

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————
Certiorari to Lancaster County

Honorable Paul M. Burch, Circuit Court Judge
—————

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S.C. SUPREME COURT

KEISHAWN MCMANUS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2019-001042

—————
APPENDIX
—————

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INDEX

INDEX i

PLEA TRANSCRIPT DATED DECEMBER 19, 2017 1

APPLICATION FOR POST-CONVICTION RELIEF 28

RETURN..... 35

AMENDED POST CONVICTION RELIEF APPLICATION 42

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JANUARY 23, 2019 44

ORDER OF DISMISSAL..... 73

INDICTMENTS 92

SENTENCE SHEET..... 94

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

STATE OF SOUTH CAROLINA
COURT OF GENERAL SESSIONS
COUNTY OF LANCASTER
2016-GS-29-00638

State of South Carolina

Vs.

Keishawn McManus

Lancaster, South Carolina

December 19, 2017

Before the Honorable Brian M. Gibbons

APPEARANCES

For the State: Lisa Collins

For the Defendant: Creighton Coleman

Reported by: Michael C. Watkins

Official Court Reporter

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

INDEX

Plea of Guilty:	3
Sentencing:	26
Certificate:	27

NO EXHIBITS

1 MS. COLLINS: This is the State of South Carolina versus
2 Keishawn Omar McManus, he's present before you on indictment
3 2016-GS-29-638, indictment for murder in count one. He is
4 entering a plea today under Alford versus North Carolina to the
5 lesser-included offense of voluntary manslaughter. This is a
6 straight-up plea. As Your Honor knows that carries a minimum
7 of two up to 30 years in prison. I am handing up at this time
8 the sentencing sheet which has been signed by the defendant and
9 his attorney, Creighton Coleman, and the indictment. We have
10 complied with the Victims Rights Act. The family of the
11 victim, Quatavia (phonetically) Robinson, who was killed on
12 this date the incident occurred is present. At the proper time
13 three family members would like to be heard and I would like to
14 have the others stand at the proper time. Law enforcement
15 representatives are also here. I do have the facts of the case
16 for Your Honor. At the time he was arrested on this incident
17 he had a prior possession of marijuana second -- I'm sorry,
18 possession of marijuana first offense was the only conviction
19 he had, as well as an assault and battery third degree, those
20 were his only convictions at the time. He was out on bond for
21 another charge at the time this happened.

22 THE COURT: Thank you. Mr. Coleman, have you had an
23 adequate opportunity to go over everything with your client?

24 MR. COLEMAN: I have, Your Honor.

25 THE COURT: Based upon your investigation into these

1 matters as well as your discussions with your client, do you
2 agree with his decision to plead guilty to this charge of
3 voluntary manslaughter under the Alford case?

4 MR. COLEMAN: Yes, sir.

5 THE COURT: All right, thank you. Mr. McManus, do you
6 understand why you're here today?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand what you're charged with?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Now, this charge of voluntary manslaughter
11 carries a minimum of two years in prison up to a maximum of 30
12 years in prison. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. It's my understanding, and of
15 course your lawyer has told me as well as the State's lawyer
16 just told me, that you're wanting to plead guilty to this
17 charge under the case of North Carolina versus Alford; is that
18 correct?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you been over what an Alford guilty plea
21 is with your lawyer?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand what it means?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. I don't want to put words in your

1 lawyer's mouth as to what he told you, but the Court -- at
2 least to me from a sentencing standpoint I would treat it the
3 same as if it were a finding by a jury of guilt, okay? Or I
4 sentence you the same as if it were a guilty plea accepted by
5 me or a no-contest plea. Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: What an Alford plea means is that you maintain
8 your innocence, you're not pleading guilty but you understand
9 that there's a substantial likelihood that the State would be
10 able to get a conviction against you in the event this case
11 went to trial based upon the evidence that it has, and as a
12 result of that you wish to cut a deal and plead guilty under
13 the Alford case however without admitting your guilt. In other
14 words you're getting the benefit of the bargain in an Alford
15 plea. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Is that basically what your lawyer told you?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Has anybody forced, pressured, coerced or made
20 you plead that way?

21 THE DEFENDANT: No, sir.

22 THE COURT: Has anybody promised you anything to get you
23 to plead that way?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. You wanted to talk with your

1 lawyer about what's been promised to you? Talk to your lawyer.

2 (Break in proceedings.)

3 THE COURT: Mr. McManus, I'll ask the question again. Has
4 anybody made any promises to you or held out any hope or reward
5 to get you to plead under Alford?

6 THE DEFENDANT: No, sir.

7 THE COURT: Have you had discussions with your lawyer
8 about the sentencing ranges that the Judge may give you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And, of course, you understand that any
11 conversations with you aren't guaranteed, it's just like I
12 can't guarantee you and tell you what I'll do either because I
13 haven't heard everything, do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You understand under the law that the maximum
16 you can get is zero years, the minimum you can get is two
17 years, do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And so you understand that -- I'm sure the
20 victim's family is going to speak to me and I anticipate
21 they're probably going to ask me to give you the maximum
22 penalty, just like I may hear from members of your family and
23 they're probably going to ask me to give as least time as
24 possible and your lawyer is going to ask for something as well.
25 But I -- at this point in time I have no idea what I'm going to

1 do, do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: So understanding that do you wish to go
4 forward with this plea?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now, have you told your lawyer everything you
7 need to tell him?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Has he answered all of your questions?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Are you satisfied with the services of your
12 lawyer?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Did you and your lawyer go over all of your
15 jury trial rights?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you understand that you have a right to a
18 jury trial, and that the only way the State could get a
19 conviction against you is if they proved to all 12 unanimous
20 jurors beyond a reasonable doubt that you are guilty of the
21 crime charged? Do you understand that the State bears the
22 burden of proving you guilty beyond a reasonable doubt? Do you
23 understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You understand that under the law you're

1 presumed innocent until proven guilty, and the State has to
2 prove you guilty. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand that you have a right -- you
5 and your lawyer have a right to cross examine witnesses on the
6 witness stand and try to make them look bad in front of a jury
7 and maybe not look credible or believable in front of a jury.
8 Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you understand that a jury will be
11 instructed that if they have any doubt about the truth of what
12 a witness says or anything they have to resolve that doubt in
13 your favor, do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You also have the right to testify at a trial
16 if you want to and tell your side of the story, but nobody can
17 force you to testify because you have a constitutional right to
18 remain silent. Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: See, those are those very valuable jury trial
21 rights that I just went over with you that you give up when you
22 plead guilty even under an Alford plea, do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you still wish to plead guilty under Alford
25 after I've advised you of these rights?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Are you under the influence of anything today
3 that would make you not understand what's going on?

4 THE DEFENDANT: No, sir.

5 THE COURT: Lastly, you understand you have ten days from
6 today to appeal any sentence which I may hand down.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. I want you to listen carefully.
9 The State is going to tell me what they say they could prove if
10 this case went to trial, okay? And after they tell me all of
11 that at some further time I'm going to ask you if you still
12 wish to plead guilty under Alford, okay?

13 THE DEFENDANT: Okay.

14 THE COURT: So Madam Solicitor, if you'll give me a
15 factual basis for this plea, even though it's an Alford plea
16 and tell me what the State would intend to prove if this case
17 were to go to trial.

18 MS. COLLINS: Thank you, Your Honor. This incident
19 happened on 12/23 of 2014 here within Lancaster County and was
20 investigated by the Lancaster County Sheriff's Department, it
21 happened at about 4:00 p.m. in the afternoon. The defendant,
22 Keishawn McManus, and the victim, 18 year old Quatavia
23 (phonetically) Robinson were boyfriend and girlfriend at the
24 time and had lived some at the residence of Mr. McManus for a
25 few months at [REDACTED] here in Lancaster County. The

1 victim and the defendant worked together, had worked together
2 earlier and had come home. The incident happened, as I stated,
3 at the defendant's home. The defendant called 911 and reported
4 that he had gone Christmas shopping, realized he had left his
5 wallet and had come back and had found the victim dead in the
6 house and apparently she had been shot. The defendant later
7 told law enforcement that there had been a text message about
8 the victim wanting to harm herself. The defendant was speaking
9 to the 911 dispatcher, and had we gone to trial the
10 dispatcher -- and the 911 tape would indicate and reflect that
11 the dispatcher asked the defendant if the victim was still
12 alive and that he stated he had called her name and she was
13 going in and out. The dispatcher asked if there was a gun near
14 her, and that the defendant said, ma'am, to get her to repeat
15 the question, the dispatcher did. He did not immediately reply
16 and that you could hear background noise in the phone before he
17 replied and then he replied she has a gun in her hand, he could
18 not see it because she was lying on it. And the dispatcher
19 asked him again, he repeated that, that she had been laying on
20 it. When law enforcement responded they did take a picture of
21 the victim, Quatavia Robinson, had a gun in her right hand, it
22 was resting on her abdomen at the time. Through the autopsy it
23 was determine that there was a single gunshot wound to the
24 victim's upper left chest above her left breast, there was no
25 exit wound. There was no burning or charring of the skin at

1 the entry wound, which he would have expected to see in close
2 contact. Law enforcement's determination was therefore that
3 the gunshot had to take place between 30 inches to 36 inches
4 away from the victim. The victim was found as stated by the
5 defendant on the 911 call lying on the bedroom floor. The
6 chamber contained one cartridge. There were four additional
7 cartridges in the gun's magazine. There was a single .380
8 casing found just beyond the victim's right foot. The gun was
9 a .380 caliber semiautomatic Giannis Arms pistol. Law
10 enforcement was investigating the incident as a possible
11 suicide at that time. When law enforcement investigated the
12 crime scene they called in Dr. Laura Pettler, who is a leading
13 expert in blood pattern analysis and staged crime scenes. She
14 as well as CSI for the sheriff's department noted that it was
15 very peculiar that the blood splatter was so low on the floor
16 and they felt that the blood pattern indicated that there had
17 been more than one activity that took place and that there may
18 have been some type of significant movement of the victim after
19 she had been shot. When Dr. Ross did the autopsy of the victim
20 she and Dr. Garvin, who assisted her with that, noted that the
21 flight path as replicated by a flight path rod, showed that the
22 projectile entered the left side above the left chest as I have
23 stated earlier, it did lacerate the top left portion of the
24 left lung through the aorta and then the top right portion --
25 the top portion of the right lung finally came to rest between

1 ribs five and six on the back right side of the body. So the
2 path was from left to right, slightly down and slightly toward
3 the back. Dr. Ross noted again that there was no powder
4 stippling or soot which would indicate an intermediate or close
5 range wound, and Dr. Ross and Dr. Garvin both expressed the
6 opinion that in their opinion that the physical characteristics
7 of the wound itself, the flight path of the projectile and the
8 position they lay did not support a self-inflicted gunshot
9 wound. Again, the victim was found with the gun in her right
10 hand, she would have had to have held it like this to have it
11 go left to right. Had we gone to trial that would have been
12 testified to by Dr. Ross and Dr. Garvin. At that point law
13 enforcement felt that there had been foul play, the only other
14 person indicated being in the house was the defendant, although
15 the defendant had stated that when he came back she had already
16 been shot. Law enforcement continued to investigate with the
17 family speaking with the family about whether there had been
18 strife between the couple and there had been arguments and
19 unhappiness between the two. Law enforcement got the text
20 messages. Again, the defendant had shown a text message
21 indicating that the victim wanted to harm herself, but when law
22 enforcement got all of the text messages it appeared that there
23 was a little bit more to it. The younger sister of the victim,
24 Destiny [REDACTED] (phonetically), had spoken with law
25 enforcement about her concerns. When law enforcement spoke

