.

2 **MR. SCALZO:** I think that's from November
3 8th.

4 **THE COURT:** All right. Mr. Mishoe, as to
5 the Attempted Murder and the companion
6 Possession of a Weapon During the Commission of
7 a Violent Crime, you still want to enter an
8 Alford plea; is that correct?

9 **MR. MISHOE:** Yes.

10 **THE COURT:** And then you heard the facts
11 on the other charges as written on the
12 Voluntary Manslaughter and Possession of a
13 Weapon and Threatening the Life of a Public
14 Official. You want to still plead guilty; is
15 that correct?

16 **MR. MISHOE:** Yes, ma'am.

17 **THE COURT:** All right. Well, I'm going to
18 accept your pleas as being freely and
19 voluntarily made with the advice of extremely
20 competent counsel with whom you say you are
21 completely well-satisfied, and the plea has a
22 substantial factual basis.

23 **MS. SEAY:** Do you think -- she does? Okay.

24 **VICTIM'S MOTHER:** My name is Carmen
25 Zimeri. I'm the mother of a good son that that

1 monster killed. (Indiscernible.) I'm sorry for
2 what I'm going to say. I wish I could kill him.
3 I know I can't because that is garbage, worth
4 nobody. He has no idea the damage that he
5 created in my life. Monster. When you die,
6 you're going to go to hell.

7 Please give him the most years you can.
8 (Indiscernible.) It is hard to be living. The
9 pain. My kids. My son had two beautiful
10 children. He shot him in his back. My son
11 didn't want to fight him. He told him I don't
12 want to be here anymore; I'm going home. And
13 then he chased him and killed him.

14 Not only that, him and the whole family
15 didn't call 911. They drop him inside the house
16 with him dying. Saw him dying second by second,
17 instead of helping him. They planned the whole
18 lie.

19 **THE COURT:** Ma'am, let me just say,
20 although I know my words can give you no
21 comfort in any way, how sorry I am for your
22 loss, and to say I know that this is not going
23 to give you any closure here today, but it's
24 just one thing that can be behind you as a
25 result of this nightmare.

1 I will say to you that --

2 I hope, Mr. Scalzo, you don't mind my
3 saying this in any way.

4 -- but the prosecutor in this case, I have
5 known her, and I know that if she felt like she
6 could have gotten more in this case, then she
7 would have. But this is the -- this is the
8 situation with the charges that are there and
9 what she felt like she could prove. I have all
10 full faith that she's done as good by your son
11 as she could, and I wish you just every peace
12 in the entire world.

13 Mr. Scalzo, I feel like you all have worked
14 on this -- this -- these charges significantly
15 and I'm inclined to go along with it. If
16 there's anything you need to put on the record
17 or your client needs to put on the record,
18 that's fine.

19 **MR. SCALZO:** I would just add very shortly
20 -- I don't think Mr. Mishoe wants to put
21 anything on the record -- but what I would add
22 is along the lines of what you just said. This
23 is a very complex case -- both -- multiple
24 cases. In the attempted murder case, this was a
25 neighbor that was just a few doors down. The ID

1 had to take place in a six-pack photo line up
2 later on.

3 You heard the facts in the voluntary
4 manslaughter. Every witness in the case was
5 related to Mr. Mishoe. That created a very
6 complex situation that needed to be dealt with.
7 I think that's where you get these negotiations
8 from. However, at the end of the day, Mr.
9 Mishoe had to agree and did so in terms of the
10 voluntary manslaughter as to what took place.

11 We've never offered this as any way of
12 trying to make up for anything that has been
13 done. But this is the best, as Your Honor
14 described, that could be resolved with our
15 limited capacities. So I would encourage Your
16 Honor to accept the negotiations and all allow
17 this to be settled so we can move forward.

18 **THE COURT:** I certainly will do it. As to
19 Attempted Murder, the sentence of the Court is
20 20 years, credit for 1362 days, and five years
21 concurrent on the weapons charge. On Voluntary
22 Manslaughter, concurrent 20 years, credit for
23 the time served and five years on the weapons
24 charge concurrent. And then consecutive,
25 probation to be tolled while at SCDC, five

1 years suspended with probation for five. Credit
2 for 1362 days.

3 Any other terms of probation other than
4 random drug and alcohol testing that you all
5 were seeking to seek?

6 **MR. SCALZO:** We did not discuss anything.

7 **MS. SEAY:** No, not --

8 **THE COURT:** Well, I'll just leave it at
9 random drug and alcohol testing.

10 **MR. SCALZO:** Yes, ma'am.

11 **THE COURT:** Good luck to you, ma'am.

12 **MR. SCALZO:** Thank you.

13 **SPEAKER:** Thank you.

14 **MS. SEAY:** Thank you, Your Honor.

15

16 **(WHEREUPON, the proceedings conclude at**
17 **approximately 4:11 a.m.)**

18

19

20

21

CERTIFICATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville, South Carolina, on this 16th day of June, 2017.

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

Teresa B. Johnson
Official Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)
)
County of Greenville)
)
Jamie Cornelius Mishoe 370558)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

2017-CP-23- 02381

v.

State of South Carolina)
)
)
)
)
)

APPLICATION FOR
POST-CONVICTION RELIEF
FILED
PAUL B. WICKENS
CLERK OF COURT
GREENVILLE CO. SC
2017 SEP 17 PM 4:36

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 Greenville South Carolina

2. Name and location of Court which imposed sentence General Sessions
Greenville SC

3. Name(s) of co-defendant(s) (if any) Imogene Mience, Labrecki Mishoe
Kareem Cotton, Jordan Sullivan Elhony Morris, Kenosha Jackson

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013GS2303357

 - (b) 2013GS2302717

(c) _____

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

(a) 11-16-16 20 years concurrent

(b) 11-16-16 20 years concurrent

(c) The 2 weapon charges were both 5 years a piece.

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere

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

NO

8. If you answered "yes" to (7), list:

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) I told my lawyer to in the court room afterwards but he didn't

(b) I couldn't do it without my lawyer but I wanted to.

→ on ba

(27) When I was sentenced I personally told my public defender I wanted to appeal. He looked at me sideways and said "Why" and walked back into the court room.
Once I was in Kirkland I wrote him asking did he do it. He stated the time had ran out.

(c) _____

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

(a) I felt I didn't have a lawyer in favor of my best interest.

(b) My lawyer didn't file motions in which I told him to.

(c) No evidence they had besides statements pointed to me.

→ on back

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

(a) When I wrote my lawyer letters at times he never wrote back

(b) letters and phone calls to my lawyer

(c) Though all they had were co-defendants statements I wanted a trial

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

~~(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)?~~ NO

(d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

24

(10) Many things made me think that my lawyer was against me. It took me about a year to get my discovery when I got it a much was left out of it. When I questioned the fact things were left out He said he would ask the solicitor about it I asked him on different occasions to file motions for me he didnt. I asked him to get up with the Detectives so I could speak with them because the information I had could be changed alot within my case and I wanted to see the video recorded statements the Detectives had which were not a part of my Discovery yet things that were on film were mentioned to a cert degree.

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

NO

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

(a) which grounds have been presented:

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

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

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

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

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

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Chris Scolzo Greenville County Courthouse 205 E. North Street, Suite 123 Greenville SC 29601
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____

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

At least a lighter sentence due to the fact they had nothing but I didn't have the money for a trial lawyer. And my lawyer could've did more to help me like filing the proper motions I asked of him.

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

No

STATE OF SOUTH CAROLINA)
)
County of Greenville)

VERIFICATION

I, Jamie Ashae, 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.

Jamie Ashae

SWORN to and subscribed before me this 27th day of March, 2017.

Michael Carter
Notary Public (L.S.)

