

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

—————
Certiorari to Darlington County

Honorable Larry B. Hyman, Circuit Court Judge

—————
JAMIE RAY LEWIS,

PETITIONER

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001778

—————
APPENDIX
—————

VICTOR R. SEEGER
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
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ATTORNEY FOR PETITIONER

ALAN WILSON
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1000 Assembly Street
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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State of South Carolina)
County of Darlington)

In Circuit Court of the
Fourth Judicial Circuit
2013-GS-16-01642

The State,
Plaintiff,
vs.
Jamie Ray Lewis,
Defendant.

Transcript of Record

Darlington, South Carolina
May 18, 2015

B E F O R E:

The Honorable Roger E. Henderson

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

Mrs. Kendall Burch, Esquire
Attorney for Plaintiff

Mr. Richard Jones, Esquire
Attorney for Defendant

Lisa Carter
Circuit Court Reporter

Handwritten notes and stamps including '2100' and '2111'.

I N D E X

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WITNESSES

PAGE

(NO WITNESSES INTRODUCED DURING HEARING)

(NO EXHIBITS INTRODUCED DURING HEARING)

1 THE COURT: Solicitor?

2 MRS. BURCH: Thank you, Your Honor. This is
3 indictment 2013-GS-16-042. Before you is Jamie Ray Lewis.
4 He's represented by Mr. Rick Jones from the public
5 defenders office. He has been indicted for murder but will
6 be pleading to voluntary manslaughter. Your Honor, the
7 state and the defense have negotiated a sentence of twenty-
8 four years.

9 (Whereupon, the witness was sworn)

10 THE COURT: All right. Jamie Ray Lewis?

11 MR. LEWIS: Yes, sir.

12 THE COURT: All right. You understand you were
13 originally charged with murder?

14 MR. LEWIS: Yes, sir.

15 THE COURT: And the state is allowing you to plead
16 guilty to voluntary manslaughter.

17 MR. LEWIS: Yes, sir.

18 THE COURT: All right. You understand that carries
19 anywhere from zero to thirty years?

20 MR. LEWIS: Yes, sir.

21 THE COURT: Okay. How do you wish to plea to that
22 charge?

23 MR. LEWIS: I'm pleading guilty, sir.

24 THE COURT: Now, do you fully understand the charge
25 against you, do you understand what voluntary manslaughter

1 means?

2 MR. LEWIS: Yes, sir.

3 THE COURT: You had enough time to talk to Mr. Jones,
4 your attorney, about this?

5 MR. LEWIS: Yes, sir.

6 THE COURT: All right. I understand there has been
7 some negotiations between your lawyer and the state and
8 that this is a negotiated plea, other than those
9 negotiations has there been any other promises been made to
10 you in order to get you to plead guilty?

11 MR. LEWIS: No, sir.

12 THE COURT: Have you been threatened by anyone in
13 order to plead guilty?

14 MR. LEWIS: No, sir.

15 THE COURT: Are you pleading guilty freely and
16 voluntarily?

17 MR. LEWIS: Yes, sir.

18 THE COURT: Are you under the influence of any alcohol
19 or drugs today?

20 MR. LEWIS: No, sir.

21 THE COURT: Is there anything at all that's
22 interfering with your ability to think, reason, and
23 understand?

24 MR. LEWIS: No, sir.

25 THE COURT: Do you understand that by pleading guilty

1 you give up certain rights?

2 MR. LEWIS: Yes, sir.

3 THE COURT: Included in those rights are your right to
4 have a trial by a jury of your peers which you and Mr.
5 Jones could participate in the selection of, do you
6 understand that?

7 MR. LEWIS: Yes, sir, Your Honor

8 THE COURT: And do you understand that the state would
9 have the burden of proof and would have to prove to that
10 jury beyond a reasonable doubt your guilt, you understand
11 that?

12 MR. LEWIS: Yes, sir.

13 THE COURT: And all twelve jurors would have to be
14 convinced. In other words, it would have to be an
15 unanimous decision, do you understand that?

16 MR. LEWIS: Yes, sir.

17 THE COURT: You're giving up those rights by pleading
18 guilty, do you understand that?

19 MR. LEWIS: Yes, sir.

20 THE COURT: You understand your lawyer would have the
21 right to cross-examine or ask questions of any witness that
22 the state might call in the case against you and you can
23 put up a defense if you so desire and you can testify
24 yourself if you wanted to. But if you didn't want to
25 testify you could not be made to testify, do you understand

1 that?

2 MR. LEWIS: Yes, sir.

3 THE COURT: And that could not be held against you in
4 any way whatsoever, do you understand that?

5 MR. LEWIS: Yes, sir.

6 THE COURT: Do you understand that you're entitled to
7 certain rights of discovery and you may have already gone
8 through that process but you can obtain information that
9 the state might have in its possession that it would
10 benefit the defense of your case, do you understand that?

11 MR. LEWIS: Yes, sir.

12 THE COURT: You understand you're giving up all of
13 your rights of discovery by pleading guilty?

14 MR. LEWIS: Yes, sir.

15 THE COURT: Now, I understand there is a negotiated
16 plea of twenty-four years if for some reason after I hear
17 the facts of the case, I don't feel comfortable in
18 sentencing you two twenty-four years I will allow you to
19 withdraw the negotiated plea, do you understand that?

20 MR. LEWIS: Yes, sir.

21 THE COURT: Now, you're represented by Mr. Jones?

22 MR. LEWIS: Yes, sir.

23 THE COURT: Have you had enough time to talk to him
24 about this matter?

25 MR. LEWIS: Yes, sir.

1 THE COURT: Has he answered all of your questions to
2 your satisfaction?

3 MR. LEWIS: Yes, sir.

4 THE COURT: Are you fully satisfied with his services
5 on your behalf?

6 MR. LEWIS: Yes, sir.

7 THE COURT: Has he done everything that you could've
8 expect of him as your lawyer?

9 MR. LEWIS: Yes, sir.

10 THE COURT: All right. At this time I'm going to have
11 the solicitor, Mrs. Burch, state for me the facts
12 concerning this charge and once that statement of facts
13 have been made I'll have some more questions for you.
14 Solicitor?

15 MRS. BURCH: Thank you, Your Honor. This incident
16 occurred on March 17, 2013 at [REDACTED] Pine Needle Road or
17 [REDACTED], I'm sorry, Pine Needle Road in Hartsville which is in
18 Darlington County. Your Honor, this case was the first
19 trial up for this term of court. Had we gone to trial the
20 state would've presented a video from a gas station down
21 the street from that address that shows Mr. Lewis walking
22 from the gas station into the direction of Mr.
23 Brewington's, who was the victim in this case, house.
24 Within a few minutes it has him leaving the store at 16:02
25 and walking towards the victim's home and he's coming back

1 at 16:32 so over the course of thirty minutes Mr. Lewis
2 went into the victim's home, we believe to rob the victim
3 of pills. The victim, as I understand from a prior case,
4 is this defendant's father's best friend. He stabbed Mr.
5 Brewington's sixteen times over some pills is what we
6 believe. Unfortunately, one of our eyewitnesses in this
7 case was Mr. Brewington's mother. She passed away in
8 January and so she would not have been available to testify
9 at trial. That went into some of the negotiations at
10 trial.

11 Your Honor, I do have a letter from the victim's
12 sister I'd like to pass up when it's appropriate.

13 THE COURT: All right. Thank you, ma'am. Mr. Lewis,
14 do you agree that the solicitor's statement of the facts is
15 substantially correct?

16 MR. LEWIS: Other than - - -

17 THE COURT: It doesn't have to be word for word
18 substantially is the term, correct.

19 MR. LEWIS: Yes, sir.

20 THE COURT: And your lawyer can speak to anything but
21 as to my question, do you agree that, that is substantially
22 correct?

23 MR. LEWIS: Yes, sir.

24 THE COURT: All right. After hearing that statement
25 of the facts and after considering the questions that I've

1 asked you, do you still want to plead guilty?

2 MR. LEWIS: Yes, sir.

3 THE COURT: Mr. Jones, do you believe that your client
4 fully understands all of his rights?

5 MR. JONES: I do, Your Honor.

6 THE COURT: You also concur in his decision to plead
7 guilty based on the facts and circumstances presented?

8 MR. JONES: Yes, sir.

9 THE COURT: All right, then, I find that Jamie Ray
10 Lewis has freely, voluntarily, and intelligently entered a
11 plea to voluntary manslaughter. He's done so upon the
12 advice of competent counsel with whom he indicates he is
13 satisfied. I am going to accept his guilty plea to
14 voluntary manslaughter. I'll be glad to hear from you, Mr.
15 Jones.

16 MR. JONES: Your Honor, thank you. I've known Mr.
17 Lewis for quite some time. His father has actually been in
18 very close contact with my office also since this matter
19 has happened. Mr. Lewis has been at the detention center
20 in custody for 793 days, I think, since either the
21 afternoon that this happened or the next afternoon and we'd
22 asked that if, His Honor, goes along with the negotiated
23 plea that he receive the credit for the 793 days.

24 Judge, Mr. Lewis is, he's not a native of Hartsville
25 but he's been in the Hartsville area for quite some time.

1 Has two children. He's gotten a GED. His - - he's had a
2 difficult family life. His wife - - let me back up just a
3 minute. I think the solicitor was absolutely right, the
4 nature of the problem that has Mr. Lewis standing in front
5 of you is prescription medication. He has had a difficult
6 time with it. His wife and the mother of his two minor
7 children actually died in December of 2012. I'm not sure
8 if it was a direct result of pills but Mr. Lewis said that
9 it was. He ended up with custody of a nine and a five-
10 year-old that's their current ages and his father and his
11 stepmother has helped him with those children. Mr. Lewis
12 has known Mr. Brewington, knew Mr. Brewington for quite
13 some time. As the solicitor said, there was a family
14 relationship and friendship relationship between the
15 families.

16 In discussing the case with Mr. Lewis he tells me he
17 was actually over at the house the night before. They
18 cooked steaks. I think they socialized a lot. There was a
19 prescription pill connection between Mr. Brewington and Mr.
20 Lewis and without going too deeply into it I think Mr.
21 Lewis, one thing that he told me that has stuck with me is
22 that, because of his problem with prescription medication
23 which he took at least three verily heavy prescription for
24 back pain related to a past accident but Mr. Brewington
25 actually was at Mr. Lewis's direction, he said when he got

1 his prescriptions filled first of the month he'd give Mr.
2 Brewington at least half of them and say hold these for me
3 which Mr. Brewington would do. They had, again, a
4 friendship relationship. That particular day there was,
5 obviously, an argument over those prescription medications.
6 Mr. Lewis tells the story a little bit differently than the
7 solicitor but the end result was exactly the same. Mr.
8 Lewis under the influence ended up taking Mr. Brewington's
9 life with a knife. As so many defendants that I've worked
10 with particularly in heinous situations like this, he is
11 often said if I could take back those couple of three
12 minutes that would certainly be something that he wishes
13 today could happen. He's got the two children which are in
14 the custody of his father and stepmother. His father's in
15 terrible health and the stepmother's relationship with the
16 children is, I think, tenuous at best. So he obviously has
17 that hanging over his head or heavy on his heart. He has
18 expressed remorse to me about the situation. As I said he
19 and Mr. Brewington were friends but the prescription
20 medications took over. The abuse of that medication took
21 over and for a few minutes he was not Jamie Ray Lewis, he
22 was somebody else and as a result of that Mr. Brewington is
23 not here today.