1 with the mother of the defendant, she stated the defendant had
2 told her it was just an accident and that he did admit he had
3 not been truthful to law enforcement and that he was actually
4 there when the shot was fired. His mother is Deanna McManus.
5 The defendant, who had been asked to come back to law
6 enforcement, he did come at one time to speak to law
7 enforcement, did not give a statement. They did tell the
8 mother at that point, "Well, that is different from what we
9 heard, we would like him to come back and speak to us again."
10 He never did return, and in fact, we would have presented
11 evidence of flight to the jury. The victim had just been
12 accepted into nursing school, was very excited, she had paid
13 her tuition, was very excited about going to nursing school
14 because it had always been her dream to deliver babies. And
15 the position of the family was the victim had a lot to live for
16 and was very excited about life at that moment and her future
17 and delivering children to this world. The defendant was not
18 arrested until a year later. Again, the incident was 12/23 of
19 '14, he was arrested 12/30/15. During the course of law
20 enforcement looking for him at one time they thought he was as
21 far north as New York, at one time as far south as Florida. He
22 eventually did return to Lancaster County and was found to be
23 at a home here in Lancaster County. There was a standoff for a
24 little over an hour, during which I believe they utilized the
25 mother as well as law enforcement to speak over an intercom

1 system or a microphone system to encourage him to come out. He
2 eventually did but there was a lengthy standoff before that.
3 The gun was traced to a purchase from a pawn dealer in Cheraw,
4 there was a lady from North Carolina that had made that
5 purchase. Per the SLED tox report, after the autopsy the
6 victim's blood was negative for alcohol or for any prescription
7 drugs, or for any illicit drugs, it came back totally clean.
8 At one point the defendant's mom -- as I indicated, they were
9 actively seeking the defendant, that he had -- defendant's mom
10 told law enforcement they went to a Georgia bus stop because he
11 was going to turn himself in but then he did not show up. The
12 mother was very concerned about the defendant having sickle
13 cell. In efforts to locate him law enforcement traced a
14 prescription through DHEC and determined he had not had a
15 prescription filled since November of 2014. Although a gunshot
16 residue kit of the defendant was taken, the defendant did
17 consent to that, SLED ultimately has not analyzed that due to
18 their backlog, however law enforcement reported they had
19 confirmed that the defendant had, in fact, washed his hands
20 before that had been taken. So the basis for the plea to the
21 voluntary manslaughter, had we gone to trial, would have been
22 that there was an argument between the couple but that the
23 defendant did try to stage and make it look like a suicide and
24 that she was killed in the course of this, and that therefore
25 would support a voluntary manslaughter plea. Thank you, Judge.

1 THE COURT: Thank you, Madam Solicitor. Mr. McManus, did
2 you hear what the solicitor just told me that the State would
3 allege they would be able to prove if this case would have gone
4 to trial?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: After hearing all of that, do you still wish
7 to plead guilty under Alford to the charge of voluntary
8 manslaughter?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: The Court finds there's a substantial factual
11 basis upon which the State has presented facts and evidence to
12 hold up or support an Alford plea. The defendant has also
13 acknowledged he is satisfied with very competent counsel,
14 therefore the Court does accept this plea. All right. As to
15 sentencing I'll be glad to hear from the State first and then
16 we'll hear from the defense in mitigation.

17 MS. COLLINS: As stated, Your Honor, this is a straight-up
18 plea, however the family of the victim does wish to speak to
19 the Judge, and under the terms of plea agreement they are able
20 to request the sentence they want the Judge to consider. Law
21 enforcement is represented today by Brad Whitesides and
22 Jennifer Rumbaugh of the sheriff's department. The case was
23 initially investigated by Spencer McInvaile who is no longer
24 with them. Thank y'all for coming. On behalf of the family of
25 Quatavia N. Robinson, known as Quay, was 18. I would like all

1 of the family to stand at this time just so they can see the
2 loved ones that Quatavia left behind who miss her everyday.
3 And then speaking on behalf of the victim will be the mother,
4 Porche (phonetically) Simon, the youngest sister; Destiny
5 [REDACTED] (phonetically), as well as a second cousin, Shanetta
6 Little. And when you come forward if you will state your name
7 and your relationship to Quay. And, Your Honor, I am going to
8 hand up -- I asked the family to bring some photographs of the
9 victim, I've shown these to Mr. Coleman.

10 THE COURT: Thank y'all for being here. I will be glad to
11 hear from each one of you.

12 SPEAKER: I'm Porche Simon, I am Quatavia Robinson's
13 mother. Your Honor, what he took from me cannot be replaced.
14 My life took a total change on December 23rd of 2014. God says
15 I have to forgive but I can't forget the pain he has caused my
16 family. She was loved by many. She'll never get to see her
17 nieces or her nephews grow up. I'll never get to see her
18 fulfill her dreams. I'll never get to see her walk down the
19 aisle (inaudible.) He took a lot. And I ask you for the
20 maximum sentence.

21 THE COURT: Thank you, ma'am, thank you. Yes, ma'am?

22 SPEAKER: I'm the little sister, I'm Destiny [REDACTED].
23 Not only was she a sister but she was like my mother. That's
24 my biological mother but she was like my mother. He took a
25 close friend to me, one that you could call on when you needed

1 her anytime. She loved the community. If she had it you had
2 it too. If she had \$5 you had \$2.50, she had \$2.50. If she
3 had \$150 y'all both split it down the middle. No, we can't get
4 her back. And the fact that I talked to her a day before any
5 of this occurred, it was just like, "Oh my God, I can't get to
6 you. I'm under the age of 18, I don't have a driver's license,
7 I can't come to your rescue." I didn't have anyone at that
8 time to come to her rescue. But we just put so much trust in
9 him to take care of her. I lost my sister two days before
10 Christmas, three days before my birthday, eight days before her
11 own birthday. She couldn't celebrate her 19th, her 20th, 21st,
12 she couldn't have her own babies, none of that. I ask you to
13 give him the maximum sentence just because of the pain and
14 suffering he has put us through over the years. We don't even
15 know what to tell my nieces and nephews, they still ask about
16 her. You can't say, "Yeah, she got killed," that's not the
17 perfect way. We have to wait for them to get of age so they
18 can understand what happened, what occurred, when it happened,
19 how it occurred. They don't understand that stuff at the age
20 of seven and six and eight, two, one, none of that. And it's
21 hard. It's hard because when I needed her she was there every
22 time, it never fails. I have watched this man pistol-whip my
23 sister, I have watched him hurt her in so many ways that you
24 can't even imagine. If love was a drug she probably would have
25 been dead, if you could overdose off love she would have been

1 dead. I just pray you give him the maximum sentence just
2 because of pain and suffering.

3 THE COURT: Thank you, ma'am. Yes, ma'am?

4 SPEAKER: I'm Shanetta Little, I am actually her third
5 cousin. I can't even start where to begin with this. She was
6 a loving person, she didn't hurt nobody, she was loved by her
7 family, we all loved her. She was very smart, went off to
8 college. I even watched her go off to college. At school she
9 was very smart, she was getting ready to go off to school and
10 become a nurse as you heard. I just hate that she's gone. I
11 have watched my family hurt over this whole situation. When I
12 got the call that night I knew it wasn't true. She would have
13 never took her own life, she was too smart, she loved life.
14 And to be taken away before Christmas, that's something we've
15 got to live with every year, that Christmas and Christmas Eve
16 come around, and then her birthday is in January. I have to
17 ride past the cemetery every day to and from work to look out
18 there and see my cousin. I go to her grave, I take balloons.
19 My family don't know but I go out there and see her by myself
20 and I hate she gone. But even as her cousin I'm asking that
21 you give him the maximum for the sake of my cousin.

22 THE COURT: Thank you, ma'am.

23 MS. COLLINS: That's all from the State, Your Honor.

24 THE COURT: Thank you, Madam Solicitor. Give me just a
25 moment, Mr. Coleman.

1 (Break in proceedings.)

2 THE COURT: Mr. Coleman?

3 MR. COLEMAN: May it please the Court, Your Honor?

4 Keishawn stands before you, currently he's 25 years old, at the
5 time this happened he was 22, the incident occurred 12/23 of
6 '14 and he was arrested 12/30 of '15 and he has been in jail
7 since that time. Your Honor, let me start out by saying this,
8 I got to know Keishawn before all of this happened and he and
9 his mama came to me. Keishawn has sickle cell, and I had
10 always heard of sickle cell but I really didn't know what it
11 was until I met him. There are three types, he's got the
12 worst. And what the sickle cell puts him through was
13 unbelievable, the pain, the hospital treatments and all of
14 that, and they came to me for social security disability. And
15 we went and got disability on behalf of Keishawn. But
16 regardless, you know, I have been in the legal profession for
17 probably 35 years doing this type stuff day in and day out and
18 there are very few people that I represent that I like more
19 than Keishawn. What he did and what happened we're sorry for.
20 There's nothing that can bring Ms. Robinson back and we want to
21 apologize to the family; to the mama, the sisters, the cousins,
22 we're sorry to be here. But Keishawn, because of his sickle
23 cell, has a limited time span in his life and I just don't want
24 him to die in prison from a hard sentence compounded with the
25 fact he has got sickle cell, because sickle cell gives him a

1 limited time to live anyway. He's a good person, he has got
2 good family support and if I can I would ask the family to
3 stand, his family. Thank y'all. I think his mother would like
4 to speak at the appropriate time. And again, Your Honor, Ms.
5 Robinson and Keishawn had lived together at Ms. McManus' house
6 for about six and a half or seven months before this happened.
7 They lived together, they were boyfriend/girlfriend and I think
8 like a lot of young people, they may not have had the perfect
9 relationship but they loved each other. And I want to make one
10 thing perfectly clear, Ms. Robinson was raised by her
11 grandmother who is not here today although I do have a
12 recording of her, and she even told Ms. McManus that she knows
13 that Keishawn loved her granddaughter and that this was an
14 accident. This is from the grandmother who raised the victim
15 in the case. I don't think there's any question that he loved
16 her and it was an accident. Yes, Keishawn made a mistake, a
17 huge mistake, it was just compounded daily as the things went
18 on. He wasn't totally upfront with the police. He was 22 at
19 the time this happened, he flipped out, he absconded and he
20 shouldn't have done that and he realizes that now. He tells me
21 that he walked in that day, and the gun was her gun, it was a
22 gun that was gotten from a pawn shop, I think, in Chesterfield
23 County, it wasn't his. He says that it was her gun and he
24 walked in and she had the gun, that when he walked in he was
25 scared he was going to get shot or she was going to get shot or

1 they both were going to get shot and they tussled over the gun
2 and it went off. There's one bullet hole in the wall at the
3 home and another one in Ms. Robinson. I don't think there's
4 any question that there was no intent to harm in this
5 particular case. He has got a good family, good grandmother,
6 it was an accident. We are here to confront what has happened.
7 He is doing it freely and voluntarily without any coercion from
8 anybody about what has happened. I know that Ms. McManus, I
9 think, wants to speak if the Court would allow her.

10 THE COURT: Sure.

11 SPEAKER: Yes, Your Honor, I'm Keishawn's mother.

12 THE COURT: Yes, ma'am?

13 SPEAKER: We've been dealing with sickle cell all of his
14 life. I'm not here asking for pity, I'm being honest. I know
15 my son, he got to take accountable for what happened, but he
16 wouldn't intentionally hurt anyone. He has a loving family,
17 stepfather that we guide him, we show him the right way, he
18 strayed. He tried to help everyone. We opened our doors to
19 Quay, we loved Quay. I accepted her in my home because of my
20 son. She lived with us for months. We would never do anything
21 to hurt her at all. She wouldn't hurt Shawn and Shawn wouldn't
22 hurt her. It's hard for both sides. We're sorry. I reached
23 out to the grandmother and I told her how sorry we was. We are
24 sorry, we can't express that enough. We're sorry it happened.
25 If it would have been vice versa I would have opened up, I

1 would have done forgiven. It would have been hard but I would
2 have forgave her. Because Keishawn, he'll give you the shirt
3 off his back, anything you ask him for, he got it, he would
4 give it to you. Keishawn finished school, he want to go to
5 college, he wanted to be a barber, he want to cut hair. He
6 suffered enough with sickle cell anemia. I was there day in
7 day out with him suffering, he still suffers. They said Shawn
8 would not live to be 30, but with God and with us praying he
9 will, he'll make it. I asked him to just hold on, be strong
10 because I'm not standing here to ask for Shawn to be set free
11 but I am asking for a reduced sentence, I am. And this is his
12 ex-girlfriend that he was in a relationship with from middle
13 school all of the way up to high school. Shawn wouldn't abuse
14 anyone, Shawn wouldn't hurt a fly, that's just his character.