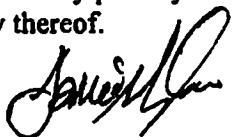
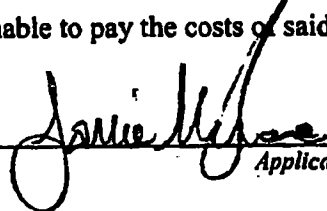
My Commission Expires: July 09, 2026

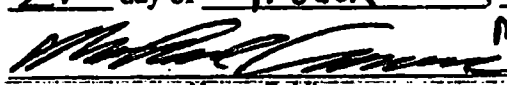
Truthfully if the witnesses and CO defendants could tell how it really all took
Place I wouldn't have gotten 20 years... under the circumstances I feel 20 years
with 5 on the end was over doing it. Then on top of that the Attempted Murder Charge was
Pinned on me by word of mouth. All the evidence should've been considered and weighed on.
I shouldn't have been placed in a position where I take 20 with 5 on the end or all my fam
catch what I catch in trial.

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

I, Jamie Mishoe, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

  _____
Applicant

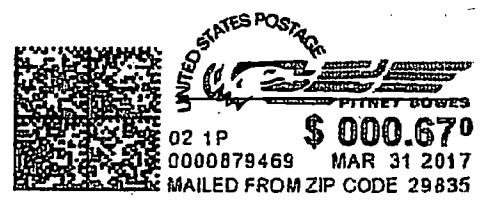
SWORN or affirmed to and subscribed before me this
2nd day of March, 2011
 Michael Conner

 Notary Public

My Commission Expires: July 09, 2026

Mishoe # 370553 F2-261

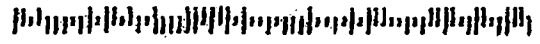
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2017-CP-23-02381

Clk of court
Greenville County Court House
305 East north street
Greenville SC 29601

29601\$2185 C007



| | | |
|--------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | THIRTEENTH JUDICIAL CIRCUIT |
| COUNTY OF GREENVILLE |) | |
| |) | |
| Jamie Mishoe, #370558, |) | 2017-CP-23-2381 |
| |) | |
| Applicant, |) | |
| |) | RETURN |
| v. |) | |
| |) | |
| State of South Carolina, |) | |
| |) | |
| Respondent. |) | |
| |) | |

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on April 17, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. Applicant was indicted in September 2014 for attempted murder and possession of a weapon during the commission of a violent crime (2013-GS-23-2717). In August 2016, Applicant was subsequently indicted Applicant for murder and possession of a weapon during the commission of a violent crime (2013-GS-23-3357). Applicant was subsequently indicted in September 2016 for threatening a life (2014-GS-23-7828). Christopher D. Scalzo, Esquire represented Applicant. Solicitor Bryna S. Seay, Esquire prosecuted the case. On November 16, 2016, Applicant pleaded guilty as indicted to attempted murder, both counts of possession of a weapon during the commission of a violent crime, and threatening a life before the Honorable Letitia H. Verdin. Applicant pleaded guilty to the lesser included offense of voluntary manslaughter. Pursuant to a negotiated sentence, Judge Verdin sentenced Applicant to imprisonment for concurrent terms of twenty years for attempted murder, twenty years for voluntary manslaughter and five years for each charge of possession of a weapon

during the commission of a violent crime. Judge Verdin then sentenced Applicant to a consecutive term of five years', suspended to five years' probation, with probation to be tolled while incarcerated, for the charge of threatening a life. Applicant did not appeal his conviction or sentence.

II.

The facts surrounding the Applicant's conviction are as follows: On December 18, 2012, Greenville Sheriff's Office responded to the attempted murder and upon arrival, the victim stated he was in his living room with the main door open and a storm door closed and unlocked when an individual opened the door and came in. When the victim stood up, the individual shot him in the stomach and fled on foot. The victim later identified Applicant in a photographic lineup. Guilty Plea Trans. pg.9-10

On February 23, 2013, the Greenville Sheriff's Office responded to a call at a residence and found a victim deceased of an apparent gunshot wound. Per investigation, and after several initial statements given were recanted, authorities received statements implicating Applicant in the victim's death after an argument had ensued between the two of them. Guilty Plea Trans. pg.10-12

As to the threatening a life charge, on July 17, 2014, while incarcerated at the Greenville County Detention Center, Applicant threatened the life of an officer who was performing his official duties as an officer at the time. Applicant further threatened the life of the officer's family. Guilty Plea Trans. pg.12, Lines 12-20

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

III.

In his application for post-conviction relief, Applicant alleges that he is being held in custody

unlawfully for the following reasons:

1. "I felt I didn't have a lawyer in favor of my best interest."
 - a. "When I wrote my lawyer letters at times he never wrote back."
 - b. "Many things made me think my lawyer was against me. It took me about a year to get any discovery. When I got it, much was left out of it. When I questioned the fact things were left out. He said he would ask the Solicitor about it. I asked him on different occasions to file motions for me and he didn't. I asked him to get up with the Detectives so I could speak with them because the information I had could've changed a lot within my case and I wanted to see the video recorded statements the Detectives had which were not a part of my discovery, yet things that were on film were mentioned to a certain degree."
2. "My lawyer didn't file motions in which I told him to."
3. "No evidence they had besides statements pointed to me."
 - a. "Though all they had were co-defendants' statements I wanted a trial."

IV.

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

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided

representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

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

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

VI.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

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

VIII.

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

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

July 28, 2017

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
)
)
 JAMIE MISHOE, 370558)
)
)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

2017-CP-23-2381

AFFIDAVIT OF SERVICE BY MAIL

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

Rodney W. Richey, Esquire
Post Office Box 10916
Greenville SC 29603

DATED this 28th day of July, 2017.


 Judy A. C. Carey, Legal Assistant
 For Respondent

I N D E X

(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

Page No.

(AW) JAMIE CORNELIUS MISHOE:

Direct Examination by Mr. Richey.....4

Cross-Examination by Mr. Mitchell.....14

(AW) CHRISTOPHER SCALZO:

Direct Examination by Mr. Richey.....20

Cross-Examination by Mr. Mitchell.....28

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

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THE COURT: Mr. Mitchell.

MR. MITCHELL: This is 2017-CP-23-2381, Jamie Mishoe v. the State of South Carolina. The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court.

The Applicant was indicted in September of 2014 for attempted murder and possession of a weapon during the commission of a violent crime. In August of 2016, the Applicant was, subsequently, indicted again for murder and possession of a weapon during the commission of a violent crime. Then he was, subsequently, indicted in September of 2016 for threatening the life.

Mr. Christopher Scalzo represented the Defendant. On November 16, 2016, the Applicant pled guilty as indicted to attempted murder, both counts of possession of a weapon during the commission of a violent crime, and threatening the life before the Honorable Letitia H. Verdin. The Applicant pled guilty to the lesser included offense of voluntary manslaughter.

Pursuant to a negotiated sentence, Judge Verdin sentenced the Applicant to imprisonment for concurrent terms of 20 years for attempted murder, 20 years for voluntary manslaughter, five years for each charge of

1 possession of a weapon during the commission of a violent
2 crime. And then she, also, sentenced him to a consecutive
3 term of five years, suspended to five years of probation
4 for threatening a life.

5 He filed an application on April 17, 2017. He's
6 present in the courtroom today and represented by Mr. Richey.

7 THE COURT: All right. Mr. Richey.

8 MR. RICHEY: Thank you.

9 We call Mr. Mishoe.

10 THE COURT: All right. Come around, Mr. Mitso.

11 MR. MITCHELL: Mishoe.

12 THE COURT: Come around to where that Bible is. And
13 Madam Clerk is going to swear you in.

14 THE CLERK: Please place your left hand on the Bible
15 and raise your right hand, as best you can.

16 WHEREUPON,

17 JAMIE CORNELIUS MISHOE,
18 after first having been duly sworn, testified as follows:

19 THE CLERK: Thank you.

20 You may be seated.

21 Please state your full name for the record.

22 THE WITNESS: Jamie Cornelius Mishoe.

23 DIRECT EXAMINATION

24 BY MR. RICHEY:

25 Q Sir, are you currently in the Department of

1 Corrections?

2 A Yes.

3 Q You've got to speak up into that mic.

4 A Yeah.

5 Q And what are you in for? Was it all the cases the
6 Attorney General said?

7 A Yes..

8 Q Okay. And what type of sentence did you receive?

9 A 20 years.

10 Q Okay. And you're asking this Court to grant you a
11 new trial; is that correct?

12 A Not only that, it's, like, I -- I rather say
13 resentencing because --

14 Q Okay.

15 A -- of the simple fact the case was -- the case was --
16 it messed up from the get-go. And I didn't -- I didn't
17 get all my motions. I didn't get -- I didn't get my full
18 discovery. And I told my lawyer that countless times. So
19 it's like I didn't know what I was up against. So I just
20 took a plea.