24 We'd ask that you consider that twenty-four years, a
25 substantial sentence for Mr. Lewis. We're very thankful

1 for the negotiations that we've had with the solicitor
2 office that's resulted in this plea. And again as I said,
3 Mr. Lewis, if he had his way he'd take back those few
4 minutes, just wishes he could.

5 THE COURT: Is this the letter?

6 MRS. BURCH: Yes, Your Honor.

7 (Whereupon, the Court takes a moment to read the
8 letter)

9 THE COURT: All right. Mr. Lewis, what would you like
10 to say?

11 MR. LEWIS: That I am sorry for my actions. There's
12 nothing I can do to take it back but I am sorry what
13 happened. I'm sorry for Mr. Brewington's life. My daddy
14 lost his best friend and a mother figure at the same time.
15 It's been a lot of domino effect in the process. I am
16 sorry.

17 THE COURT: What kind of pills were you taking?

18 MR. LEWIS: Roxicodine. Xanax's. Soma's.

19 MRS. BURCH: Judge, Mr. Brewington's had fallen from
20 scaffolding some years ago and I believe he lost the use of
21 one of his feet and was prescribed a significant amount of
22 medication for his back problems from that fall and his
23 foot. So he would have had prescriptions of those
24 medications and we subpoenaed those in preparation for the
25 trial. And from what we can tell from the records he took

1 his medicine when he was supposed to.

2 THE COURT: Were you taking his medication from him,
3 is that what you went for?

4 MR. LEWIS: No, sir. It wasn't nothing like that.

5 THE COURT: Well, what was it like?

6 MR. LEWIS: It was, we had an argument over some
7 soma's that he said was missing that I didn't having
8 nothing to do with soma because my wife died with soma's
9 but he said I had took them the night before.

10 THE COURT: I thought you just told me you took some.

11 MR. LEWIS: I was prescribed soma's. But I never - -
12 I didn't take soma's. My wife always took them.

13 THE COURT: Must have been some argument for you to
14 stab somebody sixteen times.

15 MR. LEWIS: I don't remember most of it. I really
16 don't. I remember the argument and I remember it going to
17 the situation but after that I don't remember.

18 THE COURT: Do you remember seeing his wife in there?

19 MR. LEWIS: His mother?

20 THE COURT: Mother, I'm sorry, his mother? I'm sorry.

21 MR. LEWIS: No, sir.

22 THE COURT: Talking to her?

23 MR. LEWIS: No, sir. She was in her room.

24 THE COURT: I don't know if Mr. Jones has seen this
25 but according to her statement she confronted you and you,

1 of course I understand, she was legally blind, you put your
2 hand on her and told her that Eddie was okay. You don't
3 remember any of that?

4 MR. LEWIS: No, sir. I don't remember that, sir.

5 THE COURT: Okay.

6 MR. JONES: Your Honor, that was in the incident
7 report and Mr. Lewis has that. He has told me the same
8 thing that he doesn't remember that situation.

9 THE COURT: If I had done something this horrendous I
10 would want to block it out of my mind too as well.

11 MRS. BURCH: Your Honor, just for the record the
12 victims family and law enforcement are happy with the plea
13 negotiations.

14 THE COURT: And I understand the state being willing
15 to do this based on the fact that this lady is now
16 deceased. Anything else, Mr. Jones?

17 MR. JONES: No, sir.

18 THE COURT: Anything else from the state?

19 MRS. BURCH: Nothing further.

20 MR. JONES: Your Honor, did I mention - - I think I
21 said 793, yes, sir.

22 THE COURT: Seventy hundred - - 793, yes, sir. That's
23 the figure you gave me.

24 MR. JONES: Yes, sir.

25 THE COURT: All right. Mr. Lewis, I'm going to as

1 I've already said, except your guilty plea.

2 Therefore I'm going to go along with the negotiated
3 plea. I hope you'll think about this every day while your
4 serving your time. The sentence of the court is you be
5 committed to the State Department of Corrections for a
6 determinate period of twenty-four years. You will be given
7 credit for the 793 days that you have already served.

8 MR. JONES: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 MRS. BURCH: Thank you, Your Honor.

11 (CONCLUSION OF THE HEARING ON MAY 18, 2015)

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CERTIFICATE

1
2
3 I, the undersigned Lisa S. Carter, Official Court
4 Reporter for the Fourth Judicial Circuit of the State
5 of South Carolina, do hereby certify that the
6 foregoing is a true, accurate, and complete excerpt of
7 transcript of record of all the proceedings had and
8 evidence introduced in the hearing of the captioned
9 cause, relative to appeal, in the Fourth Circuit Court
10 for Darlington County, South Carolina, on the 18th
11 day of May, 2015.

12 I do further certify that I am neither of kin,
13 counsel, nor interest in any party hereto.
14

15
16 *Lisa S. Carter*

17 Lisa S. Carter

18 Circuit Court Reporter

19 March 10, 2016
20
21
22

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Darlington)
)
Jamie Ray Lewis 299085)
 Full name and prison number (if any) of Applicant.)
)
 v.)
)
 State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

16CP160065

APPLICATION FOR
POST-CONVICTION RELIEF

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 Perry Corrections Inst, 430 Oak Lawn Rd., PEIZER, S.C. 29669
2. Name and location of Court which imposed sentence Darling County, 4th Judicial Court
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Murder / Murder ~~16-03-0010~~; ~~16-03-0020~~ 2013-65-16-1642
 - (b) Robbery / Common Law Robbery - 2013 - 65 - 16 - 1644
 - (c) WEAPON - ~~2013-03-0010~~ 1643
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 5-18-2015 ~~FILED~~ manslaughter 24 yrs.
 - (b) —

FILED

- (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty ✓
 - (b) after a plea of not guilty N/A
 - (c) after a plea of nolo contendere N/A
- 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. N/A
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. N/A
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) A direct appeal from a guilty plea would have been
 - (b) pointless.
 - (c) _____
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

SCOTT B. SUGGS
 CLERK OF COURT, D.D.
 DARLINGTON COUNTY, S.C.
 2016 JAN 29 AM 10:23

FILED

- (a) _____ SEE Attachment "A"
- (b) _____
- (c) _____

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

- (a) _____ SEE Attachment "A"
- (b) _____ SEE Attachment "B"
- (c) _____

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

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

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

- (a) the specific nature thereof:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. N/A
 - ii. _____
 - iii. _____

SCOTT B. SUGGS
 CLERK OF COURT/R.O.D.
 DARLINGTON COUNTY, S.C.

2016 JAN 29 AM 10:23

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Attachment A

10.

- a. The Applicant recieved Ineffective of Counsel prior and during his plea inviolation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution.
- b. The Applicant plea of guilty were not voluntary and intelligently entered. The judgement and sentence against the Applicant were entered in violation of his rights to due process of law and effective assistance of counsel.

11.

- a. Trial Counsel failed to provide the Applicant effective assistance of counsel in that he failed not having the Applicant mentality evaluated prior to Applicant PLEA proceeding. Which violated Applicant statues; 44-17-530, 44-23-416, 44-23-420 and 44-23-430. which Applicant was under mental health while in Darlington County Jail.
- b. Counsel failed to provide client effective assistance of Counsel prior and during his guilty plea proceeding. The Applicant's plea of guilty were coerced by Counsel's failure to provide adequate representation.

FILED

11.

- c. Applicant received ineffective assist from Counsel during his proceeding, that Applicant did not have a preliminary which violates S.C. Statutes; 17-23-130, 17-23-160 and 17-23-162; and Rule (2) S.C. rules of criminal procedure. Section I.
- d. Applicant received ineffective assist from counsel during and prior of his trial proceeding. which counsel did not disclose motion of Discovery which violated Rule (5) S.C. rules of criminal procedure.

SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

2016 JAN 29 AM 10:23

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iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

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

(a) Post-conviction relief action present first appropriate
(b) opportunity of these collateral issues.

(c) _____

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

FILED

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

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. J. Richard Jones , 300 Russell Rd., Darlington S.C. 29532
 - 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: vacation of judgement and sentence . Applicant seeks a NEW TRIAL.

20. Are you now under sentence from any other court that you have not challenged?
NO

SCOTT B. SUGGS
 CLERK OF COURT, C.D.
 DARLINGTON COUNTY, S.C.
 2016 JAN 29 AM 10:23

FILED

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Darlington)

JAMIE RAY LEWIS

I, JAMIE RAY LEWIS, 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 Lewis ✓

SWORN to and subscribed before me this 26th
day of January, 2016.

Nancy C. Murchant (L.S.)
Notary Public

My Commission Expires: 1-23-2021

SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

2016 JAN 29 AM 10:23

FILED

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

Jamie Ray Lewis

I, _____, 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.

Jamie Lewis ✓

 Applicant

SWORN or affirmed to and subscribed before me this

26th day of January, 2016.

Nancy S. Merchant

 Notary Public

My Commission Expires: 1-23-2020

SCOTT B. SUGGS
 CLERK OF COURT/R.O.
 DARLINGTON COUNTY, S.C.

2016 JAN 29 AM 10:23

FILED
 7

STATE OF SOUTH CAROLINA)

COUNTY OF Darlington)

AFFIDAVIT OF INDIGENCY

Case Name Jamie Ray Lewis

Criminal Case No. 2013-GS-16-1642

Current Address: Jamie Lewis #299085 PCI 64B122 430 Oaklawn Rd Pelzer S.C. 29669

Are you incarcerated? Yes (If "Yes") Where? Perry Correctional 430 Oaklawn Rd Pelzer S.C. 29669
 No

What were you convicted of? Voluntary Manslaughter

What was your sentence? 24 years in SCDC

Are you appealing from _____ a trial, _____ a guilty plea _____ a post-conviction relief hearing?

In what county was this trial/hearing/guilty plea held? Darlington County

Presiding Judge's name? Judge Henderson

Date of trial/guilty plea or post-conviction relief hearing May 18 2015

Were you represented by _____ a court-appointed attorney public defender or _____ retained counsel?

Name of attorney/public defender? J. Richard Jones

If retained, how much did you pay for attorney fees? \$ _____

If you still owe money to your attorney, how much? \$ _____

.....