15 THE COURT: Thank you, ma'am. Yes, ma'am?

16 SPEAKER: My name is (inaudible) I'm an ex-girlfriend.

17 (Reading a letter.) Keishawn is a guy with heart so big and so
18 pure, anyone knows him knows these things and knows that he's
19 full of pure love and joy for others. Being in a world with
20 certain things in society expect us to fail. Sometimes our
21 actions are not from poor choices but from society and a
22 failure to allow free speech. I'm not saying that why we are
23 here today is a necessary, but to say we will not look down or
24 judge for the actions committed. Mistakes are made but
25 pureness of the heart is God given. He always keep a smile on

1 his face and others. You'll never know when he's having a bad
2 day. But even when he is having a bad day he keeps his day
3 bright.

4 THE COURT: Thank you, ma'am, thank you for being here.
5 Yes, sir?

6 SPEAKER: I'm Keishawn's father. First of all I want to
7 say I'm sorry for the family and their loss. And I know my
8 son, he loved her and he wouldn't hurt anyone. I know it had
9 to be an accident because he's nothing like that.

10 THE COURT: Thank you for being here.

11 MR. COLEMAN: Judge, I do have a statement that I want to
12 hand up to the Court that's from a pastor.

13 (Break in proceedings.)

14 THE COURT: All right, yes, sir. Anything further, Mr.
15 Coleman?

16 MR. COLEMAN: No, sir, not unless you want to --

17 THE COURT: Mr. McManus, anything you would like to tell
18 me before I impose sentence?

19 THE DEFENDANT: Yes, sir. I just want to apologize to the
20 family, I want to apologize to my family. And I just want to
21 say that in my first defense no one stood with me all for
22 certain (inaudible). Thank you, Your Honor, for giving me this
23 time to speak.

24 THE COURT: Thank you, sir. Every case I hear in court is
25 a tough case and this is by no means different. By all

1 accounts there's enough tragedy in this courtroom to stretch
2 for infinity. I look at both families, both families have
3 experienced great loss. I sympathize with y'all. Y'all will
4 never get to see her again, I know. I can feel your comments,
5 I can feel that loss physically and I am sorry. Yet you're a
6 25 year old man that's going to potentially be away from your
7 family for a long time but you're still here. Why do things
8 like this happen? I don't know. I'm going to tell you, and I
9 don't know what this will mean to anybody I say this to in this
10 courtroom, but if I weren't a man of faith I would have done
11 been crazy by now. I have been doing this a long time. I've
12 seen enough heartache in my life, enough tragedy in my life
13 doing this job and it's heartbreaking. Why does stuff like
14 this happen? I don't know, but God knows and we'll all find
15 out one day. It doesn't make it any easier. It does make it
16 easier when you know that everything is part of God's plan if
17 you're a person of faith. Voluntary manslaughter carries a
18 range of a minimum of two years in prison, it used to be a
19 minimum of one year in prison but the legislature recently
20 changed that, but it's capped at 30 years. That's a tremendous
21 amount of discretion given to the judge on the hot seat, and
22 I'm that person now obviously. And the reason our laws give a
23 judge all of that discretion is because every case is
24 different, every manslaughter case is completely different from
25 another. I mean, some -- the things that's not different

1 obviously is somebody has died and that's tragic enough. And
2 what I frequently say to the victim's family, and I'm sure the
3 victims coordinators have said this to y'all and y'all have
4 heard this, no matter what I say and no matter what I do is
5 going to make it any easier for y'all to deal with the loss of
6 your loved one, I know that. And all of the experts say that
7 this helps for closure? What does closure mean? There's no
8 closure. You lost a daughter, you lost a sister, you lost a
9 niece, an aunt, a cousin, and unfortunately that's the harsh
10 reality that we're all in right now. Mr. McManus, whether it
11 was an accident or not you took a life and for that you need to
12 be punished. I understand, you know -- I'm a lawyer,
13 obviously, I understand that it is tough for both sides, and
14 you never know what is jury is going to do, I understand that,
15 but you took a life whether it's accident or not. If a jury
16 didn't believe your version of it being an accident and you get
17 a murder conviction you're looking at a minimum of 30 years up
18 to life in prison. I understand, you know, and I understand
19 that was part of you and your lawyer's consideration for this
20 guilty plea under Alford today. And let me say one last thing
21 before I do what I'm going to do because this is important, I
22 certainly hope people can understand, if they don't it is what
23 it is, I'm used to it, like I said, I've done it for a long
24 time, what is justice? You know, the families always ask for
25 justice on both sides and that's what I'm supposed to

1 represent. Justice isn't only vengeance for the victim, it's
2 not that alone, it's also mercy and compassion for a 25 year
3 old young man with sickle cell trouble who is looking at
4 conceivably spending the rest of his life in prison. I have to
5 balance that and what does it come out to? I don't know.
6 Tragedy, tragedy, tragedy. Based upon the totality of the
7 circumstances, having heard from both the victim's family and
8 from the State as well as the defendant and his family, I find
9 that Mr. McManus -- I have accepted your plea to the charge of
10 voluntary manslaughter, I find you shall be committed to the
11 South Carolina Department of Corrections for a term of 21
12 years. Good luck to you, sir.

13 (End of the hearing.)

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1 I, the undersigned, Michael C. Watkins,
2 Official Court Reporter for the Sixth Judicial
3 Circuit of the State of South Carolina, do hereby
4 certify that the foregoing is a true, accurate and
5 complete transcript of the proceedings had and
6 evidence introduced in the trial of the captioned
7 case relative to appeal in the Court of General
8 Sessions for Lancaster County, South Carolina, on
9 the 19th day of December, 2017.

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

12

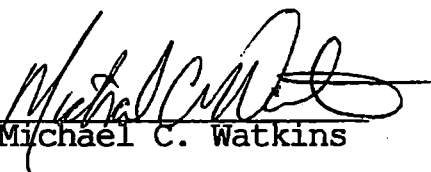
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August 2, 2018

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Michael C. Watkins

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Court Reporter

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STATE OF SOUTH CAROLINA)

County of LANCASTER)

KEISHAWN O. McMANUS)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLE.

2018 CP 29 00418

APPLICATION FOR
POST-CONVICTION RELIEF

CLERK OF COURT
LANCASTER, SC

2018 APR 13 AM 9:51

FILED
OFFICE OF CLERK
OF COURT

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 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 LEE CORRECTIONAL INSTITUTION
BISHOPVILLE, S.C. 29010
2. Name and location of Court which imposed sentence LANCASTER CO. GEN. SESS.
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) 2016-GS-29-00638- MANSLAUGHTER VOLUNTARY MANSLAUGHTER
 (b) _____

(c) _____

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

(a) 12-19-2017/21 years

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty xxxx

(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: n/a

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result: n/a

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) LAWYER FAILED TO FILE NOTICE OF APPEAL

- (b) _____
- (c) _____

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

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL OF RECORD
- (b) BROKEN PLEA DEAL ERRONEOUS ADVISE AND TRIED TO PLEA
- (c) _____

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

- (a) FAILURES TO EXPLORE, INVESTIGATE, EXAMINE AND INTERVIEW, ETC.
- (b) PROMISED A LESSER SENTENCE FOR PLEA TO CHARGES, etc.
- (c) _____

12. Prior to this application have you filed with respect to this conviction: NONE

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

NONE

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

(a) which grounds have been presented:

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

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

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

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

- (a) COMPLYING TO THE PROPER EXHAUSTION DOCTRINE OF S.C.
- (b) _____
- (c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. counsel coleman
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. PLEA
 - ii. _____
 - iii. _____

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

VACATE SENTENCE AND DISMISS CHARGES BASED UPON THE DUE
PROCESS OF RIGHTS VIOLATED, AND OR REMAND FOR RESENTENCE TO
RECEIVE THE SENTENCER ORIGINALLY PROMISED TO APPLICANT

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

NO

STATE OF SOUTH CAROLINA)
County of LEE)

VERIFICATION

I, KEISHAWN O. MCMANUS, 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 at this time for vacating, setting aside or correcting the convictions and sentence attacked in this application; and that the matters and allegations therein set forth are true and correct.

Keishawn Omar McManus
KEISHAWN OMAR MCMANUS
990 WISAKY HWY.
BISHOPVILLE, S.C. 29010

SWORN to and subscribed before me this 10
day of April, 2018

Miqua Greene (L.S.)
Notary Public

My Commission Expires: 9-29-2027

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

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

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

Keishawn mcm ar

Applicant

KEISHAWN OMAR MCMANUS
Lee Corr., Inst.,
990 Wisacky Highway
Bishopville, SC 29010-1775

SWORN or affirmed to and subscribed before me this

10 day of April, 2018

Uniqua Greene
Notary Public

My Commission Expires: 9-29-2027

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	FOR THE SIXTH JUDICIAL CIRCUIT
)	
Keishawn McManus, # 375011)	
	)	2018-CP-29-0418
Applicant,)	
)	
v.)	
	)	RETURN
State of South Carolina,)	
)	
Respondent.)	
)	
)	

In response to the application for post-conviction relief (PCR) filed by Keishawn McManus on April 13, 2018, the State files this return:

I. Procedural History

McManus is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lancaster County Clerk of Court. McManus was indicted at the April 2016 term of the Lansater County Grand Jury for murder and possession of a deadly weapon during the commission of a violent crime. (2016-GS-29-638). Creighton Coleman, Esquire represented McManus. On December 19, 2017, McManus entered a plea pursuant to *North Carolina v. Alford*¹ to the lesser included offense of voluntary manslaughter before the Honorable Brian M. Gibbons. The plea was entered without sentencing recommendations or negotiations. Judge Gibbons accepted McManus’s plea and sentenced him to twenty-one years imprisonment for voluntary manslaughter. McManus did not appeal his sentence or conviction.

II. Facts

¹400 U.S. 25 (1970).

Keishawn McManus's charges stem from the death of his girlfriend, Quatavia Robinson. On December 23, 2014, McManus called 911 and reported that Robinson had been shot. McManus told the dispatcher that he found Robinson lying on the floor with what appeared to be a gun shot wound. The dispatcher asked McManus if Robinson was still alive. He responded that Robinson was going in and out. The dispatcher asked if there was a gun near Robinson. McManus did not answer. The dispatcher repeated the question, and McManus did not immediately reply. After a brief pause, McManus stated there was a gun in Robinson's right hand. He explained that he could not see the gun before because Robinson was lying on it. Law enforcement found Robinson with a gun in her right hand. (Tr. 10).

During the early stages of the investigation, McManus informed law enforcement that Robinson had sent him a text message indicating that she wanted to harm herself. (Tr. 10). Initially, law enforcement was investigating Robinson's death as a possible suicide. An autopsy report indicated that Robinson suffered one gunshot wound to the upper chest above her left breast. There was no exit wound, and there was no burning or charring of the skin at the entry wound. (Tr. 10–11). The lack of burning or charring around the entry wound led to a further investigation of the crime. This further investigation led law enforcement to believe the gunshot was not self-inflicted, and that Robinson's body had been moved after she was shot. (Tr. 11–12). Robinson's mother told law enforcement that McManus admitted to her that he was present when Robinson was shot, and her death was the result of an accident. (Tr. 13).

A Lancaster County Magistrate issued a warrant for McManus's arrest on January 6, 2015. McManus was arrested on December 30, 2015—almost a year after the warrant was issued. (Tr. 13–14). McManus entered an *Alford* plea on December 19, 2017.

During the plea hearing, the plea court asked McManus if he understood that he was pleading pursuant to *Alford*. The court explained to him the meaning and consequences of an *Alford* plea. (Tr. 4–6). The plea court then asked McManus if plea counsel discussed the sentencing ranges he could receive. The court went on to explain, “And, of course, you understand that any conversations with you aren't guaranteed, it's just like I can't guarantee you and tell you what I'll do either because I haven't heard everything, do you understand that?” (Tr. 6). McManus affirmed (Tr. 6). The plea court then conducted a colloquy with McManus, explaining the rights he was giving up in deciding to enter an *Alford* plea instead of proceeding to a jury trial. (Tr. 7–9). The State then recited the factual basis for the plea. (Tr. 9–14).

