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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County

Honorable Thomas A. Russo, Circuit Court Judge

JAMAAD DREQWAN THOMAS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000196

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

LINDSEY MCCALLISTER
Assistant Attorney General
Attorney General Office
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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State of South Carolina,
Plaintiff,
-vs-
Jamaad Dregwan Thomas,
Defendant.

April 11, 2014
Florence, South Carolina

B E F O R E:

The Honorable D. Craig Brown, Judge

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

Ed Clements, Esquire
Attorney for the Plaintiff

Joshua Bailey, Esquire
Attorney for the Defendant

Krystal J. Smith
Court Reporter

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

1 APRIL 11, 2014

2 (WHEREAS this matter was scheduled for a term of General
3 Sessions, the defendant appeared along with his counsel
4 of record. The hearing began at 12:03 p.m.)

5 MR. CLEMENTS: Jamaad Dregwan Thomas.

6 THE COURT: Yes, sir.

7 MR. CLEMENTS: May it please the Court, Your Honor. This
8 is Indictment Number 2012-GS-21-881, State of South Carolina
9 versus Jamaad Dregwan Thomas. He's here with his attorney,
10 Mr. Josh Bailey.

11 This is an indictment, Your Honor, for murder. Mr.
12 Thomas is pleading guilty to the lesser included offense of
13 voluntary manslaughter under North Carolina versus Alford.

14 Your Honor, I have members of Mr. Jessie Raheem Brower's
15 family in the courtroom, who is the victim in the case, and
16 I'm going to ask them to raise their hands when I call their
17 name. And at the appropriate time, Your Honor, if they wish
18 to address the Court, I would ask that you hear from them.

19 The mother of Jessie Brower is Ms. Rochelle Johnson.
20 She's there in the burgundy shirt, Your Honor, with her hand
21 raised. Mr. Gary W. Martin is sittted -- seated beside her.
22 He is the uncle of Jessie Brower. And Ms. -- I can't --

23 MS. TREVA JOHNSON: It's Treva. Treva.

24 MR. CLEMENTS: Treva Johnson is the aunt of Jessie
25 Brower, and she's there with her hand raised in the black

1 shirt, Your Honor. I have also Investigator Terrance
2 Carroway. Well, now, he's Sergeant Terrance Carraway --

3 OFFICER CARRAWAY: Yes, sir.

4 MR. CLEMENTS: -- with patrol, but he was the
5 investigator on this case, Your Honor, with the Florence City
6 Police.

7 THE COURT: And it was Rochelle Thompson? Is that right?

8 MR. CLEMENTS: Johnson.

9 THE COURT: Johnson. I'm sorry. All right. Anything
10 else from the State at this time?

11 MR. CLEMENTS: Your Honor, I'm ready to give you the
12 facts when you wish to hear them, but first I'll give you Mr.
13 Thomas' record. Your Honor, he --

14 THE COURT: Well, I -- I don't want to hear that right
15 now. I'm going to ask him some questions and then I'll come
16 back to you and --

17 MR. CLEMENTS: Yes, sir, Your Honor.

18 THE COURT: -- get the facts along with his record.
19 Okay?

20 MR. CLEMENTS: Thank you, Your Honor.

21 THE COURT: Sir, if you'll raise your right hand?

22 (WHEREUPON, the defendant complies.)

23 THE COURT: Do you swear to tell the truth, the whole
24 truth, and nothing but the truth, so help you God?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. You are Jamaad Dregwan Thomas?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You can put your hand down. Have you ever
4 been treated for alcohol abuse, drug abuse or mental illness?

5 THE DEFENDANT: No, sir.

6 THE COURT: Within the last 24 hours, have you taken any
7 medication, drugs or alcohol?

8 THE DEFENDANT: No, sir.

9 THE COURT: Are you aware of any physical, emotional or
10 nervous problem that would prevent you or keep you from
11 understanding what's going on here today?

12 THE DEFENDANT: No, sir.

13 THE COURT: The State indicates that you are pleading
14 guilty to voluntary manslaughter; is that correct?

15 THE DEFENDANT: Yes, sir.

16 MR. BAILEY: Your Honor, that will be under North
17 Carolina versus Alford.

18 THE COURT: I was getting ready to --

19 MR. BAILEY: Okay. I apologize.

20 THE COURT: I appreciate it, but -- the State has also
21 indicated that this plea is being entered into pursuant to
22 North Carolina v. Alford; is that right, Mr. Thomas?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, you understand that while your plea is
25 being entered into pursuant to North Carolina v. Alford --

1 THE DEFENDANT: Yes, sir.

2 THE COURT: -- and while you're not admitting guilt to
3 this offense, you understand that the Court still looks at it
4 as a guilty plea? Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you understand that it's still going to
7 be on your record as a guilty plea? Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Understanding that, do you still
10 want to go forward and plead guilty pursuant to Alford to this
11 charge?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Now, you understand that this particular
14 offense that you're pleading to today carries a penalty of up
15 to 30 years? Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And it appears on this plea sheet or sentence
18 sheet that this plea is without recommendation or negotiation;
19 is that right, Mr. Clements?

20 MR. CLEMENTS: That's correct, Your Honor.

21 THE COURT: Is that right, Mr. Bailey?

22 MR. BAILEY: That is correct, Your Honor.

23 THE COURT: Is that your understanding, Mr. Thomas?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Understanding that I could give

1 you up to 30 years today, do you still want to plead to this
2 charge pursuant to Alford?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Furthermore, do you understand
5 that this particular offense is considered under South
6 Carolina law to be a violent offense? Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: It is also considered to be a most serious
9 offense. Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Mr. Bailey, have you explained to him the
12 consequences of pleading to a violent offense, as well as a
13 most serious offense?

14 MR. BAILEY: I have, Your Honor.

15 THE COURT: Is that right, Mr. Thomas?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Understanding that this
18 particular offense that you're pleading to today is a violent
19 offense, as well as a most serious offense, and the
20 consequences of pleading to such, you still want to plead
21 guilty to this offense?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You understand -- and I told you the maximum
24 penalty that this particular offense carries, but do you also
25 understand that it is a no-parole offense? Do you understand

1 that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: In other words, whatever sentence that this
4 Court imposes, you can pretty much count on doing day for day.
5 Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And you still want to plead guilty to this
8 charge?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. Understanding the potential
11 penalty to this offense, as well as the consequences of
12 pleading to a violent, most serious, no-parole offense, is it
13 your desire to still proceed here today and plead guilty to
14 this offense pursuant to North Carolina v. Alford?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Now, when you plead guilty, you
17 understand that you give up certain important constitutional
18 rights? You understand that you have a right to a jury trial.
19 At a jury trial, I would tell the jury that you are presumed
20 innocent, that you are presumed not guilty. The State would
21 bear the burden of proving you guilty beyond a reasonable
22 doubt.

23 You would have the right to question any witnesses
24 against you. You would have the right to remain silent if you
25 went to trial and, if you did go to trial and did remain

1 silent, I would instruct the jury that they could not -- could
2 not hold that against you.

3 If you went to trial, you would have a right to present
4 any defense you might have to this charge. If you made any
5 incriminating statements, you would have a right to challenge
6 the admissibility of those statements. Do you understand
7 these rights?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand that when you plead guilty,
10 you give up those rights?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Understanding your rights and
13 understanding that when you plead guilty you give them up, how
14 do you plead to this charge here today? Guilty pursuant to
15 Alford or not guilty?

16 THE DEFENDANT: Guilty.

17 THE COURT: All right. You're represented by Mr. Bailey.
18 Are you satisfied with him?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you talked with him enough?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you need any more time to talk to him?

23 THE DEFENDANT: No, sir.

24 THE COURT: Have you understood your talks with him?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Has he done everything that you believe he
2 could have done or should have done for you?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Has he done anything that you think he
5 shouldn't have done?

6 THE DEFENDANT: No, sir.

7 THE COURT: Do you have any complaints about him
8 whatsoever?

9 THE DEFENDANT: No, sir.

10 THE COURT: All right. Has anybody promised you anything
11 or held out any hope of reward to get you to plead to this
12 charge today?

13 THE DEFENDANT: No, sir.

14 THE COURT: Has anybody used any threats, force, pressure
15 or intimidation to get you to plead to this charge today?

16 THE DEFENDANT: No, sir.

17 THE COURT: Has anybody mistreated you in any way,
18 whether it be law enforcement or Solicitor's Office?

19 THE DEFENDANT: No, sir.

20 THE COURT: Have you had enough time to make up your mind
21 as to whether or not you want to plead or go to trial on this
22 charge?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And what do you wish to do?

25 THE DEFENDANT: Plead.

1 THE COURT: Are you doing so of your own free will?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Have you understood my questions?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you have any questions that you want to
6 ask me?

7 THE DEFENDANT: No, sir.

8 THE COURT: All right. Mr. Clements?

9 MR. CLEMENTS: Thank you, Your Honor, if it please the
10 Court. This occurred, Your Honor, in the northwest community
11 of Florence, city of Florence, on September the 18th, 2011. At
12 the time of the offense, Mr. Thomas was 18 years old. I
13 believe he's 21 years old now.

14 As far as his prior criminal history, Your Honor, he was
15 charged with armed robbery and assault and battery with intent
16 to kill back in February 2009 involving a cab driver with some
17 co-defendants. He ended up being convicted or pleading, Your
18 Honor, I believe to accessory after the fact on that case.

19 THE COURT: And that was in '09?

20 OFFICER CARRAWAY: That's correct.

21 MR. CLEMENTS: That was '09, Your Honor.

22 THE COURT: And he pled guilty when?

23 MR. CLEMENTS: He pled guilty --

24 THE COURT: Did he plead in front of me?

25 MR. CLEMENTS: I do not remember, Your Honor.

1 OFFICER CARRAWAY: I think it was. That was my case as
2 well. I'm sorry.

3 MR. CLEMENTS: Mr. Carraway has got a better memory than
4 I do and he believes -- and I cannot remember, Your Honor. I
5 don't know that I handled that particular case.

6 THE COURT: Anyway, go ahead, Mr. Clements. I'm sorry.

7 MR. CLEMENTS: All right. Your Honor, we believe this
8 case to be gang-related. Your Honor, I'm going to explain the
9 facts of the case and explain to you why we're offering a plea
10 to voluntary manslaughter.

11 There is a co-defendant in this case charged with
12 accessory named Mildenzel Davis, Your Honor. He is currently
13 incarcerated and has been incarcerated since this time. He
14 was a witness, along with more than 55 other witnesses that we
15 had subpoenaed for this case, Your Honor.

16 The facts of this case are that Mr. Jessie Brower was on
17 a porch, Your Honor, in northwest Florence, [REDACTED] Ingram Street,
18 and some people were talking to him. They went in the house.
19 They were watching a football game, and I believe it was
20 Sunday Night Football.

21 OFFICER CARRAWAY: Philadelphia and Dallas.

22 MR. CLEMENTS: And it was Philadelphia and Dallas were
23 playing. And they heard gunshots and they ran out on the
24 porch and they found Mr. Brower there lying there with a
25 gunshot injury to the head, and he died as a result thereof.

1 We had many witnesses, Your Honor, to testify about the
2 facts, including changing of -- of hoodies from a black hoodie
3 to a red hoodie, and then giving the black hoodie to -- to
4 another person that came up. They went on bicycles. They got
5 there and Mr. Thomas shot the victim, rode off on a bicycle.
6 Saw several individuals that he spoke to and told them what he
7 had done, that he had killed Little Jessie -- it's what Jessie
8 went by -- and they were saying something about off the
9 gripper. It's over. It's done. And we had several witnesses
10 as to that. Also witnesses that were incarcerated with him,
11 one even being a cousin, that he had admitted to. And I
12 wouldn't say admitted, maybe bragged about killing Little
13 Jessie.

14 Mildenzel Davis was a co-defendant. He was going to
15 testify against Mr. Thomas. He's been in several fights where
16 people have come and tried to fight him at the -- we believe
17 to be the influence of Ian Casely to fight Mr. Davis in the
18 jail, and they were putting pressure on him early on to --
19 what he called accept the body or claim the body in this -- in
20 this case.

21 Mr. Davis we know didn't have anything to do with the
22 shooting. He came up on the scene later, and we believe he
23 picked up shell casings. He had on an EMS shirt that he had
24 bought from a thrift store, and he -- the police were trying
25 to keep him out from behind the tape and he kept coming up on

1 there.

2 And he -- what -- what complicated this and the reason
3 we're offering him voluntary manslaughter is that he wrote
4 letters to Investigator Carraway and said, all right, well,
5 I'll admit to doing it. Just go ahead and give me the death
6 penalty. And then he said something to him when they
7 interviewed him. He said, well, let me tell you how I killed
8 this guy. And then he said he didn't, which we know he didn't
9 from several other witnesses. But it would kind of muddy the
10 water a little bit in the trial. We felt confident we would
11 win anyway, but a bird in the hand is better than two in the
12 bush.

13 But we had many witnesses against Mr. Thomas on where he
14 was in the vicinity, the route he took to get there, and then
15 people saw him there and then the route he took back. People
16 seen him on the way back and what he said about what happened
17 as well. And as I said, there were about 55-plus witnesses to
18 be in this case.