21 Q Well, let me ask you this, and you may not recall
22 this. But you understand the only thing this Court can
23 give you is a new trial, that you start over from the
24 beginning. Is that what you want to do?

25 A Yes, if possible.

1 Q Okay. And your basis for that is you believe that
2 your lawyer -- who represented you?

3 A Christopher Scalzo.

4 Q And -- and this was -- this was an actual shooting;
5 correct?

6 A An actual what?

7 Q Shooting. What happened? What happened in this
8 case? I'm sorry. The young man in this case -- tell me
9 what happened.

10 A (There was no verbal response.)

11 Q Well, let me say this to you. Let me rephrase this.
12 There were witness statements against you; correct?

13 A Yes.

14 Q And those statements implicated you in the crime;
15 correct?

16 A Yes, the ones that I did see.

17 Q Okay. And -- and you and Mr. Scalzo -- that's who
18 represented you; right?

19 A Yes.

20 Q And Mr. Scalzo did not deliver to you your full
21 discovery; correct?

22 A No.

23 Q And did you ever get your full discovery?

24 A No.

25 Q Okay. Did you express that to Mr. Scalzo?

1 A Yes.

2 Q When did you do that?

3 A I can't remember. But when I looked at the table of
4 contents and I looked -- and I looked through the
5 motion -- through the discovery myself, I seen that it
6 said that -- in the summaries, it said that they had
7 statements from all my co-defendants. But when I looked
8 through -- when I looked through the discovery, I only
9 seen the one from the person who came down there to the
10 LEC. That's the only -- that's the only -- that's the
11 only statement that was throughout the whole discovery.

12 Q Okay. And -- and so Mr. Scalzo did not go over that
13 with -- you did not -- he did not provide you with any
14 additional discovery?

15 A His exact words was, I will take it up with your
16 solicitor. And I've got to wait on them. That's exactly
17 what he said.

18 Q Okay. And -- and did you know -- so you're -- you're
19 saying that you'd like to start over with all your
20 discovery?

21 A I just want the -- yes, sir.

22 Q Okay. And -- and have you written Mr. -- written
23 Mr. Scalzo about this discovery, or anything? Did you
24 write it and request it?

25 A The only -- the only discovery -- see, afterwards, I

1 asked him for the one on threatening the officer, and
2 everything, and the transcripts, and whatnot. But it was
3 like it was useless, at first, when I was thinking about
4 it. Because, at first, when I asked for it while I was
5 incarcerated in Greenville County, that was way before
6 anything.

7 They can make a difference. Because they said --
8 because some of my co-defendants said that the only thing
9 they ever said as far as -- the only -- any statements
10 they ever said was that I stole cars that night, and
11 everything. They never said that I killed that man.
12 That's exactly what they said that they told me.

13 So without me having the full discovery, how am I to
14 know what was said?

15 Q So this was a shooting, supposedly?

16 A Yes.

17 Q You're saying you didn't do it. But it was,
18 supposedly, a shooting; correct?

19 A It was, supposedly, a shooting.

20 Q Right. And -- and you're saying that these
21 co-defendants made other statements other --

22 A All -- all my co-defendants -- everybody who was
23 supposed to be there quote unquote made more than one
24 statement.

25 Q Right. And you --

1 A And --

2 Q Okay. Go ahead. I'm sorry.

3 A And in the motion -- I've got the table of contents
4 right here on the motion I received. It gave -- the
5 initial statement was everybody said that this -- this
6 took place.

7 Now, the statement as far as that they supposed to
8 say that I was the shooter, that I killed him, that's not
9 in the motion. That was not in the discovery that I
10 received.

11 Q Okay. And so you're saying that you're innocent of
12 this -- these charges?

13 A Yes. That's what I'm saying.

14 Q And you did not do any of them; correct?

15 A No.

16 UNIDENTIFIED FEMALE: You killed my son, monster.

17 THE COURT: Hold on.

18 (Pause.)

19 BY MR. RICHEY:

20 Q Sir, and you requested your attorney to file motions?

21 A I requested motions that was never filed.

22 Q And -- and one of those motions was a fast and speedy
23 trial?

24 A Yes.

25 Q Okay. And were those motions dealing with

1 suppressing the victim's statement -- the witnesses
2 statement?

3 A Yes.

4 Q And he didn't do any of those?

5 A No, sir.

6 Q And you asked him to do those prior to trial?

7 A This was, like, prior -- this was, like, three months
8 when I was -- when I first got -- when I first was locked
9 up, like, April, April of 2013. I got locked up in
10 February.

11 Q Did --

12 A I also --

13 Q Go ahead.

14 A I, also, asked him to check alibis that I had.
15 Because even in the -- in the discovery, it showed I
16 wasn't even at the house. I asked him to talk to people
17 that I was with, the cars that I stole, and everything.
18 He didn't even check security footage, or none of that.
19 Ain't none of that was checked. Like, he didn't
20 investigate nothing.

21 I mean, like, I stole cars that night. It was four
22 cars that was stolen. And the police report shows all
23 that. I'm telling you where I was at. It's -- it's plain
24 and simple. And they got the cars back, all the stolen
25 cars, and everything.

1 Q Okay. Well, tell me why -- why would you plead
2 guilty and accept this negotiation? Because you know this
3 was a negotiated sentence; correct?

4 A Yes. Because --

5 Q Is that a "yes" or "no"? You know it was a
6 negotiated sentence?

7 A Yes.

8 Q Okay.

9 A Because at the end of the day, I was thinking that no
10 matter how you look at it, if they did say -- all the
11 co-defendants -- the co-defendants said they said what
12 they said and me not being able to see the statements and
13 what I was up against facing what I was facing, you know,
14 you get a plea to 30 years plus, all this. And they tell
15 you you're facing life, at the end of the day, I'm
16 thinking, okay, I came in at 22. I've got kids, and
17 everything. This is what I'm thinking. This is why I
18 took it. Me doing 20 years, that's only like 17 years.
19 I've done been locked up since '13.

20 So I was -- I was ready to get out of the county.
21 They've got me on permanent shoe [phonetic] status. I'm
22 just ready to get it over with. At the end of the day, it
23 was like, I'm tired of dragging on. My family locked up.
24 This is -- everybody locked up. I was just tired of it.

25 Q You said your family is locked up?

1 A My family was locked up with me.

2 Q Okay. Well, why were they locked up? Do you know?

3 A Because they, supposedly, lied to the police.

4 Q About this incident?

5 A About the incident.

6 Q And so the police locked them up because they,
7 supposedly, lied. And did they later change their
8 statement?

9 A Yes.

10 Q They did?

11 A Everybody later changed their statements.

12 Q And they later changed the statements to implicate
13 you; correct?

14 A Yes, sir.

15 Q And those are the statements that you wanted the
16 lawyer to suppress; correct?

17 A No. It's the statements that I wanted to see. I
18 wanted to see some of them. But it's like -- it's like,
19 okay, the one who, initially, made the statement -- go
20 ahead.

21 Q You --

22 A The one who, initially, made the statement, Justin
23 Robertson, he came -- he -- when the police first talked
24 to him -- this is why I wanted it suppressed. When the
25 police first talked to him, he said he did not -- he

1 wasn't over there. He didn't know the victim, this, this,
2 this. This supposed to be his next of kin, his best
3 friend, and everything.

4 So then you go down to the LEC and say all this, you
5 say what you said to them. Come on, that's -- he gave,
6 like, four different statements. And it was like I just
7 want to see the full discovery for what it was, not for
8 what Christopher Scalzo was telling me -- he -- he tell
9 me, oh, they've got statements from your co-defendants,
10 all this. Why isn't it in my discovery? It ain't even on
11 the contents. Why is it not there?