After the State provided the factual basis for the plea, the plea court asked McManus if he still wished to enter an *Alford* plea. McManus affirmed. (Tr. 15). The plea court accepted McManus's plea and sentenced him to twenty-one years for voluntary manslaughter. (Tr. 15, 26). McManus did not appeal his plea or conviction. He commenced this PCR action on April 13, 2018.

III. Current Application

McManus claims he is being held in custody unlawfully alleging ineffective assistance of counsel. Specifically, McManus alleges plea counsel was ineffective for:

1. Broken plea deal, erroneous advice, and tricked Applicant to plead;
2. Failure to explore, investigate, examine, and interview; and
3. Promising a lesser sentence for Applicant's plea to the charges.

McManus requests the following relief:

Vacate sentence and dismiss charges based upon the due process and rights violated, and or remand for resentencing to receive the sentence[] originally promised to Applicant.

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

IV. Response to Allegation of Ineffective Assistance of Counsel

The State submits McManus's allegation of ineffective assistance of counsel is without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985).

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). However, counsel is presumed to have adequately assisted and exercised reasonable professional judgment in making decisions in the case. *Edwards*, 392 S.C. at 456, 710 S.E.2d at 64. "[W]here counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

"[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624

(1999). Plea counsel is not deficient for advising a defendant to plead guilty based on what counsel believes the sentence would be if the defendant were convicted at trial. *See Bennett v. State*, 371 S.C. 198, 204–05, 638 S.E.2d 673, 676 (2006).

To prove prejudice, the applicant must show a reasonable probability he would not have pled guilty and would have insisted on going to trial absent plea counsel's alleged deficiency. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

As for McManus's allegation the plea deal was broken, and that plea counsel erroneously advised him and tricked him into pleading, the State submits this allegation is without merit. The State submits that any alleged deficiency regarding sentencing or the plea deal was cured by the plea court's colloquy. The plea court asked McManus if plea counsel had advised him of the applicable sentencing ranges, and McManus affirmed. The plea court then advised, "[Y]ou understand that any conversations with you aren't guaranteed, it's just like I can't guarantee you and tell you what I'll do either because I haven't heard everything, do you understand that?" (Tr. 6). McManus answered affirmatively. The plea court then explained to McManus the maximum and minimum exposure he was facing, and again advised him there was no guarantee as to what the sentence would be. (Tr. 6–7). Therefore, based on the colloquy between the plea court and McManus, any alleged deficiency as to sentencing advice or plea negotiations were cured by the plea court. *See Wolfe v. State*, 326 S.C. 158, 164–65, 485 S.E.2d 367, 370 (1997) (stating even if counsel gives erroneous advice, an applicant is not entitled to PCR where any misconceptions are cured by the colloquy during the guilty plea proceeding); *see also Bennett v. State*, 371 S.C. 198, 205 n.6, 638 S.E.2d 673, 676 n.6 (2006) ("[A] deficiency can be cured where the trial court properly informs the defendant about the sentencing range.").

However, the record does not directly dispute all of McManus's allegations; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983).

V. Any Future Amendments

McManus must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to the Uniform Post-Conviction Relief Act² and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)–(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because McManus has been appointed an attorney, the attorney, and not McManus, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCP.

VI. Response to Any and All Other Allegations

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

VII. Request for an Evidentiary Hearing

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

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

² S.C. Code Ann. §§ 17-27-10 to -160.

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

SAMUEL L. KEY
Assistant Attorney General

By:



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

October 24, 2018.

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOR THE 6 th JUDICIAL CIRCUIT
COUNTY OF LANCASTER	)	Case No.: 2018-CP-29-00418
Keishawn McManus (357011),)	
)	
Applicant,	)	AMENDED POST-CONVICTION
	)	RELIEF APPLICATION
v.)	
)	
State of South Carolina.)	

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on April 13, 2018, to add the following allegations:

Ineffective Assistance of Counsel as to Creighton Coleman and Brandon Steen , Esquire:

- a. Failure to properly investigate Applicant's Case including but not limited to interviewing potential witnesses and evaluating the veracity of evidence sought against Applicant
- b. Failure to adequately provide Applicant with all discovery and properly discuss all discovery and evidence sought against him prior to Applicant accepting his plea bargain
- c. Failure to properly counsel, discuss, and explain the pending charges and consequences so that Applicant could make an informed decision as to whether to take a plea bargain or pursue a trial
- d. Failure to discuss possible defense and challenges to the evidence with the Applicant
- e. Failure to pursue an appeal despite Applicant's request
- f. Promised lower sentence for taking plea bargain

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

Respectfully submitted,

By 

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

November 8, 2018


CERTIFICATE OF SERVICE

I certify that I have served this document via email and United States Postal Service mail to:

Samuel Key
Assistant Attorney General
Skey@scag.gov

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

This 3rd Day of November, 2018.


TIERRA WELLS, PARALEGAL
MINOR LAW OFFICES

STATE OF SOUTH CAROLINA
LANCASTER COUNTY

IN THE GENERAL COURT OF JUSTICE
CIRCUIT COURT DIVISION
2018-CP-29-00418

```

-----X
STATE OF SOUTH CAROLINA,      :
                               :
      vs.                      :      TRANSCRIPT OF RECORD
                               :
KEISHAWN MCMANUS,           :
                               :
      Defendant.              :
-----X

```

January 23, 2019
Lancaster, South Carolina

B E F O R E

The Honorable Paul M. Burch, Judge Presiding.

A P P E A R A N C E S

SAMUEL KEY, ESQ.
Assistant Attorney General
Office of The Attorney General
State of South Carolina
Post Office Box 11549
Columbia, South Carolina 29211-1549

DONAE MINOR, ESQ.
Minor Law Offices
223 East Main Street
Suite 302
Rock Hill, South Carolina 29646

Kymerlee M. Williams, CSR/RPR
Official Court Reporter
P.O. Box 283
Pineville, North Carolina 28134

I N D E X

PROCEEDINGS	3
CERTIFICATE OF DELIVERY	29

E X H I B I T S

(NONE OFFERED)

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P R O C E E D I N G S

* * *

WEDNESDAY, JANUARY 23, 2019

LANCASTER, SOUTH CAROLINA

(Whereupon, the following proceedings were held in open court. The defendant was present with his attorney, along with counsel for the State.)

THE COURT: All right.

MR. KEY: May it please the Court.

THE COURT: Yes, sir.

MR. KEY: This is Keishawn McManus v. The State of South Carolina. It's Case Number 2018-CP-29-0418. Mr. McManus is confined in the South Carolina Department of Corrections pursuant to Orders of Commitment of the Lancaster County Clerk of Court.

He was indicted in an April 2016 term of the Lancaster County Grand Jury for murder and possession of a deadly weapon during the commission of a violent crime. He was represented by Creighton Coleman.

On December 19, 2017, McManus entered a plea pursuant to North Carolina v. Alford to the lesser-included offense of voluntary manslaughter before The Honorable Brian M. Gibbons. The plea was entered without sentencing recommendations or negotiations.

1 Judge Gibbons accepted McManus' plea and sentenced him
2 to 21 years imprisonment for voluntary manslaughter. He
3 did not appeal his sentence or conviction.

4 In his application for post-conviction relief,
5 McManus claims he is being held in custody unlawfully
6 and alleging ineffective assistance of counsel.
7 Specifically, he alleges his plea counsel was
8 ineffective for a broken plea deal; erroneous advice;
9 plea counsel tricked Applicant to plead; failure to
10 explore, investigate, examine, and interview, and
11 promising a lesser sentence for Applicant's plea to the
12 charges.

13 I believe his application was amended. He is
14 represented today by Ms. Donae Minor. I will hand it
15 over to her. If she could just put on the record what
16 allegations they are going forward on today.

17 THE COURT: Ms. Minor.

18 MS. MINOR: May it please the Court, Your Honor.
19 Those allegations as stated by the AG's office are
20 correct. The amendment was to clarify those
21 allegations. We will be moving forward on the
22 allegations of failure to sufficiently counsel on
23 evidence sought against Mr. McManus, so that Mr. McManus
24 could make an informed decision as to whether to take a
25 plea or a trial, failure to investigate, and a promise

1 of lower sentencing. So it's essentially the same
2 grounds.

3 THE COURT: All right. Ms. Minor, I noticed that
4 he was originally indicted for murder, possession of a
5 deadly weapon during the commission of a violent crime.
6 Also, I have noted here that on the plea to voluntary
7 manslaughter, it does carry the maximum of 30 years. He
8 was sentenced to 21. With those factors in there, I
9 need to pose a question.

10 Have you discussed with Mr. McManus the pitfalls,
11 specifically, what we call ground zero; that if he were
12 to obtain relief, it would be carried right back to that
13 original charge?

14 MS. MINOR: I have.

15 THE COURT: In your opinion, does he understand
16 your advice as to that?

17 MS. MINOR: Yes, Your Honor. I have mentioned that
18 to Mr. McManus several times. I do believe based off of
19 our conversations -- and I also just talked to him real
20 briefly -- that he would still like to move forward.

21 THE COURT: I always like to go over that. I
22 remember several years ago over in Darlington, a
23 Petitioner was granted relief and granted a new trial.
24 He had been sentenced on a voluntary. It went back, and
25 he had a jury trial. He wound up with 28 years. So

1 that is a pitfall, a danger that everybody needs to be
2 aware of, especially when you have got a case that is as
3 particular as this one where you have a plea to the
4 lesser-included.

5 If you have reviewed that with him, we will
6 proceed.

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

9 * * *

10 KEISHAWN MCMANUS,
11 called as a witness by and on behalf of
12 the Applicant to testify, being first duly
13 sworn was examined and testified as follows:

14 * * *

15 DIRECT EXAMINATION

16 BY MS. MINOR:

17 Q Mr. McManus, you pled guilty to voluntary
18 manslaughter where Creighton Coleman was your plea
19 attorney; correct?

20 A Yes, ma'am.

21 Q Was he a hired attorney, or was he an appointed
22 attorney?

23 A Hired.

24 Q Today you are claiming ineffective assistance of
25 counsel against Attorney Coleman for his failure to

1 sufficiently counsel you on the evidence brought against
2 you, so that you could make an informed decision on
3 whether to take a plea, his failure to investigate your
4 case sufficiently, and also promised lower sentencing;
5 is that correct?

6 A Yes, ma'am.

7 Q Let's talk about the first ground, failure to
8 sufficiently counsel you on the evidence sought against
9 you.

10 Did you ever meet with Mr. Coleman to discuss your
11 case?

12 A Yes, ma'am, a few times before I was going to
13 court.

14 Q How many times would you say that you met with him
15 during the few weeks before you went to court?

16 A Three.

17 Q Were those meetings over the phone, or were they in
18 person?

19 A In person.

20 Q What did you discuss during those meetings?

21 A Basically that I was going up for a plea, so zero
22 to 20.

23 Q Did he discuss the pitfalls of taking that plea or
24 going to trial? Did he go over that information with
25 you?

1 A No, ma'am.

2 Q So it's your testimony that he just mentioned that
3 you were up for a plea?

4 A Yes, ma'am.

5 Q Did you discuss anything regarding your motion for
6 discovery or evidence? Did you discuss that?

7 A No, ma'am. We never really went over anything in
8 my case.

9 Q Were you provided with that information?

10 A Yes, ma'am. I had received my Brady the same week
11 I was going to court. But I had my Motion for
12 Discovery, yes, ma'am.

13 Q Did you ask him any questions about that when you
14 were provided with that information?

15 A I had several questions.

16 Q Did he answer those questions?

17 A Certain questions he answered. He didn't really
18 answer the majority of the questions.

19 Q What certain questions did he answer?

20 A Like different ones. Basically, it was about my
21 plea. It wasn't really never too much about my case.
22 If I asked certain things about my case, I never really
23 got an answer. It would be -- if I asked him about the
24 plea, he would start telling me certain things about the
25 plea.