1. Are you presently employed? Yes _____ No

a. If "yes," state the amount of your salary or wages per month, and give the name and address of your employer. _____

b. If "no," state the name and address of last employment, date of termination of employment, and amount of your salary or wages per month. Self employed March 1 2012 to Present, Wrap it Construction / 000.00 per month

2. List by name, age and relationship to you, any persons who are dependent upon you for support. Indicate beside each how much you contribute toward their support. _____

0371

3. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession or form of self-employment? Yes _____ No

b. Rent payments, interest or dividends? Yes _____ No

c. Pensions, annuities or life insurance payments? Yes _____ No

d. Gifts or inheritance? Yes _____ No

e. Any other sources? Yes No _____

If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months. My father sent me some money

4. Do you own cash, or do you have any money in a checking or savings account? Yes _____ No

If the answer is "yes," state the total amount of the cash owned. \$ _____

5. Do you own any real estate, stocks, bonds, notes or other valuable property (excluding ordinary household furnishings and clothing)? Yes _____ No

If the answer is "yes," describe the property and state the appropriate value of the items owned. _____

6. What kind of motor vehicle do you own? -0-

Is it paid for? Yes _____ No _____
If not, what are the monthly payments? \$ _____

7. How much do you owe (on liens, mortgages, other encumbrances or debts)? _____

2016 JAN 29 AM 10:28

FILED

I do solemnly swear that the account by me delivered into this Court does contain a true and full account of all my real and personal estate, debts, credits and effects whatsoever without exception, which I, or any person in trust for me, have or at the time of my possession had, or am, or was, in respect, entitled to, in possession, remainder or reversion and that I have not at any time since charges were made against me or before, directly or time since charges were made against me or before, directly or indirectly sold, leased, assigned or otherwise disposed of or made over, in trust for myself or otherwise, other than is mentioned herein.

I understand that the State shall file a claim against me in an amount equal to the cost for representation, but that such claim shall not constitute a lien against my property, unless, the claim is reduced to judgment by the Order of the Court after giving me at least thirty days' notice.

Under penalty of perjury, I certify that the information give by me on this affidavit is true and correct, and I understand that I will be subject to civil and/or criminal penalties if I knowingly furnish false information.

I am financially unable to employ counsel.

This 26 day of January, 2016.

Amie Lewis ✓
Defendant

I understand that I am entitled to at least thirty days' notice before a claim against me may be reduced to judgment, and I do hereby waive the right to such notice.

This 26 day of January, 2016.

Amie Lewis ✓
Defendant

SUBSCRIBED AND SWORN to before
me this 26th day of January, 2016

Nancy C. Merchant
NOTARY PUBLIC FOR SOUTH CAROLINA

My commission Expires: 1-23-2027

SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

2016 JAN 29 AM 10:22

FILED

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON)	
)	
Jamie Ray Lewis,)	Case No.: 2016-CP-16-00065
S.C.D.C. No. 299085,)	
)	
Applicant,)	
)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
)	

In response to the application for post-conviction relief filed by Jamie Ray Lewis (Applicant) on January 29, 2016, Respondent would show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. Applicant was indicted at the August 2013 term of the Darlington County Grand Jury for murder (2013-GS-16-01642).¹ Richard Jones, Esquire, represented Applicant, and Kendall Burch, Esquire, of the Fourth Circuit Solicitor's Office, prosecuted the case. On May 18, 2015, Applicant pled guilty to the lesser included charge of voluntary manslaughter. The Honorable Roger E. Henderson sentenced Applicant to imprisonment for a term of 24 years. Applicant did not appeal his plea or sentence.

II.

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

¹ Applicant was additionally indicted at the May 2013 term for possession of a controlled substance, first offense (2013-GS-16-00940); at the August 2013 term for possession of a weapon during the commission of a violent crime (2013-GS-16-01643), and strong arm robbery (2013-GS-16-01644); and at the May 2015 term for armed robbery (2015-GS-16-00755). All of these charges were dismissed *nolle prosequi* after Applicant's plea.

1. Ineffective Assistance of Counsel, in that:
 - a. "Trial Counsel failed to provide the Applicant effective assistance of counsel in that he failed not having the Applicant mentality evaluated prior to Applicant plea proceeding. Which violated Applicant statutes [S.C. Code Ann. §§ 44-17-530, 44-23-410, 44-23-420, and 44-23-430.] Which Applicant was under Mental Health while in Darlington County Jail."
 - b. "Applicant received ineffective assist from counsel during his proceeding, that Applicant did not have a preliminary which violates [S.C. Code Ann. §§ 17-23-130, 17-23-160, and 17-23-162 as well as Rule 2, S.C.Crim.P.]
 - c. "Applicant received ineffective assist from counsel during and prior of his trial proceeding. Which counsel did not disclose motion of Discovery which violated [Rule 5, S.C.Crim.P.]"
2. Involuntary Guilty Plea, in that:
 - a. "Counsel failed to provide client effective assistance of counsel prior and during his guilty plea proceeding. The Applicant's plea of guilt were coerced by Counsel's failure to provide adequate representation."

Applicant requests relief as follows:

- "Vacation of judgment and sentence. Applicant seeks a new [trial]."

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

III.A.

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

just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

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

III.B.

One of Applicant’s ineffective assistance allegations raises a question of mental competence. Due process prohibits the conviction of a person who is mentally incompetent, and that right cannot be waived by a guilty plea. Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594,

595 (1992) (citing Bishop v. U.S., 350 U.S. 961 (1956); Pate v. Robinson, 383 U.S. 375 (1966)). The test of competency to enter a plea is the same as required to stand trial: the accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him. Id., 417 S.E.2d at 596 (citing State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976); Carnes v. State, 275 S.C. 353, 271 S.E.2d 121 (1980)). An applicant alleging incompetence in fact must show by a preponderance of the evidence he was incompetent at the time of his plea. Id.

An applicant alleging ineffective assistance of counsel for failure to seek a mental health evaluation, however, must still satisfy the two prongs of Strickland, though considered in reverse as a practical necessity: applicant must demonstrate (1) a ‘reasonable probability’ that he was not competent at the time of the crime or at the time of the plea, and (2) that counsel’s failure to seek an evaluation was unreasonable. Id. at 233, 417 S.E.2d at 596. Counsel may reasonably rely on his own perceptions in deciding if a client is competent to stand trial. Id.

III.C.

One of Applicant’s allegations is that he did not receive a preliminary hearing. Every criminal defendant is entitled to notice of his right to a preliminary hearing “to determine whether sufficient evidence exists to warrant [his] detention and trial.” Rule 2(a), SCRCrimP. However, there is no state constitutional right to a preliminary hearing. State v. McClure, 277 S.C. 432, 289 S.E.2d 158 (1982); State v. Keenan, 278 S.C. 361, 296 S.E.2d 676 (1982). Furthermore, a preliminary hearing shall not be held if the defendant is already indicted by a grand jury. Rule 2(b), SCRCrimP.; see also State v. Hawkins, 310 S.C. 50, 54-55, 524 S.E.2d 50, 53 (Ct. App. 1992) (holding trial court did not err in refusing to quash defendant’s

indictments because he did not receive a requested preliminary hearing because he was indicted before a preliminary hearing was held).

Respondent is aware of no instance in this State's jurisprudence where the requirements of Strickland were satisfied by counsel's failure to request a preliminary hearing.² To the contrary, though, there is no binding precedent on point. Courts have indicated that where an Applicant is indicted by the grand jury, "[b]ecause no preliminary hearing [is then] required under the state rules, there can be no ineffective assistance of counsel for failing to request or obtain a preliminary hearing." Lopez v. Cartledge, 4:13-2872-BHH-TER, 2015 WL 733760, 16 (D.S.C. 2015). Where a defendant is indicted by the grand jury, a preliminary hearing is of no use to him, as probable cause has been established, and no Strickland deficiency or prejudice can conceivably be proven. See e.g. Id.; Bright v. State, 365 S.C. 355, 618 S.E.2d 296 (2005) (overturning a grant of relief that was based in part on the non-consensual waiver of a preliminary hearing, without specifically addressing that claim).

III.D.

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

IV.

Applicant further claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392

² Notwithstanding those grants overturned on appeal.

(1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

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

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

V.

Applicant 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), SCRPC. 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, SCRPC. 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), SCRPC.

VI.

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

[Signature block on following page]

VII.

WHEREFORE, Respondent respectfully requests that an evidentiary be held on Applicant's claims of ineffective assistance of plea counsel and that his guilty plea was not entered voluntarily.

Respectfully submitted,

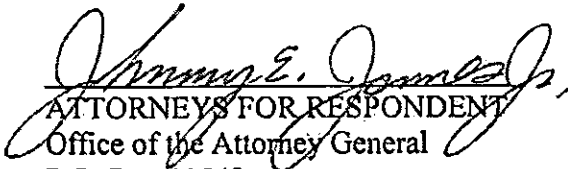
ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY E. JAMES JR.
Assistant Attorney General

By:


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


June 14, 2017

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON)	
)	
)	2016-CP-16-0065
JAMIE RAY LEWIS,)	
S.C.D.C. No. 299085,)	
)	
)	
Applicant,)	
)	
vs)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	

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

Lance S. Boozer, Esquire
Boozer Law Firm, LLC
1400 Laurel Street, Suite 4A
Columbia, SC 29201

DATED this 14th day of June, 2017.


 Brianna Arnone, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF DARLINGTON) 2016-CP-16-00065

JAMIE RAY LEWIS)
) APPLICANT)
 vs.) TRANSCRIPT OF RECORD)
)
 STATE OF SOUTH CAROLINA)
RESPONDENT)

July 23, 2018
 Darlington, South Carolina

B E F O R E:

THE HONORABLE LARRY B. HYMAN, JR., JUDGE.

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

LANCE S. BOOZER, ESQUIRE
 Attorney for the Applicant

JOHNNY E. JAMES, JR., ASSISTANT ATTORNEY GENERAL
 Attorney for the State

J. RICHARD JONES, Public Defender

HATTIE O. GORDON
 Circuit Court Reporter

I N D E X

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EXHIBITS

NO EXHIBITS WERE MARKED OR ADMITTED INTO THE RECORD

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COLLOQUY

MR. JAMES: May it please the Court.

THE COURT: Yes.

MR. JAMES: Your Honor, this is the matter of Jamie Ray Lewis v. State of South Carolina. Docket Number 2016-CP-16-00065. Mr. Lewis is present here in the courtroom today, and is represented by Mr. Lance Boozer. He was originally represented at trial or as guilty plea by Mr. Rick Jones, esquire, who is also present here in the courtroom today. It's my understanding that the Court already has a particular understand of the history of this case so I'll seat the floor to Mr. Boozer.

THE COURT: All right.

MR. BOOZER: Thank you, Your Honor. If it pleases the Court we will go ahead and call Mr. Lewis to the stand.

THE COURT: All right.

JAMIE RAY LEWIS, after being duly sworn, testified as follows:

THE COURT: Mr. Lewis, good morning.

MR. LEWIS: Morning, sir.

THE COURT: Mr. Lewis, before we begin I just want to make sure that you understand that the only relief that this Court could grant you could be -- would result in you being retried. Do you understand that?