12 Q Well, did he ever discuss those statements with you
13 or --

14 A He said -- he said they got statements from all
15 co-defendants.

16 Q Okay.

17 A I told him it's not in the discovery. He said -- he
18 said -- what he said, oh, I'm going to talk to the
19 solicitor because she probably didn't get it, this, this,
20 and that. It's still -- years later -- I was locked up
21 for 1,362 days. Why not have a full discovery?

22 Q Okay. And you did an Alford plea in this case,
23 didn't you? You said you were innocent, but you were
24 pleading guilty because --

25 A In the attempted murder?

1 Q Yeah. You did an Alford plea. Do you remember that?
2 Do you know what that is? That you're saying that -- that
3 you're not guilty. You plead and said you were not guilty
4 of these charges; correct?

5 A (There was no verbal response.)

6 Q But you believe -- you've got to answer so she can --

7 A Oh, yeah, yes.

8 Q And -- but you believed that the State had enough
9 evidence to get a conviction; is that -- is that right?

10 A (There was no verbal response.)

11 Q That's what you did.

12 Okay. So your -- your main thing today is you want
13 all your discovery so you can start over again; correct.

14 A Yes.

15 MR. RICHEY: Okay. Answer any questions the Attorney
16 General has for you.

17 THE COURT: Mr. Mitchell.

18 MR. MITCHELL: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. MITCHELL:

21 Q Good morning, Mr. Mishoe.

22 How are you?

23 A Good.

24 Q I have a few questions for you. Let me begin by
25 asking you, these are two separate shooting incidents; right?

1 A Yes, sir.

2 Q Okay. And just to be clear for the record, the
3 co-defendants that you're referring to are your family
4 members; right?

5 A Not all of them, but --

6 Q How many of them?

7 A My brother, my sister, and my momma was -- was the
8 family. And my cousin, Kareem. Ebony was a friend.
9 Jordan was a friend. And Justin, I don't -- they -- they
10 didn't consider him a co-defendant because he was just
11 a -- someone that came down to the LEC and told -- and
12 made a statement.

13 Q So statements from your mom, your brother, and your
14 sister implicating you?

15 A Not from my sister. My -- my momma's statements
16 didn't. My brother wrote a statement, like, weeks later.
17 Because he said that Jordan Sullivan told him to write the
18 statements. And I told him to go ahead and say what they
19 said happened, and all this. But that's when he made a
20 statement.

21 Jordan Sullivan and Ebony Morris was, supposedly, the
22 ones who made a statement. But Jordan Sullivan and Kareem
23 Cotton said that they never made a statement saying that I
24 killed nobody. They said we was out joy riding, stealing
25 cars, and all this. I don't know.

1 Q Okay. So let me ask you, during your -- during
2 Mr. Scalzo's representation, how many times did you meet
3 with him?

4 A Roughly, I couldn't -- I'll give you a number of four
5 or five. I couldn't give you a -- I can't give you a for
6 sure number.

7 Q Okay. So let's talk about the discovery in the case.
8 So did he provide it to you or not?

9 A He gave me the discovery.

10 Q Okay. So he gave you a copy of the discovery. And
11 your -- your -- I guess your allegation is that it didn't
12 contain the statements; is that right?

13 A It ain't an allegation. I've got the paperwork to
14 prove it didn't contain the statements.

15 Q Okay. And so during the course of your meetings, did
16 you guys talk about what those statements said?

17 A He just -- he just mentioned that they had
18 statements. He didn't never say, oh, they said this,
19 this, this, this, and that. But he said they've got
20 statements that's -- that's implicating you. That's all
21 he said.

22 He never wrote [phonetic] down the statements. He
23 never himself brought the statements. He said that they
24 had recorded videos, and all that. I asked him for all
25 that. I asked him to see the videos. Because in the --

1 within the motion, it say that -- within discovery, it say
2 that you can see the footage, that you've got to request
3 this, this, and that. I was -- I was -- I wanted him to
4 do all of that just to know what I was up against.

5 Q Okay. Did you ever have any conversations with --
6 conversations with your mom or your brother prior to you
7 pleading guilty?

8 A I -- yes. I had visitation with both of them.

9 Q Okay. And so you guys didn't talk about statements
10 that they made?

11 A My momma said that she never made a statement. The
12 only statement she made was in general. The first
13 statement she made and the second statement she made never
14 implicated me as the shooter.

15 My brother -- my brother, Labraski, he came -- he
16 came and visited me. He was on my visitation when he got
17 out of jail. He said that Jordan Sullivan got with him
18 and said that I said make a statement saying what they --
19 what the detectives already knew, go ahead and make a
20 statement so he can get out of jail. That's -- that's
21 exactly what was said.

22 Q Okay. So when you met with Mr. Scalzo, what type of
23 defenses did you guys talk about?

24 A It's not looking good. That's what he used to say,
25 it's not looking good.

1 As far as the defense, he brought the plea agreement.
2 I asked him for the e-mails and everything where they're
3 talking about -- with the solicitor. He brought me the
4 plea agreement for the 30 years, and all this. But I --
5 I -- other than that, we did not never talk about if we go
6 to trial the full extent of us doing -- just, no. We
7 never discussed anything like that.

8 Q Okay. So if you had issues with Mr. Scalzo, why
9 didn't you tell the Court and ask for him to be relieved
10 or removed to get a new attorney?

11 A I ain't going to say that -- when I was in the county
12 jail, it wasn't -- I was ignorant to the law as a whole as
13 to what I could do -- what I could do. Because everything
14 I tried to do was failing. So it's like...

15 Q Okay. So at the guilty plea, when the judge asked
16 you if you were satisfied with Mr. Scalzo, you told
17 her that you were; right?

18 A Yes.

19 Q Okay. So why didn't you complain to the Judge about
20 what he didn't do?

21 A Because it was, like, it was too late. We already in
22 court now. I done signed -- I done signed the paper.
23 Ain't no need to go back. I'm -- I was just ready to get
24 it over with. Why drag it on? I done been locked up
25 three and a half years. Ain't nothing going on.

1 My family's still locked -- everybody's still going
2 through it. It wasn't no need to keep dragging it on. I
3 felt like that it was either -- if I don't take -- if I
4 don't take the 20 right now, I probably -- I got a high
5 chance of dying in prison.

6 Q Okay. And when the Court asked you if anybody
7 promised you or threatened you into taking the plea, you
8 told the Court no; right?

9 A Because it depends on how you say threatened. It
10 ain't threatened if they say you're going to take the
11 trial -- the plea or you're going to trial. And you
12 not -- you -- it ain't considered -- no, I still don't
13 think I was threatened --

14 Q Okay.

15 A -- or forced.

16 MR. MITCHELL: Judge, that's all the questions I have
17 for this witness.

18 THE COURT: All right. Anything further?

19 MR. RICHEY: No other questions, Your Honor.

20 THE COURT: All right. I don't think I have any
21 questions, sir.

22 You can step down.

23 MR. RICHEY: We call Chris Scalzo.

24 THE CLERK: Place your left hand on the Bible and
25 raise your right hand.

1 WHEREUPON,

2 CHRISTOPHER SCALZO,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Thank you.

5 Please be seated.

6 And state your full name for the record.

7 THE WITNESS: It's Christopher Scalzo.

8 DIRECT EXAMINATION

9 BY MR. RICHEY:

10 Q Mr. Scalzo, where are you employed?

11 A At the public defender's office in Greenville.

12 Q In Greenville. And on November 16th, 2016, were you
13 employed there?

14 A I was.

15 Q And do you recall representing Mr. Mishoe?

16 A I do.

17 Q And -- and you were in the courtroom during his
18 testimony; is that correct?

19 A I was.

20 Q And the issue that's before us with him is it's his
21 position that you did not provide him all the discovery
22 prior to his guilty plea. Is that --

23 A That's what I heard him say, yes.

24 Q Can -- do you have any evidence that he was provided
25 with -- with all the discovery?

1 A Yes. So we'll have -- I think they're in reverse
2 chronological order, so I'll start there. In February of
3 2017 -- or in January of 2017, he sent me a letter. He
4 would have already have pled guilty. He pled guilty on
5 November 16th of 2016.