1 Q We have to help the Court understand what
2 questions you asked him.

3 Do you recall what questions you asked Mr. Coleman
4 that he failed to answer those questions sufficiently?

5 A So many. For example, GSR kit. I was asking about
6 my GSR kit, how it was tested. He would never answer
7 how my GSR kit tested. That is an example of a question
8 I would ask about my case. He wouldn't never answer.

9 Q But he would answer questions pertaining to the
10 plea; is that correct?

11 A Yes, ma'am.

12 Q What kinds of questions did you have pertaining to
13 the plea?

14 A Was I going up on zero to 20.

15 Q And he answered those questions?

16 A He answered that. He telled (sic) me I was going
17 up on zero to 20. When I got to court, I found out I
18 was going up on 2 to 30 on the plea.

19 Q So it's your testimony that Mr. Coleman failed to
20 answer any questions about your case, and, particularly,
21 one example is the GSR kit?

22 A Yes, ma'am.

23 Q And the only questions that he really answered were
24 pertaining to the sentencing of your plea?

25 A Yes, ma'am.

1 Q Is it also your testimony that you didn't have
2 enough time to spend with Mr. Coleman to discuss your
3 case?

4 A Yes, ma'am.

5 Q You also allege that Mr. Coleman failed to
6 investigate your case; is that correct?

7 A Yes, ma'am.

8 Q Based on the limited amount of times that you met
9 with Mr. Coleman, did he ever say anything about
10 reviewing your discovery or your evidence?

11 A He told me a few times that he looked over it, but
12 there was certain questions I would ask him. When I was
13 talking to him in prison about my case, I would ask him
14 stuff, and he couldn't give me no answer for it. You
15 could tell he wasn't really looking over it.

16 Q So based off of that and to your knowledge, you
17 don't believe he did anything to investigate your case?

18 A No, ma'am.

19 Q Did you ever ask Mr. Coleman to appeal your case?

20 A Yes, ma'am.

21 Q What happened?

22 A I asked him to appeal it on the same day I got
23 sentenced. When I got back to the County, I wrote him a
24 letter to appeal my case for me. He never
25 did.

1 Q You never heard back?

2 A No.

3 Q Let's talk about this promised lowered sentencing.
4 Earlier you testified that Mr. Coleman said something
5 about a lower sentencing. What did Mr. Coleman promise
6 you, as far as sentencing?

7 A 10 to 15.

8 Q When did he promise you that sentencing? When did
9 you guys talk about sentencing?

10 A When he started coming to the County, sitting with
11 me. He said, "It's an open case, zero to 20, but if we
12 go in, I guarantee to get you 10 to 15."

13 That is what we be discussing.

14 Q So he mentioned the word "guarantee"?

15 A Yes, ma'am.

16 Q Had you had known this outcome would have been a
17 little different, would you have opted to go to trial
18 instead of entering the guilty plea?

19 A Yes, ma'am.

20 Q Is there anything else that you would like for this
21 Court to know regarding Mr. Coleman's ineffective
22 assistance of counsel?

23 A No.

24 MS. MINOR: I have no further questions, Your
25 Honor.

1 Please answer any questions of opposing counsel and
2 the Court.

3 * * *

4 CROSS-EXAMINATION

5 BY MR. KEY:

6 Q Good morning, Mr. McManus.

7 A Good morning.

8 Q How many times did you meet with Mr. Coleman before
9 your guilty plea?

10 A Like three.

11 Q You said you received your discovery. Did Mr.
12 Coleman go over that with you?

13 A No, sir.

14 Q He didn't explain the sentences or the indictments
15 or anything like that?

16 A No, sir.

17 Q Did you and Mr. Coleman discuss any possible
18 defenses to your case?

19 A Example?

20 Q An example.

21 A Yeah.

22 Q Did you-all prepare for trial at all, or was it
23 just --

24 A It was just the plea.

25 Q Did you ever give Mr. Coleman any witnesses to

1 investigate into that might help your case?

2 A Yes, sir.

3 Q Who are those witnesses?

4 A I have several witnesses. Sable Fox.

5 Q Are any of them here today?

6 A No, sir.

7 Q Do you know if Mr. Coleman ever reached out to
8 those witnesses?

9 A No, sir. I was supposed to have a private
10 investigator to reach out to me. I never heard anything
11 from the private investigator.

12 Q Did you discuss with Mr. Coleman the plea offers
13 that were made?

14 A No, sir.

15 Q You did not?

16 A No.

17 Q What was your thought -- what did you think you
18 were pleading to, what sentence you could get?

19 A I knew I was -- I was thinking I was going in on
20 zero to 20. I was thinking I was looking at a time
21 frame between 20 and 10, but the most I could get was
22 20.

23 Q Who told you that you could get zero to 20?

24 A Mr. Coleman.

25 Q So he did --

1 A He told me the most I could get was 20. He
2 guaranteed 10 to 15. Like I said, when I came to court,
3 I found out I was going in on the 2 to 30.

4 Q So you discussed with Mr. Coleman the plea offers?

5 A Yeah. Zero to 20, but he will guarantee 10 to
6 15.

7 Q What were you originally charged with?

8 A Murder.

9 Q What did you plead to?

10 A Voluntary manslaughter.

11 Q Did you and the plea Judge have a discussion about
12 pleading guilty that day?

13 A Yes, sir.

14 Q Do you remember the Judge asking you if you wish to
15 plead guilty that day?

16 A Yes, sir.

17 Q What was your answer?

18 A Yes.

19 Q So you told the Judge that you did wish to plead
20 guilty?

21 A Yes, sir. This was before the fact that I found
22 out I was going in on 2 to 30.

23 Q Do you recall the Solicitor for the State reciting
24 the facts in your case?

25 A Yes, sir.

1 Q Did you agree that those were the facts that you
2 would have presented at trial?

3 A Some. Yes, sir.

4 Q You entered an Alford plea. So you didn't have to
5 admit guilt, but you agree that that is what the State
6 would have presented at trial?

7 A Yes, sir.

8 Q Do you remember the plea Judge going over your
9 Constitutional Rights at the plea?

10 A Yes, sir.

11 Q Do you remember him asking if you wished to waive
12 those rights?

13 A Yes, sir.

14 Q Did you waive your Constitutional Rights?

15 A Yes, sir, I did.

16 Q Did the Judge ask if you were satisfied with Mr.
17 Coleman's representation?

18 A I don't recall.

19 Q You said that you asked Mr. Coleman to file a
20 direct appeal.

21 Do you remember when you asked him?

22 A We talked about it when I was walking out of
23 court. I wrote it as soon as I got back, the same day
24 of my sentencing. It was when I got back to the
25 detention center.

1 MR. KEY: Nothing further, Your Honor.

2 THE COURT: Ms. Minor, anything else?

3 MS. MINOR: Nothing further, Your Honor.

4 THE COURT: Thank you, sir. You may step down.

5 (Whereupon, the witness exited the witness stand.)

6 MS. MINOR: I would like to call Creighton

7 Coleman.

8 THE COURT: Good morning, Mr. Coleman.

9 MR. COLEMAN: Good morning, Judge.

10 * * *

11 CREIGHTON COLEMAN, ESQ.,

12 called as a witness by and on behalf of

13 the Applicant to testify, being first duly

14 sworn was examined and testified as follows:

15 * * *

16 DIRECT EXAMINATION

17 BY MS. MINOR:

18 Q Good morning, Mr. Coleman. You just heard Mr.

19 McManus testify that he only met with you three times.

20 Is that true?

21 A I think it was more than that. I certainly didn't

22 keep a record, but I met with him -- one thing, too.

23 His mother, Deanna, would come over to my office a good

24 bit and talk about the case. I met with her and

25 Keishawn, I would say, about 10 times. One thing I

1 think is very important -- let me look at my notes.

2 Q Okay.

3 A Keishawn was charged with two murders. The one
4 that he is talking about today involving his girlfriend,
5 Ms. Robinson, that occurred December 23, 2014. He had
6 another murder that happened on July 25, 2012. I
7 represented him on both of those. So we had a full
8 plate.

9 We talked often about everything. It's a little
10 confusing. Keishawn absconded. He left, and I got on
11 him. Keishawn is a good guy. I like Keishawn.

12 The big thing too -- I wanted to let the Court
13 know that he was in and out of jail for a long period of
14 time. One of the questions that I did extensively
15 research and talked to the people at the Attorney
16 General's Office and all of that -- the Department of
17 Corrections -- how he would get credit for the time that
18 he served for both of those. He did get credit for
19 that. He got close to 1,218 days credit for time
20 served.

21 We met extensively -- I bet I came over here two to
22 three times, and I met with the Solicitor's Office. We
23 came back here and met with Ms. Lisa Collins of the
24 Solicitor's Office. They wanted to move this case. We
25 met with Judge Gibbons -- at least twice, if not three

1 times -- trying to hammer out a resolution to this.

2 So, yes, I met with them a good bit.

3 Q You mentioned that you met with his mother. Did
4 Mr. McManus waive privilege for you to speak with his
5 mother about his case?

6 A We always talked about him. When we all talked
7 together and then just the two of us. I don't know if I
8 tacitly -- if he waived it, but that is his mom.

9 Q But he is the client; correct?

10 A Correct.

11 Q So the answer to that question is, the privilege --
12 let me back up. Mr. McManus didn't tacitly waive the
13 privilege for you to speak with his mother.

14 A He knew I was talking to his mother.

15 Q As far as the evidence, the discovery and the
16 evidence, that was sought against him, can you tell me
17 about your discussions about the evidence and everything
18 that was faced against him?

19 A I did. I made copies and gave him a copy of the
20 file. One point about the GSR, here are my notes right
21 here that I took once I had looked at all of the
22 information. I discussed with him that his girlfriend
23 that was killed, she bought that gun over at the Cheraw
24 Pawn Shop over there on October 14, 2014. It was
25 registered in her name.

1 Initially, Keishawn said that she committed
2 suicide. There was also a hole in the wall where
3 another bullet went and then a bullet in her. There was
4 no gunshot residue on her. There was no burning of her
5 skin, the upper left where she shot herself.

6 Also, the doctors said it was not suicide. There
7 was nothing to indicate that it was suicide. There was
8 no gunshot residue anywhere that could link anything to
9 anybody.

10 Q It's your testimony that you went over all of that
11 information with Mr. McManus?

12 A Correct.

13 Q You believe that he understood everything based off
14 of the discussions that you had?

15 A Keishawn is very smart. He understood.

16 Q You heard Keishawn say that he asked questions
17 about his GSR kit. Do you recall him asking any
18 questions about his GSR kit?

19 A Yes. I remember that.

20 Q Did you answer those questions?

21 A Yes.

22 Q Can you tell me what you did? I know you said you
23 reviewed the discovery. What all did you do, as far as
24 an investigation of his case?

25 A Well, when I have talked to his mother, there was

1 an individual, as I recall, that was with Keishawn
2 earlier that day. As I recall, it was a cousin that had
3 been living with Keishawn and them.

4 She was supposed to -- his mother was supposed to
5 get the name. When we knew the name and the address, we
6 would reach out to that person time and time again.
7 They just would not cooperate.

8 Q Would you say that you talked to Keishawn's mother
9 more than you talked to Keishawn about his case?

10 A Probably not. No.

11 Q You also heard Keishawn testify about his
12 sentencing. He said that you promised him a lower
13 sentence.

14 Can you tell me about that?

15 A When we met with the Solicitor's Office and the
16 Judge trying to hammer this thing out, as I recall, the
17 Judge had mentioned, 20 years. That is what I told
18 Keishawn.

19 When we came to court, the family of the victim was
20 here. They sat right over here to the left
21 of the audience. They were very passionate, and the
22 Judge gave one more year than the 20 years that he said
23 he was going to give.