1 MR. LEWIS: Yes, sir.

2 THE COURT: And the State is not bound by your plea
3 of voluntary manslaughter. You were indicted for murder,
4 and that means that if we went back to trial you could
5 very easily or probably would be tried on your initial
6 charge which is murder. Do you understand that.

7 MR. LEWIS: Yes, sir.

8 THE COURT: Okay. And I just want to make sure that
9 you're clear on that.

10 MR. LEWIS: Yes, sir.

11 THE COURT: Okay. All right, sir.

12 MR. BOOZER: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. BOOZER:

15 Q. Mr. Lewis, how are you doing today?

16 A. I'm all right.

17 Q. Just keep your voice up cause everyone has got to
18 hear you, all right?

19 A. All right.

20 Q. All right. Okay. Mr. Lewis, do you know what you're
21 here for today to do while we're here?

22 A. Yes, I do.

23 Q. All right. And what are we here -- what did you file
24 to get into Court?

25 A. We're here for post conviction relief. I'm here to

1 prove that I was not -- it was ineffective assistance of
2 counsel.

3 Q. All right. Now, Mr. Lewis, what were you originally
4 charged with?

5 A. Murder.

6 Q. And did you enter into a guilty plea?

7 A. Yes, sir, I did.

8 Q. All right. What did you enter a plea to?

9 A. Voluntary manslaughter.

10 Q. And what type of sentence did you receive?

11 A. Twenty-four years.

12 Q. Okay. And, now, just as His Honor was asking you a
13 couple of question about what this Court can do. You and
14 I, obviously, spoken about what this Court could do for
15 you. Do you understand that?

16 A. Yes, sir.

17 Q. All right. And you understand that the only thing
18 this Court can do is give you a new trial. Just hit the
19 reset button and go back to trial on your original charge
20 of murder. Do you understand that?

21 A. Yes, sir.

22 Q. And you and I have certainly discussed that there are
23 some risks as well as benefits associated with that.

24 Worse case scenario is you could go back to trial and for
25 whatever reason you are found guilty, you could

1 potentially get more time left than you have left to serve
2 or what you got the first go round?

3 A. Yes.

4 Q. Okay. And knowing all of that do you still wish to
5 go forwards with regards to your P.C.R?

6 A. Yes, sir.

7 Q. Okay. Now, tell us who represented you for your
8 plea?

9 A. Mr. Rick Jones.

10 Q. All right. Was he the only lawyer that you had?

11 A. I think right there when he decided that there was
12 going to be maybe a trial or what, so, no. Jamie was
13 there. The one sitting two down from him. The one on the
14 end.

15 Q. Okay. You're referencing another lawyer?

16 A. Yeah.

17 Q. All right. Let me go back. When were you first
18 arrested?

19 A. March the 17th 2013.

20 Q. All right. And your plea was in May of 2015?

21 A. Yes, sir.

22 Q. So Mr. Jones represented you for about two years?

23 A. Yes, sir.

24 Q. About how many times do you think you met with him?

25 A. Up until they decided that it was time to go to trial

1 maybe five, six times. Then that week, four times.

2 Q. Were you ever set to have a trial or tell me about
3 that?

4 A. No. That Monday before the 18th or whenever it was I
5 took my plea another lawyer had come to me, another public
6 defender. He said, "You were going to go to trial this
7 coming week, but your D.N.A. still wasn't back." And then
8 the next day Rick came and said the D.N.A. was back; that
9 we were going to trial that Monday.

10 Q. Okay. Tell me before the 24 year plea deal came
11 about were there any other offers prior to that?

12 A. It started out at 35, day for day, and my daddy,
13 whatever. I think his max was 20. And then it went from
14 that to 30 and my daddy 15. And my daddy did, and then it
15 went down to 29. It was voluntary manslaughter. And my
16 daddy, ten.

17 And the thing about with my daddy is my daddy is the
18 only one left to keep my kids. And he knew that because
19 he had me sign over temporary custody to my daddy. And
20 make sure that my kids had somewhere to go, you know.
21 They wouldn't go into foster care. I mean, he knew that
22 was the only place left for them.

23 And then it wen down to where we are to my daddy two
24 years. And I told him that I would not take any plea
25 without, you know, my daddy going home with nothing

1 because, you know, that's my kids, you know. And it was
2 said that, you know, you go to 24; that the prosecutor
3 which was Judge Burch's daughter, Kendall or whatever her
4 name is. Said that she felt like that if she would have
5 put me in prison the last time that the man would still be
6 alive. And that's as low as she would go, but this was
7 before she had said that because we were stuck at 27, I
8 believe.

9 Q. And you were still rejecting 27?

10 A. Yeah.

11 Q. Okay. Let me ask you this. Did y'all ever discuss
12 any sort of trial strategy or anything like that?

13 A. Not. It wasn't no trial strategy, period.

14 Q. You filed a few allegations in your application so
15 let's talk about those. One of those is you feel like
16 your lawyer didn't have you mentally evaluated prior to
17 the plea. Talk a little bit about that why you think your
18 lawyer should have had you evaluated.

19 A. I mean even the woman at the jailhouse, she was
20 supposed to be some kind of mental health counselor. I
21 mean she had me put on mental health medication. I mean
22 when I went to Kirkland and when I went to Perry and come
23 back they put me on mental health meds. So I should have
24 been sent for a mental health evaluation.

25 I mean especially with the severity of the crime I

1 was supposed to be mental health evaluated.

2 Q. Well, let me ask you. What sort of -- what type of
3 mental health problems were you having at that time?

4 A. Deep depression. My wife had just died three months
5 before I got locked up. I mean, I was really going
6 through a lot at that point in time. I was severely
7 depressed. Mainly, that's the main thing. I was severely
8 depressed.

9 Q. Are you still suffering from that depression today or
10 are you sort of past that?

11 A. I'm still going through it.

12 Q. Okay?

13 A. I'm still being medicated for it and I'm still --

14 Q. What type of medication are you taking?

15 A. I take Tegretol. I take one in the morning and two
16 at night. And Remeron at night.

17 Q. All right. Okay. Do you understand what you're
18 doing here today? Is it affecting you at all today?

19 A. No, sir, it is not.

20 Q. Okay. That -- during that time did you tell your
21 lawyer about some of your mental health problems?

22 A. Yeah, he knew. He knew what I was going through. He
23 actually had brought up when I was signing the paperwork
24 over for my father to have temporary custody. "I heard
25 about your wife. I'm sorry to hear about it."

1 Q. Okay. Did you ask him to make any investigations
2 into your concerns at that time?

3 A. At the time I was still out of my mind. I mean I
4 still -- it was still really affecting me.

5 Q. Did you understand what you were doing at the plea
6 that day?

7 A. Yeah, I understood. I mean it was stay with my
8 father or my kids go to foster care.

9 Q. Now, you also got an allegation that you feel like
10 your lawyer was ineffective in that you didn't have a
11 preliminary hearing?

12 A. Yes.

13 Q. Okay. If you would explain. Did you ask for a
14 preliminary hearing?

15 A. Yeah. I came up here that are day. It was for a
16 bond hearing for here, and it was preliminary for
17 Hartsville City. He said we were going to do away with
18 both, and he felt like neither one would be productive and
19 that was it. That was the last of it.

20 Q. All right. How about if you've seen, since I've been
21 representing you, have you seen a copy of your Rule Five
22 materials?

23 A. Yes, sir.

24 Q. Okay. Now, you've got an allegation that your lawyer
25 didn't disclose to you those same Rule Five materials?

1 A. Yeah.

2 Q. Have you ever reviewed any discovery with Mr. Jones?

3 A. Yeah. Actually, I got one part. I think it was 18
4 months into it, and then I got a secondary part two months
5 later. And I mean it was basically the same thing, but
6 there were some things in the new, which you had send me,
7 that wasn't in the beginning part. Wasn't in neither
8 part, but Lee County lost all my paperwork.

9 Q. Okay. What were some items, from your understanding,
10 of reviewing discovery that were not in anything Mr. Jones
11 showed you?

12 A. Like I said Lee County lost all my paperwork. That's
13 been an issue. That's been a real bad issue, and they
14 have not replaced nothing.

15 Q. All right. Let me ask you this. Obviously, you
16 entered a plea. You had to tell the Court or acknowledge
17 guilt. Why did you go in there and enter the plea that
18 day and not stop the Court and say, "I want a trial?"

19 A. Because if I would have and because he had told me
20 that they were going to sit my daddy right there beside
21 me, and if I was found guilty I would ---

22 MR. JAMES: Objection, Your Honor.

23 THE WITNESS: --- get life.

24 THE COURT: I will allow it. State of mind. It's
25 not for the truth of the matter asserted. Go ahead.

1 THE WITNESS: He said he was going to sit my daddy
2 right there beside me, and this is the God's honest truth;
3 that if they found me guilty I would get life and my
4 father would get the max for his accessory before and
5 after the fact.

6 BY MR. BOOZER:

7 Q. So you thought you were getting an automatic life
8 sentence if you were found guilty?

9 A. Yes.

10 Q. Okay. Mr. Lewis, obviously, this is your day in
11 Court. I know you've been waiting patiently for it. Is
12 there anything else as it relates to your P.C.R.
13 application that we haven't covered?

14 A. No, sir.

15 Q. Okay. Please answer any questions the State may have
16 for you.

17 THE COURT: Mr. James.

18 CROSS-EXAMINATION

19 BY MR. JAMES:

20 Q. Good morning, Mr. Lewis.

21 A. How are you doing?

22 Q. Are you of sound mind this morning?

23 A. Yes.

24 Q. And you understand everything that is happening
25 around you?

1 A. Yes, I sure do.

2 Q. Medication is assisting you with that understanding?

3 A. Yes, sir.

4 Q. Please try to speak up for the court reporter.

5 A. Yes, sir.

6 Q. Were you on these medications at the time of your
7 guilty plea?

8 A. I was on Remeron. Not the same medication.

9 Q. Different medications, but were they also helpful to
10 you at the time of your plea?

11 A. A little bit. Yes.

12 Q. And you affirmed that you understood what was
13 happening at the time of the guilty plea?

14 A. Oh, yeah.

15 Q. Okay. Who was it again that told you, reserving my
16 prior objection, but who told you that if you did not
17 plead guilty and went forward to trial and you would get a
18 life sentence and your father would get the maximum?

19 A. Mr. Rick Jones.

20 Q. Rick Jones?

21 A. My attorney, Mr. Rick Jones. Yeah.

22 MR. JAMES: No further questions for this witness,
23 Your Honor.

24 EXAMINATION BY THE COURT

25 BY THE COURT:

1 Q. All right. Mr. Lewis, let me ask you something?

2 A. Yes, sir.

3 Q. You indicate that you had a reason for entering this
4 plea, and that was to avoid prosecution of your father and
5 to have your children placed with him; is that correct?