19 Your Honor, the State would ask that you impose a 30-year
20 sentence. We ask also that you hear from the victim's family.
21 But for the letters being written saying that I did it, go
22 ahead and give me the death penalty, from Mr. Davis, we would
23 not have seen fit to offer a voluntary plea.

24 And if there's any other facts that are pertinent, I'd
25 ask that you hear from Sergeant Carraway, Your Honor, and also

1 from the family.

2 THE COURT: All right. Hold on just a -- well, if you
3 have any additional facts to add, I'll be happy to hear from
4 you Mr. Carraway.

5 MR. CLEMENTS: There's one other thing. I think there
6 was some talk -- don't know about this, but there was some
7 talk that Mr. Brower was kind of off to himself and doing his
8 own thing and was doing some things that were not sanctioned,
9 and that might have been -- is that correct --

10 OFFICER CARRAWAY: Yes.

11 MR. CLEMENTS: -- Sergeant Carraway? That might have
12 been part of the reason why he was killed.

13 UNKNOWN FEMALE: That don't give nobody no reason to kill
14 nobody.

15 THE COURT: Ma'am, I want you to be in the courtroom
16 during this plea, but you are not allowed to speak unless you
17 are asked to speak. Do you understand me?

18 UNKNOWN FEMALE: Yes, sir.

19 THE COURT: Okay.

20 MR. CLEMENTS: And, Your Honor, we would also say we
21 don't believe if that was, in fact, true, some of that talk on
22 the street, that certainly does not give rise to anybody to
23 bring any harm to Mr. Brower.

24 THE COURT: Okay. All right. Listen to me carefully,
25 Mr. Thomas. You heard what Mr. Clements said regarding the

1 facts pertaining to this case, did you not?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Now, is it your belief that if
4 this case were to go to trial and those facts were presented
5 in -- in this courtroom that, based upon those facts, there's
6 a reasonable probability that you'd be convicted of this
7 offense?

8 THE DEFENDANT: I don't think so, Your Honor, because all
9 the witnesses that they have -- they've been incarcerated on
10 charges.

11 THE COURT: Okay. Do you want a trial in this case?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You want your trial?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay.

16 MR. CLEMENTS: All right. That's good.

17 THE COURT: You'll be tried in front of me week after
18 next. We'll try it and it's number one up.

19 MR. BAILEY: That will be fine, Your Honor.

20 MR. CLEMENTS: Thank you, Your Honor.

21 (WHEREUPON, there is a break in the proceedings from
22 12:19 p.m. until 2:09 p.m., after which the proceedings
23 continue as follows.)

24 THE COURT: All right. Mr. Clements?

25 MR. CLEMENTS: Yes, Your Honor. Mr. Bailey, if you'll

1 bring your client around? Your Honor, I put the sentencing
2 sheet right there in front of you. We're back on the record
3 for Indictment 2012-GS-21-881.

4 THE COURT: All right. Now, were these other two young
5 ladies -- were you all here with him as well? Do you all want
6 to come forward? All right. Anything else right now?

7 MR. CLEMENTS: Your Honor --

8 THE COURT: I mean I'm going to ask him some questions
9 certainly.

10 MR. CLEMENTS: I think you recall what we stated earlier.
11 That's all we have at this time, Your Honor.

12 THE COURT: Right. All right. Mr. Thomas, earlier --
13 actually, probably around 12:30, you were in here in front of
14 me, and it is now ten after two. At that time, we went
15 through -- I asked you several questions about this case,
16 about you wanting to go forward with a plea. Mr. Clements put
17 the facts on the record as it related to this case, and I
18 asked you a question at that time.

19 And my question to you was that if this case were to go
20 forward and those facts were presented, do you believe it was
21 a reasonable probability that you would be convicted. That
22 was my question to you.

23 Upon asking you that question, your response was no, you
24 did not, and there -- and at that time also I asked you if you
25 wanted a trial or if you wanted to go forward with the plea,

1 and you conveyed to the Court at that time that you wanted a
2 trial -- that you wanted a trial and, therefore, we stood down
3 on your plea. We stood down on it.

4 It's my understanding that during the period in which we
5 stood down from about 12:30 until now -- until about ten after
6 two, that you have been speaking with Mr. Bailey, your lawyer,
7 who stands there beside you. I have been informed that -- and
8 you stand back before this Court right now, and I have been
9 informed that you now want to proceed with your plea to this
10 offense; is that correct?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now, I want to ask you some questions.
13 During the time that we stood down from about 12:30 until now,
14 did you -- did you have an opportunity to fully discuss this
15 matter with your lawyer?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you need any more time to talk with your
18 lawyer?

19 THE DEFENDANT: No, sir.

20 THE COURT: All right. Now, you -- as you stand back
21 before this Court here today -- and I asked you these
22 questions before, but I'm going to ask some of them of you
23 again. I went through the potential penalty in this case,
24 which was up to 30 years. Do you remember that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And I also talked with you about the
4 consequences of pleading to what is considered -- and this is
5 considered, one, a violent offense, as well as a most serious
6 offense. Do you remember that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Now, understanding that this particular
9 offense -- this voluntary manslaughter that you stand before,
10 the Court for today, understanding that it carries up to 30
11 years and understanding that it is a violent offense, as well
12 as a most serious offense, and understanding the consequences
13 of it -- because your lawyer has explained it to me and you
14 previously acknowledged that he explained it to you and that
15 you understood that; is that correct?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. So understanding the potential
18 penalties and the consequences of pleading to a violent
19 offense, a most serious offense, and the fact that it's a no-
20 parole offense, do you still want to go forward and plead
21 pursuant to North Carolina v. Alford here today?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now, I previously went through your
24 constitutional rights with you. Do you remember that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you have any -- do you still understand
2 that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you have any questions about them?

5 THE DEFENDANT: No, sir.

6 THE COURT: And you understand when you plead you give up
7 those rights?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And understanding your rights and
10 understanding that when you plead you give them up, do you
11 still want to go forward and plead guilty pursuant to North
12 Carolina v. Alford to this offense?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Now, I'm going to ask you these
15 questions about your lawyer again. You're represented by Mr.
16 Bailey. Mr. Bailey, how long have you represented him?

17 MR. BAILEY: Judge, I think it's probably close to about
18 two years. He's been in jail for about two and a half. So --

19 THE COURT: Okay.

20 MR. BAILEY: -- somewhere probably between two and two-
21 and-a-half years. I was his first and only lawyer.

22 THE COURT: Okay. During this period of time, Mr.
23 Thomas, that Mr. Bailey has represented you, have you talked
24 to him enough?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Have you understood your talks with him?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you need any more time to talk to him?

4 THE DEFENDANT: No, sir.

5 THE COURT: Has he done everything again that you believe

6 he should have done or could have done for you?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Has he done anything that you think he

9 shouldn't have done?

10 THE DEFENDANT: No, sir.

11 THE COURT: Are you satisfied with his services?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Completely satisfied?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you have any -- any complaints whatsoever

16 about Mr. Bailey's representation of you?

17 THE DEFENDANT: No, sir.

18 THE COURT: Since we broke about 12:30 and as we're back

19 in here right now, has anybody promised you anything or held

20 -- or held out any hope of reward to get you to come back in

21 this court today to enter this plea?

22 THE DEFENDANT: No, sir.

23 THE COURT: Has anybody used any threats, force, pressure

24 or intimidation to get you to come back in here today to enter

25 this plea?

1 THE DEFENDANT: No, sir.

2 THE COURT: Has anybody mistreated you in any way,
3 whether it be law enforcement or Solicitor's Office, to get
4 you to come back in here and enter this plea?

5 THE DEFENDANT: No, sir.

6 THE COURT: Have you had enough time -- and I asked you
7 this before, but I'm going to ask you again. Have you had
8 enough time to make up your mind as to whether or not you want
9 to plead pursuant to North Carolina v. Alford to this offense
10 or go to trial on this charge?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And what do you want to do?

13 THE DEFENDANT: Plead.

14 THE COURT: Now, plead what? Guilty or not guilty?

15 THE DEFENDANT: Guilty.

16 THE COURT: All right. Now, is that decision to plead
17 guilty pursuant to North Carolina v. Alford to this offense --
18 is that your decision and your decision alone after
19 consultation with your lawyer?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Have you fully understood all the
22 questions that I have asked of you?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you -- do you have any questions
25 whatsoever that you want to ask of me as it relates to this

1 plea here today?

2 THE DEFENDANT: No, sir.

3 THE COURT: All right. Now, going back to the facts as
4 stated on the record by Mr. Clements, while I understand that
5 you may not agree with every one of those facts -- do you
6 understand what I'm saying?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: While you may not agree with all of those
9 facts, do you believe that if this case were to go to trial
10 and the State were to present the facts as Mr. Clements said,
11 that there's a reasonable probability that you would be
12 convicted of this offense?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And is that the basis of your plea here today
15 pursuant to North Carolina v. Alford?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: In addition to the -- I guess the reduction
18 of the charge, Mr. Clements?

19 MR. CLEMENTS: Yes, sir.

20 THE COURT: Is that right, Mr. Bailey?

21 MR. BAILEY: That is correct, Your Honor.

22 THE COURT: Is that right, Mr. Thomas?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. And again, I've told you this
25 before, but I'm telling -- I'm going to tell you again. Even

1 though it's a plea pursuant to North Carolina v. Alford, do
2 you still understand the Court views it as a guilty plea? Do
3 you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And it's still going to be on your record as
6 a guilty plea.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Anything further at this time?

9 MR. CLEMENTS: Your Honor, we've stated all that I wish
10 to state, but I would defer at this time to Sergeant Carraway
11 and to Mr. Brower's family. If you would, hear from any of
12 those that wish to address the Court.

13 THE COURT: Well, before I hear -- I want to put this on
14 the record. I do find that there is a substantial factual
15 basis for the plea. I do find that the defendant's decision
16 to enter this plea pursuant to North Carolina v. Alford has
17 been entered freely, voluntarily, knowingly, and
18 intelligently. That he has had the advice and counsel of an
19 attorney with whom he's indicated he is completely satisfied.
20 And I'll accept his plea pursuant to North Carolina v. Alford.

21 And before I hear from you, Mr. Bailey, or the defendant
22 and/or his family, I'm going to hear from Officer Carraway and
23 then from the victim's family. Okay? Officer Carraway, I'd
24 be happy to hear from you if there's anything else you wish to
25 add, sir.

1 OFFICER CARRAWAY: Sir, we've covered just about
2 everything. Mr. Clements covered just about everything. The
3 State just holds the position that we just ask that the max be
4 enforced on this and that's basically all we have.

5 THE COURT: Okay. Anything further from you, Mr.
6 Clements? Thank you, Mr. Carraway.

7 MR. CLEMENTS: Nothing further from me, Your Honor.

8 THE COURT: All right. At this time, I will be happy to
9 hear from any of the victims that so desire to speak. I will
10 say this. Ms. Johnson, Mr. Martin, and Ms. Johnson again I
11 believe, any comments that you all wish to make need to be
12 directed to the Court. Okay? They need to be directed to the
13 Court, not to the defendant or his family. Am I clear on
14 that? Okay. I'll be happy to hear from you, Ms. Johnson. If
15 you will, please stand and state your full name for the
16 record.

17 MS. ROCHELLE JOHNSON: Okay. Hi. I'm Rochelle Johnson,
18 Jessie Brower's mother, and I'm here. I'm glad to be here
19 today to finally get justice for my son. It has been almost
20 three years now, and I'm here asking you for the maximum that
21 you can give to this young man for taking my son's life.

22 It's been said over and over and time and time again that
23 pain having a baby is the worstest pain that you can go
24 through as far as a woman in life, but actually I found out
25 that burying a child is the worstest pain that you can go

1 through in life as far as a child. And I lost my son and it's
2 -- it's pain on me every day. The sleep method that I have to
3 take constantly over and over every night -- I go to sleep
4 with the pain. I wake up with the pain.

5 I have a grandson that God has blessed me with, and he
6 have a -- he have a son that will not have his father in his
7 life due to him being taken away. And I just ask that you
8 give him the maximum that you can give him for taking my son
9 away from me.

10 THE COURT: Okay. Thank you, Ms. Johnson. Ma'am, do you
11 wish to say anything? If so, please state your name for the
12 record.

13 MS. TREVA JOHNSON: I'm Treva Johnson, Jessie -- Jessie
14 Brower's aunt.

15 THE COURT: Yes, ma'am.

16 MS. TREVA JOHNSON: And I just wanted to say that his
17 family and my family has suffered because they lost someone
18 too, but also I want to push for the max too.

19 THE COURT: Okay. Mr. Martin, anything you want to tell
20 me, sir?

21 (WHEREUPON, there is no verbal answer.)

22 THE COURT: All right. Anything from the State, Mr.
23 Clements?

24 MR. CLEMENTS: No, Your Honor.

25 THE COURT: All right. Mr. Bailey, I'll turn it over to

1 you. I'll be happy to hear from you.

2 MR. BAILEY: Thank you, Your Honor. May it please the
3 Court.

4 THE COURT: Yes, sir.

5 MR. BAILEY: Judge, I think where I would like to begin
6 is with kind of our version of the facts as we would have
7 presented them and argued had this matter went to trial on
8 April the 21st.