24 So he is correct with that, but I never told him
25 absolutely this is a done deal. I told him that this is

1 Q Between 5 and 10?

2 A Yes. He was in the Lancaster County Jail. His
3 mother probably the same amount. I was representing her
4 on another case too, a wreck case.

5 Q Did he ever indicate to you that speaking with his
6 mother was a problem?

7 A No.

8 Q You testified that you did go over the discovery
9 with him?

10 A Absolutely.

11 Q Did you-all discuss any possible defenses?

12 A Yes. I mean, first Keishawn had told the police,
13 the authorities, that it was suicide. I think the
14 gunshot residue and the autopsy showed that it wasn't.
15 So I think Keishawn lacked some credibility with law
16 enforcement at that time.

17 His girlfriend -- he had some text messages from
18 her that indicated that she may have a mental issue. I
19 think she was on some medication, and we talked about
20 that. I don't think that he wanted to character
21 assassinate her.

22 Q When you met with Mr. McManus, did you discuss the
23 elements of the charges against him?

24 A Yes.

25 Q Did you discuss what evidence the State had against

1 him?

2 A Absolutely.

3 Q Can you give a summary of what the State would have
4 presented at trial?

5 A The big thing is that he had two murder cases, and
6 he knew he had to deal with both of them. As we
7 negotiated with the Solicitor's Office and we got down
8 to around 20 -- I think that is something that he could
9 live with, based on both of those cases that he was
10 confronted with.

11 With regard to Ms. Robinson, Keishawn was the one
12 who called 911 and told them that somebody was dead, and
13 they came over. Keishawn told them about -- that it was
14 a suicide.

15 They were going to present all of that. They were
16 going to be able to show that it wasn't suicide. I
17 think at that point, he lost any and all credibility at
18 that point. He had absconded. He left the area. I
19 think that was going to be admissible.

20 So, yeah, we talked about all of it.

21 Q What kind of investigation did you do into the
22 case?

23 A I looked -- of course, I looked through all of the
24 discovery. I talked to his mother about any witnesses,
25 because it was in her house where this occurred. They

1 were living with DeAnna McManus -- in the house with
2 her. I talked to her about their relationship and what
3 was going on with it; whose gun it was. All of that.

4 We looked at that it was her gun. She had bought
5 it on the dates that I said earlier from Cheraw Pawn. We
6 did all we could to look at everything. He knew all of
7 that. He knew it was her gun. He knew when she bought
8 it. We talked about all of that. We ran all of those
9 rabbits in the hole.

10 He knew absolutely what was going on, and he
11 elected to go forward with the plea.

12 Q Did he ask you to pursue plea negotiations?

13 A Yeah. He knew I was meeting with the Judge and
14 the Solicitor's Office to try to reach a resolution.

15 As I said before, he had two murder charges against
16 him. He was looking at two life sentences potentially.

17 Q What happened to the other murder charge?

18 A He later pled guilty, and I represented him on
19 that. It was after this fact. This case he pled
20 guilty, and he got 21 years on December 19, 2017.

21 In the other case, he pled to accessory before the
22 fact on July 23, 2018. He got 20 years concurrent.
23 That was the whole deal with this case. He was trying
24 to minimize the amount of time that he was going to get
25 for these two murder charges.

1 Q Did he ever indicate to you that he did not want
2 to go forward with his guilty plea -- his Alford plea?

3 A No.

4 Q What did the State offer for his plea?

5 A Initially?

6 Q I guess finally.

7 A Of course, I mean, they knocked it down to
8 voluntary manslaughter. In talking with the Judge and
9 the Solicitor, they were content with 20 years. They
10 thought 20 years was a good amount.

11 I took that to Keishawn, and I told Keishawn that;
12 that they are looking at 20 years, but it could be more
13 or less. It just depends on what happens in court. I
14 remember I was mad as I walked out of the courtroom,
15 because Judge Gibbons gave one more year than the 20
16 years. It was because of the family that was in here.

17 Q Was this a straight-up plea?

18 A Yes, sir.

19 Q When you discussed to Mr. McManus the 20 years,
20 did you say that is what you will be sentenced for or
21 that is what you thought the sentence would be?

22 A That is what I thought, pursuant to my
23 conversations with the Solicitor and the Judge, 20 years
24 is a good, good barometer of what you would get. I
25 didn't say absolutely he would get it. Like I said

1 before, I never tell a client that. It could be more or
2 less. I thought he would have gotten 20, based on our
3 conversations.

4 Q And he got 21?

5 A Correct.

6 Q How much could he have gotten?

7 A 30.

8 Q Did you go over the consequences of him pleading
9 guilty on this charge?

10 A Yeah. And all his jury rights and what they would
11 have to prove. Everything.

12 Q Did he ever tell you that he didn't understand what
13 you were explaining to him?

14 A No. Keishawn is very smart. I had represented
15 Keishawn in a Social Security/Disability claim that we
16 got. Keishawn has Sickle Cell Anemia. There are three
17 types. This is how I learned about Sickle Cell, through
18 Keishawn. He has the worst. We used that all we could
19 in mitigation to try to appeal to the Judge.

20 Q Whose decision was it to plead guilty?

21 A His.

22 Q Did he ever tell you that he wanted to go trial?

23 A He always said that we need to try to reach a
24 resolution, a deal. But if not, we would go to trial.
25 That is what we did. We kept talking to the Solicitor

1 and reaching a resolution to everything.

2 Q When did Mr. McManus indicate to you that he wanted
3 to appeal his case?

4 A I think as we were walking out. I am not sure.

5 Q Within the ten days?

6 A Yes.

7 Q Did Mr. McManus understand that he could be
8 sentenced anywhere between 2 and 30?

9 A Yes. He knew that that was an estimate of the time
10 that he was going to get -- the 20.

11 MR. KEY: No further questions.

12 THE COURT: Anything else?

13 MS. MINOR: No further questions of this
14 witness, Your Honor.

15 THE COURT: Thank you, sir.

16 (Whereupon, the witness exited the witness stand.)

17 MS. MINOR: Your Honor, that is the Applicant's
18 case.

19 MR. KEY: Nothing from the State.

20 THE COURT: All right. I won't hold you in
21 suspense on this one. I glanced at the file, and I
22 looked over the transcript. This is going to be one of
23 those unusual ones in that I will grant relief of a
24 belated appeal that was not followed up.

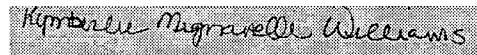
25 That is it. I don't see that Mr. Coleman was

CERTIFICATE OF REPORTER

I, Kymberlee M. Williams, Certified Shorthand Reporter/Registered Professional Reporter for the 6th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Lancaster County, South Carolina, on the 23rd day of January, 2019.

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

This, the 1st day of August, 2019.



KYMBERLEE M. WILLIAMS, CSR/RPR

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	FOR THE SIXTH JUDICIAL CIRCUIT
)	
Keishawn McManus, # 375011)	
	)	2018-CP-29-0418
Applicant,)	
)	
v.)	
	)	ORDER GRANTING BELATED APPELLATE
State of South Carolina,	)	REVIEW UNDER WHITE V. STATE AND
	)	DISMISSING ALL OTHER ALLEGATIONS
Respondent.)	
)	

The matter before the Court is an action for post-conviction relief (PCR) commenced by Keishawn McManus (Applicant) on April 13, 2018. In his PCR application and amendments, Applicant alleged ineffective assistance of counsel for: (1) failure to investigate, (2) failure to adequately provide Applicant with discovery, (3) failure to adequately advise Applicant, (4) failure to discuss possible defenses and trial strategy with Applicant, (5) failure to file an appeal despite Applicant's request, and (6) promising a lower sentence in exchange for Applicant's plea. The Court held an evidentiary hearing January 23, 2019. Applicant was present and represented by Donae A. Minor, Esquire. Assistant Attorney General Samuel Key represented the State. After hearing the testimony at the PCR hearing and a full review of the record, the Court finds, as explained below, Applicant is entitled to relief in the form of belated appellate review of direct appeal issues pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). However, the Court finds Applicant's other allegations are without merit and denies relief on the remaining issues.

PMB

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LANCASTER, SC

2018-CP-29-0418

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lancaster County Clerk of Court. Applicant was indicted at the April 2016 term of the Lancaster County Grand Jury for murder and possession of a deadly weapon during the commission of a violent crime (2016-GS-29-638). Creighton Coleman, Esquire represented Applicant. On December 19, 2017, Applicant entered a plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), to the lesser-included offense of voluntary manslaughter before the Honorable Brian M. Gibbons. Applicant pleaded guilty without recommendations or negotiations. Judge Gibbons accepted Applicant's plea and sentenced him to twenty-one years imprisonment for voluntary manslaughter. Applicant did not appeal his sentence or conviction.

II. FACTS

Applicant's charges stem from the death of his girlfriend, Quatavia Robinson. On December 23, 2014, Applicant called 911 and reported Robinson had been shot. Applicant told the dispatcher he found Robinson lying on the floor with what appeared to be a gun shot wound. The dispatcher asked Applicant if Robinson was still alive. He responded that Robinson was going in and out. The dispatcher asked if there was a gun near Robinson. Applicant did not answer. The dispatcher repeated the question, and Applicant did not immediately reply. After a brief pause, Applicant stated there was a gun in Robinson's right hand. He explained he could not see the gun before because Robinson was lying on it. Law enforcement found Robinson with a gun in her right hand. (Tr. 10).

During the early stages of the investigation, Applicant informed law enforcement that Robinson had sent him a text message indicating she wanted to harm herself. (Tr. 10). Initially, law enforcement was investigating Robinson's death as a possible suicide. An autopsy report

indicated that Robinson suffered one gunshot wound to the upper chest above her left breast. There was no exit wound, and there was no burning or charring of the skin at the entry wound. (Tr. 10–11). The lack of burning or charring around the entry wound led to a further investigation of the crime. This further investigation led law enforcement to believe the gunshot was not self-inflicted, and that Robinson's body had been moved after she was shot. (Tr. 11–12). Robinson's mother told law enforcement Applicant admitted to her that he was present when Robinson was shot, and her death was the result of an accident. (Tr. 13).

A Lancaster County Magistrate issued a warrant for Applicant's arrest on January 6, 2015. Applicant was arrested on December 30, 2015—almost a year after the warrant was issued. (Tr. 13–14). Applicant entered an *Alford* plea on December 19, 2017.

During the plea hearing, the plea court asked Applicant if he understood that he was pleading pursuant to *Alford*. The court explained to him the meaning and consequences of an *Alford* plea. (Tr. 4–6). The plea court then asked Applicant if plea counsel discussed the sentencing ranges he could receive. The court went on to explain, "And, of course, you understand that any conversations with you aren't guaranteed, it's just like I can't guarantee you and tell you what I'll do either because I haven't heard everything, do you understand that?" (Tr. 6). Applicant affirmed (Tr. 6). The plea court then conducted a colloquy with Applicant, explaining the rights he was giving up in deciding to enter an *Alford* plea instead of proceeding to a jury trial. (Tr. 7–9). The State then recited the factual basis for the plea. (Tr. 9–14).

After the State provided the factual basis for the plea, the plea court asked Applicant if he still wished to enter an *Alford* plea. Applicant affirmed. (Tr. 15). The plea court accepted Applicant's plea and sentenced him to twenty-one years for voluntary manslaughter. (Tr. 15,

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26). Applicant did not appeal his plea or conviction. He commenced this PCR action on April 13, 2018.

III. ALLEGATIONS

Applicant alleges ineffective assistance of counsel. Specifically, Applicant alleges plea counsel was ineffective for:

1. Failure to pursue an appeal despite Applicant's request to do so;
2. Involuntary Guilty Plea;
 - a. Failure to investigate Applicant's case including but not limited to interviewing potential witnesses and evaluating the veracity of evidence sought against Applicant;
 - b. Failure to adequately provide Applicant with all discovery and properly discuss all discovery and evidence sought against him prior to Applicant accepting his plea bargain;
 - c. Failure to properly counsel, discuss, and explain the pending charges and consequences so Applicant could make an informed decision as to whether to take a plea bargain or pursue a trial;
 - d. Failure to discuss possible defenses and challenges to the evidence with Applicant; and
 - e. Promised a lower sentence for taking plea bargain.