6 A. Yes, sir.

7 Q. So you understood why you were pleading?

8 A. Yes, sir.

9 Q. What was there -- you say that you're of sound mind
10 now and you understand what we're doing. What was there
11 about your plea that you have problems with now? What was
12 there about your plea that you did not understand? What
13 was there about your plea that made you feel compelled to
14 have to do this other than what you've already told us?

15 A. Just, I mean, that it was pretty much I go ahead and
16 take this plea or my father was going to go with me.

17 Q. Your father would be tried?

18 A. Yes, sir.

19 Q. Okay. And is there anything about that process,
20 looking back, that you did not understand?

21 A. No, sir.

22 Q. Was there or since that occurred have you had any
23 mental health evaluations or I know you said you were
24 depressed, but did it rise to the level that you didn't
25 understand the process what the prosecutor, your

1 attorney's job were? What your position was? What your
2 options were? Was there anything you didn't understand?

3 A. Well, I mean if he would have actually broke down the
4 situation to where we could have went to trial I believe I
5 would have went to trial, sir.

6 Q. You think you would have?

7 A. Yes, sir, because I mean with the facts.

8 Q. Well, tell me this.

9 A. With the facts and the evidence there is no way I
10 would have been found guilty by no court of law, sir.

11 Q. Tell me this. Have you since seen your discovery
12 materials?

13 A. Yes, sir.

14 Q. Can you tell me what's been made available to you now
15 that was not available to you then?

16 A. It was actually laid out more plainly to me with some
17 of the new evidence what I had seen in the Rule Five that
18 he had sent me. That's why I say there is no court of law
19 that could have found me guilty.

20 Q. Why did you plead?

21 A. Excuse me?

22 Q. If they could not have found you guilty they could
23 not have found your father guilty?

24 A. Exactly. But I wasn't told at that time, and I
25 wasn't ---

1 Q. Told what?

2 A. That's what I'm getting at.

3 Q. What weren't you told?

4 A. Because we never actually sit down and made a plan.

5 He -- once the D.N.A. come in he said, "With this D.N.A. I
6 feel like not a good chance you will make it."

7 Q. But you didn't believe him?

8 A. No, sir. No. There is no way possible, sir. I know
9 I'm not supposed to bring this thing up, but they found
10 D.N.A. on the back of my boxers. I was in the same
11 clothes I was in before, after and everything, and the man
12 was frontal assaulted.

13 Q. Okay. All right.

14 A. I mean I've been at Lee County through all these
15 rights and everything, and a frontal assault, man gets
16 blood all over him.

17 Q. Okay. Thank you.

18 THE COURT: Anything further, Mr. Boozer?

19 MR. BOOZER: No, Your Honor.

20 THE COURT: Mr. James?

21 MR. JAMES: No, Your Honor.

22 THE COURT: You may step down. Mr. Boozer.

23 MR. BOOZER: No further witnesses.

24 THE COURT: Mr. James?

25 MR. JAMES: Your Honor, the State respectfully calls

1 Mr. Rick Jones.

2 THE COURT: Mr. Jones, please come around.

3 J. RICHARD JONES, after being duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. JAMES:

7 Q. Good morning, Mr. Jones.

8 A. Good morning, sir.

9 Q. How are you doing today?

10 A. Very well. Thank you.

11 Q. Are you an attorney licensed to practice in this
12 state?

13 A. I am.

14 Q. About how long have you been practicing law?

15 A. Let's see. Forty-two years in November.

16 Q. What portion of that experience is criminal?

17 A. I've done criminal probably a little bit since 1976.
18 Exclusively since 2009. And in between a fair amount.

19 Q. Did you represent Jamie Ray Lewis on this murder
20 charge?

21 A. I did.

22 Q. Do you recall about how many times you met with him?

23 A. I don't doubt what he said was probably correct. I
24 don't know exactly how many times. I would add that he
25 was mostly in A Pod at the Detention Center, and a lot of

1 times when one would go to A Pod with the intent to see A,
2 B and C you would end up seeing several others. And.I
3 talk I probably talked to Mr. Lewis I won't say every time
4 I went out there, but.a substantial number of times when I
5 went out there primarily to see him about the number he
6 said.

7 Q. And you filed for discovery in this case?

8 A. Yes, I did.

9 Q. And to your knowledge was the discovery that you
10 received complete?

11 A. As far as I know, yes.

12 Q. Did you review the evidence with your client?

13 A. Absolutely.

14 Q. Did he appear to understand everything that you
15 explained to him?

16 A. He did.

17 Q. Did you have any reason to question his lucidity or
18 understanding of anything that you said to him?

19 A. Not at all. Mr. Lewis was a very sad case, and I
20 don't doubt at all that he was depressed, but not to the
21 extent I did not feel that it affected his ability to
22 understand what was going on.

23 Q. What sort of discussions did you ever have with Mr.
24 Lewis regarding his severe depression?

25 A. I remember talking to him about the -- he had a work

1 related injury some time prior to him being arrested. He
2 was on some pain killers. I think that was probably the
3 main reason that he got himself into the situation he was
4 in; that he was having a time with those pain killers. To
5 answer your question specifically other than the fact that
6 he was depressed for a number of reasons the circumstance
7 that he found himself in.

8 He mentioned also his children. His children were of
9 great concern to him. And he understood that with his
10 wife having died and him being incarcerated that his
11 father and his step mother were the only people that would
12 be available to help care for the children while he was
13 incarcerated.

14 All of those factors I think weighed heavily on his
15 mind.

16 Q. Did you ever see reason to have Mr. Lewis evaluated?

17 A. I did not.

18 Q. Why not?

19 A. As I said I never had the impression that he didn't
20 understanding exactly what was going on, why he was there,
21 what I was doing, what the system that he was involved in
22 was about. There was not a question in my mind that he
23 had any incompetency either temporarily or permanently.

24 Q. You recall what the State's evidence was against your
25 client?

1 A. Yeah. There were several things that were damaging
2 to him. He was on video at the convenience store, and the
3 video pointed towards Mr. Burlington's house. And it
4 showed him leaving the store and heading that way. And
5 sometime later it showed him coming back.

6 There was blood on shirts. There was -- I don't
7 recall in the video if it was very clear about him jumping
8 into a car with somebody, but he left the store with a
9 gentleman who was available to testify that he jumped in
10 the car very upset. I think there was some bloody items,
11 the shirt or some items.

12 And there was -- the victim's mother was in the house
13 at the time of the event and was, up until the end, going
14 to testify against Mr. Lewis. Unfortunately for the State
15 she passed away just prior to the time when his case was
16 being called for trial, and she had not been deposed.

17 Q. Not withstanding the fact that she died were there
18 any characteristics of the victim's mother that may have
19 challenged the credibility or the quality of her testimony
20 against Mr. Lewis?

21 A. Yes, she was blind. She and Mr. Lewis were
22 acquainted with each other. The victim, and if I get
23 confused, it's Mr. Burlington's and either Mr. Lewis'
24 father were good friends. There was a good family
25 relationship among Mr. Lewis' family and Mr. Burlington's

1 family. Mr. Burlington's mother knew Mr. Lewis very well.
2 So I think her identification was important because she
3 could have had testified that she was present at the time
4 she son was killed and she talked to him. However, that
5 testimony would not have been available at the trial. I
6 think that's one of the reasons the plea went from or the
7 case sent from murder to a voluntary manslaughter.

8 Q. What if anything did Mr. Lewis tell you about that?

9 A. Well, to be frank, he didn't remember an awful lot
10 about it. He said he was pretty torn up on whatever pills
11 he was taking. And he, when we would talk about things,
12 he would, specifically talking to the victim's mother, he
13 had no recollection of that whatsoever.

14 His other recollection was basically that there was
15 an argument over some pills. The State had one view of
16 it. They felt that Mr. Lewis was there to break into Mr.
17 Burlington's stash of pills and steal the pills. Mr.
18 Lewis' story was that Mr. Burlington actually helped him
19 by keeping some of his pain killers so that he wouldn't
20 take them all at one time.

21 And while he was over there there was an argument
22 concerning something that just got out of hand, and the
23 next thing he knew Mr. Burlington was dead.

24 Q. Did you explain the charges to Mr. Lewis?

25 A. Absolutely.

1 Q. Did your explain the elements of each offense
2 charged?

3 A. Sure.

4 Q. Did he give you any leads or witnesses to follow up
5 on?

6 A. He did not. In my mind, and one of the reasons that
7 I visited him infrequently until the time his case was
8 actually going to be tried, is in my opinion Mr. Lewis
9 really didn't want a trial. He just wanted the best deal
10 that he could get. And the negotiations continued over
11 the course of the couple of years that he was in
12 detention. And we never could get the number as low as he
13 and I would like for it to have been.

14 It didn't come down hardly at all until Miss, elder
15 Mrs. Burlington died. And ...

16 Q. Well, let's stop there and put a pin in it since
17 we're moving on to plea negotiations. A number of offers
18 and numbers were thrown around by the Applicant on the
19 stand a moment ago. What sort of plea offer, if any,
20 existed at the start and where did you ultimately get?

21 A. The prosecutor, Ms. Burch, was familiar with
22 Mr. Lewis, and I think he indicated during his testimony
23 that she had said that if he had gotten enough time the
24 first time that he would not have been in the situation.

25 Mr. Lewis had been charged with breaking -- not

1 necessarily braking into to house, but stealing a safe
2 from Mr. Burlington. As I recall that case he,
3 Mr. Burlington, had a safe where he kept items including
4 the pills that I think is what Mr. Lewis was interested
5 in. And at some point in time when Mr. Lewis was at Mr.
6 Burlington's house the safe was picked up, thrown through
7 a bathroom window and Mr. Lewis jumped out after the safe
8 and picked up the safe and started running with it. It
9 was a smaller safe, obviously.

10 And he was charged with that and got a little bit of
11 time for that charge. So she was familiar with Mr. Lewis
12 and his dealings with Mr. Burlington prior to his death.

13 Q. What was the best -- you indicated that there was
14 never an offer as low as your client wanted. What sort of
15 offer was he looking for?

16 A. We wanted to basically get it below 20. As I recall
17 we had a lot of discussions about getting a plea below 20.
18 She was very adamant that it wasn't going down and worked
19 very hard to get it to 24.

20 Q. So you never got an offer that was below 20?

21 A. No, not at all. Ms. Burch, actually -- the fact that
22 the elder lady had died obviously concerned the State, but
23 Ms. Burch was going to try it with or without that. And
24 when, at the end of the negotiations, when I was trying to
25 get it lower, she basically said, 'not going any lower,

1 we'll just try the thing and see what happens'.

2 Q. You said 24 was as low as it ever got?

3 A. My recollection is that is as low as it ever got, and
4 had to work hard to get it there.

5 Q. Certainly. Back around, did you ever conduct any
6 sort of investigation into the facts against your client?

7 A. I didn't recall if we had our investigator during
8 this period of time. We had an investigator in the office
9 that we our employee for some period of time. I don't
10 remember if he was there or not.