9 I have explained -- and particularly over the break --
10 and I would like to put this on the record, Judge, that during
11 the break Jamaad and I spoke extensively about the meaning of
12 North Carolina versus Alford. I think there was some
13 confusion with one of the questions the Court posed to him,
14 and I cleared that up. He understands that under North
15 Carolina versus Alford he maintains his innocence as he comes
16 before you today --

17 THE COURT: Right.

18 MR. BAILEY: -- but in light of the risk of going to
19 trial for murder, upon being found guilty facing a sentence of
20 30 years to life, he has elected to plead guilty to the
21 reduced charge of voluntary manslaughter.

22 Judge, for the last two -- two-and-a-half years
23 investigating this case, meeting with Jamaad, talking about
24 the facts and reviewing everything that has been given to us
25 from the Solicitor's Office, a couple things jump out based on

1 Solicitor Clements' recitation of the facts.

2 He indicates he subpoenaed 55 people to trial for the
3 21st. I don't think there were 55 people or anywhere close to
4 it named in any of the discovery I was given, Judge, but of
5 the main players that were turned over and the statements that
6 were given to me, this case rests primarily on what other
7 people have said.

8 There is no gun that was found in this case. The alleged
9 bicycles that Mr. Thomas and his co-defendant or co-defendants
10 were on that night -- they were never located, and I'll go
11 into that in a little bit more detail, Judge. There's no
12 physical evidence, no DNA, no footprints. There is nothing
13 physical that links Jamaad to this crime.

14 We've got a number of individuals from the neighborhood
15 who indicate they saw Jamaad that night or that he made
16 certain statements to them. All of those statements could
17 have been cross-examined thoroughly and attacked for the
18 credibility of the witnesses' character.

19 For instance, Judge, there was a Michael Dixon. Michael
20 Dixon was at a residence in the neighborhood, and that
21 residence belongs to Jamaad's baby's mother -- her
22 grandmother. Michael Dixon dates a daughter that lives there.
23 Michael Dixon stated that Jamaad came over that night after
24 being dropped off by his uncle and confessed to killing
25 Jessie.

1 On its own, that's pretty damaging, but the problem is is
2 Investigator Carraway and his other investigators showed up at
3 that house that night and interviewed the grandmother and the
4 daughter that lives there, along with Jamaad. None of them
5 state that Michael Dixon was in that residence that night.
6 Okay? And there wasn't enough time for him to get there to
7 talk to Michael Dixon before the investigator showed up.

8 The other interesting aspect about that evening and that
9 particular house is Investigator Carraway used some type of
10 blue light or -- or GSR detection on Jamaad's hands in front
11 of the witnesses that were there at that house, and there was
12 no positive detection for gunshot residue on Jamaad's hands.
13 However, my investigator had to uncover that information
14 because it did not make it into any official report by the
15 Florence Police Department.

16 After that, Judge, the law enforcement spoke to the only
17 eyewitness to the shooting in the case, and her name was
18 Harriett Shields. She was at the house at [REDACTED] Ingram Street.
19 She left there shortly before the shooting, and she took her
20 car towards the intersection of Ingram and Alexander Street
21 and made a right on Alexander to go down towards an area
22 called the bottom and Carver -- Carver Street.

23 As she approaches that intersection, Judge, she
24 specifically states to law enforcement that she sees two
25 subjects in all black clothing with black masks on bicycles,

1 and she starts hearing gunshots and she looks behind her and
2 she can actually see what she claims to be the fire
3 discharging from the barrels of the guns. She can't make out
4 who they are. She can't make out if they were male or female
5 -- it's not in the report -- or even what race they are. Just
6 all black clothing, black masks, and on bicycles.

7 That is important, Judge, because a -- a large part of
8 Investigator Carraway's investigation and his interview with
9 Jamaad places Jamaad in a red-hooded sweatshirt that night,
10 and there are a few individuals that law enforcement talked to
11 that night that all clarify and confirm Jamaad was wearing a
12 red-hooded sweatshirt that night. And they have seen other
13 people that were with Jamaad that night in all black clothing.
14 Okay? The one witness to the shooting doesn't say she sees
15 anyone in a red-hooded sweatshirt in the area, and so we
16 thought that was problematic, Judge, and we could have
17 attacked that at trial.

18 A couple other witnesses test -- provided statements as
19 to basically two theories of the shooting. Either the
20 shooting happened at the intersection of Ingram and Alexander
21 Street as the one eyewitness confirmed or there are other
22 witnesses that say the subjects came between [REDACTED] and 928
23 Ingram in-between two houses and shot the victim at point-
24 blank range.

25 Well, that -- that doesn't make sense because that would

1 mean there would be no evidence on [REDACTED] or 928. Law
2 enforcement found one fired bullet in the paved walkway at 928
3 coming from Ingram and Alexander as if it was a distance
4 shooting.

5 Additionally, Judge, on the side of the [REDACTED] house that
6 faces Ingram and Alexander, there were at least two or three
7 bullet holes in the side of the house. Two went through the
8 window and one in the siding on the house. Clearly, if this
9 was a point-blank shooting case between the houses, nobody is
10 going to just reach up and shoot into the house to make a
11 diversion or anything like that. So it was a distance
12 shooting. Those witnesses were going to lose all credibility
13 if Solicitor Clements brought them to court.

14 A majority of these witnesses at the time they -- they
15 provided their statements, Judge, all had pending charges,
16 whether they were for drugs. Calvin Hunter I think was facing
17 a murder charge in connection with a Carver Circle murder.
18 There's a Lakavis Harrison who was a jailhouse snitch. He was
19 facing murder in connection with the community activist who
20 was murdered a couple years ago that was just resolved.

21 Judge, these are all things that we could have -- we
22 could have attacked and -- and Mildenzel, the co-defendant in
23 this case -- and Solicitor Clements did say this. I think on
24 three occasions he tells law enforcement he's the one who did
25 the shooting and he -- he never provides any real information

1 that implicates Jamaad. He does take a polygraph examination,
2 at which time he does tell the investigators after the
3 examination that he lied and he never did see Jamaad shoot
4 Jessie Brower.

5 When Mildenzel was arrested for this, I think it was
6 within a week. The shooting was on September the 18th and his
7 first statement was on September the 26th, Judge. He was -- he
8 was arrested wearing the EMS shirt and some BDU-type pants
9 that were dark in color. Law enforcement sent those to SLED
10 for GSR testing. The EMS shirt came back with the results
11 that indicated that the round lead particles found on that
12 shirt are a component to GSR. That's pretty strong evidence
13 in our opinion that Mildenzel was the shooter that night.

14 Also, Judge, the -- Jessie Brower's hands were bagged,
15 and GSR kits were performed on him and sent to SLED. And that
16 SLED report, Judge, does indicate that GSR was found, but the
17 particles were not enough to allow SLED to make a positive
18 recognition.

19 The individuals who were at that house that night -- no
20 one saw what happened. The other witnesses that saw Jamaad
21 that night -- their stories do not coincide with one another.
22 Robert Holloman provided a very lengthy statement to law
23 enforcement, and I think Solicitor Clements and I both can
24 agree that he's a pill head and he was probably not going to
25 be called at trial.

1 But he happened to place himself at every major important
2 location that night and was able to say that Jamaad was there
3 doing something. Jamaad was at the Gladstone house and got
4 the bullets from somebody. He then sees Jamaad over in the
5 area of Ingram and Alexander riding his bicycle in a red-
6 hooded sweatshirt mind you. After the shooting, Jamaad is
7 running down the road in a red-hooded sweatshirt, and Robert
8 Holloman almost runs him over. He then sees Mildenzel Davis,
9 the co-defendant, attempt to enter the crime scene to tamper
10 with evidence. He put himself in every important point,
11 Judge, all in the red-hooded sweatshirt that night, along with
12 every other witness that we've got.

13 The remainder of the witnesses that have been provided to
14 me, Judge, were jailhouse snitches. They all claimed they
15 were incarcerated at the Florence County Detention Center with
16 Jamaad, and that he provided them with information and
17 confessions as to doing the shooting by himself.

18 Late in the discovery process and before we were supposed
19 to try this case back in March, I was given discovery of some
20 additional statements, and that indicated that there was
21 someone else who could have possibly been the shooter. I
22 don't know if law enforcement ever followed that up. That was
23 the first time I had ever heard that name, and I haven't been
24 given any supplemental reports if law enforcement followed up
25 those leads at all to see if he could possibly be the shooter.

1 They have honed in on Jamaad since the night of the shooting.
2 Okay?

3 Judge, Jamaad is now 21 years old. He was -- he was 18
4 when he was arrested. He completed the ninth grade and he was
5 attending Poynor when he was arrested on this back in 2011.
6 He's lived in Florence County all of his life. His parents
7 were never married. They are with him in the courtroom today.
8 He was raised primarily by his grandmother in Florence and in
9 the neighborhood where this took place.

10 It's a sad situation today, but he's a product of the
11 neighborhood. The amount of murders that I've been able to
12 hear about and read about with multiple players, not only
13 either witnesses in this case or involved, but have been
14 involved in other cases, it's astonishing about that
15 neighborhood, Judge, and it's troubling.

16 He has a daughter. She is almost three years old. He
17 was locked up at the time she was born; so he hasn't even
18 gotten -- had the chance to see her. His grandmother who
19 raised him -- she -- she -- she has asked that she be allowed
20 to address the Court here today.

21 THE COURT: Thank you, Mr. Bailey. Anything else from
22 you at this time, Mr. Bailey?

23 MR. BAILEY: Nothing at this time, Judge.

24 THE COURT: Okay. Ma'am, I'll be happy to hear from you.
25 Please tell me your name for the record.

1 MS. THOMAS: My name is Martha Thomas.

2 THE COURT: Yes, ma'am, Ms. Thomas?

3 MS. THOMAS: I'm here on behalf of Jamaad Thomas, my
4 grandson. Jamaad Thomas wasn't a rowdy person. He was a good
5 boy. I know. I raised him.

6 And as far as him with a gun or shooting anybody, no, I
7 don't think so. But Little Jessie used to come to my house
8 with Jamaad, and they ate together. They was friends. I
9 don't know what happened, but they was friends, and I just
10 don't see where Jamaad could have shot Little Jessie.

11 THE COURT: Thank you, Ms. Thomas. Anybody else?

12 MR. BAILEY: Your Honor, I don't think anyone else is
13 going to make a statement this afternoon. I would just ask
14 that in considering this case, the facts as both Solicitor
15 Clements and I have placed on the record, and on behalf of
16 Jamaad, we would ask that Your Honor please consider a
17 sentence of ten years.

18 I know the victim's family and law enforcement are
19 seeking the full 30 years in this case. I don't think that
20 would benefit anyone in its entirety. So we would ask for ten
21 years, Judge. We understand that some time is going to be
22 handed down and, just for purposes of sentencing, I would like
23 the Court to be aware that Mr. Thomas has been incarcerated
24 since October the 4th of 2011 for a calculation of 921 days.

25 MR. CLEMENTS: Your Honor, if I may, there's --

1 THE COURT: Hold on a minute. Mr. Thomas, anything you
2 want to tell me, sir?

3 THE DEFENDANT: Yes, sir. I just got caught up in the
4 wrong area at the wrong time being around the wrong people
5 and, if you'll give me another chance, I won't be staying in
6 Florence. I'll be moving with my mama and get away from that
7 area and raise my daughter and take care of my
8 responsibilities as a man.

9 THE COURT: All right. Anything else from defense
10 counsel?

11 MR. BAILEY: Nothing from the defense, Your Honor.

12 THE COURT: All right. Mr. Clements, you want to add
13 something?

14 MR. CLEMENTS: Your Honor, just a couple things. Some of
15 what Mr. Bailey referred to in regards to forensics and
16 gunshots -- that is an area where gunshots are going on,
17 unfortunately, all the time. There were some of the things he
18 alluded to that law enforcement looked at and saw and noted,
19 and then they thought they had absolutely no bearing on this
20 particular case.

21 We do have the theory that they came down the side of the
22 house, which would be as you look at the house the left side
23 of the house, and came up on the side of that little porch and
24 shot Jessie Brower. So some of the other shots could not have
25 been fired in this scenario, and we don't think are from that

1 occasion.

2 The information about some type of technology that I've
3 never heard of and Sergeant Carraway has never heard of of
4 where he tested Mr. Thomas for gunshot residue -- I'm not
5 aware of any type such technology that exists, and Sergeant
6 Carraway said he doesn't either, and he didn't do anything.
7 There's no kind of light or anything he knows of that he can
8 shine on someone's hands to see if there's gunshot residue
9 there.

10 So we're not -- we don't know where that came from.
11 We're kind of confused about that. If there is that kind of
12 technology, we would like to get a hold of it because it would
13 save us from having to send a lot of evidence to SLED and
14 waiting on getting it back.

15 But -- and nevertheless, also, Your Honor, there's a lot
16 of other witnesses. Brian or Byron Black and several others
17 that are not incarcerated, that live in that neighborhood,
18 that confessions were made and claims were made by Mr. Thomas
19 that he killed Little Jessie. Also, they made a lot of
20 statements about off the gripper, which comes from some rap
21 song I think, and that it was done, it was taken care of.

22 Mr. Thomas did have on a black hoodie. He took that off
23 and gave it to another individual and got a red hoodie from
24 Calvin Waiters Hunter. He said he had to take care of some
25 business and needed to -- to get that red hoodie, which all

1 that does not contradict each other, and that was going to be
2 testified to.