IV. PCR TESTIMONY

Applicant's Testimony

Applicant testified at the PCR hearing as follows. Applicant met with plea counsel about three times before he pleaded guilty. Applicant stated he and plea counsel discussed pursuing a plea offer of zero to twenty years. Applicant stated plea counsel never advised him of the pitfalls or benefits of pleading guilty or going to trial. Applicant stated plea counsel never reviewed the discovery with him, and he did not receive the discovery in his case until the week he was scheduled for court. On cross examination, Applicant reiterated plea counsel never discussed the indictments against him, the discovery, or the sentences he could receive if convicted at trial. Applicant stated he asked plea counsel about his case, but plea counsel only somewhat answered his questions. Applicant explained he asked plea counsel about the gun-shot residue (GSR) kit in

his case, but plea counsel never answered his questions. Applicant stated plea counsel only wanted to answer questions regarding plea negotiations.

Applicant stated he informed plea counsel of several individuals to investigate. Specifically, Applicant asked plea counsel to reach out to Sable Fox. Applicant was unsure whether plea counsel investigated the witnesses he named.

Applicant testified plea counsel advised him the State's offer was for an open plea of zero to twenty years' imprisonment, but plea counsel guaranteed Applicant he would receive between ten to fifteen years. On cross, Applicant testified plea counsel also informed him he could get a maximum of twenty years for his plea. Applicant testified he learned the State's offer was for two to thirty years imprisonment when he appeared in court.

Applicant acknowledged the colloquy with the plea court regarding his plea. Applicant stated he was originally charged with murder, but was allowed to plead to the lesser-included offense of voluntary manslaughter. Applicant admitted he told the plea court he still wished to plead guilty after the plea court's colloquy. Applicant stated he would have refused the State's offer and gone to trial if he knew he was not guaranteed a ten to fifteen year sentence.

Finally, Applicant testified he asked plea counsel to appeal his guilty plea. Applicant stated he asked plea counsel to file an appeal while he was in the courtroom following his plea, and he wrote plea counsel a letter the same day from the detention center.

Plea Counsel's Testimony

The State called plea counsel to testify at the PCR hearing. Plea counsel recalled meeting with Applicant more than three times. Plea counsel stated he frequently spoke with Applicant's mother regarding his case, and she would come by his office to meet with him. Plea counsel stated he met with Applicant and Applicant's mother at least ten times to discuss the case. Plea

counsel stated he always spoke to Applicant and Applicant's mother together, and Applicant did not have an issue with plea counsel discussing the case with Applicant's mother.

Plea counsel testified he gave Applicant a copy of his defense file and he investigated into the gun used in the case. Plea counsel stated he discovered through his investigation the victim, Applicant's girlfriend, purchased the gun in Cheraw. Plea counsel stated he and Applicant discussed Applicant's version of the events that took place. Plea counsel recalled that initially, Applicant claimed the victim committed suicide; however, the discovery indicated the victim was shot two times, there was no GSR present on the victim, the victim had no burning of the skin, and the forensic pathologist concluded the victim did not commit suicide in the autopsy report. Plea counsel testified he reviewed all the evidence with Applicant, and Applicant understood the State's case against him. Plea counsel recalled discussing with Applicant text messages between Applicant and the victim that indicated the victim possibly had some mental health issues. However, plea counsel stated Applicant did not want to assassinate the victim's character. Further, plea counsel stated he discussed the GSR results with Applicant.

Plea counsel testified he spoke to Applicant's mother during his investigation of the case. Plea counsel recalled Applicant stating he was with someone earlier the day of the incident, and Applicant's mother provided plea counsel with the person's name and address. Plea counsel stated he attempted to contact the person multiple times, but the person would not cooperate.

Plea counsel testified he explained to Applicant the elements of the crime alleged and the State's evidence in the case. He explained Applicant had a second, unrelated, murder charge against him, and he and Applicant were dealing with both murder charges simultaneously.¹ Plea counsel stated he also explained Applicant would have serious credibility issues if the case went

¹ Plea counsel stated Applicant eventually pleaded guilty to the second murder charge at a separate plea hearing.

to trial because Applicant originally reported the incident as a suicide—which was ruled out by the autopsy—and because Applicant absconded during the State’s investigation. Plea counsel testified Applicant wanted to plead guilty in this case, and Applicant seemed to understand everything going on.

Plea counsel testified he met with the State and the plea judge during the plea negotiations, and the plea court mentioned a sentence of twenty years during the meeting. Plea counsel stated he conveyed the offer to Applicant; however, he advised Applicant the twenty year recommendation was not a “done deal.” Plea counsel stated he explained to Applicant he thought Applicant would receive a twenty-year sentence, but he also explained sentencing was ultimately up to the plea court. Plea counsel explained to Applicant he could receive anywhere from two to thirty years, and he explained to Applicant the twenty year sentence was just plea counsel’s estimation. Plea counsel recalled the victim’s family being present during the plea hearing, and the victim’s family members were very passionate during sentencing. However, plea counsel felt Applicant presented compelling mitigation evidence during sentencing because Applicant suffered from sickle-cell anemia. Plea counsel stated he conveyed this information during mitigation. Plea counsel stated the plea court gave Applicant one year more than the State recommended.

Plea counsel recalled Applicant requesting him to file an appeal in the case; however, plea counsel admitted he failed to file an appeal.

V. DISCUSSION

The issue before the Court is whether Applicant received ineffective assistance of counsel. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant

sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Cherry v. State*, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To prove prejudice, the applicant must show a reasonable probability he would not have pleaded guilty and would have insisted on going to trial absent plea counsel's alleged deficiency. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

1. Failure to File a Direct Appeal

Applicant contends plea counsel was ineffective for failing to file a direct appeal. The Court agrees. Applicant is entitled to petition the Supreme Court for belated appellate review of his guilty plea. See *White v. State*, 263 S.C. 110, 118, 208 S.E.2d 35, 39 (1974) (stating in the absence of an intelligent waiver by the defendant, counsel should pursue an appeal on the defendant's behalf). Here, Applicant testified he asked plea counsel to file an appeal the day he pleaded guilty and subsequently wrote a letter to plea counsel requesting plea counsel file an appeal. Plea counsel agreed Applicant requested he file an appeal of his case and admitted he failed to do so. Therefore, based on the testimony given at the PCR hearing, the Court finds Applicant did not knowingly and voluntarily waive his right to petition the Supreme Court for belated appellate review of his guilty plea. The Court concludes Applicant is entitled to a belated review of his convictions. A petition for belated review pursuant to *White v. State* can remedy Applicant's lack of a direct appeal.

2. Involuntary Guilty Plea

Applicant also alleges ineffective assistance of counsel attacking the knowing and voluntary nature of his guilty plea. Specifically, Applicant contends his guilty plea was

unknowing and involuntary alleging: (a) failure to investigate, (b) failure to provide and review discovery, (c) failure to advise Applicant of the pending charges and consequences so that Applicant could make an informed decision between taking a plea bargain and pursuing a trial, (d) failure to discuss potential defenses and strategies, and (e) for promising a different sentence than Applicant received. These allegations are properly before the Court as attacks on the knowing and voluntary nature of Applicant's plea. *See Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (stating a defendant who entered a plea on the advice of counsel may only attack the voluntary and intelligent nature of the plea). As explained below, the Court finds Applicant knowingly and voluntarily pleaded guilty.

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). "[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). To prove prejudice, the applicant must show a reasonable probability he would not have pleaded guilty and would have insisted on going to trial absent plea counsel's alleged deficiency. *Hill*, 474 U.S. at 59.

a. Failure to Investigate

Applicant claims plea counsel was ineffective for failing to properly investigate the case including interviewing potential witnesses and evaluating the veracity of evidence against Applicant. The Court disagrees.

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation

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of the facts and circumstances of the case.” *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011). However, “Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.” *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). “In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” *Wiggins v. Smith*, 539 U.S. 510, 521–22 (2003).

In support of his allegation plea counsel failed to interview potential witnesses, Applicant testified he informed plea counsel of several individuals to investigate; however, Applicant could only remember requesting plea counsel to investigate Sable Fox. Applicant presented no witnesses other than himself at the PCR hearing. Plea counsel testified Applicant’s mother provided him with the name and address of a potential witness to interview, and he attempted to contact the potential witness several times. Plea counsel recalled the witness being uncooperative.

The Court finds plea counsel was not deficient for failing to interview potential witnesses. In making this finding, the Court finds credible plea counsel’s testimony he attempted to contact the witness several times, but the potential witness would not cooperate. The Court finds plea counsel’s investigation of potential witnesses reasonable. The Court further finds Applicant has failed to prove any prejudice resulted from plea counsel’s alleged deficiency of failure to interview potential witnesses because Applicant presented no witness in support of his allegation at the PCR hearing. *See Moorehead*, 329 S.C. at 334, 496 S.E.2d at 417 (“Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.”). Because Applicant

presented no testimony as to what the witnesses would have offered had plea counsel interviewed them, any evidence or testimony those witnesses may have provided is mere speculation.

As for plea counsel's alleged failure to evaluate the veracity of the evidence against Applicant, the Court finds credible plea counsel's testimony regarding his investigation of the evidence in the case. As mentioned above, plea counsel testified he investigated the background of the gun found at the scene of the crime. He stated he discovered through his investigation the victim was the registered owner of the gun and had purchased the gun in Cheraw. Plea counsel also testified he reviewed the text-message conversations between Applicant and the victim which indicated the victim possibly suffered from a mental illness. Plea counsel stated he and Applicant discussed the text-message conversations and began to develop a defense based on those messages. Plea counsel also stated he reviewed the GSR results and the autopsy report that ruled out suicide as the victim's cause of death. Based upon plea counsel's credible testimony, the Court finds plea counsel was not deficient in his investigation and evaluation of the evidence in Applicant's case.

As for prejudice, Applicant acknowledged the colloquy with the plea court regarding his plea. Applicant stated he was originally charged with murder, but was allowed to plead instead to voluntary manslaughter. Applicant admitted he told the plea court he still wished to plead guilty after the plea court's colloquy. At the plea hearing, after the State recited the facts they intended to prove if the case proceeded to trial, Applicant informed the plea court he still wished to enter an *Alford* plea. (Plea Tr. 15). The Court finds any alleged deficiency on behalf of plea counsel for failing to evaluate the veracity of the evidence against applicant was cured at the plea hearing. *See Wolfe v. State*, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997) (stating even if

counsel gives erroneous advice, an applicant is not entitled to PCR where any misconceptions are cured by the colloquy during the guilty plea proceeding). Accordingly, the Court finds plea counsel was not ineffective for failing to investigate, and Applicant knowingly and voluntarily pleaded guilty. The Court denies relief on this allegation and dismisses it with prejudice.

b. Failure to provide and review discovery

Applicant alleges plea counsel was ineffective for failing to adequately provide Applicant with all discovery and properly discuss all discovery and evidence sought against him prior to Applicant accepting his plea bargain. The Court disagrees.

As mentioned above, Applicant stated plea counsel never reviewed the discovery with him, and he did not receive the discovery in his case until the week he was scheduled for court. Applicant stated he asked plea counsel about his case, but plea counsel only somewhat answered his questions. Applicant explained he asked plea counsel about the GSR kit in his case, but plea counsel never answered his questions. Plea counsel stated he and Applicant discussed Applicant's version of the events that took place. On the other hand, plea counsel recalled that initially, Applicant claimed the victim committed suicide; however, the discovery indicated the victim was shot two times, there was no GSR present on the victim, the victim had no burning of the skin, and the forensic pathologist concluded the victim did not commit suicide in the autopsy report. Plea counsel testified he reviewed all the evidence with Applicant, and Applicant understood the State's case against him. Plea counsel recalled discussing with Applicant text messages between he and the victim that indicated the victim possibly had some mental health issues. However, plea counsel stated Applicant did not want to assassinate the victim's character. Further, plea counsel stated he discussed the GSR results with Applicant.