11 I don't recall doing an in depth investigation based
12 on what Mr. Lewis told me, because again, my understanding
13 was Mr. Lewis really didn't want a trial. He just wanted
14 the best deal that he could possibly get.

15 Q. His inclination was never to take this for trial but
16 to fight for a better deal?

17 A. That was my understanding.

18 Q. It affect the plea conditions at all on the
19 resolution of any charges may have existed against his
20 father?

21 A. Yes. His dad, when Mr. Lewis was at the convenience
22 store following the event at Mr. Burlington's house my
23 recollection is he either flagged down or got a ride from
24 somebody at the convenience store home. When he got home
25 he and his dad basically got in the car. I think they

1 were headed to North Carolina, and when they were stopped
2 around Pageland, somewhere between Hartsville and the
3 North Carolina line, I think there was some law
4 enforcement intervention. And Mr. Lewis Sr. was charged
5 with accessory. I don't really recall if he was charged
6 with accessory before, but I know that he was charged with
7 accessory after the fact. And that weighed heavily on Mr.
8 Lewis Jr's decision to plead.

9 Q. Did you ever tell Mr. Lewis that he was guaranteed a
10 life sentence if he went to trial and was convicted?

11 A. I don't think I told him he was guaranteed. I told
12 him that in all likelihood if he was convicted that he
13 would probably get life which was generally what happened
14 when you went to trial on a murder case and were found
15 guilty. I told him the maximum penalty was life. I
16 certainly did that.

17 Q. Given your view of the facts of the case do you stand
18 by your judgment that a life sentence would have been
19 likely if he went to trial?

20 A. I do particularly with the prior history between the
21 two. I think whenever that came out, whether in
22 mitigation or after he had been found guilty, I think in
23 all likelihood the Judge would have probably given him
24 life.

25 Q. You discussed all of Mr. Lewis' rights with him

1 before he went to the guilty plea, right?

2 A. Certainly.

3 Q. Did you explain his right to remain silent? His
4 right to confront witnesses?

5 A. Absolutely.

6 Q. Did to force Mr. Lewis to plead guilty?

7 A. Not at all.

8 Q. Would you have been prepared the proceed to trial had
9 this case gone to trial?

10 A. Probably not that particular day, but had it been in
11 a trial mode, most certainly.

12 Q. Was this case already on the immediate trial roster
13 or was it still more time to prepare?

14 A. There was still some time to prepare. I think it was
15 on the term on the trial list during the term that he pled
16 guilty. I do not remember if he was first up, second up.
17 I don't recall. There wasn't much else to do as far as
18 investigation for Mr. Lewis.

19 I think, listening to him testify, I do recall that
20 we waited for D.N.A. for a long time. And when it did
21 come back it -- Mr. Burlington's blood was on his clothes.

22 Q. Did you ever articulate to Mr. Lewis any kind of
23 planned trial strategy if you did take it to trial?

24 A. Yeah, we talked about the fact that Mr. Burlington's
25 mother was not there to testify, and that she had not been

1 deposed. So that portion of the State's case would be
2 available.

3 Q. Did Mr. Lewis ask for a preliminary hearing?

4 A. You know, I don't remember if we ever talked about a
5 pre-lim. I don't know if he was indicted before the
6 preliminary was scheduled. To be honest I really don't
7 remember that part of it. I don't know if we waived it.
8 I don't -- just don't remember.

9 Q. But he was ultimately indicted?

10 A. Oh, no questions.

11 Q. By the grand jury?

12 A. Yes, sir.

13 MR. JAMES: Beg the Court's indulgence. No further
14 questions, Your Honor.

15 MR. BOOZER: Thank you, Your Honor. Very briefly.

16 CROSS-EXAMINATION

17 BY MR. BOOZER:

18 Q. Mr. Jones, how are you?

19 A. Fine, thank you, and hope you are.

20 Q. Fine, and thank you. Going back to talking about
21 your thought that if he proceeded to trial that if he
22 would be found guilty he'd likely get a life sentence.
23 What were you basing on?

24 A. Past experience.

25 Q. What past experience specifically lead you to know

1 that belief?

2 A. I've had a number of murder trials. I don't really
3 recall but one or two where the person got less than life.
4 There was one in Dillon where it was a 30 year sentence,
5 and it was one in Darlington where there was a 30 year
6 sentence.

7 I think that with those two exceptions most every
8 other trial that I've either been involved with or either
9 been in the courtroom and witnessed on a murder life was
10 usually the sentence.

11 Q. Had you tried a murder case before Judge Henderson
12 before this case?

13 A. No.

14 Q. Okay. Do you know what Judge Henderson's sentencing
15 tendencies would -- let me ask. Would that have been the
16 trial judge, Judge Henderson?

17 A. I think so.

18 Q. Okay. Do you know what his sentencing tendencies
19 were in murder cases?

20 A. He was a very new Circuit Court judge, but was an
21 experienced Family Court judge. He was -- and I dealt
22 with him in Family Court throughout the entire time that
23 he was on the bench. He was a very harsh sentencer for
24 juveniles. I do recall that.

25 Q. Okay.

1 A. So I had no reason to believe that it would be less
2 than.

3 Q. Okay. But had you never had a murder case that was
4 similar to this tried before Judge Henderson that you had
5 handled personally?

6 A. Correct.

7 Q. So you couldn't base sort of your decision they I
8 think you will get a life sentence because you hadn't
9 tried one before Judge Henderson?

10 A. Correct.

11 Q. Okay.

12 A. Correct.

13 Q. Did you advise that Mr. Lewis in fact that if he were
14 found guilty of the murder that he could be sentenced to
15 30 years?

16 A. I think I told him that the minimum was 30 and the
17 maximum was life. Yes.

18 Q. Do you think that your focus on the life sentencing
19 concerns had an affect on him to take the plea?

20 A. I don't think it did at all because after this
21 elderly lady died I think we were always talking about
22 voluntary. I think Ms. Burch got to the voluntary fairly
23 early in the negotiations, so we were never talking about
24 life.

25 Now, did I have a conversation with Mr. Lewis about

1 if we went to trial he could get life, yes. I have no
2 doubt that I did have that conversation, but we were not
3 at that stage where we were doing the negotiations. We
4 are already down to voluntary.

5 Q. But if you went to trial he would be facing murder?

6 A. Correct.

7 Q. Did you testify that you told him in your opinion
8 that you thought that if he went to trial and were found
9 guilty he would get a life sentence?

10 A. I don't remember the exact conversation, but I have
11 no doubt that I told him in all likelihood he would
12 probably get life.

13 Q. Okay. Did you feel that he would be convicted of
14 murder or think it was a situation if he were found guilty
15 of something it would be like voluntary manslaughter?

16 A. Well, we never really were in a trial mode. It was
17 always get me the best you can get. As we discussed
18 Mr. Lewis in my opinion didn't want a trial. Mr. Lewis
19 wanted the best deal that he could get, and we were trying
20 hard as -- I was trying as hard as I could work to get him
21 what he wanted. And we just couldn't get it below the 20
22 I think he kind of expected.

23 Q. Did y'all make any sort of trial preparations or
24 discuss any sort of defenses or trial strategies?

25 A. We talked concerning his options, but he again did

1 not -- I was not in a trial mode if that's what you're
2 getting at. I was pretty sure this matter was going to be
3 concluded with a plea. I did not feel we would be trying
4 this case.

5 Q. Well, not necessarily that you're in trial mode, but
6 in order to evaluate do I take my changes and go to trial
7 or do I take the plea. Don't you need to know, well, what
8 would be my defenses at trial?

9 A. Certainly.

10 Q. Did y'all have any of that discussion?

11 A. Probably briefly because we just didn't talk that
12 much about the trial. Mr. Lewis, in my opinion, didn't
13 want one, but yes. To answer your question we talked
14 about his options, about what was available.

15 As I said earlier his thoughts on his father's charge
16 were I think a significant part of his decision to do what
17 he did because of his children because he knew that his
18 father would take care of his children.

19 MR. BOOZER: Beg the Court's indulgence, Your Honor.

20 BY MR. BOOZER:

21 Q. Thank you, Mr. Jones. That's all the questions that
22 I have.

23 REDIRECT EXAMINATION

24 BY MR. JAMES:

25 Q. Mr. Jones, briefly. What defenses if any were

1 available to your client?

2 A. Well, I don't think we talked much about self-defense
3 because I don't remember Mr. Brew [sic] -- Mr. Lewis
4 talking about Mr. Burlington having a weapon. So he
5 didn't -- he didn't have a lot of options available to
6 him.

7 Q. Was his defense going to be I didn't do it? You know
8 it's kind of inconsistent with self-defense. We have all
9 found ourselves in a jam. Did you have an idea how it was
10 going to be?

11 A. He never told me that he didn't do it. So I don't
12 think it was ever a matter of I wasn't there. I was
13 someplace else. I think it was always we had a fight.

14 Q. No alibi?

15 A. No, sir. We had a fight, and the next thing I knew
16 he was dead.

17 MR. JAMES: No further questions, Your Honor.

18 THE COURT: Mr. Boozer.

19 MR. BOOZER: Nothing further.

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

21 MR. JAMES: That's all from the State, Your Honor.

22 COLLOQUY

23 THE COURT: All right. I'll hear from you. I think,
24 Mr. Boozer, you have the burden so I will allow you to
25 talk to me first.

1 SPEAKER 2: Thank you, Your Honor. If it pleases the
2 Court. Judge, I focused on I guess one aspect of the
3 testimony that's here today; that is that his testimony
4 was involuntary because he thought that if he went to
5 trial he would get a life sentence. Obviously, my client
6 believed that's one reason that he chose to plead guilty.
7 He thought he would get a life sentence.

8 THE COURT: But didn't he just tell me his main
9 concern was to make sure that his father wasn't
10 prosecuted?

11 MR. BOOZER: He ---

12 THE COURT: And that his children could go live with
13 them?

14 MR. BOOZER: He absolutely did, Judge.

15 THE COURT: All right.

16 MR. BOOZER: And I think being an advocate for my
17 client my argument would be that if you would add into
18 that the issue of was going to get a life sentence if he
19 went to trial.

20 THE COURT: And that certainly was a possibility.

21 MR. BOOZER: That certainly was a possibility.

22 THE COURT: Okay.

23 MR. BOOZER: I guess my argument, Your Honor, would
24 be as Mr. Jones testified he based his advise to Mr. Lewis
25 that e would get a life sentence if he went to trial and

1 were convicted based on his past experience with murder
2 cases.

3 THE COURT: Didn't he also say that when the primary
4 witness passed away the emphasis shifted and his opinion
5 changed that it -- no witness, the victim can't testify.
6 We're looking at a voluntary situation?

7 MR. BOOZER: I don't think he testified to that.
8 Your for purposes of a plea, yes, it did turn to a
9 voluntary situation.

10 THE COURT: Right.

11 MR. BOOZER: But then for purposes of trial I think
12 his testimony would be they would be moving forward on the
13 murder charge.

14 THE COURT: All right.

15 MR. BOOZER: And he said if he went to trial on the
16 murder charge and was found guilty that he would get a
17 life sentence. Going back, Mr. Jones' testimony is that
18 he was basing that on his experience trying murder cases
19 in the circuit. He had seen one or two that were 30 year
20 sentences. The rest were life sentences.

21 He admitted that he had not tried a case before Judge
22 Henderson who was new on the bench at that time. So he
23 certainly wasn't familiar with what his -- and His Honor
24 would have been the one who had obviously done the
25 sentencing. He wasn't familiar with how he would have

1 sentenced in that situation.

2 So I don't know that there really was an experience
3 particular to Judge Henderson that he could rely upon to
4 give that advise to my client. So we would argue, Judge,
5 that's one of the reasons that he entered the plea as he
6 thought, well, if I go in hear and do this I'll get
7 convicted of murder and I will get a life sentence, and
8 that's sort of the only option. I do understand what you
9 ---

10 THE COURT: My understanding of Mr. Jones' testimony
11 was there came a point where he, even thought the State
12 would have gone forward on murder, we're looking at you're
13 probably going to get a manslaughter on you. Even if we
14 went to trial that's the most likely. I mean that is what
15 I gathered from it. Maybe I was wrong.

16 MR. BOOZER: That's not what I gathered from it.

17 THE COURT: Okay.

18 MR. BOOZER: I gathered it was a -- if he got
19 convicted of murder it would be a life sentence.

20 THE COURT: Your position is that your client was
21 still under the impression that if he went to trial and
22 got convicted he would get life?

23 MR. BOOZER: Absolutely.

24 THE COURT: Okay. All right, and I can understand
25 that. Mr. James.

1 MR. JAMES: Your Honor, the testimony shows that from
2 start to finish as indicated by counsel that Mr. Lewis'
3 plan was to get the best deal possible. He maintained
4 that through the representation to the end. Due to the
5 unfortunate for the rest of us, unfortunate for Mr. Lewis,
6 the State's key witness died before trial. So the best
7 possible deal came along, and he took it. And he
8 indicated clearly and unequivocally that he took it
9 knowingly, intelligently and understandingly.

10 Mr. Jones indicated his opinion that it was likely
11 that he would get a life sentence if he went to trial.
12 And given his considerable experience in the practice of
13 law, generally, his practice of criminal law within this
14 circuit, and having dealt with Judge Henderson, not with
15 murder trials, but in other cases before, he was certainly
16 more than competent to express his opinion about the
17 likelihood. But he did indicate that the minimum was 30
18 and the maximum was life and that any of those options was
19 very possible.

20 What is undeniable is that Mr. Lewis did receive
21 effective assistance of counsel. He did have time to
22 review his discovery. He understood that everything that
23 was happening was for his own motivation. Wisely chose to
24 admit his guilt rather than proceed to trial. For all
25 these reasons I do not believe he has met either prong of

1 Strickland, and ask this Court to deny relief.

2 THE COURT: All right. I am -- of course, we all
3 understand the standard set forth in Strickland v.
4 Washington, and Cherry v. State. And we have to take that
5 in the context of Hill v. Lockhart when it is applied to a
6 guilty plea situation. The issue here is whether or not
7 the plea was made freely and voluntarily.

8 One of the things raised by the Petitioner is whether
9 or not he should have been given a mental evaluation. He
10 tells me that even today he suffers from the same
11 symptoms. Whether a person is mentally ill or not
12 certainly is not the standard of whether a person is
13 competent versus maybe mentally ill, but still fully
14 competent.

15 The testimony of Mr. Lewis convinces me without a
16 doubt that he was competent because his decision was made
17 on a clearly articulated plan or reason. He tells me that
18 he negotiated in the plea process. He's clear as to what
19 was offered and when. He tells us that all along it was
20 based on, well, how many is my father going to get. And
21 it progressively got less and less down to two years.

22 And then finally the father was not going to be
23 prosecuted, and that's when he entered the plea. I think
24 that indicates that he certainly was competent, certainly
25 participated in his plea.

1 I have -- I asked him directly, and what information,
2 what discovery material were you -- that you have now that
3 you didn't have then that would have made a difference.
4 You know, Hill v. Lockhart established the standard, and
5 that is whether there is a reasonable probably but for
6 counsel's errors he would not have pled guilty and
7 insisted on going to trial.

8 Mr. Jones I believe correctly told him, you know,
9 that the range is 30. If you're convicted on the murder
10 it is 30 to life. And I believe this judge under these
11 circumstances will give you life. And he articulated his
12 reason for doing so. There was a relationship between the
13 parties. It was almost essentially a home invasion or may
14 have been a home invasion. He had stolen a safe earlier.

15 There is certainly some aggravating circumstances
16 there that I think would have certainly supported his
17 opinion. And, again, he's just giving his opinion as to
18 what a possible sentence would be on a conviction.

19 But most importantly, Mr. Jones tells me that once
20 the witness died my opinion changed. My opinion was that
21 they would get a voluntary or that was what I understood
22 him to say. Perhaps, I misunderstood him, but that I what
23 I understood him to say. And it would be down in the 30
24 range.

25 And I think that's reflected by the fact that the

1 prosecutor then began to lower in stages her offer. I
2 believe that the, and I find that the Petitioner has not
3 met his burden, and I would deny relief in this matter.
4 Mr. James, if you would submit an order to me. Thank you.

5 MR. JAMES: Thank you, Your Honor. I respectfully
6 request 30 days.

7 THE COURT: Certainly. All right.

8 END OF TRANSCRIPT OF RECORD

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTH JUDICIAL CIRCUIT
 COUNTY OF DARLINGTON)
)
 Jamie Ray Lewis,) Case No.: 2016-CP-16-00065
 S.C.D.C. No. 299085,)
)
 Applicant,)
) **ORDER OF DISMISSAL**
 v.)
)
 State of South Carolina,)
)
 Respondent.)

This matter comes before the Court by way of an application for post-conviction relief filed by Jamie Ray Lewis ("Applicant") on January 29, 2016. Respondent made its return on or about June 14, 2017. The Court convened an evidentiary hearing into the matter on Monday, July 23, 2018, at the Darlington County Courthouse in Darlington, South Carolina. Applicant was present at the hearing and represented by Lance S. Boozer, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

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

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. Applicant was indicted at the August 2013 term of the Darlington County Grand Jury for murder (2016-CP-16-00065). J. Richard

FILED
 2018 SEP - 7 AM 11:07
 SCOTT B. SUGGS
 CLERK OF COURT/R.O.D.
 DARLINGTON COUNTY, S.C.

Jones, Esq. represented Applicant, and Kendall Burch, Esq., of the Fourth Circuit Solicitor's Office, prosecuted the case. On May 18, 2015, Applicant pled guilty to the lesser-included charge of voluntary manslaughter. The Honorable Roger E. Henderson sentenced Applicant to imprisonment for a term of 24 years. Applicant did not appeal his plea or sentence.

Present Application

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

1. Ineffective Assistance of Counsel, in that:
 - a. "Trial Counsel failed to provide the Applicant effective assistance of counsel in that he failed not having the Applicant mentally evaluated prior to Applicant plea proceeding. Which violated Applicant statutes [S.C. Code Ann. §§ 44-17-530, 44-23-410, 44-23-420, and 44-23-430.] Which Applicant was under Mental Health while in Darlington County Jail."
 - b. "Applicant received ineffective assist from counsel during his proceeding that Applicant did not have a preliminary which violates [S.C. Code Ann. §§ 17-23-130, 17-23-160, and 17-23-162 as well as Rule 2, S.C.Crim.P.]"
 - c. "Applicant received ineffective assist from counsel during and prior of his trial proceeding. Which counsel did not disclose motion of Discovery which violated [Rule 5, S.C.Crim.P.]"
2. Involuntary Guilty Plea, in that:
 - a. "Counsel failed to provide client effective assistance of counsel prior and during his guilty plea proceeding. The Applicant's plea of guilt were coerced by Counsel's failure to provide adequate representation."

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

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

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

prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

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

1. Failure to Subject Applicant to Mental Evaluation

Applicant alleges Counsel was ineffective in failing to have him mentally evaluated prior to the plea proceeding. A defense counsel may reasonably rely upon his or her own perceptions and judgment in determining whether his or her client is competent prior to and in the course of proceedings. Jeter v. State, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992); see also Garren v. State, 423 S.C. 1, 13, 813 S.E.2d 704, 710 (2018) (finding no deficiency where plea counsel testified that, based on his interactions with his client, an evaluation was unnecessary, and that he believed his client to be competent at the time of the plea). “When establishing Strickland prejudice in the context of plea counsel’s failure to request a mental competency evaluation, the

applicant need only show a reasonable probability that he was incompetent at the time of the plea.” Garren, 423 S.C. at 12, 813 S.E.2d at 710. As is the case with any allegation of failure to investigate, an applicant must present evidence to show what plea counsel would have discovered and how it would have resulted in a different outcome; mere speculation as to an applicant’s competency is not sufficient to support a grant of relief. Id., 423 S.C. at 13-14, 813 S.E.2d at 711; Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995).

Applicant pled to killing Edward Brewington by stabbing him some 16 times in an effort to rob him of pills. (Tr. 7-8; see also Indictment 2013-GS-16-01642). At the plea proceeding, the Court inquired whether Applicant was under the influence of any alcohol or drugs, which Applicant denied. (Tr. 4, ll. 18-20). Applicant further denied that there was anything interfering with his ability to think, reason, and understand. (Tr. 4, ll. 21-24).

At the evidentiary hearing, Applicant testified he was placed on medication while in jail during the pendency of his charges. Applicant claimed to suffer from severe depression and that he was still struggling with it. Applicant listed various medications prescribed for the treatment of his condition. Applicant indicated he told Counsel of his problems, but didn’t ask for any investigation of the subject. Applicant affirmed he understood what he was doing at the time of his guilty plea.

Counsel testified Applicant was depressed and was concerned about what would happen to his children as a result of incarceration. Counsel confirmed he did not seek any mental evaluation of Applicant because he had no reason to do so. Counsel testified there was no question in his mind that Applicant understood everything occurring in the course of his representation. Counsel noted Applicant was unable to remember the killing itself due to being

heavily medicated at the time. Counsel additionally noted Applicant didn't want a trial, but rather asked for the best deal that he could get.

No mental health records, evaluation reports, or expert testimony were admitted at the evidentiary hearing. The SCDC records before the Court, dated Wednesday, March 23, 2016, indicate treatment for drug addiction during prior terms of incarceration, but no such special admittance since beginning his present term of incarceration in SCDC on May 22, 2015. Similarly, the SCDC records indicate Applicant was disciplined for "mutilation" in 2004, but no such incidents during his present term of incarceration. Applicant appears to have worked as a recreation aide and a food service aide during his present term of incarceration. Applicant's mental classification in SCDC indicates no current mental health treatment.