3 So there were a lot of -- as in all cases, there are a
4 lot of conflicting information from people all around out on
5 the street, but we feel like we had plenty of evidence to go
6 forward and were ready to go forward, but I just wanted to
7 respond to those things in particular about the gunshot
8 residue technology and about the gunshots because we don't
9 think those had anything to do with this particular case. You
10 can go out there and you can find all kind of evidence of all
11 kind of shootings because shootings go on there,
12 unfortunately, in that neighborhood all the time. I think Mr.
13 Bailey would admit to that.

14 THE COURT: Tell me -- and you told me before, but I want
15 to make sure I'm clear on it. He had a prior assault and
16 battery with intent to kill involving a cab driver?

17 MR. CLEMENTS: Cab driver. Yes, sir.

18 THE COURT: It was several defendants?

19 MR. CLEMENTS: I think there were four.

20 OFFICER CARRAWAY: Four.

21 MR. CLEMENTS: And he was the youngest one of that group.

22 OFFICER CARRAWAY: In 2009.

23 MR. CLEMENTS: And it was in 2009.

24 MR. BAILEY: I believe that was a -- it resulted in an
25 accessory.

1 MR. CLEMENTS: He got -- he got an accessory out of it
2 was what his ultimate sentence --

3 THE COURT: He pled in 2010?

4 MR. CLEMENTS: 2009, Your Honor.

5 THE COURT: He pled in 2009?

6 MR. CLEMENTS: Yes, sir. And it looks like from this it
7 happened in 2009 in February was the offense date, and it
8 looks like the disposition was in late 2009. At the end of
9 2009 is what it looks like. 10/22/2009.

10 THE COURT: Was there a female involved in that also?

11 OFFICER CARRAWAY: Yes, there was.

12 MR. CLEMENTS: There was according to Sergeant Carraway,
13 Your Honor.

14 THE COURT: And what was his sentence on that?

15 MR. CLEMENTS: For Mr. Thomas?

16 THE COURT: Time served?

17 MR. CLEMENTS: It was, like, five years suspended to one
18 year and probation.

19 OFFICER CARRAWAY: Time served.

20 MR. CLEMENTS: But he got time served and probation. It
21 was five years suspended to that.

22 THE COURT: Is he on probation right now?

23 THE PROBATION AGENT: No, sir.

24 THE COURT: What happened with that probation case?

25 MR. CLEMENTS: It probably expired and the term ran out

1 prior to this happening I guess.

2 THE DEFENDANT: I completed it.

3 THE COURT: Sir?

4 THE DEFENDANT: I completed my probation.

5 THE COURT: Did some of the other co-defendants plead in
6 2010 in that case?

7 MR. CLEMENTS: All of them did; Your Honor.

8 THE COURT: He pled in 2009, but the others pled in 2010?

9 MR. CLEMENTS: I -- I mean I --

10 THE COURT: The reason I'm asking is because I'm familiar
11 with the case and I feel -- I wasn't elected to this position
12 until 2010 and I'm just wondering if some of the co-defendants
13 may not have been in front of me. He may not specifically
14 have been in front of me. I'm just wondering if some of the
15 co-defendants were.

16 MR. CLEMENTS: I think either Mr. Jupertinger or Mr.
17 Tucker handled this case, but I know that those that were the
18 most -- we felt like were the most culpable pled later.

19 THE COURT: Okay.

20 THE PROBATION AGENT: He's expired.

21 MR. CLEMENTS: And we felt like that was gang-related, as
22 well as this, Your Honor.

23 MR. JEPERTINGER: That was Fitz's case.

24 MR. CLEMENTS: Fitzlee?

25 MR. JEPERTINGER: Fitzlee's case.

1 MR. CLEMENTS: That was Fitzlee McEachin's case, Your
2 Honor.

3 MR. JEPERTINGER: And Vick represented the main guy and
4 he got 27 years and it was in front of Nettles.

5 THE COURT: In front of Nettles?

6 MR. JEPERTINGER: Yes, sir.

7 MR. CLEMENTS: I think the victim lived in that case.
8 According to Sergeant Carraway, he was called over there to
9 deliver pizza and when he got there, they -- they jumped him.
10 Pickup? Pickup or call. Yeah.

11 THE COURT: And that's all that's on his record?

12 MR. CLEMENTS: Yes, sir. But he was 18 when this
13 occurred and I guess he was 17 when that occurred.

14 THE DEFENDANT: Sixteen.

15 MR. CLEMENTS: Sixteen? Sixteen. He was 16 when that --
16 that occurred.

17 THE COURT: And again, the motive that you -- that the
18 State believes that was motive in this case was it was gang-
19 related-type activity?

20 MR. CLEMENTS: Yes, sir. There's pretty much a gang
21 headquarters there on Sanborn Street, which is about a block
22 or two away from this occur -- where this occurred on Ingram.
23 This is on Gladstone. Gladstone is where the headquarters is
24 for the gang in that area, and it's only about two -- two-and-
25 a-half blocks from this site on Ingram Street.

1 THE COURT: Is this predominantly an African-American
2 community?

3 MR. CLEMENTS: It is, Your Honor. It's near where the
4 old Carver school is, just north of Sumter Street.

5 THE COURT: Okay.

6 MR. CLEMENTS: There's been a lot of gang activity, but
7 since -- in the recent time, it's calmed down we believe
8 because of some people that are now incarcerated.

9 MR. BAILEY: Your Honor, if you would allow it, Mr.
10 Thomas has asked if he can address additional information to
11 the Court.

12 THE COURT: Yes, sir, Mr. Thomas?

13 THE DEFENDANT: Yes, sir. Like he said, there wasn't no
14 gunpowder test. Him -- Investigator Godwin and Investigator
15 Davis -- they put me in the back at the trunk of their car and
16 tested my hands with a blue flashlight and told me to do my
17 hands like that. There wasn't nothing on my hands. They let
18 me go. They also interrogated me again the next day and asked
19 me questions and let me go.

20 OFFICER CARRAWAY: Your Honor, if I could?

21 THE COURT: Yes.

22 OFFICER CARRAWAY: I recall what he's saying now.
23 Investigator Godwin was actually just looking at his hands.
24 We didn't -- we don't have a light that can actually pick up
25 gun residue. Investigator Godwin actually told him to put his

1 hands out and he -- he inspected his hands when we were over
2 at the scene -- over there at his girlfriend's house. But as
3 far as a light picking up residue, we don't have anything that
4 can do that.

5 THE COURT: And the only light that the Court is aware of
6 is a light that can show blood in various types of
7 investigations, the presence or past presence of blood, but
8 technology changes every day.

9 Mr. Thomas, I understand that you stand before this Court
10 today pleading pursuant to North Carolina v. Alford, and I
11 told you during your plea that although you are pleading under
12 such, the Court still looks at it as a guilty plea.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: It's amazing to this Court the number of
15 young people that stand in the very place that you stand as a
16 result of these types of acts, whether it be attempted murder,
17 assault and battery, murder or manslaughter. It is evident
18 that among so many today there is a total disregard for life
19 -- a total disregard for life.

20 This offense occurred when you were 18 years old, which
21 is going to have a profound impact upon your life on this
22 earth. Your grandmother, who stands there beside you, I am
23 sure has done everything she could do to lead you in the right
24 direction, but you have made choices. And I think you were
25 sitting in that box over there this morning when I was talking

1 to this young man who was in front of me on a probation
2 violation, and his mother stood up here with him and he had
3 prior drug offense after drug offense after drug offense.

4 And I asked his mother did you encourage your son to be
5 involved in drugs on this date, and she said no, sir. And I
6 went down that list on his record. Did you -- did you
7 encourage your son to be in drugs or involved in drugs on this
8 day? No, sir. And I asked his mother -- I said, "You
9 encouraged him to do what was right, to not hang out with the
10 wrong people, and to make good decisions." She said, "Yes,
11 sir." And I looked at the young man and I said, "You've made
12 wrong decisions, whether it be who you hang out with, who you
13 run with or whatever."

14 And they -- your decisions have put you in this position
15 here today. All of those guys that you ran with on the
16 streets and hung out with on the street, how many of them do
17 you see in this courtroom standing beside you supporting you
18 today?

19 THE DEFENDANT: None, sir.

20 THE COURT: None of them. None of them. And when you go
21 to the Department of Corrections, you won't ever hear from
22 them. If I was a betting man, you will never hear from them.
23 But I guarantee you your mom, your dad, and your grandmother
24 will be in touch with you and they'll keep up with you because
25 they love and care for you.

1 Everything that I encourage my children to do, they may
2 not always agree with me, but my encouragement to them is
3 always in their best interest. They may not see it that way
4 at the time, but it is. Because at some point, they are going
5 to be grown, such as you are -- you're a grown man -- and
6 they'll get a chance to make their own decisions, just like
7 you've made, but hopefully they will make right decisions and
8 not find themselves in the place that you find yourself here
9 today.

10 When you do or engage in the kind of conduct you've
11 engaged in, the people that care about you the most are the
12 ones that suffer. They're the ones that suffer. Jail has a
13 -- or those chains that you find yourself in, and being
14 incarcerated has a way of humbling people. Ninety-nine
15 percent of the people that come into this courtroom in your
16 situation are very humble as they stand before this Court.

17 I don't wish to see anybody go to jail. That's not my
18 desire. My wish is for everybody to be successful, but I can
19 want it as much as I want it, just like I'm sure your parents
20 and your grandmother want you to be successful, but we can't
21 make you be successful. Every person in here has to make
22 those decisions on their own. When you finish serving your
23 sentence, you will still be a fairly young man by today's
24 standards, and what you do with the remainder of your life
25 will be up to you.

SENTENCE

THE COURT: On Indictment 2012-GS-21-881, the defendant is committed to the State Department of Corrections for a period of 28 years. Give him credit for 921 days. Good luck to you, Mr. Thomas.

MR. CLEMENTS: Thank you, Your Honor.

MR. BAILEY: Thank you, Your Honor.

THE COURT: Thank you.

(WHEREUPON, the proceedings end at 2:52 p.m.)

--- END REQUESTED TRANSCRIPT ---

Krystal J. Smith

21 | April 20, 2015

FORM 5
FILED

STATE OF SOUTH CAROLINA

COUNTY OF Florence

2015 MAR -9 PM 12:15 THE COURT OF COMMON PLEAS

CONNIE REEL-SHEKINI
CCCP & GS
FLORENCE COUNTY, SC

2015 CP 21-108

Full name and prison number (if any) of Applicant:

Jamaad Dregwan Thomas #354532

v.

State of South Carolina

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 Lieber Correctional Institution, P.O. Box 205
2. Name and location of Court which imposed sentence Bridgeville, SC, 29472
3. Name(s) of co-defendant(s) (if any) Florence County Court of General Session, 180 N. Irby St, Florence, SC, 29501
4. The indictment number or numbers (if known) upon which and the offenses for which

sentence was imposed:

(a) 2012-65-21-00881

(b) _____

(c) _____

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

(a) 4-11-14(b) 28 years

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) My Attorney never gave me knowledge that I could appeal
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Brady violation
- (b) Ineffective Counsel
- (c) Violation of due Process 5th 14th

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

- (a) See SCRCRIMP Rule 5 and Brady violation
- (b) Counsel failure to object
- (c) Involuntary and unknowingly Plea

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

N/A

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

i. _____

ii. _____

iii. _____

iv. _____

N/A

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

N/A

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

N/A

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

i. _____

ii. _____

iii. _____

iv. _____

N/A

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

NO

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

N/A

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

i. _____

ii. _____

iii. _____

N/A

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

(a) _____

(b) _____

(c) _____

N/A

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

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

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

- ✓ (a) the name and address of each attorney who represented you:
- i. Joshua A. Bailey
- ii. 314 West Evans Street, P.O. Box 1317
- iii. Elizence, South Carolina, 29563
- (b) the proceedings at which each such attorney represented you:
- i. Guilty Plea
- ii. Sentencing
- iii. _____

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

Case vacated

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

NO

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

I, J.T., 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.

Jamaed Desean Thomas
Applicant

SWORN or affirmed to and subscribed before me this
5th day of March, 2015.

Ledraun Bryant
Notary Public

My Commission Expires: May 26, 2020

2015 MAR -9 PM 12:59
CLERK
COURT

STATE OF SOUTH CAROLINA)

County of Florence)

VERIFICATION

I, JT, 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.

Jamaad Oreguian Thomas

SWORN to and subscribed before me this 5th
day of March, 2015.

Laurian Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

2015 MAR -9 PM 12:59
FILED
CLERK OF COURT
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Jamaad Dreqwan Thomas, #359532,

2015-CP-21-0708

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on March 9, 2015, Respondent would show this Court:

I.

Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the July 2012 term of the Florence County Grand Jury for one count of Murder (2012-GS-21-00881). Applicant was represented by Joshua A. Bailey, Esquire. On April 11, 2014, Applicant pleaded guilty to the lesser-included offense of Voluntary Manslaughter, and the Honorable D. Craig Brown sentenced him to a term of imprisonment for twenty-eight years, with credit for time served. Applicant did not appeal this conviction or sentence.

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

II.