6 In January, he sent two letters. I responded on
7 February 13th, 2017, to those two letters. I've got a
8 letter from December of -- yeah, December of 2016 from
9 him, and my response after that in December of 2016, as
10 well. I think it was three days later. I think he asked
11 for some paperwork in that.

12 And then October 4th of 2016 is a letter from me to
13 him regarding his attempted murder case. And that's,
14 specifically, a letter responding to -- or a request for
15 the discovery in that case.

16 And it's a -- basically, a form letter that we use
17 and say, here's your discovery. I'm advising you don't
18 share it, don't -- you know. Don't let it out because he
19 would have been incarcerated there for -- in the jail.

20 Q Let me -- let me ask you this question.

21 A Yes.

22 Q You heard the statement -- the testimony of him that
23 there were statements. Do you have something in there
24 that those statements were provided to him? I think he
25 said -- he testified he got a lot of it, but he did not

1 get the statements from the witnesses.

2 A Right. I mean, I don't have a way of -- if I'm going
3 to send discovery, then I'm sending everything that I've
4 got. So I don't have a way of knowing what he does or
5 does not have. I don't have a -- any notes or my
6 conversation where he said, hey, I got this, but I don't
7 have this.

8 I can tell you that in the murder case, the discovery
9 packet that I have for the murder case, I've got notes
10 labeled that somebody -- one of the lawyers did for me,
11 you know, statement by Kenosha Mishoe, a statement by
12 Charles Ashbury [phonetic], like, there's five tabs of
13 statements that are referred to in here. I don't know why
14 I would have pulled them out and not given them to him. I
15 have no reason to not give it to him.

16 Q And on that discovery, there's a list on the front
17 page of it; is that correct? You've got a list of stuff
18 that's on it?

19 A Yeah. That's correct.

20 Q And on that list, does that list include those
21 statements, like, statements --

22 A Yeah. So, for instance, on the second page, it says
23 item 21 is the statement of Kenosha Mishoe. And then it
24 goes -- you know, the hand-written statement of Charles
25 Ashbury, a handwritten statement of Kenosha Mishoe is,

1 also, listed there. I'll have to see if there are other
2 statements. Imogene Mishoe is item 50, so.

3 Q What date is that letter that you're referring to?

4 A This letter from the solicitor is dated April 24th,
5 2013. It looks like we got it on the 26th of April.

6 Q Did you -- did you send that information from that
7 date to him?

8 A That, I don't -- that, I don't know.

9 Q Okay.

10 A I don't -- I have the attempted murder in my letter
11 to him. It refers to the attempted murder.

12 Q Okay.

13 A I'm looking to see. The warrant numbers are all for
14 the attempted murder. I don't know if I have a letter
15 that says I gave him that discovery.

16 Q Okay.

17 A I can keep looking in here to see if that's in there.
18 Now, that's not the only evidence. You've got an entire
19 stack of evidence right here -- here as well, so.

20 Q Well, let me ask you this. The -- the mechanism for
21 you giving them discovery, how is that done? Do -- do you
22 mail it? Do you have it sent down there?

23 A It depends on where he is. So if he was at the jail
24 here, prior to resolving the case, then I would have had
25 the copies made and either brought it myself if I was

1 going for a visit, or I have J.C., who's an investigator
2 in our office, put the package together, just go down and
3 give it to a client. And that's probably what I would
4 have done.

5 Now, if he was in prison and asked for it, then I
6 would have made a copy and mailed it to the prison.

7 Q You've got a letter -- do you have a letter from the
8 solicitor dated March 26th, 2013?

9 A A letter -- like, a discovery letter?

10 Q Yes, sir.

11 A I'll have to look through this. Hold on.

12 Q Mr. Scalzo, I --

13 MR. RICHEY: Can I approach the witness, Your Honor?

14 THE COURT: Yes.

15 BY MR. RICHEY:

16 Q Mr. Scalzo, I'm going to pass this to you. I'm going
17 to give this to you, this -- this letter right here I'm
18 going to show you --

19 A Yeah. That -- I've got the letter right here.

20 Q So -- so this is a letter that you have?

21 A Yes.

22 It's dated March 26th, 2013?

23 Q Yes, sir.

24 A And was the first item the arrest warrant,

25 2013A233021740?

1 Q Yeah.

2 A Yeah. I have that.

3 Q So the April letter is a follow-up to this discovery;
4 right?

5 A Probably -- I mean, there is follow-up discovery
6 going through 2016 --

7 Q Right.

8 A -- for the various cases, as well as the murder case.
9 But, yeah.

10 Q Okay. And so you -- okay. So you're sure -- so
11 you testified you were comfortable that he got this
12 stuff?

13 A I believe so.

14 Q Okay.

15 A Now, I'll say it this way. A lot of things came in.
16 I would not have a note -- like I said, I've got these
17 yellow pieces of paper.

18 My practice is if I go to the jail and meet with a
19 client or even if a client comes in my office, I take
20 notes on my pad. I write a -- the date on it. I don't --
21 I look through these.

22 I don't see a reference in there saying client saying
23 I need this statement, or I need new copies of this, or
24 there being an issue of not having it.

25 Q Okay.

1 A It may very well be that he didn't get a copy of the
2 April 24th. There was a lot going on in terms of the
3 amount of discovery. But I have no recollection of there
4 being an issue that we were arguing about there's -- this
5 is a missing piece, or this is, you know, not in with what
6 I've got.

7 Q Well, let me ask you about the actual case itself.

8 A Yes.

9 Q Did -- did you talk to him about the case? I'm
10 assuming you did.

11 A Absolutely. We talked from the -- from day one.

12 Q And -- and in terms of the evidence, was there
13 sufficient evidence for him to enter this plea -- well,
14 let me -- let me say it this way. Who were the witnesses
15 against him?

16 A As he described just before, it was mainly his
17 family, some friends, and I guess a cousin, family. But
18 it was his mother, and his brothers, his sister.

19 Now, they may have testified to different things
20 and -- and not necessarily all of them testified to the --
21 would have testified to the same thing. But that was the
22 group of people that the State was intending to call as
23 witnesses.

24 Q Do you recall any alibi testimony that you could have
25 presented on his behalf? I think he testified --

1 A Not -- not independent alibi testimony from a live
2 witness that I could have put up on the stand. Did we
3 have a discussion about that topic? Yes. He and I had a
4 discussion about that topic early on.

5 Q What's the set up of these charges? Were they at
6 home? Were they at his house?

7 A Yeah. It -- I believe it's his mother's house. And
8 the group of people that are listed as the witnesses were
9 present at the house that the victim in the case was
10 there. It was someone that he and the family knew.

11 At some point, the victim and Mr. Mishoe's sister
12 were in a room. I don't -- I think maybe they were
13 watching TV, or something to that effect. And I don't
14 know if it was kissing. But there was some romantic sort
15 of touching taking place. That upset Jamie, Mr. Mishoe.
16 There was a confrontation about it.

17 And at some point, the allegation -- the witnesses
18 would have said that Jamie shot at him. And he was struck
19 in the chest. And that took place inside the house,
20 according to the witnesses.

21 MR. RICHEY: Okay. One moment, Your Honor.

22 (Pause.)

23 MR. RICHEY: No other questions, Your Honor.

24 THE COURT: Anything, Mr. Mitchell?

25 MR. MITCHELL: Thank you, Your Honor.

CROSS-EXAMINATION

1
2 BY MR. MITCHELL:

3 Q Mr. Scalzo, I just have a few questions for you.

4 A Sure.

5 Q In terms of the actual case itself, so I heard you
6 testify about the discovery and the actual case. But
7 there were separate shooting incidents; correct?

8 A Yes.

9 Q Okay. And so when he pled, he pled guilty to both at
10 the same time; right?

11 A Yes.

12 Q Okay. Until -- when you guys -- during those
13 meetings when you guys met, did you go over all the
14 charges and the punishments that he could face if he was
15 convicted?