The Court finds no deficiency on the part of Counsel, nor prejudice therefrom. There is no evidence to demonstrate a reasonable probability that Applicant would have been found incompetent to enter a guilty plea had a competency evaluation been conducted. To the contrary, Applicant himself testified, both at the plea and at the evidentiary hearing, that he understood the proceedings and what he was doing. Further, Counsel properly relied upon his own perceptions and judgment of Applicant's competency in the course of his representation of Applicant and found no reason to question his competency. Further, as no competency evaluation was submitted to the Court, it could only speculate as to what, if anything, any such report would reveal. For all of these reasons, Applicant has failed to meet his burden as to either prong of Strickland and his request for relief by way of this allegation is **DENIED**.

2. Failure to Seek Preliminary Hearing

Applicant alleged Counsel was ineffective in failing to seek a preliminary hearing. "In South Carolina, the Preliminary Hearing serves the purpose of determining whether the State can

show probable cause[.]” State v. White, 243 S.C. 238, 242, 133 S.E.2d 320, 321 (1963). No preliminary hearing shall be held “if the defendant is indicted by a grand jury or waives indictment before the preliminary hearing is held.” Rule 2, S.C.Crim.P.

No meaningful testimony was provided at the evidentiary hearing as to this allegation. Applicant was properly indicted by the Darlington County Grand Jury upon a finding of probable cause. Counsel testified Applicant only wished for the best deal possible and did not wish to go to trial. This Court can discern from the record no evidence of either deficiency on the part of Counsel, nor any resulting prejudice to Applicant. Accordingly, Applicant has failed to meet his burden under Strickland, and the request for relief by way of this allegation is **DENIED**.

3. Failure to Disclose Discovery

Applicant alleges Counsel was ineffective in failing to disclose and discuss with him the contents of his discovery. During the plea proceeding, the Court informed Applicant that by pleading guilty he would be relinquishing certain rights, including his right to discovery, which Applicant affirmed he understood. (Tr. 6, ll. 6-14). Applicant also affirmed he’d had enough time to talk to Counsel, that Counsel had answered all of his questions to his satisfaction, that he was fully satisfied with Counsel, and that Counsel had done everything he expected of him. (Tr. 4; pp. 6-7).

At the evidentiary hearing, Applicant recalled meeting with Counsel five or six times, then an additional four times as trial approached. Applicant testified he received discovery in two parts and reviewed the materials with Counsel. Applicant claimed Lee Correctional Institute confiscated and lost his paperwork. Applicant claimed Counsel had no strategy, and never actually sat down and planned a trial strategy with him, but rather told Applicant he had no chance upon receiving and reviewing DNA evidence.

Counsel confirmed Applicant's recollection of how many times they met. Counsel testified he filed and received complete discovery and reviewed the materials he received with Applicant. Counsel characterized the matter as a sad case and noted several damaging pieces of evidence: video recording from a convenience store camera pointed in the direction of the victim's house; Applicant's bloody clothing and eyewitness testimony that Applicant was wearing bloody clothing shortly after the killing; and the testimony of the victim's blind mother, to whom Applicant spoke after the killing, and who was familiar with Applicant by way of a previously good family relationship. The State's theory of the case was that Applicant attacked the victim in order to steal his medication. Counsel recalled Applicant's explanation was that the victim was holding Applicant's medication by agreement in order to prevent Applicant from abusing necessary prescriptions. Counsel noted Applicant only ever wanted him to get the best plea deal possible and expressed no interest in trial. Specifically, Applicant wanted a deal for less than 20 years. However, Counsel recalled, the prosecutor was familiar with Applicant due to prior charges that Applicant stole a safe from the victim, and was unwilling to go so low. The best deal ever provided was for 24 years, which came only after the victim's mother, a key witness, unexpectedly died.

This Court finds no deficiency on the part of counsel, nor prejudice therefrom. There is no evidence before this Court to show Counsel either failed to obtain discovery or discuss it with Applicant. Both Applicant and Counsel indicated discovery was received and reviewed. There is no indication of what, if anything, could have been further discussed between Applicant and Counsel and how any such discussion could have resulted in a different outcome. Counsel demonstrated a thoroughly competent grasp of the underlying facts of the case and the evidence against Applicant as derived from the discovery materials. The Court accepts as credible

Counsel's testimony that Applicant never wished to go to trial, but only directed him to negotiate the most favorable possible plea deal. For all these reasons, Applicant has failed to meet his burden under either prong of Strickland, and his request for relief by way of this allegation is accordingly DENIED.

B. Involuntary Guilty Plea – Threat of Life Sentence

Applicant claims his plea was not entered knowingly or voluntarily because he was coerced by Counsel's advice that Applicant would receive a life sentence at trial and that his father, who was also charged in the crime, would receive the maximum under the law. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)).

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an

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

During the plea proceeding, the Court inquired if Applicant was promised anything other than the negotiated terms; Applicant denied any other promises. (Tr. 4, ll. 6-11). Applicant denied being threatened by anyone in order to plead guilty. (Tr. 4, ll. 12-14). Applicant affirmed he was pleading freely and voluntarily. (Tr. 4, ll. 15-17).

At the evidentiary hearing, Applicant testified Counsel told him he would get a life sentence if convicted at trial and that his father, also charged for assisting him after the killing, would get the maximum under the law. As previously indicated, Applicant affirmed both at the plea proceeding and during the evidentiary hearing that he understood what was occurring during the plea proceeding.

Counsel testified he'd been engaged in the practice of criminal law since 1976. As indicated in prior sections, Counsel articulated the facts and evidence of the case as exceptionally brutal and damning—Applicant could not recall what occurred due to severe intoxication, but the evidence showed he stabbed the victim 16 times in a dispute over pills, resulting in the victim's death. Counsel denied guaranteeing Applicant would receive a life sentence if he went to trial, but did confirm that he warned it was likely. Counsel reaffirmed his analysis based on his prior experience in defending murder cases, and noted the prior difficulties between Applicant and the victim. Counsel admitted he had not tried a murder before the Honorable Roger E. Henderson,

but that his understanding was that Judge Henderson had tended to impose harsh sentences in family court matters prior to taking the circuit court bench. Counsel opined the threat of a life sentence was not the primary motivator behind Applicant's decision to plead, but rather that he was enticed by the opportunity to plead to voluntary manslaughter and take the best offer extended.

The Court finds Applicant knowingly, intelligently, and voluntarily entered his plea. Applicant was fully aware of the charges against him, his sentencing exposure, and the rights he would be giving up. The Court finds Applicant participated in his own defense, and in directing Counsel to plea negotiations. The Court finds Counsel did not guarantee a life sentence if Applicant went to trial, but rather correctly counseled Applicant on his sentencing exposure and on the very real and likely possibility that he would receive a life sentence if convicted for a particularly heinous killing. Applicant has failed to meet his burden of showing some ineffectiveness of counsel resulting in an involuntary plea, has failed to meet either prong of Strickland, and accordingly his request for relief by way of this allegation is **DENIED**.

[Conclusion and signature on following page]

III. CONCLUSION

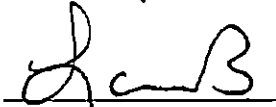
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 28 day of Aug


 LARRY B. HYMAN, JR.
 Presiding Judge
 Fourth Judicial Circuit

2018 SEP -7 AM 11:07
 CLERK OF COURT/ROJ
 DARLINGTON COUNTY, SC

FILED

Cowley, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DARLINGTON)

INDICTMENT FOR

Murder / Murder

§16-03-0010; 16-03-0020

At a Court of General Sessions, convened on August 22, 2013, the Grand Jurors of Darlington County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Jamie Ray Lewis did in Darlington County, on or about March 17, 2013, willfully, feloniously, and intentionally kill the victim, Edward Brewington, with malice aforethought, either express or implied, by means of stabbing victim in the upper torso area multiple times, and the victim did die as a proximate result thereof on or about March 17, 2013 in Darlington County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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



WILLIAM B. ROGERS, JR.
 SOLICITOR

WITNESSES

Chad Mcinville

Darlington County Sheriff

Law Enforcement Case #: 201303-0417

[Handwritten Signature]

335

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
2013A1610100311

ARRESTED ON: 2013-03-18

ACTION OF GRAND JURY

[Stamp: TRUE SRI]

Grand Jury Foreperson

[Handwritten Signature]

Date

AUG 22 2013

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2013-GS-16-1642

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
August 2013

THE STATE

vs.

Jamie Ray Lewis

INDICTMENT FOR

Murder / Murder

§16-03-0010; 16-03-0020

CDR Code: 0116

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DARLINGTON) INDICTMENT FOR
) Weapons / Poss. weapon during violent crime
) §16-23-0490

At a Court of General Sessions, convened on August 22, 2013, the Grand Jurors of Darlington County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION
 OF A VIOLENT CRIME

CDR: 0549 16-23-0490

That Jamie Ray Lewis did in Darlington County, on or about March 17, 2013, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, to wit: Murder, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

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


 WILLIAM B. ROGERS, JR.
 SOLICITOR

WITNESSES

Chad Mcinvile

Darlington County Sheriff

Law Enforcement Case #: 201303-0417

335

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
2013A1610100332

ARRESTED ON: 2013-03-22

ACTION OF GRAND JURY

Indictment

Grand Jury Foreperson

S. Bullock

Date

AUG 22 2013

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2013-GS-16-1643

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
August 2013

THE STATE

vs.

Jamie Ray Lewis

INDICTMENT FOR

Weapons / Poss. weapon during violent crime

§16-23-0490

CDR Code: 0549

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON) Robbery / Common law robbery, strong arm robbery

§16-11-0325

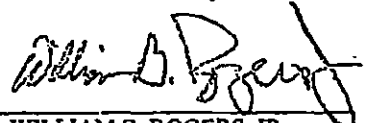
At a Court of General Sessions, convened on August 22, 2013, the Grand Jurors of Darlington County present upon their oath:

ROBBERY/STRONG ARM ROBBERY

CDR: 0137 C/L, 16-11-0325

That Jamie Ray Lewis did in Darlington County on or about March 17, 2013, take personal property from or in the immediate presence of Edward Brewington with the intent to deprive him of possession through the use of force, threats of force, or intimidation, and did carry away the property taken, to wit: did victim's medicine, in violation of the Common Law crime of Strong Arm Robbery.

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



WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

Chad Mcinville

Darlington County Sheriff

Law Enforcement Case #: 201303-0417

[Handwritten Signature]

335

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
2013A1610100333

ARRESTED ON: 2013-03-22

ACTION OF GRAND JURY

[Handwritten Signature]

Grand Jury Foreperson

[Handwritten Signature]

Date

AUG 22 2013

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2013-GS-16-1644

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
August 2013

THE STATE

vs.

Jamie Ray Lewis

INDICTMENT FOR

Robbery / Common law robbery, strong arm robbery

§16-11-0325

CDR Code: 0137

William B. Rogers, Jr., Solicitor