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

1. "Brady Violation"
 - a. "See SCR Crim P. Rule 5 and brady violation" (sic)
2. "Ineffective Counsel"
 - a. "Counsel failure (sic) to object"
3. "Violation of Due Process 5th, 14th" (sic)
 - a. "Involuntary and Unknowingly plea"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. SCRP Rule 11. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only person authorized to file amendments. SCRCP Rule 11.

III.

In his first claim, Applicant alleges Brady v. Maryland, 373 U.S. 83 (1963), and Rule 5 violations. Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 268 (1993). A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

The requirements of Rule 5, as opposed to the constitutional dictates of Brady, are judicially created discovery mechanisms for use in criminal proceedings. State v. Gullede, 326 S.C. 220, 487 S.E.2d 590 (1997). Rule 5(a)(1)(C) requires:

Upon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant.

Id. The definition of “material” for purposes of Rule 5 is the same as the definition used in the Brady context. See Fradella v. Town of Mount Pleasant, 325 S.C. 469, 482 S.E.2d 53 (Ct.App.1997) (per curiam). In order for Applicant to prevail on a Rule 5 claim, he must show not only an actual violation, but also that he suffered prejudice as a result. State v. Wilkins, 310 S.C. 81, 425 S.E.2d 68 (Ct.App.1992); State v. Trotter, 322 S.C. 537, 473 S.E.2d 452 (1996).

Respondent submits that this ground for relief is totally without merit. However, the allegation concerning a Brady and/or Rule 5 violation probably raises questions of fact that are not conclusively refuted by the record. Respondent requests an evidentiary hearing on this ground for relief. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant claims ineffective assistance of counsel in his application. Respondent contends Applicant’s counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Id. at 442, 334 S.E.2d at 814. Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel’s performance was deficient. Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” Id. (quoting Strickland, 466 U.S. at 688). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show there is a reasonable probability that, but for counsel’s alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

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

V.

Respondent further submits Applicant’s third allegation of Due Process violations is without merit. Applicant’s allegation claims infringement of his rights under certain amendments to the

United States Constitution. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that an Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon an applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VI.

Applicant further claims his guilty 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. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Respondent submits that 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, [an Applicant's] right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Statements made during a guilty plea should be considered conclusive, unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975) *overruled on other*

grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985). Applicant has 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. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (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.

VII.

Each and every allegation contained within the Application which is not expressly admitted, qualified, or explained hereby is denied.

VIII.

WHEREFORE, Respondent requests an evidentiary hearing on Applicant's allegations of ineffective assistance of trial counsel and Brady/Rule 5 violations. Respondent requests that Applicant's allegation regarding violations of Due Process be dismissed for failing to state a cognizable claim under the Uniform Post-Conviction Procedure Act.

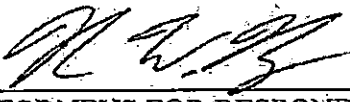
Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHÓZ
Chief Deputy Attorney General

JOHANNA VALENZUELA
Senior Assistant Deputy Attorney General

For: LINDSEY A. MCCALLISTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

Jan. 19, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

2015-CP-21-708

JAMAAD DREQWAN THOMAS, #359532)

Applicant,)

vs.)

AFFIDAVIT OF SERVICE BY MAIL

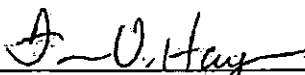
STATE OF SOUTH CAROLINA,)

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:

Jonathan D. Waller, Esquire
 Giese Law Firm
 1315 Blanding Street
 Columbia, SC 29201

DATED this the 19th day of January, 2017.


 Felicia V. Hayes, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE	)	2015-CP-21-0708
	)	
	)	
Jamaad Dregwan Thomas	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina	)	)
<u>DEFENDANT</u>	)	August 31, 2017
		Florence, South Carolina

B E F O R E:

THE HONORABLE THOMAS A. RUSSO, JUDGE.

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

JOHNATHAN WALLER, ESQ.
Attorney for the Applicant

LINDSEY A. MCCALLISTER, ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

KESHIA REED
Official Court Reporter

1	<u>I N D E X</u>				
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
3	Jamaad Thomas				
4	Mr. Waller	3			
5	Ms. McCallister		13		
6					
7	Joshua Bailey				
8	Mr. Waller	17		29	
9	Ms. McCallister		25		
10					
11	Certificate of Reporter				
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					

1 THE COURT: Madam Attorney General, be happy to
2 hear from you, ma'am.

3 MS. MCALLISTER: Thank you, Your Honor. This is
4 the case of Jamaad Thomas vs. The State of South Carolina
5 2015-CP-21-0708. Your Honor, Mr. Thomas was indicted at
6 the July 2012 term of the Florence County grand jury on
7 one count of murder. He was represented on that charge by
8 Joshua Bailey. On April 11th 2014, he pleaded guilty to
9 the lesser-included offense of voluntary manslaughter
10 pursuant to Alford, Your Honor. Judge Brown sentenced him
11 to a term of imprisonment for 28 years. He did not appeal
12 that conviction or sentence. He filed this application
13 for post-conviction relief on March 9th 2015. Mr. Thomas
14 is present in the courtroom today and he is represented by
15 Jonathan Waller.

16 THE COURT: All right, Mr. Waller.

17 MR. WALLER: Thank you, Your Honor. I would
18 call Jamaad Thomas.

19 THE COURT: Mr. Thomas, sir, if you would come
20 around. And after you get up on that step, if you just
21 stop there and then madam clerk will place you under oath,
22 okay. And then you can have a seat after that.

23 THE CLERK: Place your left hand on the Bible
24 and raise your right hand as much as you can. Do you
25 swear or affirm that the testimony you give will be the

1 truth, the whole truth, and nothing but the truth so help
2 you God?

3 THE WITNESS: Yes, ma'am.

4 THE CLERK: Thank you. You can have a seat.

5 THE COURT: Yes, sir.

6 MR. WALLER: Thank you, Your Honor. May it
7 please the Court.

8 WHEREUPON,

9 Jamaad D. Thomas,
10 after first having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. WALLER:

13 Q Good morning, Mr. Thomas. How are you today?

14 A Fine.

15 Q All right. Mr. Thomas, if you could speak up so the
16 court reporter can hear what you're saying, that
17 microphone doesn't work, but if you could just talk loudly
18 where everybody can hear you, okay. Mr. Thomas, do you
19 remember when you got arrested?

20 A Back in 2011.

21 Q Okay. You remember what you were charged with?

22 A Murder.

23 Q Okay. Who was your attorney or how did you get an
24 attorney?

25 A They appointed me one.

1 Q Who did they appoint you?

2 A Joshua Bailey.

3 Q Okay. He's the only one you ever had?

4 A Yes, sir.

5 Q All right. After he appointed -- he was appointed to
6 represent you, how long after that did y'all first meet?

7 A I don't remember.

8 Q Okay. Short amount of time, long amount of time?

9 A Short.

10 Q Okay. What did y'all talk about do you remember?

11 A About the case.

12 Q Okay. What did y'all talk about?

13 A I mean about statements they say they had, but
14 certain statements I ain't seen.

15 Q Okay. We'll get back to that in just a minute. Did
16 y'all talk about the charge of murder and what it carried?

17 A Yes, sir.

18 Q Okay. So you knew what you were facing?

19 A On a murder charge.

20 Q Okay. Did y'all talk about what the State -- the
21 evidence the State would have to prove, the elements they
22 would have to prove to find you guilty?

23 A Elements of murder?

24 Q Yes, sir.

25 A No, sir.

1 Q Okay. Did y'all talk about the evidence that the
2 State had against you and what they were going to say
3 happened?

4 A Yes, sir.

5 Q Okay. What did y'all talk about? You mentioned some
6 statements. Were there some statements given by
7 witnesses?

8 A It's a lot of statements I haven't even seen
9 including a CD disk containing statements or interviews.
10 I never seen none of those.

11 Q Okay. So there were some -- a bunch of statements
12 given in your case and you think some of them were on --
13 were recorded, were on disks?

14 A That's what they say.

15 Q Okay. Have you ever seen them?

16 A No, sir.

17 Q Okay. Have you and Mr. Bailey talked about them?

18 A Yes, sir.

19 Q Okay. Let me ask you this, when you were in the jail
20 and now in the department of corrections, are you allowed
21 to have a disk?

22 A No, sir.

23 Q Okay. So you don't have the ability to look at
24 those?

25 A No, sir, I never seen those.

1 Q Okay. Did you and Mr. Bailey ever watch any of those
2 videos?

3 A No, sir.

4 Q Okay. Do you even know if there were videos?

5 A No, sir, I just know what they been telling me. I
6 ain't physically seen nothing.

7 Q Okay. You just know you were give some disks and
8 they said they were statements?

9 A Yes, sir.

10 Q Okay. Did y'all discuss -- you and Mr. Bailey
11 discussed the fact that there were statements given?

12 A Yes, sir.

13 Q Okay. Did y'all discuss what those statements
14 supposedly said?

15 A Yeah.

16 Q Okay. What did you all talk about?

17 A I mean, whatever he told me I just been listening,
18 but I didn't see no statements or what they been saying.
19 I mean, he can say anything, but I ain't physically seen
20 no statements or nothing like that.

21 Q Okay. Well, what did y'all talk about in the
22 statements?

23 A Things he said that they had said in the statements.

24 Q Okay. Well, what were they saying?

25 A They been saying all kinds of stuff, all kinds of

1 lies, but I never seen nothing, that's my big issue. I
2 ain't never seen nothing. I'm just going off what he told
3 me.

4 Q Okay. And we're going to get to that in just a
5 minute. Did you and Mr. Bailey ever talk about any
6 possible defenses that you might have?

7 A Not that I remember. Defenses like what?

8 Q Anyway you could beat the case or get a lesser charge
9 or something like that, something that would help you out
10 and not be charged with murder?

11 A No, sir.

12 Q Okay. Did you think you had any defenses?

13 A I mean, I ain't seen my statements so, I don't know.
14 I never seen my statement.

15 Q You don't know because you didn't see it?

16 A Yeah.

17 Q Okay. Did you know what evidence the State said they
18 had against you?

19 A Statement that I didn't seen.

20 Q Okay. Right. But you didn't -- you never saw it?

21 A I seen three transcripts and that was a Robert
22 Holloman and I had a statement of my transcripts and a
23 Kevin Hunter. Them the only three transcripts. But the
24 main three statements that led to my arrest I never seen
25 those including my co-defendants.

1 Q Okay. Did you and Mr. Bailey ever talk about going
2 to trial?

3 A Yes, sir.

4 Q Okay. And what did y'all talk about when you were
5 talking about trial?

6 A I can't remember that's so long ago.

7 Q I understand. Did you want to go to trial?

8 A Yes, sir, I told the judge that.

9 Q You told the judge that?

10 A Yes, sir.

11 Q Okay. When you pled guilty you actually started and
12 then told the judge you didn't want to plead guilty you
13 wanted to go to trial; is that right?

14 A Yes, sir.

15 Q And then y'all took a break and you came back and
16 pled under North Carolina vs. Alford?

17 A Yes, sir.

18 Q Okay. Did you ever tell Mr. Bailey you wanted to go
19 to trial?

20 A I spoke with him for a little minute that I wanted to
21 go to trial.

22 Q Okay. When you say a little minute, you mean like a
23 long time?

24 A Yes, every time he came to see me in the county.

25 Q Okay. Did you gave him any witnesses to talk to or

1 any information that you wanted him to investigate?

2 A It was one concerning a statement that say they had
3 against with somebody that was going with my baby mother
4 sister, that the only one I remember.

5 Q Okay. Do you know -- and if you don't know that's
6 fine. Do you know if he followed up on that information?

7 A Yeah, I think he had a private investigator. I don't
8 remember her name some light skin lady. She suppose to
9 had went and talk to my baby mama about one of those
10 statements.

11 Q Okay. Well, let me ask you this, Mr. Thomas,
12 ultimately you made the decision to plead; is that right?

13 A Yes, yes, sir.

14 Q Why did you make that decision?

15 A Because it was these statements that I never seen, so
16 I didn't want to go to trial in the blind not knowing who
17 said what and, you know what I'm saying.

18 Q Were you up for trial right then?

19 A I think he said he was going to try it in a week
20 after next.

21 Q Okay. So within two weeks you were going to trial?

22 A Yes, sir.

23 Q Okay. And you hadn't seen any of the discovery?

24 A No, sir.

25 Q Okay. And you already testified that you started to

1 plead when you took a break. And what did you do during
2 the break?

3 A Went in a room with Mr. Bailey.

4 Q Okay. And what did y'all talk about during that
5 break?

6 A And then Ed Clements came in there the prosecutor.

7 Q Okay. What did you and Mr. Bailey talk about first
8 of all?

9 A I mean, he said it was best for me to take the plea.
10 If I go to trial, I get life. They could give me life.

11 Q Okay. You testified a minute ago that y'all talked
12 about some statements. Did y'all talk about those during
13 the break?

14 A Yeah, he mentioned some statements, but it was
15 statements I ain't never seen before.

16 Q Okay. But did Mr. Bailey tell you what the statement
17 supposedly said?

18 A No, sir. I never know what they said.

19 Q Okay. Well, let me ask it this way then. You stand
20 in front of the judge and you say I'm not going to plead
21 guilty. I want to go to trial. When you go talk to Mr.
22 Bailey and you come back and all of a sudden you're ready
23 to plea, what changed your mind?