The Court finds credible plea counsel's testimony he provided and reviewed all the discovery with Applicant, and Applicant understood the State's case against him. As discussed in the previous subsection, any alleged deficiency on behalf of plea counsel for failing to evaluate the veracity of the evidence against applicant was cured at the plea hearing. *See Wolfe*, 326 S.C. at 164, 485 S.E.2d at 370 (stating even if counsel gives erroneous advice, an applicant is not entitled to PCR where any misconceptions are cured by the colloquy during the guilty plea proceeding). At the plea hearing, after the State recited the facts they intended to prove if the case proceeded to trial, Applicant informed the plea court he still wished to enter an *Alford* plea. (Plea Tr. 15). Applicant knew what the State intended to prove against him at trial, and informed the plea court he still wished to plead under *Alford*. Therefore, plea counsel was not ineffective because Applicant entered his *Alford* plea knowing what the State intended to prove had his case gone to trial. The Court denies relief on this allegation and dismisses it with prejudice.

- c. Failure to advise Applicant of the pending charges and consequences so Applicant could make an informed decision between taking a plea bargain and pursuing a trial.

Applicant alleges plea counsel was ineffective for failing to advise Applicant of the pending charges and consequences so Applicant could make an informed decision between taking a plea bargain and pursuing a trial. The Court disagrees.

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *Alford*, 400 U.S. at 31 (1970). "[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman*, 337 S.C. at 599, 524 S.E.2d at 624. To prove prejudice, the applicant must show a reasonable probability he would not have pleaded

guilty and would have insisted on going to trial absent plea counsel's alleged deficiency. *Hill*, 474 U.S. at 59.

As mentioned above, Applicant testified plea counsel never discussed the indictments against him, the discovery, or the sentences he could receive if convicted at trial. Applicant stated plea counsel only wanted to answer questions regarding plea negotiations. Plea counsel testified he explained to Applicant the elements of the crime alleged and the State's evidence in the case. He recalled a big issue in the case was Applicant had a second murder charge against him, and he and Applicant were dealing with both murder charges simultaneously. However, plea counsel explained to Applicant he could receive anywhere from two-to-thirty years' imprisonment. At the plea hearing, Applicant informed the plea court plea counsel had informed him of his rights to a jury trial. (Plea Tr. 7). The plea court then went on to explain Applicant's right to a jury trial, and Applicant stated he understood his right. (Plea Tr. 7-9).

The Court finds credible plea counsel's testimony he explained the elements of the charges to Applicant, the maximum and minimum mandatory exposure Applicant faced, and the nature of the rights Applicant waived by pleading guilty. The Court further finds Applicant has not proven any prejudice resulting from plea counsel alleged deficiency of failing to advise Applicant because the plea court's colloquy cured any defects in Applicant's understanding. See *Wolfe*, 326 S.C. at 164, 485 S.E.2d at 370 (stating even if counsel gives erroneous advice, an applicant is not entitled to PCR where any misconceptions are cured by the colloquy during the guilty plea proceeding). Accordingly, the Court finds plea counsel was not ineffective for failing to advise Applicant of the pending charges and consequences, and Applicant knowingly and voluntarily pleaded guilty. The Court denies relief on this allegation and dismisses it with prejudice.

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d. Failure to discuss potential defenses and strategies.

Applicant alleges plea counsel was ineffective for failing to discuss possible defenses and challenges to the evidence with Applicant. The Court disagrees.

As mentioned above, Applicant stated plea counsel never advised him of the pitfalls or benefits of pleading guilty or going to trial. Applicant stated he asked plea counsel about his case, but plea counsel only somewhat answered his questions. Applicant stated plea counsel only wanted to answer questions regarding plea negotiations. Conversely, plea counsel stated he and Applicant discussed Applicant's version of the events that took place. Plea counsel recalled initially, Applicant claimed the victim committed suicide; however, the discovery indicated the victim was shot two times, there was no GSR present on the victim, the victim had no burning of the skin, and the forensic pathologist concluded the victim did not commit suicide in the autopsy report. Plea counsel recalled discussing with Applicant text messages between he and the victim that indicated the victim possibly had some mental health issues. However, plea counsel stated Applicant did not want to assassinate the victim's character. Further, plea counsel stated he also explained Applicant would have serious credibility issues if the case went to trial because Applicant originally reported the incident as a suicide—which was ruled out by the autopsy—and because Applicant absconded during the State's investigation. Plea counsel testified Applicant wanted to plead guilty in this case, and Applicant seemed to understand all of the issues.

The Court finds credible plea counsel's testimony he discussed possible defenses with Applicant prior to Applicant's plea. Specifically, plea counsel recalled discussing Applicant's version of events and advising applicant he would have serious credibility issues at trial because he absconded and the evidence ruled out suicide. Plea counsel stated he reviewed and explained

how the discovery tended to disprove Applicant's version of the events. Plea counsel also recalled discussing the text-message conversations between Applicant and the victim and how the messages could be used to support Applicant's suicide defense; however, plea counsel stated Applicant did not want to pursue that defense because he did not want to assassinate the victim's character. Plea counsel's credible testimony shows Applicant was aware of possible defenses to his charges. Accordingly, the Court finds plea counsel was not ineffective for failing to discuss potential defenses and strategies with Applicant.

e. Promising a different sentence than Applicant received.

Applicant alleges plea counsel was ineffective for promising a lower sentence for taking the plea bargain. The Court disagrees.

"When a defendant is represented by counsel during the plea process and enters his plea on the advice of counsel, the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." *Rayford v. State*, 314 S.C. 56, 48, 443 S.E.2d 805, 806 (1994).

As stated above, Applicant testified plea counsel advised him the State's offer was for an open plea of zero-to-twenty years' imprisonment, but plea counsel guaranteed Applicant he would receive between ten to fifteen years. On cross-examination, Applicant testified plea counsel also informed him he could get a maximum of twenty years for his plea. Applicant testified he learned the State's offer was for two to thirty years' imprisonment when he appeared in court. Applicant recalled the plea court advising him he could be sentenced between two and thirty years' imprisonment; however, Applicant also stated he would have proceeded to trial if he knew he was not guaranteed a ten to fifteen year sentence.

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Plea counsel testified he met with the State and the plea court during the plea negotiations, and the plea court mentioned a sentence of twenty years during the meeting. Plea counsel stated he conveyed the offer to Applicant; however, he advised Applicant the twenty year recommendation was not a "done deal." Plea counsel stated he explained to Applicant he thought Applicant would receive a twenty year sentence, but he also explained sentencing was ultimately up to the plea court. Plea counsel explained to Applicant he could receive anywhere from two to thirty years, and he explained to Applicant the twenty year sentence was just plea counsel's estimation.

The Court finds credible plea counsel's testimony he advised Applicant of the State's offer to recommend a twenty-year sentence, but also explained to Applicant the recommendation was not guaranteed. The Court also finds credible plea counsel's testimony he explained the sentencing range Applicant faced, and he told Applicant he could receive anywhere from two-to-thirty years' imprisonment. The Court finds not credible Applicant's testimony he would have gone to trial if he knew he was not guaranteed to receive between ten fifteen years' imprisonment. The plea transcript shows Applicant knowingly pleaded guilty with a recommended twenty-year sentence. (Plea Tr. 6). Further, Applicant informed the plea court he was not pleading guilty based on any promises other than the recommended sentence. (Plea Tr. 5-6). Accordingly, the Court finds Applicant knowingly entered his plea with a recommended twenty year sentence. Therefore, the Court denies relief on this allegation and dismisses it with prejudice.

VL CONCLUSION

The Court finds Applicant is entitled to petition the Supreme Court for a belated appellate review of his guilty plea pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974).

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However, the Court finds plea counsel's representation regarding Applicant's guilty plea was neither deficient nor prejudicial. Applicant pleaded guilty pursuant to the advice of plea counsel. Applicant knew the meaning and consequences of pleading guilty to the charges and voluntarily chose to do so. Applicant failed to show plea counsel was deficient for failure to investigate, failure to provide and review discovery with Applicant, failure to advise Applicant of the charges and consequences of the charges against him, or failure to discuss possible defenses and strategies available to Applicant, or for promising a lower sentence than received. Further, the Court finds Applicant knowingly and voluntarily pleaded guilty because the plea court's colloquy cured any of plea counsel's alleged deficiencies. Therefore, based on the foregoing, the Court denies relief on these allegations and dismisses these allegations with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

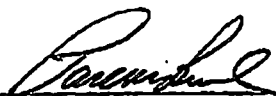
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THEREFORE:

1. The Court grants Applicant a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974);
2. The Court denies relief on Applicant's allegations attacking the knowing and voluntary nature of his plea; and
3. Applicant shall be remanded to the custody of the State.

AND IT IS SO ORDERED.

May 28th 2019.



PAUL M. BURCH
Presiding Judge
Sixth Judicial Circuit

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

INDICTMENT

12-5 PM 11 51
1994 0105

At a Court of General Sessions, convened on April 14, 2016, the Grand Jurors of Lancaster County present upon their oath:

COUNT I

MURDER

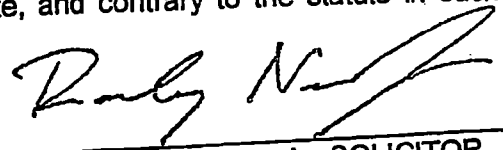
That Keishawn Omar McManus did at [REDACTED] Drive, in Lancaster County, South Carolina on or about December 23, 2014, feloniously, willfully, and with malice aforethought kill and murder the victim Quatavia Robinson by shooting her with a handgun which constituted as the proximate cause of the death of the victim on December 23, 2014, in violation of Section 16-3-10 of the *Code of Laws of South Carolina*.

COUNT II

POSSESSION OR DISPLAY OF FIREARM OR KNIFE DURING COMMISSION OF A VIOLENT CRIME

That Keishawn Omar McManus did in Lancaster County, South Carolina, on or about December 23, 2015, possess or visibly display a firearm, to wit: a handgun during his commission of a violent crime, to wit: Murder of Quatavis Robinson, in violation of §16-23-490, *Code of Laws of South Carolina, (1976), as amended*.

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



Randy E. Newman, Jr., SOLICITOR

DOCKET NO. 2016-GS-29-638

The State of South Carolina
County of Lancaster

FILED
OFFICE OF CLERK
OF COURT
2016 APR 14 PM 2:21
CLERK OF COURT
LANCASTER, SC

COURT OF GENERAL SESSIONS

APRIL TERM 2016

ARREST WARRANT NUMBER/DOA

Count I IN RE: AW #
2015A2910100017 (DOA-12-30-15)

Count II IN RE: AW #
2015A2910100018

ACTION OF GRAND JURY

TRUE BILL

J. J. Nettles
Foreperson of Grand Jury
Date: APR 14 2016

VERDICT

Foreperson of Petit Jury
Date:

THE STATE
vs.

Keishawn Omar McManus

Indictment for

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

Count II
POSSESSION OF A FIREARM OR KNIFE
DURING THE COMMISSION OF A VIOLENT
CRIME

S. C. Code: 16-23-490
CDR Code: 0549
Class: Felony, F

Count I -
Def. pled to Vol. Mansl.
as lesser - included offense
on 12-19-17 with Judge
Gibbons. - *[Signature]*
12-20-17

Count II -
This count Nolle Prossed
in plea agreement - Def. pled

STATE OF SOUTH CAROLINA

COUNTY 94F Lancaster
STATE VS.
Keishawn Omar Mcmanus

AKA:
Race: BLACK Sex: M Age: 25
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: [REDACTED]
DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Manslaughter / Voluntary manslaughter

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2900638 *Count I*
A/W#: 2015A2910100017
Date of Offense: 12/23/2014
S.C. Code § : 16-03-0010; 16-03-0020
CDR Code #: 0116

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, _____ (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] 07892 Keishawn O Mcmanus [Signature] 6521
Collins, Lisa SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 21 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

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

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Recipient: _____

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

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk: [Signature]
Court Reporter: [Signature]
SCCA/217 (07/2016)

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

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

Presiding Judge: [Signature]
Judge Code: _____
Sentence Date: 12/19/17