16 A Absolutely. I mean, here's something you have to
17 understand, particularly, in the lead up to when we pled
18 guilty -- so this would have been October of 2016. I've
19 got one, two, three, four times I'm going -- well,
20 September through October, four different times I'm going
21 to see him back and forth.

22 Because what was going on was we were -- there were
23 serious negotiations that culminated in this negotiated
24 plea taking place. So we were talking about a variety of
25 plea options.

1 The State was pretty stuck on -- I'd have to look
2 again. I want to say that it might have been 30 or 25 for
3 a long time. And, you know, Jamie, I recall,
4 specifically, giving me things, numbers, essentially,
5 saying go get this, this is what I want. And he was
6 fairly firm on a couple of sets of numbers that I had to
7 go back to the solicitor on.

8 So that time frame would have involved us talking
9 about both of the cases, primarily because with the
10 attempted murder case -- the lead case was the murder.
11 The State wanted both the attempted murder and the
12 threatening case -- you know, we would have preferred to
13 just do it clean. The biggest most important case, that
14 gets resolved, let everything else go. The State was
15 pretty firm on -- on needing those two cases resolved
16 within the plea.

17 So there was no way to avoid discussing that issue
18 with him because he had to sign off on them, which is why
19 we, ultimately, ended up with the Alford plea. You know,
20 it was a split case. It was an Alford plea and a regular
21 plea. So that made it unusual as well.

22 Q So during those meetings, did you guys discuss
23 statements that his family members had made to police?

24 A Yeah. I mean, that -- short of their statements,
25 they didn't have a case.

1 Q Okay.

2 A That -- I mean, there was no -- again, there was no
3 way to avoid the discussion about what we expect his
4 family to testify to should he go to trial. It's not as
5 clean as he's describing it. So it's not merely a matter
6 of did the statement exist, or did it not exist, was it
7 inconsistent?

8 He had to operate on what did we think they were
9 going to say as testifying witnesses if they were -- if
10 the case was called to trial. There were probably going
11 to be multiple different things that they said. But at
12 the end of the day, you have to make your decision based
13 on what you expect them to come up there and say. Their
14 cases were being resolved. Everything was sort of getting
15 tied up by the State. He was the -- he was left.

16 I can tell you that in the entire time that I
17 represented him from -- February 27th, 2013 is when I got
18 the case to November 16, 2016, not one of his family
19 members communicated with me. I did communicate with a
20 couple of the lawyers who represented his family members
21 that were charged.

22 In talking with them, I never got a -- a -- any
23 indication from those lawyers of things that were
24 different or inconsistent with what I was getting from the
25 prosecutor. So I wasn't getting a different story from

1 their own lawyer. Obviously, I could not directly talk to
2 them if they were represented.

3 But nobody was contacting me either with -- either
4 through their lawyer saying, hey, the statements are all
5 off, that they're -- you know, they're wrong, or even the
6 person trying to call me, which can happen, saying, hey,
7 that statement that I gave the police is wrong. There was
8 nothing. And all the indication was that it was what it
9 was on -- on paper.

10 Q Okay. And so when Mr. Mishoe made this -- this
11 determination that he wanted to plead guilty, he was well
12 aware of all that information?

13 A Yeah. I mean, we talked about it over and over again
14 about -- did we go over it line by line? Probably not.
15 Did I give him what I believed the witnesses would testify
16 to or what the State could, essentially, make them admit
17 they told the police officers if they were to be reluctant
18 to testify? Yeah. That's the whole point.

19 He knew the story just as much as I knew the story,
20 as far as what they would say, or what the police were
21 claiming that they told them.

22 Q And I heard him testify that his brother and mom told
23 him that they would not testify against him or was going
24 to say something different. Did he ever indicate anything
25 like that to you?

1 A Yeah. I mean, he indicated to me that that's what he
2 thought was going to happen. Like I said, nobody directly
3 told me. But it's somewhat neither here nor there. He
4 gets to decide whether or not he's going to plead guilty.

5 I can advise him that, hey, if they decide not to
6 testify, here are the repercussions. They could get
7 subpoenaed to come to court. They could be put up on the
8 stand, you know, all the different ways that it could go.
9 But I'm not the one that decides whether or not he wants a
10 trial or whether he wants to plead. That was his role.
11 And I do that the same in every case.

12 MR. MITCHELL: Thank you, Mr. Scalzo.

13 That's all the questions I have.

14 THE COURT: All right. Anything else, Mr. Richey?

15 MR. RICHEY: No, Your Honor.

16 THE COURT: I have no questions, Mr. Scalzo.

17 Thank you.

18 You can step down.

19 THE WITNESS: Thank you, sir.

20 THE COURT: All right. Anything else from the State
21 or from the Applicant?

22 MR. MITCHELL: Nothing, Your Honor.

23 MR. RICHEY: No, Your Honor.

24 THE COURT: All right. I'll entertain a short
25 argument from both sides.

1 MR. RICHEY: Your Honor, my client's main crux, his
2 big argument was that he did not receive all the
3 discovery. I think Mr. Scalzo testified that he couldn't
4 be absolutely sure he got it. But that's his main beef.

5 And I think his issue is that he didn't know
6 whether -- he couldn't make an intelligent and voluntary
7 decision to plead guilty without all the information. And
8 that's the crux of what he's saying.

9 He's saying that he wants an opportunity to review
10 all the evidence in his case prior to making a decision to
11 plead guilty. And it's his position that he was denied
12 the opportunity to do that. And that's what he's asking
13 for is to get all of his discovery.

14 Thank you, Your Honor.

15 THE COURT: Mr. Mitchell.

16 MR. MITCHELL: Just very briefly, Your Honor. Based
17 on the allegations that I've heard, I think the chief
18 complaint from the Applicant is that he didn't receive
19 discovery and somehow that induced his plea to be somehow
20 involuntary. I think the record as presented by testimony
21 from Counsel today is that he provided discovery to the
22 Applicant in this particular case.

23 Whether he went over the statements line by line is
24 something -- something that I don't know if he's -- he was
25 quite sure about. But there is no question that he had

1 discussions with the Applicant about what the testimony or
2 the statements from his co-defendants were. Not
3 withstanding the fact that there were statements from his
4 mother and then, also, his brother. And so we heard
5 Counsel testify that given all the information that the
6 Applicant had, he made a decision to plead guilty.

7 The plea transcript, I think, is very -- very
8 thorough in terms of asking whether he was satisfied with
9 trial Counsel -- plea Counsel. He responded to the Judge
10 that he was, that nobody was threatening or promising him
11 anything. And so I think the record would show that his
12 plea was not involuntary, that he did this of his own free
13 will.

14 With that being said, I do not think that he has
15 demonstrated that Counsel was ineffective and has not met
16 either prong of the Strickland test.

17 So for those reasons, I would ask that the Court
18 dismiss Mr. Mishoe's application.

19 THE COURT: Okay. As it relates to the Applicant,
20 Mr. Mishoe's application for post-conviction relief, I --
21 I read the transcript of the plea that was before Judge
22 Verdin. And she -- as she always does, she did an
23 excellent job of asking the -- the pertinent questions and
24 facilitating the plea.

25 And what was unusual -- not unusual, but a little

1 different in this plea was that the Applicant tendered an
2 Alford plea. And I read the transcript. And Judge Verdin
3 was very diligent in making sure that the Applicant
4 understood the -- what an Alford plea was, and, in fact,
5 whether or not he still wanted to plead guilty after
6 having been explained to him what the -- an Alford plea
7 was.

8 There was a question in the transcript where the
9 Judge asked the Applicant whether or not he was satisfied
10 with the services of his attorney. And his response was
11 yes. At no point in the -- during the -- the transcript I
12 read or during this plea that -- the Applicant could have
13 said to the Court at that time I -- I still need some
14 discovery. And that was -- and the Applicant didn't do
15 that. The Counsel of record, Mr. Scalzo, testified that
16 he had met with the Applicant on a number of occasions and
17 had provided to him discovery that he did have.

18 Based upon my examination of the standards set forth
19 in the Strickland case, which sets -- there's a two-prong
20 test for the Court to determine whether or not the
21 Applicant has set forth sufficient evidence to the Court
22 to establish ineffective assistance of Counsel on behalf
23 of the Counsel that he had at the time of the plea. I
24 find that the Applicant has failed in that two-prong test.