24 A Because he said it was best for me to plea.

25 Q Okay. So you relied on your attorney's advice?

1 A Yes.

2 Q But you hadn't seen any of the evidence against you?

3 A I ain't seen no evidence. Especially, the main three
4 that led to my arrest including my co-defendants. I never
5 seen those.

6 Q Have you seen some of the stuff now since you been in
7 the department of corrections?

8 A No, sir.

9 Q You still haven't seen it?

10 A No, sir.

11 Q You ever asked Mr. Bailey for a copy of your file?

12 A Talking about other statements?

13 Q Yes, sir.

14 A Yes, sir. I had wrote him one time..

15 Q Okay. Did he ever send you a copy?

16 A No, sir.

17 Q Okay. If you'd seen some of those statements or all
18 of the statements really, would that have ---

19 A I could have made a better decision of whether to
20 pled guilty or not.

21 Q Okay. So ---

22 A I ain't want to go to trial in a blind with things I
23 ain't never seen.

24 Q Okay. So you couldn't make a decision because you
25 hadn't seen any of the statements?

1 A Yes, sir.

2 Q Okay. If you had seen them, would you have gone to
3 trial?

4 A Depends on what they said in the statement.

5 Q Okay. Mr. Thomas, I think I've asked you all the
6 questions that I have for you. Is there anything you
7 think that I've left out or that the judge needs to be
8 aware of Mr. Bailey's representation of you?

9 A As far as my statement that I didn't seen.

10 Q Okay. Anything else you think he didn't do that he
11 should have done?

12 A Not really as far as giving me those statements and
13 letting me see those CD's that I didn't seen.

14 Q Okay. So basically letting you have an opportunity
15 to review the evidence the State had against you?

16 A Yes.

17 Q So you could make a good decision?

18 A A better decision.

19 Q A best decision for you?

20 A Yes, sir.

21 MR. WALLER: Okay. I don't have any further
22 questions, please answer any Ms. McCallister has for you.

23 CROSS-EXAMINATION

24 BY MS. MCALLISTER:

25 Q Good morning, Mr. Thomas.

1 A Good morning.

2 Q You been talking with Mr. Waller a little bit about
3 what happened when you actually went in front of the judge
4 to plea -- to do your plea. So you remember that day,
5 correct?

6 A Yes, ma'am.

7 Q And you remember going to court to do that?

8 A Yes, ma'am.

9 Q Okay. And at one point you actually told the judge I
10 don't want to do this, I rather go to trial; is that
11 correct?

12 A Yes, ma'am.

13 Q Okay. And at that point that's when you took this
14 break and went and talked with Mr. Bailey; is that right?

15 A Ed Clements came in there.

16 Q Okay. And how long of a break was that do you
17 recall?

18 A No, ma'am.

19 Q I mean, was it five minutes or was it a little bit of
20 time?

21 A I don't recall.

22 Q Okay. But you did come back in after you took that
23 break and you went through with the plea, correct?

24 A Yes, ma'am.

25 Q Okay. And at that time the judge asked you some

1 questions about whether you were satisfied with
2 Mr. Bailey's services as your attorney. Do you remember
3 that?

4 A Yes, ma'am.

5 Q Do you remember what you told the judge?

6 A Yes, ma'am.

7 Q What did you tell him?

8 A I told him, yeah.

9 Q Okay. So you told him that you were satisfied. Do
10 you tell him you had any more questions you wanted to ask
11 Mr. Bailey?

12 A At that time I been young, so only thing I know is
13 say, yeah, what he tell me to do.

14 Q Okay. And you didn't tell this judge on your own,
15 hey, I don't think I can make this decision because I
16 haven't seen these statements?

17 A I mention something about the statements in there.

18 Q Okay. You mentioned something about the statements?

19 A That the statements that they had was a lot of people
20 was incarcerated with murder charges and all kinds of
21 things.

22 Q Okay. And did you tell the judge you didn't want to
23 go forward with the plea because you hadn't seen those
24 statements?

25 A I ain't remember telling him that. He ask me what

1 you saying do you want to go to trial, I'm like, yes.

2 Q Okay. But then you eventually came back in and told
3 him you had changed your mind, correct?

4 A Yes.

5 Q And you didn't tell him at any point after you came
6 back in and change you never said, you know what, no, I'm
7 going to trial because I haven't seen these statements?

8 A I mean, he told me it was best to plea it to.

9 Q So you relied on your attorney's advice and you
10 didn't -- the judge gave you a chance to tell him if you
11 had any issues and you didn't tell him?

12 A Yeah, I told him I wanted to go to trial, but it was
13 these statements that I never seen before, but Mr. Bailey
14 told me it was best for me to take the plea under Alford.

15 Q And you told the judge that that's what you wanted to
16 do?

17 A Yes, ma'am.

18 Q Okay. Thank you.

19 MS. MCCALLISTER: Nothing further, Your Honor.

20 THE COURT: All right. Anything further of this
21 witness?

22 MR. WALLER: Nothing further, Your Honor.

23 THE COURT: All right. Mr. Thomas, you may have
24 a seat. Thank you, sir.

25 MR. WALLER: Your Honor, I call Joshua Bailey.

1 THE COURT: Mr. Bailey, please come around and
2 be sworn, sir.

3 THE CLERK: Do you swear or affirm that the
4 testimony you give will be the truth, the whole truth, and
5 nothing but the truth so help you God?

6 THE WITNESS: I do.

7 THE CLERK: Thank you have a seat.

8 WHEREUPON,

9 Joshua Bailey,
10 after first having been duly sworn; testified as follows:

11 DIRECT EXAMINATION

12 BY MR. WALLER:

13 Q Good morning, Bailey. How are you today?

14 A I'm good, Mr. Waller. How are you?

15 Q Doing well. Thank you for asking. Mr. Bailey, how
16 did you come to represent Jamaad Thomas?

17 A I was appointed to him by the clerk's office.

18 Q Okay. And when you received that appointment, do you
19 know where he was at that time?

20 A Florence County Detention Center.

21 Q Okay. Was he incarcerated the whole time or did he
22 ever make bond or anything like that?

23 A He never made bond.

24 Q Was he given a bond?

25 A I don't recall. If he was given a bond, it would

1 have been maybe around \$100,000, but his family didn't
2 have the means to bond him out if there was one.

3 Q Okay. About how long after you got appointed, did
4 you go meet with him?

5 A Usually, I try to once. I get an appointment from the
6 clerk's office within the first 30 days I would go out to
7 introduce myself and have a brief meeting with them
8 initially. Let them know I'm filing a motion to obtain
9 the evidence. And once I obtain a copy of all that I send
10 it out to him and then I be back out after that to start
11 reviewing different things.

12 Q Okay. The first time you met with him you wouldn't
13 have had discovery is that safe to say?

14 A I mean, that's probably accurate because most of the
15 time when I would get appointed the first meeting I didn't
16 have any discovery on most cases.

17 Q Okay. How many times did you meet with Mr. Thomas in
18 total if you recall or just generally?

19 A I don't recall the specific number, but I would say
20 it was at least once every month to two months.

21 Q Okay. For how long?

22 A Depends on what we're talking about that particular
23 day. It could be as short as 15 to 30 minutes and I
24 remember times I'd spend two to three hours out at the
25 detention center meeting with Mr. Thomas especially as we

1 got closer to trial.

2 Q Okay. That's where I was going next. Did y'all ever
3 discuss going to trial?

4 A Oh, yeah.

5 Q Okay. The solicitor during the plea, I believe,
6 representing to the Court that they had 55 witnesses
7 subpoenaed. I think you took a little bit of an issue
8 with that. Were there a lot of statements given in this
9 case?

10 A Where the particular shooting occurred, it was a
11 neighborhood. And I remember law enforcement meeting with
12 different people like the location where the victim was
13 shot, I believe, it was on maybe a Monday night football
14 or something. I think there were four or five people in
15 the house, so law enforcement talk to everyone there and
16 nothing of substance came of those. And then they started
17 to find out different people who lived in the area that
18 they interviewed. I don't recall there ever being 55
19 names total in the entire case, so I don't know who he
20 would have been bringing to trial. And witnesses were
21 they alleged to have -- they allege to have witnesses who
22 were kind of placing Mr. Thomas at different points, I
23 guess, as he moved from one location to the other and
24 ultimately up to where the shooting took place. And,
25 then, I guess, back to where he came from. Yeah, I don't'

1 remember witnesses about that.

2 Q Okay. Did you and Mr. Thomas have an opportunity to
3 go over any statements those witnesses might have given?

4 A Oh, yeah. We went over all the witness statements
5 that I received. Mr. Thomas and I went over.

6 Q Okay. Were any of them recorded audio or visual?

7 A Yeah, there were.

8 Q Okay. Did y'all have an opportunity to view those
9 together?

10 A No.

11 Q Okay. Why not?

12 A I don't have the equipment to take out to the
13 detention center to play a DVD for him to watch.

14 Q Did you have a transcript of that?

15 A Some of the statements I had transcripts of. Some of
16 the statements that I found to be non-consequential so to
17 speak that there were really no facts to be made out of
18 the statements. When I reviewed them, I took detailed
19 notes and I would review with Mr. Thomas this is what this
20 witness said.

21 Q Okay. How many audio or video recorded statements
22 were there in this case if you remember or if you can
23 refer to your file?

24 A Okay. Looks like they sent me one CDR that contained
25 one, two, three, four, five, six, seven, eight statements

1 on it. Another disk that had one, two, three, four, five
2 statements on it. And then a different disk that had
3 Jamaad's interview on it.

4 MR. WALLER: Beg the Court's indulgence.

5 (WHEREUPON, a pause in the proceedings.)

6 BY MR. WALLER:

7 Q Okay. So, Mr. Bailey, just doing a little quick math
8 there, that's 14 audio or video recorded statements?

9 A I'll take your word for it.

10 Q Okay. And Mr. Thomas didn't get a chance to see any
11 of those?

12 A Yeah, I mean, I didn't have the equipment to take out
13 to the detention center. I know in the past I had been
14 told by some other attorneys in Florence that they weren't
15 allowed to take laptops in for inmates to view videos.

16 Q Okay. Did you ever attempt to file any motions or
17 ask a judge for an order allowing you to do so?

18 A No.

19 Q Okay. You testified that you discussed the contents
20 of those with Mr. Thomas?

21 A Oh, yeah, we thoroughly reviewed everything.

22 Q How close were you to going to trial like time wise?

23 A I don't remember what day of week the plea was on,
24 but I believe we were first up the following Monday.

25 Q Okay. What had y'all done at that point to prepare

1 you and Mr. Thomas together or you individually what had
2 y'all done to prepare for the trial?

3 A I had prepared cross-examination of questions
4 against all the witnesses that I thought the State was
5 going to be bringing to trial.

6 Q Okay.

7 A There was no material that was uncovered where we
8 would have presented any real defense to the case. So we
9 probably weren't going to call any witnesses to trial.

10 Q Okay. And at some point Mr. Thomas decided that he
11 wanted to plead guilty at first, but then backed off of
12 that and ultimately pled under North Carolina vs. Alford;
13 is that correct?

14 A Yeah, there was leading up to, you know, a couple of
15 weeks before the trial Mr. Thomas wanted to entertain an
16 offer and I think it was he wanted me to go to Ed Clements
17 and try to get somewhere around ten years. Obviously, I
18 did that and Mr. Clements rejected it. We ended up
19 entering into negotiations to do -- reduce the charge to
20 manslaughter and Mr. Thomas and I could argue for whatever
21 sentence we thought was appropriate. I don't recall -- I
22 haven't read the transcript. I don't recall if we asked
23 for ten. Maybe, it was 12, but that was what Mr.
24 Thomas wanted.

25 Q What went into the decision to not go to trial? Was

1 it Mr. Thomas' decision?

2 A It was Mr. Thomas' decision.

3 Q Was it his idea?

4 A It was absolutely was. My advice to Mr. Thomas was
5 based on the evidence that I had observed, that I thought
6 it was likely a jury would find him guilty of murder. But
7 that the decision to plead guilty to murder, to pled
8 guilty to manslaughter or to go to trial was strictly his.

9 Q Okay. The mitigation that you presented to the
10 Court in the transcript where you discussed the
11 discrepancies in the statements or the cross-examination
12 that you just discussed preparing him. I mean, did you
13 believe that would be meritorious?

14 A It would have been difficult. It would have been
15 difficult. I mean, I could have attacked some of the
16 points in the State's case, but there was no way to get
17 around the fact that there were two young kids on bicycles
18 who did the shooting and Jamaad was one of those two kids.
19 So any defense that he would have had would have been
20 basically a mere presence defense.

21 Q Okay. When court broke down -- the first plea broke
22 down, what happened after that? What happened during the
23 interim?

24 A We were on the fifth floor of this courthouse in
25 Judge Brown's courtroom to the back and off to the side is

1 a conference room. Mr. Thomas and I stepped into that
2 conference room and I remember Ed Clements coming in to
3 find out if we were going to go through with the plea or
4 if we were just going to call it off for the day and move
5 forward with trial. I know there was also a brief
6 discussion through the course of negotiations Jamaad
7 really wasn't -- I don't want to say he was a target
8 because they charged him with murder, but what they wanted
9 was they wanted the gang leaders that were above Jamaad.
10 And there was always an offer on the table that Jamaad
11 would receive a more favorable sentence if he cooperated
12 to testify against the individuals who ordered Jamaad and
13 his co-defendant to go shoot this young boy that ended up
14 dead. When Ed Clements stepped into the conference room,
15 he told me that that offer was still on the table. That
16 if Jamaad wanted to cooperate, he would be willing to
17 entertain and we could work towards that. After Ed left,
18 I know Jamaad said he wanted to speak with his family who
19 were present in the courtroom. And vaguely I remember --
20 I want to say it was his mama and his daddy and an uncle
21 that were present that day. I made arrangements with the
22 Florence County Sheriff's Office who was running security,
23 I got the family members to be able to come into the
24 conference room in the back of courtroom and they had
25 discussion about things. And then Mr. Thomas ultimately

1 decided that he did want to plead guilty. There was a
2 discussion about the affects of a North Carolina vs.
3 Alford plea. And ultimately what that meant in reality
4 and what that meant on paper and then I remember we went
5 back out and did the plea.

6 Q Okay. So when he made that decision, he again had
7 not seen any of the 14 different audio, video-recorded
8 statements?

9 A No.

10 MR. WALLER: Beg the Court's indulgence please.

11 THE COURT: Yes, sir.

12 (WHEREUPON, a pause in the proceedings.)

13 MR. WALLER: Nothing further. Please answer any
14 questions Ms. McCallister has.

15 CROSS-EXAMINATION

16 BY MS. MCALLISTER:

17 Q Mr. Bailey, the statements that you were given on
18 those CD's, are some of those statements ones that you
19 also received transcripts for?

20 A Yes, I do believe so.

21 Q Okay. And the statements that you had transcripts
22 for did you share those transcripts with Mr. Thomas?

23 A Absolutely. Yeah, any documents that I had Mr.
24 Thomas received a copy of.

25 Q Okay. And the ones that you -- but you don't think

1 you had transcripts for all 14 statements?

2 A No, no.

3 Q Okay.

4 A Because once I listen to them -- I mean, once I had a
5 grasp of what the facts of this case are going to be,
6 there was no need to have the statements transcribed
7 because they didn't relate to any facts that I didn't
8 think they could be called to trial.

9 Q Okay. So the transcripts you were getting these
10 things transcribed on your own; is that correct?

11 A Well, the State transcribed three statements I
12 believe maybe four provided me with those transcripts and
13 then when I listened to the audio or watched, I think,
14 Jamaad's statement was videoed. You know, I followed
15 along with it -- basically, I was following along with it
16 to check it for its accuracy.

17 Q Okay. And the rest of the statements you didn't feel
18 the need to have transcribed?

19 A No, I had the information. Yeah, we didn't.

20 Q Okay. You took notes on those ---

21 A Whatever notes I took ---

22 Q --- on those videos when you watched them and you
23 shared those notes and the contents of what those
24 statements were with Mr. Thomas?

25 A Of course.

1 Q How far ahead of trial did you do that do you think?

2 A As soon as -- I don't recall when we did the plea,
3 but the disks were given to me somewhere around the end of
4 January 2012.

5 Q Okay. So the end of January of 2012, I think the
6 transcript will speak for itself the plea was in April of
7 2014?

8 A Okay.

9 Q So you had these transcripts then for over a year?

10 A Yeah, the statements.

11 Q And the statements, I'm sorry I said transcripts.
12 You had the statements for over a year, does that sound
13 right?

14 A Yeah.

15 Q And during that time you were meeting with Mr. Thomas
16 approximately once a month or every two months?

17 A Yeah.

18 Q And discussing issues that came up in the case
19 including the statement?

20 A Yeah, I mean there were times I'd go out to meet with
21 Mr. Thomas and, you know, he would be frustrated of course
22 as anyone would. I know he kept telling me his family was
23 attempting to hire Rose Mary Parham and that shut us down
24 for a while in terms of our communication because he
25 didn't want to talk to me about the facts of the case

1 because his family was suppose to be hiring him Mrs.
2 Parham.

3 Q Okay. But by the time we came to April 11th, I
4 think, you said you were first on the trial docket for
5 next Monday if he decided not to plea. Were you prepared
6 to go forward with trial at that time?

7 A Absolutely, yeah.

8 Q Okay. And so you all came that morning and he starts
9 going through the plea and decides I don't want do this
10 says I want a trial; is that right?

11 A That's what I remember of it, yeah.

12 Q Okay. And you stop and take this break, do you
13 recall how long that break was?

14 A Probably 30 minutes to an hour. I think Judge Brown
15 took maybe one or two more pleas before we were able to
16 get back in.

17 Q Okay. So I mean y'all left the courtroom and went
18 somewhere private to talk?

19 A Yeah, I mean down on the fifth floor if this was the
20 bench, y'all in the back of the courtroom, kind of like
21 where these conference rooms are outside this door.
22 There's a conference room and table and chairs.

23 Q Okay. So it wasn't like y'all were in the courtroom
24 having to -- have this discussion and feeling like you got
25 to let somebody know what you're going to do?

1 A No.

2 Q Okay. You felt like you had enough time to talk to
3 him about whatever his concerns were that day?

4 A Absolutely. And we could have taken more time if he
5 needed it.

6 Q Okay. And whose decision was it to proceed with the
7 plea?

8 A Jamaad's.

9 Q Okay.

10 MS. MCALLISTER: Beg the Court's indulgence,
11 Your Honor.

12 THE COURT: Yes, ma'am.

13 (WHEREUPON, a pause in the proceedings.)

14 MS. MCALLISTER: That's all questions I have,
15 Your Honor.

16 MR. WALLER: Just very briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. WALLER:

19 Q Mr. Bailey, did you know any of the people that were
20 given -- that gave the reported statements?

21 A Did I know them personally?

22 Q Yes, sir.

23 A No.

24 Q Did you know any of them by reputation?

25 A I knew -- just from what my investigation uncovered,

1 I think a couple of them had some other charges pending.
2 I think one of them might have even had a pending murder
3 charge unrelated to this one, but in terms of like what
4 their reputation was, no.

5 Q Okay. Is that not something Mr. Thomas would have
6 been able to help you with if he had known personally with
7 regard to any reputation of any of the individuals?

8 A Oh, sure. I asked him about that.

9 Q But he wasn't able to see the statements?

10 A Well, some of them were audio statements, so I don't
11 know what he was going to be able to see.

12 Q Okay. Was he able to hear the statements?

13 A No. Once again, no, but I had notes from every
14 interview.

15 Q Okay. Of that people didn't know that you -- people
16 that you didn't know?

17 A Correct. And every time I would sit down with Mr.
18 Thomas and we would review a statement, I would ask him
19 what can you tell me about this individual. Do you know
20 this person. Do you want me to send an investigator out
21 to do some investigation on this. This is what I been
22 able to uncover in terms of pending charges, convictions.
23 This is what we would be able to use as impeachment at
24 trial.

25 Q But he wasn't able to help you with the contents of

1 those statements because he didn't have ---

2 A Well, I disagree with that.

3 Q But he didn't have the recordings or he didn't have a
4 transcript with the exception of the three transcripts
5 that were produced?

6 A I'll give you an example, okay. Some of the
7 statements were literally probably a couple minutes long,
8 okay. But here's what I would -- this is an example of
9 what Mr. Thomas and I would do when I met with him at the
10 detention center. Harry Shields gave a recorded
11 statement, here are my notes, stated she was at the
12 residence shortly before the shooting. She left in her
13 vehicle towards Alexander Street, makes a right towards
14 Carver, hears several shots, looks back and sees clear
15 enough to describe fire coming from the barrels of the
16 guns, obvious more than two guns being shot. Description
17 of the shooters, two subjects wearing all black clothing
18 and black masks on bicycles. And I would say this is what
19 her audio-recorded statement stated.

20 Q Okay. So you would take notes of the interviews and
21 go talk to Mr. Thomas?

22 A Yes.

23 MR. WALLER: Nothing further, Your Honor.

24 THE COURT: Anything further of this witness?

25 MS. MCALLISTER: No, Your Honor.

1 THE COURT: Thank you very much, Mr. Bailey.
2 You may step down, sir.

3 (WHEREUPON, the witness leaves the witness
4 stand.)

5 THE COURT: Any objection to Mr. Bailey being
6 excused?

7 MR. WALLER: No objection, Your Honor. And
8 nothing further from the applicant.

9 THE COURT: All right. Anything further from
10 the State?

11 MS. MCALLISTER: No, Your Honor, just ask to be
12 heard for a few minutes.

13 THE COURT: All right. Mr. Bailey, thank you,
14 sir. You are free to go.

15 Mr. Waller, and I'll be happy hear from you,
16 sir.

17 MR. WALLER: Thank you, Your Honor. Your Honor,
18 the evidence I don't think is -- the testimony is not any
19 contest that there was 14 statements not reduced to
20 writing, as three of them were reduced to writing. That
21 Mr. Thomas did not have an opportunity to view or to see
22 or to hear what the witnesses were going to say against
23 him. Solicitor Clements presents to the Court that they
24 had 55 witnesses subpoenaed and Mr. Bailey did take
25 exception with it.. And I don't disagree with him one bit

1 that that may have been on the high side, but Mr. Thomas
2 who is -- the peers of the people giving the statements
3 didn't have an opportunity to hear them or see them and
4 make the decision for himself as to what the veracity of
5 their statements or whether those statement will be
6 successful in helping to convict him and letting him make
7 the decision to plead guilty voluntarily or not and
8 intelligently.

9 Your Honor, I understand that often times the
10 county detention centers are very restrictive on what they
11 can or cannot allow in there and for safety reasons and
12 valid safety reasons. I understand there were three
13 transcripts that were produced of these statements and so
14 I think that was the remedy here. Mr. Bailey testified
15 that he took very good notes, but there's still being
16 filtered through another person instead of Mr. Thomas being
17 able to see them for himself and make that decision. Your
18 Honor, I would ask you to consider that and the transcript
19 and Mr. Thomas' application.

20 THE COURT: Thank you, Mr. Waller.

21 Ms. McCallister.

22 MS. MCALLISTER: Thank you, Your Honor. In this
23 instance, I think the transcript speaks for itself. This
24 defendant came to court, started to go through a plea,
25 told the Court I don't want to do this. I want to go to

1 trial. The Court said I'm going let you -- you know, if
2 that's what you want to do, that's fine. We'll start on
3 Monday and I'm going to let you talk to your attorney
4 about that decision. And he had time to leave the
5 courtroom, go to a private conference room, talk to his
6 attorney, talk to his family. And he came back in the
7 courtroom and decided that he wanted to plead guilty. And
8 he did plead guilty and he told the judge that's what he
9 wanted to do. And he told the judge he was satisfied with
10 his attorney and that he had no issues, no complaints, no
11 more questions. He never told the judge I don't want to
12 do this because I haven't seen those statements.

13 Your Honor, I think Mr. Bailey gave him the
14 transcripts that he had, went through that example of how
15 he would take notes and question, you know, Mr. Thomas
16 about did he know those people, does he know anything, you
17 know, here's what she's saying. Do you know this person.
18 Do you know anything about this. Do you want me to send
19 in an investigator.

20 If Mr. Bailey reviews the files and the facts
21 and decides that these witnesses are not even going to be
22 called or don't even establish any facts that are
23 pertinent, I don't think Mr. Bailey is under the burden of
24 having those transcripts transcribed and that's what he's
25 there for. He's the attorney and his client, you know,

1 was advised of the content of the statements and the
2 evidence against him even if he didn't have the chance to
3 actually listen to all of them or see all of them, Your
4 Honor. Again, he could have told the judge that. The
5 judge obviously was listening to him when he said I don't
6 want to do this. So he had that chance and he didn't take
7 it, Your Honor.

8 THE COURT: All right. In reading through the
9 transcript, Mr. Waller, the concern that I got with
10 regards to the applicant's position is I would have -- I
11 would be more in agreement with you if Mr. Thomas was
12 unaware of these statements that he wasn't told about or
13 that things that he wasn't shown, but he was aware of
14 everything. He didn't get to listen to everything and I
15 heard all of that. And Mr. Bailey's testimony regarding
16 taking copious notes and then translating that or giving
17 that over to Mr. Thomas for his consideration. He's
18 certainly had an understanding of what these -- at least
19 the gist of what these witnesses would have testified to
20 if it went to trial and so he had all that information.
21 It goes before the Court. The State removes the specter
22 of a murder charge and reduces it down to voluntary
23 manslaughter. And he begins going through the plea
24 colloquy and it's made clear to the Court that Mr. Thomas
25 is not pleading guilty straight up, but he's pleading

1 under Alford because he disagrees with the State's
2 position, but the State's made him a plea offer and he
3 would like to take advantage of that opportunity.