25 And based on that, I will go ahead and deny the

1 Applicant's application for post-conviction relief, and
2 instruct Mr. Mitchell to prepare the appropriate order.

3 MR. MITCHELL: Absolutely, Judge.

4 THE COURT: All right.

5 *****END OF TRANSCRIPT OF RECORD*****
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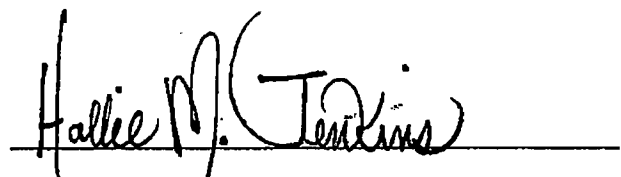
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of 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 the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 23rd day of October, 2018.

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

February 4, 2019



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)
)
 Jamie Mishoe, #370558)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)
)
)
)
)
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)

IN THE COURT OF COMMON PLEAS
 FOR THE THIRTEENTH JUDICIAL CIRCUIT

2017-CP-23-2381

ORDER OF DISMISSAL

19 JUN 7 2018
 CLERK OF COURT
 GREENVILLE, SC

This matter comes before the Court by way of an application for post-conviction relief filed on April 17, 2017 by Jamie Mishoe (Applicant). Respondent made its Return on July 28, 2017. An evidentiary hearing into the matter was convened on October 23, 2018, at the Greenville County Courthouse in Greenville, South Carolina. Applicant was present and represented by Rodney W. Richey, Esquire. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General’s Office.

At the hearing, Applicant testified on his own behalf. Applicant’s Plea Counsel Christopher J. Scalzo, Esquire also testified. This Court had before it a copy of the records of the Greenville County Clerk of Court regarding the Applicant’s convictions, the transcript from Applicant’s guilty plea, the PCR application, Respondent’s Return and Applicant’s records from the Department of Corrections. After reviewing the record and everything presented, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. Applicant was indicted in September 2014 for attempted murder and possession of a weapon during the commission of a violent crime (2013-GS-23-2717). In August 2016, Applicant was subsequently indicted Applicant for murder and possession of a weapon during the commission of a violent crime (2013-GS-23-3357). Applicant was subsequently indicted in September 2016 for threatening a life (2014-GS-23-7828). Christopher D. Scalzo, Esquire represented Applicant. Solicitor Bryna S. Seay, Esquire prosecuted the case. On November 16, 2016, Applicant pleaded guilty as indicted to attempted murder, both counts of possession of a weapon during the commission of a violent crime, and threatening a life before the Honorable Letitia H. Verdin. Applicant pled guilty to the lesser included offense of voluntary manslaughter. Pursuant to a negotiated sentence, Judge Verdin sentenced Applicant to imprisonment for concurrent terms of twenty years for attempted murder, twenty years for voluntary manslaughter and five years for each charge of possession of a weapon during the commission of a violent crime. Judge Verdin then sentenced Applicant to a consecutive term of five years', suspended to five years' probation, with probation to be tolled while incarcerated, for the charge of threatening a life. Applicant did not appeal his conviction or sentence.

FACTUAL HISTORY

The facts surrounding the Applicant's conviction are as follows: On December 18, 2012, Greenville Sheriff's Office responded to the attempted murder and upon arrival, the victim stated he was in his living room with the main door open and a storm door closed and unlocked when an individual opened the door and came in. When the victim stood up, the individual shot him in

the stomach and fled on foot. The victim later identified Applicant in a photographic lineup. Guilty Plea Trans. pg.9-10

On February 23, 2013, the Greenville Sheriff's Office responded to a call at a residence and found a victim deceased of an apparent gunshot wound. Per investigation, and after several initial statements given were recanted, authorities received statements implicating Applicant in the victim's death after an argument had ensued between the two of them. Guilty Plea Trans. pg.10-12

As to the threatening a life charge, on July 17, 2014, while incarcerated at the Greenville County Detention Center, Applicant threatened the life of an officer who was performing his official duties as an officer at the time. Applicant further threatened the life of the officer's family. Guilty Plea Trans. pg.12, Lines 12-20

ALLEGATIONS

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

1. "I felt I didn't have a lawyer in favor of my best interest."
 - a. "When I wrote my lawyer letters at times he never wrote back."
 - b. "Many things made me think my lawyer was against me. It took me about a year to get any discovery. When I got it, much was left out of it. When I questioned the fact things were left out. He said he would ask the Solicitor about it. I asked him on different occasions to file motions for me and he didn't. I asked him to get up with the Detectives so I could speak with them because the information I had could've changed a lot within my case and I wanted to see the video recorded statements the Detectives had which were not a part of my discovery, yet things that were on film were mentioned to a certain degree."
2. "My lawyer didn't file motions in which I told him to."
3. "No evidence they had besides statements pointed to me."
 - a. "Though all they had were co-defendants' statements I wanted a trial."

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

Applicant's Testimony

Applicant testified Plea Counsel represented him on his charges. He testified he did not get a full copy of his discovery from Plea Counsel. Applicant testified that the discovery was supposed to have contained statements from his co-defendants that implicated him but that he never received those statements. He testified his co-defendants had given more than one statement to law enforcement. Applicant testified he requested that Plea Counsel file motions for a speedy trial and to suppress the statements. He testified when he pled guilty he knew the sentences he received were a negotiated sentences and also accepted an Alford plea to another charge. Applicant testified the alleged statements from his co-defendants were never included in his discovery.

On cross-examination, Applicant testified he met with Plea Counsel four or five times during the course of his representation. He testified Plea Counsel reviewed his discovery with him with the exception of statements made by his co-defendants. Applicant testified his mom and brother were his co-defendants and he talked to them about statements they had given to law enforcement. He testified his mother and brother indicated to him they did not implicate him in their statements.

Plea Counsel's Testimony

Plea Counsel testified he was appointed to represent Applicant on his charges. He testified at some point during the course of his representation of Applicant he sent Applicant a copy of his discovery. Plea Counsel testified included in his package of discovery were copies of statements made by Applicant's co-defendants. He testified it would not make any sense why he would not have given the statements to Applicant when he sent the discovery to him. Plea

Counsel testified he felt comfortable in the fact that he was sure he had sent Applicant a complete copy of his discovery and that his notes in his file did not reflect that Applicant did not have a copy of his co-defendants' statements. He testified from when he was originally appointed to represent Applicant he discussed Applicant's case with him initially and throughout his representation. Plea Counsel testified Applicant's co-defendants included members of his family. He testified that Applicant's murder charge stemmed from a shooting at Applicant's family's house where Applicant allegedly shot his sister's boyfriend after an argument. Plea Counsel testified several members of Applicant's family were present during this time.

On cross-examination, Plea Counsel testified during the course of his representation he met with Applicant several times to discuss his charges. He testified during those meetings he discussed the indictments and the possible punishments Applicant was facing. Plea Counsel testified he discussed Applicant's constitutional rights with him and also the State's burden of proof. He testified he talked to the lawyers of Applicant's co-defendants who indicated to him that they were going to implicate Applicant in the murder. Plea Counsel also testified Applicant knew there were statements in the discovery from his co-defendants and they discussed them.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

In a post-conviction relief action, the applicant bears the burden of proving the

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

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

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance

of counsel. This Court finds as follows on the following grounds presented by Applicant at the evidentiary hearing:

Ineffective Assistance of Counsel

Failure to Review and Provide Discovery

Applicant alleges Plea Counsel was ineffective in failing to review and provide his discovery to him. Applicant testified he did not get a full copy of his discovery from Plea Counsel. Applicant testified that the discovery was supposed to have contained statements from his co-defendants that implicated him but that he never received those statements. Plea Counsel testified at some point during the course of his representation of Applicant he sent Applicant a copy of his discovery. Plea Counsel testified included in his package of discovery were copies of statements made by Applicant's co-defendants. He testified it would not make any sense why he would not have given the statements to Applicant when he sent the discovery to him. Plea Counsel testified he felt comfortable in the fact that he was sure he had sent Applicant a complete copy of his discovery and that his notes in his file did not reflect that Applicant did not have a copy of his co-defendants' statements. This Court had the opportunity to view the testimony of each witness on this issue at the PCR hearing. This Court finds credible the testimony of Plea Counsel and finds Applicant's testimony to not be credible. This court further finds credible the testimony of Plea Counsel that Applicant knew there were statements in the discovery from his co-defendants and they both discussed those statements. As a result, Applicant has failed to show deficient performance or resulting prejudice in this regard. Therefore, this ground has no merit and must be denied and dismissed with prejudice.

Failure to File Motions

Applicant testified in a cursory fashion that Plea Counsel was ineffective for failing to

file motions to suppress his co-defendants statements and for a speedy trial. This court find these allegation to be without merit.

First, Applicant has failed to show that plea counsel was deficient or Applicant was prejudiced in plea counsel not filing a motion for a speedy trial. "A criminal defendant is guaranteed the right to a speedy trial." State v. Cooper, 386 S.C. 210, 216, 687 S.E.2d 62, 66 (Ct.App.2009), citing U.S. Const. amend. VI; S.C. Const. art. I, § 14; State v. Pittman, 373 S.C. 527, 548, 647 S.E.2d 144, 155 (2007). However, "[t]here is no universal test to determine whether a defendant's right to a speedy trial has been violated." Cooper, 386 S.C. at 216, 687 S.E.2d at 66 (citing State v. Waites, 270 S.C. 104, 107, 240 S.E.2d 651, 653 (1978)). "[T]he determination that a defendant has been deprived of this right is not based on the passage of a specific period of time, but instead is analyzed in terms of the circumstances of each case, balancing the conduct of the prosecution and the defense." Pittman, 373 S.C. at 549, 647 S.E.2d at 155; see Cooper, 386 S.C. at 217, 687 S.E.2d at 66.

A reviewing court should consider four factors when determining whether a defendant has been deprived of his or her right to a speedy trial: 1) length of the delay; 2) reason for the delay; 3) defendant's assertion of the right; and 4) prejudice to the defendant. Barker v. Wingo, 407 U.S. 514, 530, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972); see also State v. Brazell, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997). These four factors are related and must be considered together with any other relevant circumstances. Barker, 407 U.S. at 533, 92 S.Ct. 2182.

Cooper, 386 S.C. at 216-17, 687 S.E.2d at 66.

Here, this court finds the time involved in the disposition of Applicant's case to not be in violation of Applicant's rights as Applicant was charged and indicted with several serious charges from two separate incidents. This court further finds there was no evidence the delay was the result of any attempt from the State to hinder Applicant's ability to present a defense.

Additionally, Applicant has presented no argument or evidence reflecting he suffered any prejudice as a result of the delay in the disposition of his case.

Moreover, this court finds Applicant has not met his burden in alleging Plea Counsel was ineffective for failing to file a motion to suppress the statements of his co-defendants. While this may have been a viable argument had Applicant proceeded to trial, this court finds Plea Counsel was not deficient for failing to file such motion considering Applicant pled guilty. Furthermore, this court finds Applicant has not demonstrated sufficient prejudice. Therefore, this court finds these allegations of failure to file a motion for a speedy trial and motion to suppress to be without merit. These allegations are denied and dismissed with prejudice.

CONCLUSION

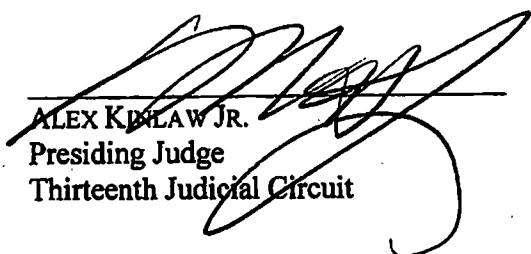
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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), SCRCR 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 THAT:

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 November, 2018.


ALEX KIRLAW JR.
Presiding Judge
Thirteenth Judicial Circuit

Welly, South Carolina

Copy mailed to
Attorney Richey and A.G.
on 11 / 7 / 2018.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED MURDER AND POSSESSION OF A WEAPON
DURING THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on SEP 16 2014 the Grand Jurors of Greenville

County present upon their oath:

COUNT I – ATTEMPTED MURDER

That JAMIE MISHOE did in Greenville County, on or about the 18th day of December 2012, unlawfully, with malice aforethought, and with the intent to kill, attempt to kill Charles Chambers. This is in violation of § 16-03-0029 of the South Carolina Code of Laws (1976) as amended.

COUNT II – POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That JAMIE MISHOE did in Greenville County on or about the 18th day of December 2012, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: Attempted Murder. This is in violation of §16-23-490 of the South Carolina 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.


SOLICITOR

WITNESSES

Lloyd C Newman

Greenville County Sheriffs Office

3/1/2013

ARREST WARRANT NUMBER

✓ 2013A2330201740 and 2013A2330201742 ✓

COUNTS I & II

**ACTION OF GRAND JURY
TRUE BILL**

Ricky T. Hall

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-23- 002717

BSD

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS ²⁰¹⁴

September TERM 2013

THE STATE

vs.

JAMIE MISHOE *(P)*

Indictment for

✓ 3410/0549

**ATTEMPTED MURDER/POSSESSION OF A
WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME**

VIOLATION § 16-03-0029 and § 16-23-0490

**ENTERED
ACCT.** *(Signature)*

FILED

APR 15 2013

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
MURDER AND POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on **AUG 23 2016** the Grand Jurors of Greenville
County present upon their oath:

COUNT I - MURDER

That JAMIE CORNELIUS MISHOE did in Greenville County, on or about the 23rd day of February, 2013, unlawfully and with malice aforethought kill JOHN ZIMERI by means of shooting him, and that JOHN ZIMERI died as a proximate result thereof. This is in violation of §16-3-0010 of the South Carolina Code of Laws (1976) as amended.

COUNT II – POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That JAMIE CORNELIUS MISHOE did in Greenville County on or about the 23rd day of February, 2013, possess or visibly display an operable firearm during the commission or attempted commission of a violent crime, to wit: Murder. This is in violation of §16-23-490 of the South Carolina 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.


SOLICITOR

WITNESSES

Lloyd C Newman

Greenville County Sheriffs Office

2/24/2013

ARREST WARRANT NUMBER

2013A2330201555 & 2013A2330201556
COUNTS I & II

ACTION OF GRAND JURY

TRUE BILL

Thomas J. Park

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-23-
BSD 003357

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

August

TERM 2013 ²⁰¹⁶

THE STATE

vs.

JAMIE CORNELIUS MISHOE *CM*

0217 ✓ Indictment for

0416/0549 ✓

**MURDER AND POSSESSION OF A WEAPON
DURING THE COMMISSION OF A VIOLENT
CRIME**

VIOLATION § 16-03-0010 and § 16-23-0490

**ENTERED
ACCT.** *PK*

FILED

APR 30 2013

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
THREATENING A LIFE

At a Court of General Sessions, convened on
County present upon their oath:

SEP 27 2016

the Grand Jurors of Greenville

That JAMIE MISHOE did in Greenville County, on or about the 17th day of July 2014, knowingly and willfully deliver or convey to JOSHUA THOMAS, an officer with the Greenville County Detention Center, a threat to inflict bodily harm upon or take the life of JOSHUA THOMAS or members of his immediate family and the threat was directly related to JOSHUA THOMAS's professional responsibilities. This is in violation of §16-3-1040 of the South Carolina 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.

Bryana S. Gray

SOLICITOR BAR # 65398

WITNESSES

W.K.

W.Kramer

Greenville County Detention Center

7/21/2014

ARREST WARRANT NUMBER

2014A2330206744

ACTION OF GRAND JURY

TRUE BILL

Thomas J. Pate

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-23-007828

BSS

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

September TERM 2016

THE STATE

vs.

JAMIE MISHOE

Indictment for

0541

THREATENING A LIFE

VIOLATION § 16-03-1040

ENTERED
ACCT. *JCP*