4 The Court goes through an extensive colloquy
5 regarding his constitutional rights. The Court states
6 that if there any statements that you have a right to
7 challenge those statements. But understanding all of
8 these things, but you understand you give up all of this
9 up when you plead guilty. You waive or you give up these
10 rights. And Mr. Thomas indicated he understood all of
11 that, understood that he would be waiving these rights and
12 he be waiving any defenses that he may have and he chose
13 to go forward. And then at some point as it was testified
14 to something occurred during that -- actually it occurred
15 at the close of the State's presentation of the evidence
16 as they would present it to a jury. And I think that
17 caused Mr. Thomas some hesitation. And when the Court --
18 and this happens often times I've had it occur. You know,
19 the guilty plea straight up you just say do you agree with
20 the facts that the State has just presented, but when you
21 do an Alford plea, you say something words to the effect
22 now you understand that that's the evidence that the State
23 would produce if this case were to go to trial is that
24 your understanding and is that your belief that you likely
25 would have been convicted. And at that point I don't know

1 if you understood the judge's question or what, but he
2 decided, no, I don't want to go forward. And he was given
3 every opportunity and it's not like the Court said all
4 right, well, let's bring the jury in. He actually set if
5 for another term of court, so he wasn't going to be going
6 to trial that day or the next day or even that week. And
7 so the Court let him do that.

8 There was conversation -- and obviously I'm not
9 privy to everything that went on during that, but the
10 whole basis of his application seems to be his inability
11 to listen to those statements or to read transcripts from
12 those statements. And they were all made -- he was aware
13 of them at the time. He was aware that he hadn't seen
14 them at the time. And being aware of all that, he waived
15 all of that and I believe he did it freely and
16 voluntarily. I think he did it without coercion. He told
17 the Court in response to the Court's questions that he was
18 satisfied with his attorney. Judge Brown even went as far
19 as to say is there anything he did or didn't do that you
20 need him to do and he said, no, sir. So it appears that
21 all of that was done freely, voluntarily and
22 intelligently. I think it was a knowing -- it appears
23 that it was a knowing waiver of rights. And he now comes
24 in pursuant to his PCR because he now wants to exercise
25 those rights. And I don't think that's appropriate,

1 unless there's some indication that he was not aware of
2 his rights or that he was under some duress or some --
3 something that would cause that plea not to be freely and
4 voluntarily entered into. It appears that it was and I'm
5 going to respectfully deny his application.

6 MR. WALLER: Thank you, Your Honor.

7 MS. MCALLISTER: Thank you, Your Honor.

8 END OF REQUESTED TRANSCRIPT

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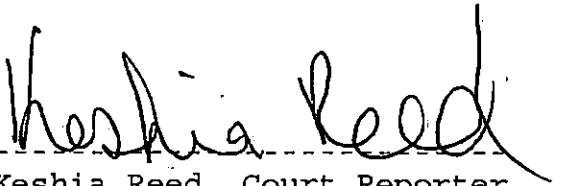
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 39, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of Common Pleas for Florence County, South Carolina, on the 31st day of August, 2017.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 19th day of June 2018.


Keshia Reed, Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)
Jamaad Dregwan Thomas, #359532,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

C.A. No. 2015-CP-21-0708

ORDER OF DISMISSAL

2018 JAN 29 AM 11:02
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 9, 2015. Respondent made its Return on January 19, 2017. An evidentiary hearing into the matter was convened on August 31, 2017, at the Florence County Courthouse before the Honorable Thomas A. Russo. Jonathan Waller, Esquire, represented Applicant. Lindsey McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent. At the hearing, Applicant testified on his own behalf. Joshua A. Bailey, Esquire, testified for the State. This Court had before it a copy of the records of the Florence County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return, and the guilty plea transcript.

PROCEDURAL HISTORY

Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the July 2012 term of the Florence County Grand Jury for one count of murder (2012-GS-21-00881). Applicant was represented by Joshua Bailey (Counsel). On April 11, 2014, Applicant pleaded guilty pursuant to Alford v. North Carolina, 400 U.S. 25 (1970), to the lesser-

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Doris Poulos O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

included offense of voluntary manslaughter, and the Honorable D. Craig Brown sentenced him to a term of imprisonment for twenty-eight years, with credit for time served. Applicant did not appeal this conviction or sentence.

ALLEGATIONS

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

1. Brady¹ Violation
 - a. "See SCR Crim P. Rule 5 and Brady violation"
2. Ineffective Assistance of Counsel
 - a. "Counsel fail[ed] to object."
3. Violation of Due Process
 - a. "Involuntary and Unknowingly plea"

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

Brady Violation

This Court finds Applicant failed to present any testimony, argument, or evidence at the hearing regarding the allegation in his application that the State violated the disclosure rules of either SCRCRP Rule 5 or Brady. Instead, it appears Applicant's contention is Counsel did not fully and appropriately share discovery with Applicant, such that his guilty plea was rendered involuntary. That allegation is addressed below. This Court deems the allegation regarding a

¹ Brady v. Maryland, 373 U.S. 83 (1963).

Brady violation to be abandoned, and the allegation is dismissed.

Ineffective Assistance of Counsel/Involuntary Guilty Plea

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel’s performance was deficient. Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” Id. (quoting Strickland, 466 U.S. at 688). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but

for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56. Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. Dalton, at 137-38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions

“made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). Additionally, “the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing.” Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Applicant testified he was arrested for murder, and Counsel was appointed to represent him. Applicant testified he met with Counsel a short time later, and they discussed the charges, possible sentences, and evidence against him. Applicant testified he did not discuss possible defenses with Counsel, and he was not sure if he had any viable defense. Applicant testified he gave one name of a potential witness to Counsel, and he believed Counsel’s investigator talked to that person. Applicant testified there were several videotaped witness statements he never reviewed or received a transcript for, although Counsel watched the tapes, and they discussed the contents.

Applicant testified he told Counsel he wanted a trial every time they met, and he also told the judge he wanted a trial rather than to continue with a guilty plea. Applicant testified the judge allowed him to take a break to confer with Counsel about how to proceed, and the Solicitor was also involved in the meeting. Applicant testified he ultimately pleaded guilty because of the statements he had not seen. Applicant testified he could have made a better decision about whether to plead guilty or proceed with a trial if he had seen the statements, but he was not certain he would have changed his mind and gone to trial. Applicant further testified he still had not seen the statements, though he had requested them from Counsel. Applicant testified his

decision would depend on the content of the statements. However, Applicant acknowledged on cross-examination, after the break to confer with Counsel, he never informed the plea judge he had not seen the statements, and instead averred he was satisfied with Counsel and did not have any more questions.

Counsel testified he did not recall the specific number of meetings he had with Applicant, but his practice is to have the initial meeting within thirty days. Counsel testified he generally meets with his clients once a month or once every two months, with longer and more frequent meetings as trial approaches. Counsel testified he usually does not have discovery available at the first meeting, but he sends it to the client as it is received.

Counsel testified there were a significant number of witnesses in the case, mostly people who had seen Applicant and his codefendant in the neighborhood and several witnesses who were inside the house where the shooting took place. Counsel testified the witnesses could place Applicant at various points around the neighborhood both to and from the shooting location. Counsel further testified he went over every statement with Applicant, although he did not have the ability to play the videos for Applicant in jail. Counsel testified some of the statements had been transcribed by the Solicitor's Office, which he received in discovery, and he reviewed the remaining interviews and decided not to have them transcribed. Counsel also testified he took detailed notes of the non-transcribed interviews and went over them with Applicant to determine if Applicant knew the witnesses or had any information to offer in response to the statements. Counsel testified, in total, he received one CD with eight statements, one CD with five statements, and one CD containing Applicant's statement; he estimated he received three to four transcripts.

~~that~~
 Counsel testified at first, Applicant wanted to plead guilty, later decided he wanted a trial, then changed back to wanting to plead guilty. Counsel testified ~~that~~ when they arrived for the guilty plea, Applicant was given the choice to plead guilty that day or begin trial the following Monday. Counsel testified he was prepared for trial. Counsel testified he had not uncovered anything in his review of the discovery that would lead him to call defense witnesses, but he had prepared questions for cross-examination of all of the State's witnesses.

Counsel also testified, in the days leading up to trial, Applicant indicated he would accept an offer of ten years, but Solicitor Clements would not agree. Counsel testified he instead negotiated a reduced charge of voluntary manslaughter with no sentencing recommendation so the defense could argue for whatever they felt was appropriate. Counsel testified the State's theory was the shooting was done as part of a gang initiation, and the Solicitor was really after the gang leaders, but Applicant would not cooperate. Counsel testified it was Applicant's decision to proceed with the guilty plea. Counsel testified he advised Applicant a conviction was likely at trial, but the ultimate decision was up to Applicant. Counsel testified ~~that~~ although he felt he could attack some points in the State's case, mitigation was difficult because there was no way to get around the fact that two kids on bikes had done the shooting, and Applicant had been identified as one of them.

Counsel testified Applicant requested a trial during the guilty plea colloquy, and they were able to take a break to meet with Applicant and his family before resuming the plea. Counsel testified the Solicitor was only present to see what Applicant's decision was, and he did not participate in the meeting. Counsel testified Applicant wanted to talk to his family and was able to do so. Counsel also testified he fully explained the plea, including the import of Alford.

Regarding Applicant's claim ^{that} his guilty plea was induced by ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds Applicant's testimony regarding Counsel's ineffectiveness is not credible, while also finding Counsel's testimony is credible. This Court finds Counsel provided effective assistance in this case and Applicant's decision to plead guilty was made freely and voluntarily. Counsel conferred with Applicant on multiple occasions, during which Counsel discussed the pending charges, the State's evidence, possible defenses and courses of action, and answered all of Applicant's questions. Additionally, Counsel conveyed the State's plea offer to Applicant, who had ample time to confer with Counsel and his family before making a decision. This Court further finds credible Counsel's testimony ^{that} he discussed all witness statements with Applicant and made Applicant aware of the contents of those statements, even if Applicant did not personally view the videos. See, e.g., Hyman v. State, 397 U.S. 35, 723 S.E.2d 375 (2012) (finding defense counsel was not deficient, nor was defendant prejudiced, where the State allowed defense counsel to view a videotape of the controlled drug buy prior to the plea, but refused to allow defendant himself to watch it). Further, Applicant testified he could not say for certain if viewing the videos would have changed his decision to plead guilty.

This Court finds the record reflects Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Applicant was aware there were witness statements he had not seen when he entered his guilty plea, and the plea waived his right to challenge those statements. Additionally, this Court finds Applicant was not subject to any time constraints, as his trial would not have started until the following week. The plea judge explained the charge to Applicant, including the maximum penalty. Tr. pp. 7, 19. The plea judge also went through Applicant's constitutional rights multiple times and questioned Applicant as to whether he

understood those rights and wished to give them up to plead guilty. Tr. pp. 9-10, 20-21. Applicant agreed that he did. Tr. p. 21. Importantly, even after stopping his guilty plea to reconsider, Applicant told the plea judge he was satisfied with his attorney, that Counsel had done everything Applicant had asked of him, and he did not need any more time to discuss this matter with Counsel. Tr. pp. 21-22. Applicant further told the plea judge no one had threatened him or made him any promises to get him to plead guilty, and he was doing so of his own accord. Tr. pp. 22-23. This Court therefore finds Applicant understood the terms of the plea and entered into it freely and voluntarily.

Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court also finds that the record fully supports the knowing and voluntary nature of Applicant's guilty plea. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (holding defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both."). In addition, Applicant has presented no evidence or valid reasons why he should be allowed to depart from the truth of his statements made at the plea. See Dalton, 376 S.C. at 137, 654 S.E.2d at 874 ("[Admissions] made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements."). This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably

effective assistance such that his guilty plea was rendered involuntary. The allegation is hereby denied and dismissed.

CONCLUSION

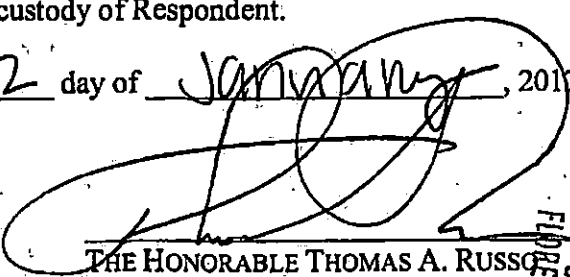
Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his plea and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from receipt 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), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, Applicant must serve and file a notice of appeal on his own behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 22 day of January, 2017.

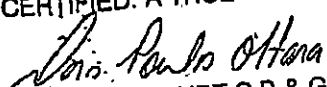

THE HONORABLE THOMAS A. RUSSO
Presiding Judge
Twelfth Judicial Circuit

Florence

South Carolina.

2018 JAN 29 AM 11:02
 DORIS POULOS O'HARA
 C.C.P. & G.S.
 FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY

 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

WITNESSES

Terrence Carraway Florence Police Department

E. L. Clements, III

ARREST WARRANT NUMBER

M378823 M378817

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-21-00881

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JULY TERM 2012

THE STATE

vs.

MILDENZEL MALCOLM DAVIS

JAMAAD DREQWAN THOMAS

Indictment for

MURDER

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF FLORENCE)

MURDER

At a Court of General Sessions, convened on JULY 19, 2012 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- MURDER

CDR: 0116: 16-03-0010,0020, 16-01-0060

That MILDENZEL MALCOLM DAVIS and JAMAAD DREQWAN THOMAS did in Florence County on or about September 18, 2011, feloniously, willfully and with malice aforethought kill one Jesse R. Brower, by means of shooting him with guns; and that the said Jesse R. Brower did die as a proximate result thereof; in violation of Sections 16-03-0010, 0020, and 16-01-0060, 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.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR