

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————
Certiorari to Clarendon County

Honorable Kristi F. Curtis, Circuit Court Judge
—————

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S.C. SUPREME COURT

ROOSEVELT SABB, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001990
—————

APPENDIX
—————

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South Carolina Commission on Indigent
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Division of Appellate Defense
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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)	COURT OF GENERAL SESSIONS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CLARENDON)	
)	
State of South Carolina,)	CASE NO. 2014-GS-14-0347
)	
PLAINTIFF,)	TRANSCRIPT OF RECORD
)	
VS.)	
)	
Roosevelt Sabb, Jr.)	
)	
DEFENDANT.)	
)	

October 3, 2017

Manning, South Carolina

B E F O R E:

The Honorable George M. McFadden, Jr.

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

Christopher DuRant, Assistant Solicitor
For the State

Shaun C. Kent, Esquire
For the Defense

Certified Transcript Provided For: Office of Atty General

Phyllis Norton, CVR-Master, Nationally Certified Verbatim Court Reporter
 636 Long Point Road, Unit G, #74, Mt. Pleasant, South Carolina 29464
 PNorton@sccourts.org

I N D E X

HEARING - Plea -- 03

EXHIBITS - None Proffered

CERTIFICATION OF TRANSCRIPT -- 12

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

1 THE COURT: Mr. DuRant.

2 MR. DURANT: Your Honor, standing before you is
3 Roosevelt Saab, Jr. He is pleading guilty to Indictment
4 2014-GS-14-0347 to the lesser included offense of
5 voluntary manslaughter.

6 Mr. Saab is represented by Shaun Kent of the
7 Clarendon County Bar. Mr. Kent and I have negotiated a
8 sentence in this case of 15 years.

9 (WHEREUPON, the witness was duly sworn.)

10 THE COURT: Mr. Kent is that right, sir?

11 MR. KENT: That is, Your Honor.

12 THE COURT: Gentlemen, this is a negotiated plea; is
13 that correct?

14 MR. DURANT: Yes, sir, Your Honor.

15 MR. KENT: Yes, it is, Your Honor.

16 THE COURT: Mr. Saab.

17 MR. SABB: Yes, sir.

18 THE COURT: To this charge of voluntary manslaughter
19 how do you wish to plead?

20 MR. SABB: Guilty.

21 THE COURT: Now Mr. Saab, have you had time to talk
22 to your lawyer Mr. Kent about this situation?

23 MR. SABB: Yes, sir.

24 THE COURT: Have you shared with Mr. Kent everything
25 you know about what happened?

1 MR. SABB: Yes, sir.

2 THE COURT: Has Mr. Kent answered your questions to
3 your satisfaction?

4 MR. SABB: Yes, sir.

5 THE COURT: Do you have any complaints about his
6 representation?

7 MR. SABB: No, sir.

8 THE COURT: Has he shared with you what we call
9 discovery information or evidence?

10 (WHEREUPON, Mr. Sabb confers with Mr. Kent.)

11 MR. SABB: Yes.

12 THE COURT: Is there anything that Mr. Kent has not
13 done for you that you want him to do?

14 MR. SABB: No, sir.

15 THE COURT: Sir?

16 MR. SABB: No, sir.

17 THE COURT: Mr. Sabb, has anybody promised you
18 anything to come here today and plea here? I am not
19 talking about a negotiated plea. I am talking about
20 anything else.

21 MR. SABB: No, sir.

22 THE COURT: You come today here pleading guilty
23 freely and voluntarily?

24 MR. SABB: Yes, sir.

25 THE COURT: Is anybody in any way making you do

1 this?

2 MR. SABB: No, sir.

3 THE COURT: Are you today using or under the
4 influence of any medication, drugs, or alcohol?

5 MR. SABB: No, sir.

6 THE COURT: Do you have a known or diagnosed mental
7 illness condition I need to know about?

8 MR. SABB: No, sir.

9 THE COURT: When you plead guilty today, sir, you
10 give up your right to remain silent on this charge; do
11 you understand that?

12 MR. SABB: Yes, sir.

13 THE COURT: You also give up your right to a jury
14 trial. And in that jury trial, Mr. Kent, your lawyer
15 could call people who would testify in your favor. He
16 could question people who testify against you. No one
17 could make you testify. And the jury could find you not
18 guilty or they could find you guilty with a unanimous
19 verdict beyond a reasonable doubt. That happens in a
20 trial.

21 But because you are pleading guilty none of that
22 will happen. Do you understand that?

23 MR. SABB: Yes, sir.

24 THE COURT: Do you understand you are waiving that
25 right?

1 MR. SABB: Yes, sir.

2 THE COURT: You have ten days to appeal the sentence
3 of this court. Do you understand that?

4 MR. SABB: Yes, sir.

5 THE COURT: Mr. Durant.

6 MR. DURANT: Your Honor, this incident occurred in
7 the early morning hours of July the 5th of 2014 just
8 after midnight on the evening following of July 4th.

9 Mr. Saab and the victim, Keith Allen Smith, were
10 first cousin. They were both down here from out of state
11 visiting family.

12 The two of them had been according to the witness
13 statements and other evidence the two of them had been
14 together throughout that day. Apparently were, as I
15 said, cousins and close friends.

16 They had been hanging out earlier that day and had
17 gone to some night club or some establishment earlier
18 that evening. Had left that establishment and got into
19 an argument.

20 When they were -- arrived back at their mutual
21 uncle's house, a Lonnie Saab, at the residence which they
22 were staying in at that evening, they got into another
23 argument. As I said, Your Honor, began to fight.

24 And they got into an actual physical altercation in
25 the yard. Were actually on the ground wrestling and

1 fighting and hitting each other. Family members broke
2 them up that evening.

3 Further evidence indicates that the victim in the
4 case, Keith Smith, came inside of the residence for a
5 short period of time while the defendant remained
6 outside. He was in his vehicle.

7 The victim went back outside. And then when he did
8 he out of anger he slammed his uncle's door. His uncle
9 followed him outside to confront him about slamming the
10 door.

11 The victim was in the grass in front of the mobile
12 home at that time. The uncle was on the stoop. The
13 defendant was in his car.

14 The evidence from several witnesses indicates that
15 the defendant revved his vehicle, revved the motor in his
16 vehicle, and then accelerated. Hit the victim and pinned
17 him -- pinned the victim between the defendant's vehicle
18 and another stationary vehicle that was parked
19 perpendicular to the defendant's vehicle down on the
20 other side of the home.

21 Evidence indicates that after the defendant struck
22 the victim he backed up, drove out of the driveway,
23 pulled into a vacant lot across the street from the
24 house, got out of his car and waited for law-enforcement
25 to arrive.

1 The victim was pronounced dead on the scene. He was
2 transported to MUSC in Charleston where an autopsy was
3 performed that confirmed that he died from blunt force
4 trauma to his mid section.

5 Statements were collected from several witnesses
6 that were there, including the uncle, Lonnie Saab, that
7 actually witnessed the event and described it as I have
8 relayed it to Your Honor.

9 Tragically, the victim's mother, Ms. Christine
10 Ziegler, was actually there at the time. It was her
11 brother's house they were staying in. She actually heard
12 the collision. Went outside and found her son on the
13 ground deceased.

14 Your Honor, the South Carolina Highway Patrol
15 accident investigation team did respond, the MAIT team.
16 And they detailed photographs and actually prepared an
17 animated video showing what they believe the evidence
18 indicated happened that evening.

19 There were very identifiable tire markings in the
20 grass which that showed that the defendant appeared to
21 have swerved towards the house, towards the victim, and
22 hit him intentionally and pinned him between the cars.

23 Again, as I said, Your Honor, the evidence is also
24 clear that the two had been involved in a physical
25 altercation that shortly prior -- just prior to this

1 incident.

2 Your Honor, I have been in communication with the
3 victim's mother, Christine Ziegler, throughout the last
4 several months in preparing for a potential trial or this
5 guilty plea.

6 Ms. Ziegler who lives in Florida is here, Your
7 Honor. She is seated in the front row in the colorful
8 blouse.

9 Ms. Ziegler and I have had conversations about what
10 a negotiated sentence may look like and have had
11 discussions leading up to this 15-year negotiated
12 sentence. And she is fully aware of the negotiations and
13 has participated in them on behalf of the State.

14 THE COURT: All right.

15 Mr. Sabb, did you hear all of that, sir?

16 MR. SABB: Yes, sir.

17 THE COURT: Mr. Sabb, is that substantially and
18 essentially correct?

19 MR. SABB: Yes, sir.

20 THE COURT: Mr. Sabb, do you still wish to plead
21 guilty?

22 MR. SABB: Yes, sir.

23 THE COURT: And are you pleading guilty to voluntary
24 manslaughter because you are guilty?

25 MR. KENT: Yes, sir.

1 THE COURT: All right. Mr. Kent, any concerns about
2 his plea?

3 MR. KENT: None whatsoever, Your Honor.

4 THE COURT: I find that he is most well represented
5 by most competent trial counsel. I find he has offered
6 his plea freely knowingly and voluntarily and that it is
7 substantially factually based. And I accept the plea.

8 Mr. Kent, your comments about the negotiated plea if
9 any?

10 MR. KENT: Your Honor, if you are so inclined based
11 upon the negotiation to follow the negotiation I have
12 nothing to add on behalf of Mr. Saab.

13 THE COURT: Mr. Durant, does anybody wish to say
14 anything from the family?

15 MR. DURANT: I don't believe so, Your Honor. I met
16 with Ms. Ziegler and the victim's bother Ronnie Smith,
17 who is actually in the courtroom as well, just prior to
18 the plea. It was my understanding at that time that
19 neither wished to address the court. I will ask them
20 again now as to whether they wish to, Your Honor.

21 (WHEREUPON, Mr. Kent confers with family of victim.)

22 MR. DURANT: Ms. Zieger has indicated she doesn't
23 wish to address Your Honor.

24 THE COURT: Mr. Kent, anyone on your client's
25 behalf?

1 MR. KENT: Nothing on behalf of Mr. Sabb; no, Your
2 Honor.

3 THE COURT: All right. In these cases in court
4 sometimes where nothing needs to be said. I am not going
5 to say a lot here. It is just travesty all around here.

6 None of us -- based on my view of the facts as
7 recited to the court the plea event today I am going to
8 go along with the negotiated plea and sentence will be
9 incarceration at the South Carolina Department of
10 Corrections for 15 years, straight sentence.

11 MR. DURANT: Thank you, Your Honor.

12 THE COURT: Thank you very much.

13 MR. KENT: Thank you, Your Honor.

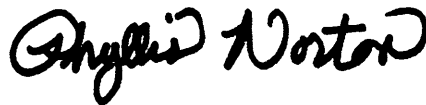
14 (WHEREUPON, the hearing concluded.)

(NOTE: Please contact the court reporter for additional copies or certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina, on October 3, 2017.

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



PHYLLIS NORTON, CVR

Date: June 14, 2018

*Certified Transcript Provided For: Office of Atty Gen.
Certification Reference #061418 Original*

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Clarendon)

Roosevelt Sabb Jr. 00374107)

2018-CP-14-136

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

v.)

APPLICATION FOR

State of South Carolina

**CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE**

POST-CONVICTION RELIEF

DATE 3/29/2018

Beulah H. Roberts

CLERK OF COURT
CLARENDON COUNTY, SC

MAR 29 PM 2:00
BEULAH H. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Kirkland Correctional Institution, 4344 Broad River Road
Columbia, South Carolina 29210
2. Name and location of Court which imposed sentence Manning Municipal Court
29 W Boyce Street, Manning, South Carolina 29102
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) 14GS140347 Voluntary Manslaughter
 - (b) _____

(c) _____

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

(a) October 3, 2017 Adult Straight Sentence 15 years, 0 months, 0 days

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

No

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

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

i. NA

ii. _____

iii. _____

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

i. NA

ii. _____

iii. _____

(c) the date of each such result:

i. NA

ii. _____

iii. _____

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

i. NA

ii. _____

iii. _____

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

(a) Applicant never saw or heard from counsel after plea, when applicant was allowed to contact counsel it was past the time to file for an appeal.

(b) _____

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

(a) See attached.

(b) See attached

(c) See attached

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

(a) See attached.

(b) See attached

(c) See attached

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

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

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

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

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

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

(a) the specific nature thereof:

i. NA

ii. _____

iii. _____

iv. _____

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

i. NA

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

No

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

(a) which grounds have been presented:

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

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

- i. NA
- 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) NA
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? _____
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

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. Shaun Kent 19 S. Mill Street Manning, South Carolina 29102
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Shaun Kent represented me at my arraignment and plea.
 - ii. Shaun Kent represented me at my sentencing.
 - iii. _____

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

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

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

Roosevelt Sabb Jr
Applicant

SWORN or affirmed to and subscribed before me this 21 day of March, 2018.

Melissa Spigner
Notary Public

My Commission Expires: Dec 1, 2025

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully.
 - (a) Applicant was denied the right to effective counsel guaranteed him by the sixth and fourteenth amendment of the United States Constitution and the corresponding provisions of the South Carolina State Constitution when counsel administered fallacious and erroneous advice.
 - (b) Applicants right to effective assistance of counsel as guaranteed by the sixth and fourteenth amendment of the United States Constitution and South Carolina State law was violated when counsel failed to make a reasonable investigation in the applicant's case.
 - (c) Applicants right to effective assistance of counsel as guaranteed by the sixth and fourteenth amendment of the United States Constitution and South Carolina State law was violated when counsel failed to subject the prosecution's case to meaningful adversarial challenge.

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

(c) In the thirty-eight months between the incident and the plea counsel failed to contact the applicant with or for any information concerning the case. Three weeks before the plea date counsel called the applicant and said he had received discovery and they should meet. When the applicant called to schedule a meeting with counsel, the applicant was told to "hold tight" by counsel. The applicant did not hear from counsel until a few days before the plea.

When they met four days before plea, counsel informed the applicant that he had not spoken to the solicitor or been given a plea offer.

Counsel then briefly showed the applicant partial discovery in the case. Counsel then informed the applicant that he was going to meet with the solicitor and they will meet again in the next week. Three weeks is a minimum amount of time to allow an attorney to investigate and prepare for the trial.

When the applicant returned to counsels' office three days later counsel wrote 10-12 years on his dry erase board and told the applicant that if he pleaded to fifteen years he could be home in ten years with good time.

Counsel never discussed any mitigating facts. Counsel never discussed any possible defenses. Counsel never discussed any favorable witnesses. Counsel then informed the applicant that if he chose to go to trial it would begin the following day.

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)
))
Roosevelt Sabb, Jr., SCDC #374107)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No.: 2018-CP-14-0136

RETURN

The State (Respondent), making its Return to the application for Post-Conviction Relief filed on March 29, 2018, would respectfully show this Court:

I.

Roosevelt Sabb Jr. (Applicant), is presently confined in the South Carolina Department of Corrections pursuant to orders of the Clarendon County Clerk of Court. In October 2014, the Clarendon County Grand Jury indicted Applicant for murder (2014-GS-14-0347). This charge arose from an incident occurring on July 5, 2014. Applicant and Victim were cousins and close friends. Upon arriving at their mutual uncle’s residence, they had an argument, which escalated into a physical altercation outside the mobile home. After their family broke up the fight, Victim went inside for a short time, and Applicant got into his vehicle. When Victim returned outside and stood alone on the grass in the front yard, Applicant revved his engine and quickly accelerated directly towards Victim, striking him with his car and pinning him between his vehicle and another parked, unoccupied vehicle. Evidence indicated that Applicant then reversed out of the driveway, pulled into a vacant lot across the street from the house, got out of his car and waited for law enforcement to arrive. Victim was pronounced dead on the scene. An autopsy at MUSC revealed that he died from the blunt force trauma to his mid-section.

Applicant was represented on the charge by Shaun C. Kent, Esquire. Assistant Solicitor Christopher DuRant prosecuted the case. On October 3, 2017, Applicant plead guilty before Honorable George M. McFadden, Jr. to the lesser-included offense of voluntary manslaughter under a negotiated plea from the Solicitor's office. Pursuant to the negotiation, Judge McFadden sentenced Applicant to fifteen years' incarceration. Applicant did not appeal his conviction or his sentence.

II.

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

1. Ineffective Assistance of Counsel
 - a. "Counsel administered fallacious and erroneous advice"
 - i. "In the thirty-eight months between the incident and the plea, counsel failed to contact Applicant with any information concerning the case."
 - ii. "Three weeks before the plea date counsel called the applicant and said he had received discovery."
 - iii. "When Applicant called to schedule a meeting to discuss, Applicant was told to 'hold tight' by counsel and did not hear from counsel until a few days before the plea."
 - iv. "When Applicant returned to counsel's office [three days after their initial meeting] counsel wrote 'ten-twelve years' on a dry erase board and told Applicant that if he plead to fifteen years then he could be home in ten with good time."
 - v. "Counsel informed Applicant that if he chose to go to trial it would begin the following day."
 - vi. "Counsel briefly went over partial discovery in the case."
 - b. "Counsel failed to make a reasonable investigation in the Applicant's case"
 - i. "Four days before the plea counsel informed Applicant that he had not spoken to the Solicitor or been given a plea offer."
 - c. "Counsel failed to subject prosecution's case to meaningful adversarial challenge"
 - i. "Counsel never discussed any mitigating facts."
 - ii. "Counsel never discussed any possible defenses"
 - iii. "Counsel never discussed any favorable witnesses"

Attached to this Return and incorporated by reference are the records of the Clarendon County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, and the post-conviction relief application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. The Sixth Amendment of the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984); *Lomax v. State*, 379 S.C. 93, 665 S.E.2d 164 (2008). In a post-conviction relief action, an applicant bears the burden of providing proof in support of the allegations purported in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). The standard for this claim as grounds for relief has been set forth in a two pronged test, outlined in *Strickland*. *Strickland v. Washington*, 466 U.S. 668 (1984).

First, Applicant must show that counsel's performance was deficient. *Id.*; *Cherry v. State*, 300 S.C.115, 117, 386 S.E.2d 624, 625 (1989). The evaluation associated with deficient performance is measured by the level of "reasonableness under prevailing professional norms". *Id.* (citing *Strickland*, 466 U.S. at 690). The appropriate analysis for reasonableness is whether the attorney has provided representation within the range required for criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Judicial scrutiny of counsel's performance is highly deferential by following a strong presumption that counsel's conduct falls within the wide range of adequate and reasonable professional assistance. *Strickland* at 689. Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must be shown to have also prejudiced the

applicant such that there is a “reasonable probability that, but for, counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 117-118. With respect to counsel in a guilty plea proceeding, the applicant must show that there is a reasonable probability that, but for counsel’s errors, he would not have plead guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52 (1985).

Respondent submits Applicant can satisfy neither requirement of the *Strickland* test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. *Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1982).

IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See* also Rules 15(a)-(b), SCRCF. All claims should be made well in advance of the evidentiary hearing.

Because Applicant has an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCF. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. *See* Rule 15(a), SCRCF.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent

to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General


W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JULIE A. COLEMAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

, 2018

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON)	
)	
)	2018-CP-14-0136
)	
ROOSEVELT SABB, JR., #374107,)	
)	
Applicant,)	
)	
vs.)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	
_____)	

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

Timothy L. Griffith, Esquire
Timothy L. Griffith, Attorney at Law
360 W. Wesmark Blvd, Second Floor
Sumter, South Carolina 29150

DATED this 6th day of August 2018.



 Kaitlyn S. Slice, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)	
)	COURT OF COMMON PLEAS
COUNTY OF CLARENDON)	2018-CP-14-0136
)	
)	
)	
)	
ROOSEVELT SABB, JR.,)	
APPLICANT,)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
THE STATE,)	
DEFENDANT.)	
_____)	

March 27, 2019
Manning, South Carolina

B E F O R E:

THE HONORABLE KRISTIE F. CURTIS, JUDGE.

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

TIMOTHY L. GRIFFITH, ESQ.
Attorney for the Applicant

JANELLE H. GREGORY, ESQ.
Attorney for the Defendant

Proceedings Recorded by DCRP
Transcribed by Penny M. Johnson

I N D E X

(PW) - Denotes Plaintiff's Witness
(DW) - Denotes Defense Witness

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E X H I B I T S

(There were no exhibits submitted.)

P R O C E E D I N G S

1
2 THE COURT: Yes, ma'am.

3 MS. GREGORY: Good morning, Your Honor. Before you is
4 Roosevelt Sabb, Jr. During the October 2014 term, the
5 Clarendon County Grand Jury indicted Applicant for murder.
6 On October 3rd, 2017, Applicant pled guilty before Judge
7 McFadden to the lesser included offense of voluntary
8 manslaughter under a negotiated plea. Pursuant to the
9 negotiations, Judge McFadden sentenced Applicant to 15 years
10 incarceration. He did not file an appeal.

11 He filed this PCR Application on March 29th, 2018,
12 alleging ineffective assistance of counsel because counsel
13 administered erroneous advice, counsel failed to make
14 reasonable investigation into his case and counsel failed to
15 subject prosecution to meaningful adversarial challenge.
16 Applicant is present today and represented by Mr. Griffith.

17 THE COURT: Mr. Griffith.

18 MR. GRIFFITH: Thank you, Your Honor. At this time, I
19 would call Mr. Roosevelt Sabb.

20 ROOSEVELT SABB, after being duly
21 sworn, testified as follows:

22 THE BAILIFF: State your name for the record and spell
23 your last name, please.

24 THE APPLICANT: Roosevelt Sabb, S-A-B-B.

25 DIRECT EXAMINATION

1 BY MR. GRIFFITH:

2 Q Mr. Sabb, where are you incarcerated?

3 A Broad River Correctional.

4 Q And when were you first incarcerated?

5 A After the plea or --

6 Q After the plea, yes, sir.

7 A I went to Kirkland and then I went to Broad River.

8 Q Do you remember what date you did the plea?

9 A October 4th, I think, of 2017.

10 Q 2017?

11 A Uh-huh.

12 Q Now, prior to that, how long did you have an attorney?

13 A Since --

14 Q Before your plea?

15 A 2014.

16 Q So how many times did you get an opportunity to talk to
17 Mr. Kent, who was your attorney?

18 THE COURT: Mr. Griffith, can I stop you for a minute
19 and let me go over a few things with Mr. Sabb?

20 MR. GRIFFITH: Sure.

21 THE COURT: Mr. Sabb, you understand that this is a
22 Post-Conviction Relief action?

23 THE APPLICANT: Correct.

24 THE COURT: Which means there are only two things that
25 I can do in your case. I can deny your application, in

1 which case, you would continue to serve out the remainder of
2 your 15-year sentence. I'm showing that your max out date
3 is February 16th, 2031, according to your current records.
4 Is that your understanding?

5 THE APPLICANT: Uh-huh.

6 THE COURT: The second thing I can do is I can grant
7 your application. If I say yes, he's got grounds, I believe
8 he's correct, then I send it back and it's as if your plea
9 never took place.

10 THE APPLICANT: Uh-huh.

11 THE COURT: Which means then you are subject to the
12 original charge of murder. Murder carries a minimum
13 mandatory sentence of 30 years, which means you would serve
14 that day for day. There's no early release whatsoever.
15 That's the minimum sentence that you could receive. You
16 could receive a higher sentence than 30 years, up to life
17 imprisonment with no possibility of parole. At the minimum,
18 I'm showing that if you were sentenced in 2017 to 30 years,
19 that would move your date to 2047, your max out date.

20 So I want to make sure you understand if this -- if I
21 grant your application, you go back for either a new trial
22 or a new plea. There's no guarantee that you're going to
23 get a better deal when you go back than you got the first
24 time. Now, I can't look in a crystal ball and tell you what
25 would happen when it goes back, but you are -- you have

1 potential exposure of 30 years to life imprisonment. You
2 understand that?

3 THE APPLICANT: I understand.

4 THE COURT: And knowing that, sir, you still want to go
5 forward with your application today?

6 THE APPLICANT: Yes.

7 THE COURT: Go right ahead.

8 MR. GRIFFITH: Thank you, Your Honor.

9 BY MR. GRIFFITH:

10 Q Mr. Sabb, I came to visit you in the prison, you
11 remember that?

12 A Yes.

13 Q And we talked about the possibility of you either
14 having a new trial and some of the evidence was there. Do
15 you remember?

16 A Correct.

17 Q You told me that Mr. Kent was your attorney; is that
18 correct?

19 A Correct.

20 Q When did he first become your attorney, do you
21 remember?

22 A 2014.

23 Q 2014?

24 A Uh-huh.

25 Q And you pled guilty in?

1 A 2017.

2 Q 2017. So a couple of years went by?

3 A Correct.

4 Q During that time, how many times did you see Mr. Kent?

5 A From the time I bailed out until a few days before
6 trial, I didn't see him at all.

7 Q So you were bonded out of the jail?

8 A For 34 months. I didn't see him for 34 months.

9 Q So then how long before the plea did you see Mr. Kent?

10 A A few days.

11 Q So you didn't see him the entire time you were out.

12 Then tell us how it kind of came to be that you did go in to
13 see him?

14 A He called me and told me to come in. I came in, I
15 think it was the Thursday before that, and he just showed me
16 -- well, he showed me a part of the -- the animation part of
17 my discovery and he asked my permission to go talk to the
18 solicitor about a plea. He didn't show me the entirety of
19 my discovery or anything like that. He just showed me one
20 section of it.

21 He told me to go home, spend time with my family and
22 he'd talk to me -- at that time, he told me next Thursday.
23 He called me that Friday and told me to come in either
24 Monday or Tuesday, the day before the plea.

25 When I went in, he wrote 10 to 12 years on the board

1 and he told -- basically, he told me if I take the plea of
2 15 years, I could be home in as little as ten years. When I
3 explained to him that the animation that the State put
4 together wasn't accurate, he told me he understood that, but
5 it was nothing we could do about it. Basically -- you know,
6 I asked him about a lesser charge and he told me there
7 wasn't nothing we could do. So he, basically, gave me no
8 options but to take this plea or -- that was pretty much the
9 only option I had was to take that plea.

10 When we discussed -- I asked him -- he asked me did I
11 want to go to trial -- I asked him about trial. He said he
12 was prepared for trial, but I don't see how we were prepared
13 for trial if we hadn't discussed anything before that point.

14 Q Did he share with you the information that he had
15 gotten from the solicitor's office, in other words, the
16 discovery?

17 A The only part he showed me of the discovery was the
18 animation that the State had put together of what happened.

19 Q Mr. Kent has been practicing law for quite a while.
20 Did he give you an opinion as to what would happen if you
21 went to trial?

22 A He told me they would play the animation over and over
23 again if I went to trial and that would be bad.

24 Q Did he indicate what he thought a high possibility of
25 -- whether there was a high possibility of you being

1 convicted or what did he -- did he tell you anything about
2 that?

3 A Not that I remember, no.

4 Q So did he promise you anything when you decided to take
5 this plea?

6 A He told me I would be home in as a little as ten years,
7 which I find is not accurate at all. 12 years, nine months
8 on a 15-year plea is the absolute minimum.

9 Q Well, you understand that Mr. Kent is -- he couldn't
10 tell the judge exactly how much to give you?

11 A I understand that.

12 Q You understand what you pled to -- what did you plead
13 to?

14 A Voluntary manslaughter.

15 Q And the difference between pleading to voluntary
16 manslaughter and pleading to murder is quite a difference.
17 Did he explain the difference?

18 A Not that I remember -- I mean, yeah, you plead to
19 murder, yeah, you would get a larger sentence, correct.

20 Q So you understand that now if you were to be granted
21 your PCR that you would go back and you would be tried for
22 murder?

23 A Correct.

24 Q So that would make you subject again to the possibility
25 of 30 plus years as Judge Curtis pointed out to you. I just

1 want to make sure you understand that?

2 A Correct.

3 Q So would you have gone to trial if you had known that
4 the information Mr. Kent gave you was not correct?

5 A Yes. Can I add to that? What I found was when Mr.
6 Kent showed me the animation, he told me there was nothing
7 we could do about that. So, of course, you know, getting
8 into a law library and finding out that animations are
9 normally not allowed and he could have challenged it and
10 things like that, of course, I would have insisted that we
11 challenge that before taking a plea. That deprived me of
12 critical information needed to know if I should take this
13 plea or not. Basically, he's telling me, oh, they're going
14 to show it over and over again. He could have challenged
15 it. I don't understand why he didn't challenge it.

16 Q Did he share with you other information that they had,
17 other evidence?

18 A No. The only thing he showed me was the animation.

19 Q But you were aware of witnesses that would be
20 testifying?

21 A As far as I know, the only witness they had down was my
22 uncle, who's now deceased, and he was pretty much out of his
23 mind at that time. He was on Hospice care with cancer in
24 his brain at that time. So he wouldn't have been able to
25 testify.

1 Q So what else do you think that Mr. Kent could have or
2 should have done that he didn't do or did do that he
3 shouldn't have done that would mean that you would have gone
4 to trial if it were not for that?

5 A Several things. One of the things, as far as the
6 animation, when he told me -- he should have challenged the
7 animation I feel like. He gave me bad advice telling me we
8 couldn't challenge the animation. I asked him, I said -- I
9 told him, That's not what happened. He said, I understand
10 that, but there's nothing we can do about it. Of course, he
11 could have put a challenge in. He could have hired my own
12 expert witness to go out and rebut the State's case, which I
13 would have preferred to do. We didn't have -- I didn't talk
14 to anybody.

15 We, basically, didn't go through anything as far as if
16 we could ask for a lesser charge, if we went to trial, would
17 I be able to go for an accident. I maintain what happened
18 was an accident. He told me there was nothing we could do
19 about challenging it, so that's why things happened the way
20 they happened. I would prefer him challenge everything from
21 the beginning, elements, you know, motions to suppress. He
22 didn't challenge anything. He didn't interview anybody. He
23 didn't hire an expert witness. He didn't oppose anything.

24 I mean, even with a sentence of voluntary manslaughter,
25 there's a minimum of two years and maximum of 30. Nobody

1 put on the record why I deserved to be sentenced at a higher
2 rate than people would -- I'm in prison. I meet people
3 everyday who had prior bad acts, really terrible people who
4 got less time for the same charge.

5 Q You understand that had you gone to trial and some of
6 these things came up, that's where Mr. Kent would have had
7 the opportunity to object or ask that things be brought up,
8 but you didn't go to trial?

9 A Correct.

10 Q You understand the difference?

11 A Well, some of those things, he would have had to do
12 before we went to trial as far as filing motions and
13 everything else. That should have been done before we took
14 a plea anyway because we had no determination until the day
15 before trial was supposed to start. So, basically, on the
16 day before trial was supposed to start, he called me in and
17 gives me this option of you're going to go to trial tomorrow
18 or take this plea. We haven't met. He haven't discussed
19 anything. We didn't find favorable witnesses. He didn't
20 interview anything. It was just, basically -- I don't know
21 what we would have went to trial with because he was
22 unprepared.

23 Q So you're saying except for the fact that you were
24 misinformed or your attorney did not take action to file
25 motions to suppress certain evidence or anything like that,

1 you would have gone to trial?

2 A Correct.

3 MR. GRIFFITH: I have no further questions, Your Honor.

4 THE APPLICANT: Can I --

5 MR. GRIFFITH: Oh, you want to make another statement?

6 THE APPLICANT: Yes. Also, as you see in the trial
7 transcript where -- I don't feel like -- in the plea, he --
8 during the plea, the factual basis that the solicitor put
9 on, I had never heard those facts at all. I didn't believe
10 any of them. I know they were false. Everything that he
11 said didn't really happen, so I stopped answering. And Mr.
12 Kent actually -- when the Judge said are you pleading guilty
13 because you're guilty, Mr. Kent actually answered for me.
14 You can see it in the transcript. Which was my right, which
15 really invalidates the plea in my opinion because if I had
16 stopped maybe we could have done something different at that
17 point. But because he went forward and answered for me, he
18 deprived me of being able to actually maybe do something
19 different during the plea, also.

20 MR. GRIFFITH: Remember, this is your last bite at the
21 apple, so is there anything else you want to add?

22 THE APPLICANT: No.

23 MR. GRIFFITH: No further questions. Please answer any
24 questions from the Attorney General.

25 CROSS-EXAMINATION

1 BY MS. GREGORY:

2 Q Good morning, Mr. Sabb.

3 A Morning.

4 Q Do you recall during the plea, the Judge asked you if
5 you wanted to plead guilty and you said yes?

6 A Uh-huh.

7 Q Do you recall telling the judge that you had enough
8 time to talk to your lawyer?

9 A Yes.

10 Q Do you recall telling the judge that your lawyer had
11 answered all of your questions?

12 A Yes.

13 Q And that you did not have any complaints about your
14 lawyer?

15 A Yes.

16 Q And that your lawyer had done everything that you
17 wanted him to do?

18 A Yes.

19 Q And that you were pleading freely and voluntarily?

20 A Yes.

21 Q Do you remember waiving your Constitutional rights?

22 A Yes.

23 Q And do you recall the judge telling you that you had
24 ten days to appeal?

25 A Correct.

1 MS. GREGORY: No further questions, Your Honor.

2 THE COURT: Anything further, Mr. Griffith?

3 MR. GRIFFITH: Nothing, Your Honor.

4 THE COURT: You can step down, Mr. Sabb.

5 MS. GREGORY: We would call Shawn Kent to the stand.

6 SHAWN KENT, after being duly
7 sworn, testified as follows:

8 THE BAILIFF: State your name for the record and spell
9 your last name, please.

10 THE WITNESS: Shawn Kent, K-E-N-T.

11 DIRECT EXAMINATION

12 BY MS. GREGORY:

13 Q Good morning, Mr. Kent.

14 A Good morning. How are you?

15 Q Good. How long have you been practicing law?

16 A Next March will be 20 years.

17 Q And how much of that has been criminal law?

18 A Probably about 80 percent the entire time. I was a
19 former public defender. I was a prosecutor in Charleston,
20 South Carolina, and then practicing in Manning for the last
21 15 years.

22 Q How did you come to represent Mr. Sabb?

23 A I'm not positive. I think I had represented or knew
24 some of his family beforehand. An investigator who formerly
25 worked for my office knew him and his family as well.

1 Q How many times did you meet with him? You heard his
2 testimony it was zero?

3 A It's not zero, but he actually is close to accurate.
4 He was incarcerated. We met with him numerous times at the
5 jail while he was incarcerated while we were trying to get
6 him a bond. Thereafter, we got him released on bond on an
7 ankle monitor. Mr. Sabb was a commercial truck driver, so
8 he was actually not living in Clarendon County, so we were
9 able to get him released on the bond so he could drive
10 trucks. And so, candidly, he was never in town. Not
11 through any fault of his own, he had to work. So he
12 actually wasn't in town. He made his payments through the
13 mail through his truck driving service. So we actually
14 talked on the phone several times. But as far as meeting
15 actually in person, we weren't able to meet a lot of times
16 because he just didn't live in town.

17 Q Did you meet with any of his family? Was there anyone
18 else involved?

19 A Meeting with his family, not that I can recall. I know
20 my investigator had met with some of his family, but no,
21 ma'am.

22 Q Did you file Rule 5 and Brady motions in this case?

23 A Yes, ma'am, we did.

24 Q Did you review all of that with Mr. Sabb?

25 A Yes, ma'am, we did.

1 Q More than just the animation?

2 A Yes, ma'am, we did.

3 Q Do you think he understood what you were going over?

4 A Very well. Mr. Sabb is a very intelligent person. He
5 understood very well all of the discovery.

6 Q What were the facts of the case?

7 A It was actually a troubling case. Back in 2014, Mr.
8 Sabb and his cousin, who were very close friends, that was
9 one of the troubling parts, were very, very close friends.
10 They had been hanging out the majority of the day. The
11 evidence through witnesses showed that the two of them had
12 been drinking and hanging out and partying all the day, as
13 friends often do.

14 Earlier in the day before the incident, the two had
15 gotten into a verbal fight that later turned physical. They
16 had to be separated by a couple of individuals. They got in
17 a pretty bad physical fight. Everything seemed to agree
18 that the cousin had started the fight, but him and Roosevelt
19 had gotten into a pretty nasty fight.

20 Thereafter, the cousin went inside of the residence
21 where the incident took place. While he was inside of the
22 residence, Mr. Sabb sat outside. Some of the witnesses
23 indicated that he was fuming, if you will, but sat outside
24 inside of his vehicle. The cousin was inside of the
25 residence.

1 Afterwards, the cousin walked outside and slammed the
2 door pretty loudly. After he walked outside slamming the
3 door pretty loudly, he walked in front of his vehicle. The
4 individual, who Mr. Sabb indicated his Uncle Lonnie had come
5 outside, basically, angry, like who in the world is slamming
6 my door so loud.

7 When he came outside, Lonnie's statement was that he
8 heard Roosevelt or saw Roosevelt behind the wheel revving
9 his vehicle and then drove directly into his cousin, who he
10 had fought with, pinned him up inside of the vehicle, pulled
11 his vehicle back away and then went across the street and
12 parked.

13 The animated video that Mr. Sabb was talking about was
14 a video that was prepared by the MAIT team. My assistant is
15 pretty good at taking notes when we meet, so I reviewed the
16 notes. And, unfortunately, I think he is mistaken on the
17 animation argument. We told him very candidly that we
18 didn't think the animation would actually be admitted. We
19 were worried about it, but did not think it would be
20 admitted.

21 We took that animation to a friend of mine, Woody
22 Poplin, and had him review it, who actually does accident
23 reconstruction, and thought that it was accurate based upon
24 the measurement and the dimensions that SLED had looked at
25 and the MAIT team had looked at.

1 The things that we told Mr. Sabb about going back
2 across what happened, the MAIT's team video was actually
3 based upon the fact that the vehicle that Mr. Sabb was
4 driving when he hit the individual actually had a pretty
5 severe oil leak, so the MAIT team was actually able to
6 follow the oil leak as it actually drove, hit the
7 individual, backed up and then went across the street. The
8 witnesses inside of the residence indicated that not only
9 did the vehicle actually hit the victim, but the car revved
10 up. Two of the witnesses indicated that they heard the car
11 actually revving.

12 The MAIT team came out. They indicated that not only
13 did it rev, but they were able to see acceleration marks
14 where the tires were basically spinning. The MAIT team was
15 able to indicate from the tire marks because it was a wetter
16 day that they were able to see a swerve pattern, which
17 indicated that the vehicle swerved toward the house and then
18 came back towards the victim.

19 The MAIT team throughout the discovery -- and we
20 discussed all of this with Mr. Sabb. The MAIT team's belief
21 was that Mr. Sabb swerved to come across and come back at
22 the victim, eliminating the theory and the thought process
23 of accident in that the vehicle the revved, they saw
24 acceleration marks. The theory was, acceleration marks,
25 then saw the vehicle going towards the house and then coming

1 back as if the victim was trying to get out of the way to
2 dodge, then he was pinned against the vehicle. The vehicle
3 then backed up and then parked across the street. And those
4 are the facts of what we were faced with.

5 Q Did you discuss his version of the facts?

6 A Completely. Mr. Sabb maintained that it was an
7 accident. As he stated on the stand, he said his version of
8 the story was this was an accident and this wasn't
9 intentional.

10 Q Were there witnesses that would have testified for the
11 State that would have backed up what the MAIT team found?

12 A In the notes, the number one witness -- and he is
13 exactly right. The number one witness that would have been
14 against him was his Uncle Lonnie, who has since -- now since
15 deceased and he was a little -- his mental stabilities were
16 a little bit not the best, so he would not have made the
17 best witness for the State and we discussed that.

18 The problem that we had and that we discussed with him
19 -- just one moment. In my notes that I specifically put
20 down, it indicates that my secretary wrote, and this isn't
21 my handwriting, there were two witnesses. They're not as
22 important as the science of the accident. The victim had
23 been drinking. There was an argument. Uncle heard
24 acceleration, came outside and saw the Defendant strike the
25 victim.

1 One of the things that we told him about is that the
2 MAIT team in Clarendon County as well as the solicitor in
3 the case wanted a murder charge very much. They thought
4 this was a murder case. They thought it was a very severe
5 murder case. They said it did not support accident.

6 The expert that I talked to said that the MAIT -- and
7 when he said all I showed him was the video, but we showed
8 him the science, we showed him the numbers, we showed the
9 statistics. And we did show him the MAIT animated video
10 because it comes with it and he was adamant that that's not
11 what happened. And I wasn't actually worried about it
12 coming in, I was more worried about the MAIT's testimony.

13 Q Other than the expert witness that you consulted with
14 on the accident reconstruction, did you do any other
15 investigation?

16 A Went out to the scene, looked at the scene. One of the
17 things that made this case a little bit different -- and
18 talked to the lead investigator, Kenny Clark, on the case.
19 He took me out to the scene, myself and my investigator. We
20 looked at it, looked at what happened.

21 I have notes -- and candidly, I brought one portion of
22 my file. I have notes where we interviewed potential
23 individuals outside, out of the residence. We talked to Mr.
24 Sabb several times about his story as to what happened and
25 then reviewed the discovery. Make this clear, the biggest

1 thing we wanted to make sure was, we were mostly concerned
2 about the testimony of the MAIT. The science in this case
3 is what concerned me the most. And I explained that to him.

4 Q Were you able to find any favorable witnesses?

5 A No.

6 Q So how did the offer come about for the voluntary
7 manslaughter?

8 A What ended up happening -- and as long as we're being
9 candid and we're reading my notes, Mr. Durant had indicated
10 that he wanted to put this case on the trial docket. I
11 informed Mr. Sabb over a phone call and through my assistant
12 as well as my investigator that this case was coming up
13 readily on the trial docket and I needed to bring him down
14 to sit down and talk to him about the case. We talked about
15 the fact that the case -- the solicitor controls the docket.
16 And one of the rules was that he was able to leave whenever
17 he wanted to leave and when they were ready to call the
18 case, they'd be ready to call the case. That's what we
19 discussed.

20 I mean, I told him -- when we talked, one of the things
21 we always talked about was I wasn't going to make him come
22 back and forth because he was trying to make a living. So
23 when they finally talked about wanting to call the case for
24 trial, I said it's time for you to come down here so we can
25 start prepping and getting ready. Over the telephone is

1 when I told him I'm going to go back and forth to the
2 solicitor's office and the priority is to get the murder
3 charge off the table.

4 So when myself, Mr. Durant as well as Kenneth Clark met
5 to discuss the case, one of the things that I made very
6 clear, the case had a lot of age on it at that point in
7 time. It was a 2014 case. I did not think a murder charge
8 would be appropriate to them. Even in my notes, I told them
9 why don't we do something lesser, maybe we can work some
10 type of plea on this situation. Because as I told Mr. Sabb,
11 I was very fearful of where this case would go. I candidly
12 told him that we had an unfavorable judge.

13 We had Judge McFadden, who I like very much, but when
14 it comes to victim cases, he can be very hard on victim
15 cases and I told him that -- and right here in my notes, we
16 have a difficult judge. If we lose trial, I can potentially
17 see him giving you a life charge. And he had mentioned --
18 I'm sorry, I'll let you ask the question.

19 But that's when we got to the 30 point. Then we talked
20 about in my notes of what my discussions were. And these
21 were discussions from my notes on 10/2/17. We need to get
22 murder off the table. That is now officially off the table.
23 Now, you potentially have three options. The first is a
24 straight-up plea to manslaughter, in which we could put a
25 lot of information in mitigation down as to what happened

1 and that's when I discussed specifically my fear that we
2 have a difficult judge who doesn't like victim cases is what
3 I told him directly. I said it would be a miracle if we
4 could get you a 10 to 15 year -- less than 10 to 15 year
5 charge on a straight-up plea, but I'll do whatever you want
6 me to do. In my notes, it says in my best case scenario, I
7 said there is none, worse case scenario if we did a
8 straight-up manslaughter plea would be 30 years.

9 In my notes -- and again, we meet with a lot of people
10 everyday and I would defer to what Mr. Sabb said I wrote
11 down. But in my notes written down from my assistant, and I
12 can give you a copy, it says very clear right here 85
13 percent offenses, which is what I would have told everybody,
14 it's an 85 percent offense. I know he had indicated that I
15 wrote on the board that he would be out in ten years. I
16 have trouble believing I would have said that, but I'm not
17 saying he could be right and if so, I was just wrong and I
18 informed him incorrectly. If his version is correct, I just
19 don't remember doing that and I don't have that written down
20 in the notes.

21 Q But you have written down that you told him it was an
22 85 percent offense?

23 A No, I want to be -- what is written down right here, my
24 assistant -- like I said, my assistant takes the notes. She
25 takes the notes based on my conversation. I keep notes of

1 every meeting. And listed right next to here is where I
2 mentioned where in one of our initial meetings, I talked to
3 him about the difference between murder, the difference
4 between voluntary manslaughter and the difference between
5 involuntary manslaughter and in between the murder and the
6 voluntary manslaughter written next to both of those are 85
7 percent offenses. And this is based upon my assumption and
8 every meeting I have had with somebody in these situations,
9 I would have told them that they carry 85 percent.

10 Q But this is a negotiated plea?

11 A Correct.

12 Q So how did the negotiated plea come about?

13 A So -- and I'm sorry, I jumped around a little bit. So
14 when we went back through and I discussed all of his
15 potential options with him and I told him the possibility of
16 taking a straight up plea or going to trial on this
17 situation, I gave him my opinions on what would happen at
18 trial as opposed to my opinion on what would happen in the
19 plea.

20 He came down and he met again after we had the initial
21 meeting with his sister and brother-in-law and I gave the
22 same information back to his sister and brother-in-law. And
23 I told them exactly my theory and my thoughts on what would
24 be the best case scenario.

25 After our first meeting, I told him I would go back to

1 the solicitor again and try to get a better offer.

2 Q Better offer than the --

3 A Than the straight-up plea, I would try to get him a
4 better offer. And that might be where some of the confusion
5 is because I told him -- just one moment. I explained to
6 him the difference between negotiated numbers as written
7 down in my notes. I mentioned if we work a plea, we can
8 eliminate Lonnie's statement and have the family present
9 positive information about you. I told him that the family
10 of the victims are split right down the middle. The
11 majority of them want him to do life in prison. The others
12 are much more sympathetic. That's where I do have written
13 down in my notes that, perhaps, we can get to a 12 or
14 13-year offer. And it actually says right in my notes, if I
15 can get a 12 offer, perhaps, you can be home in ten years.
16 That's the only point where I can assume where the 85
17 percent would have come up. But again, these are my
18 assistant's notes.

19 So after that weekend, I met again with Chris Durant.
20 I asked him again -- he was very adamant that you're welcome
21 to plea straight-up to the voluntary manslaughter or go to
22 trial. I thought that was a poor idea given the facts. He
23 then said would you be willing to take a 25-year offer,
24 which, of course, I rejected. And then we discussed a
25 15-year negotiated offer, which I had already discussed with

1 Mr. Sabb. He said he could deal with that type of number.

2 And the only reason he was willing to come down that
3 low on that number was one of the principle investigators on
4 the case had recently passed. His names was Holmes Smith,
5 he was one of the investigators on our case. He had died.
6 So I think that's one of the reasons he was willing to come
7 more reasonable, so we talked about the 15. I asked him
8 again in my notes would he consider 12 years, he said no.
9 And that's where we got to the negotiated 15-year number.

10 Q And when you communicated that with Mr. Sabb, what did
11 he say?

12 A He, of course, did not want it. He did not want the
13 deal at all. He wanted me to do much better. I told him
14 that we would not do any better. In my notes here, it
15 clearly says best we can do is 15 years, if we plead
16 straight up, we'll go above the 15. I have down here we can
17 candidly go to trial. We will get the case continued so it
18 won't come up this week, but it won't get better. That's
19 where my assistant has wrote down again.

20 These are my assistant notes. Fear as the facts are so
21 bad, we will present this as an awful accident. Shawn
22 states this would have to be a perfect storm. MAIT team has
23 science on their side. Prosecutor wants murder, MAIT wants
24 murder. Prosecutor has talked to the family. They do not
25 want 30 years.

1 And then the biggest thing that I kept going was not
2 the animation video, the thing that I told him was hurting
3 him the most is it will be very difficult to prove accident
4 because of the acceleration marks. It wasn't the video. It
5 was that the MAIT team actually had acceleration marks
6 immediately before he hit the individual. Like if there
7 weren't the acceleration marks, I wasn't as worried.

8 Mr. Poplin, who I specifically said I didn't want a
9 report because his report hurt us. So I said I didn't want
10 him to prepare a written report. But he said the
11 acceleration marks were spot on and accurate, also, and it
12 looked like a person who had paused, accelerated, thought
13 about it and hit somebody.

14 Q Whose decision was it to plead guilty when you brought
15 up the negotiated 15 years?

16 A Mr. Sabb's 100 percent. I always give the clients the
17 option. I said -- and he did make one of my quotes right, I
18 said, if you want to go to trial, we'll go to trial. We can
19 go right now, but this is your life.

20 Q Did you believe this was in his best interest?

21 A One hundred percent.

22 Q Would you have taken the case to trial if he had wanted
23 to go to trial?

24 A All day long. I enjoy trying cases. I like trying
25 cases. I try a lot of cases. I think I'm pretty much known

1 to enjoy trying cases. And I told Mr. Sabb that, but I
2 said, just because my ego likes trying cases you have to do
3 what's in your best interest.

4 MS. GREGORY: No further questions, Your Honor.

5 THE COURT: Mr. Griffith.

6 MR. GRIFFITH: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. GRIFFITH:

9 Q Thank you, Mr. Kent.

10 A Hey, Tim. How are you doing, sir?

11 Q I am well. Mr. Kent, Mr. Sabb has indicated that he
12 believes that you did not do any investigation. Did you
13 offer to let him speak to the investigator?

14 A I don't think I did, Tim. And he's probably accurate
15 about that. And probably looking back, I probably should
16 have let him, but I felt comfortable with our conversations
17 back and forth. But no, I didn't offer to let him, no, sir.

18 Q But you did just testify that you had significant
19 amounts of investigation and hired an investigator?

20 A Yes. Well, I don't want to misspeak. When I say hire,
21 Woody owed me a favor. So I don't want to use the word
22 hire. Owed me a favor, so I went down to see him on another
23 case and had him look over the evidence for me.

24 Q You involved an investigator?

25 A Yes, sir.

1 Q He also complains that you didn't work hard enough to
2 get him a more favorable plea. Did you ask for involuntary
3 manslaughter?

4 A Very funny you mention that. That's actually written
5 in my notes. And that was shut down ridiculously quickly.

6 Q Yes, I know Mr. Durant.

7 A You know Mr. Durant very well. That was shut down very
8 quickly. I did make a request -- just one moment. I want
9 to make sure. Yes, I have that down in my notes. When we
10 talked about the three potential options in a meeting that I
11 had with Mr. Sabb on September 28th, 2017, talks about the
12 trial, talks about murder versus voluntary manslaughter
13 where I explained to him the difference. And I specifically
14 said that I would make another request for involuntary
15 manslaughter for the accident. I told him what it carries
16 and explained to him very quickly that the solicitor said
17 that was not an option. And the family also told the
18 solicitor that was not an option.

19 Q Another of his claims, specifically, is that he did not
20 see any discovery other than the animation. You have some
21 documentation that shows that you definitely showed him
22 other discovery?

23 A Again, the best that I can offer you are the pages of
24 notes and there's a copious amount of pages, and I can give
25 them to you, from my assistant. My assistant, Debbie, meets

1 with me when I meet with every client. She takes notes on
2 everybody. And she has down where we have gone through the
3 discovery, where we talk about the accelerations marks,
4 where we talk about the measurements, where we talk about
5 the two witnesses are not as important as the science of the
6 accident. We talk about the drinking. And she actually has
7 in the notes where we went through the potential plea
8 colloquy from Judge McFadden and one of the lines is have
9 you gone over the discovery with your lawyer.

10 Q Did you discuss with Mr. Sabb your opinion as to how he
11 would fair in a trial?

12 A Yes, sir. I told him based on my opinion, he would
13 lose a trial and there was a very real possibility he would
14 be convicted of murder.

15 Q But you did, as you stated earlier, tell him that he
16 had the opportunity to go to trial?

17 A Tim, I always -- 20 years I've been practicing, 15
18 years I've been doing pure criminal defense work, I made it
19 very clear and I make it clear to every client, I will give
20 you my opinion, but it is just that, and you have to make
21 the decision on your own.

22 And I think that's unfortunately why I end up going to
23 so many trials because I don't talk a client in or out of a
24 trial. I give them all the information, all the weight and
25 I don't force anybody to do anything they don't feel

1 comfortable with.

2 Q One of his biggest complaints is that he did not have
3 enough opportunity to speak to you prior to this plea, that
4 he only saw you the weekend or couple days before the plea.
5 How would you answer that?

6 A I would probably agree with him, candidly. And through
7 no fault, as I mentioned, of his own because he working out
8 of state as a commercial truck driver. I would have
9 preferred to meet with a client significantly more times.
10 Tim, as you know, you get a plea offer when you get a plea
11 offer. You get notice for trial when you get notice for
12 trial. Just because we were not meeting with him everyday,
13 we did have phone conversations. We did explain to him what
14 was going on with his case.

15 But when I got the plea offer is when I called him in
16 and said you need to get to the office and we met. That
17 first meeting we met wasn't like a 20-minute meeting. I'm
18 pretty sure we met three or four hours that day. We went
19 over things in pretty good detail. But if he is saying that
20 he did not meet enough times with me, I would say he's
21 correct, if that's how he feels.

22 Q You just mentioned that you did have telephone
23 conversations with him?

24 A Nothing substantive. It wouldn't have been a
25 conversation where we would have sat down for hours on end

1 and talked, but I have documentation where we would talk and
2 tell him nothing is going on. Tim, as you know, you've been
3 to Clarendon County quite often. It's not the jurisdiction
4 where very week, you're getting information and talking to
5 the solicitor. You can go -- and that's what would happen.
6 He was out -- from 2014 to '17, there was no movement on his
7 case.

8 Q If you're lucky.

9 A If you're lucky.

10 Q I got the discovery. When I got the discovery, I let
11 the client know the discovery was in. We told the client at
12 some point in time, they could call the case for trial.
13 Immediately, when they told me the case was up for trial, I
14 called the client and told him he needed time to come in and
15 discuss the case. But in that process, me, personally, I
16 was still working on his case.

17 MR. GRIFFITH: Thank you, Mr. Kent. I have no further
18 questions.

19 MS. GREGORY: No redirect, Your Honor.

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

21 MS. GREGORY: That's the State case, Your Honor.

22 THE COURT: Anything further, Mr. Griffith?

23 MR. GRIFFITH: One moment, Your Honor.

24 (Pause.)

25 MR. GRIFFITH: Thank you, Your Honor. We have nothing

1 further.

2 THE COURT: Okay. Thank you. I will take it under
3 advisement.

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, PENNY M. JOHNSON, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

March 12, 2020

Penny M. Johnson
Penny M. Johnson
Official Court Reporter

STATE OF SOUTH CAROLINA)
 COUNTY OF CLARENDON)
)
 Roosevelt Sabb, Jr., #356248,)
)
 Applicant,)
))
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE THIRD JUDICIAL CIRCUIT

2018-CP-14-0136

ORDER OF DISMISSAL

20180816-140136-CP-14-0136
 15:20:46 EST 08/16/2018

This matter comes before the Court by way of an application for post-conviction relief filed on March 29, 2018, by Roosevelt Sabb, Jr. (Applicant). The State (Respondent) filed a Return on August 16, 2018, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on March 27, 2019, at the Sumter County Courthouse. Applicant was present at the hearing and represented by Timothy Griffith, Esquire. Assistant Attorney General Janell H. Gregory of the South Carolina Attorney General’s Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. Shaun C. Kent, Esquire (Counsel) also testified. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application.

I. PROCEDURAL HISTORY

The records before this Court establish Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Clarendon County Clerk of Court’s order of commitment. During the October 2014 term, the Clarendon County Grand Jury indicted Applicant for murder (2014-GS-14-0347). Assistant Solicitor Christopher DuRant of the Third Circuit Solicitor’s Office prosecuted the case.

On October 3, 2017, Applicant appeared with Counsel before the Honorable George M. McFadden, Jr. and, pursuant to a negotiated plea, pled guilty to the lesser-included offense of voluntary manslaughter. Pursuant to the negotiation, Judge McFadden sentenced Applicant to fifteen years imprisonment. Applicant did not appeal his guilty plea or sentence.

II. SUMMARY OF FACTS

Applicant and Keith Allen Smith (Victim) were cousins. On July 5, 2014, Applicant and Victim were at their uncle's residence when they got into an argument. (GP Tr. 6.) There was a physical altercation in the yard, which was broken up by family members. (GP Tr. 6-7.) After the altercation, Victim went inside the residence and Applicant stayed outside. (GP Tr. 7.) When Victim went back outside, the uncle followed him. (GP Tr. 7.) As Victim was standing in the yard, Applicant, who was in his car, revved the engine and accelerated towards Victim hitting him and pinning him between a parked vehicle and Applicant's vehicle. (GP Tr. 7.) After striking Victim, Applicant drove his vehicle down the driveway and parked in a vacant lot across the street from the uncle's residence and waited for law enforcement to arrive. (GP Tr. 7.) Victim was pronounced dead at the scene. (GP Tr. 8.)

III. ALLEGATIONS RAISED

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

1. Ineffective Assistance of Counsel:

a. "Counsel administered fallacious and erroneous advice"

- i. "Three weeks before the plea date counsel called the applicant and said he had received discovery."
- ii. "When Applicant called to schedule a meeting to discuss, Applicant was told to 'hold tight' by counsel and did not hear from counsel until a few days before the plea."
- iii. "When Applicant returned to counsel's office [three days after their initial meeting] counsel wrote 'ten-twelve years' on a dry erase board and told Applicant that if he plead to fifteen years then he could be

- home in ten with good time.”
- iv. “Counsel informed Applicant that if he chose to go to trial it would begin the following day.”
- v. “Counsel briefly went over partial discovery in the case.”
- b. “Counsel failed to make a reasonable investigation in the Applicant’s case”
 - i. “Four days before the plea counsel informed Applicant that he had not spoken to the Solicitor or been given a plea offer.”
- c. Counsel failed to subject prosecution’s case to meaningful adversarial challenge.
 - i. Counsel never discussed any mitigating facts.
 - ii. Counsel never discussed any possible defenses.
 - iii. Counsel never discussed any favorable witnesses.

An evidentiary hearing was held on March 27, 2019, Applicant proceed on the following grounds for relief:

- I. Ineffective Assistance of Counsel
 - a. Counsel failed to meet with Applicant and review discovery;
 - b. Counsel failed to investigate Applicant’s case;
 - c. Applicant accepted the State’s plea offer because Counsel failed to prepare for trial.

III. TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant’s Testimony

At the beginning of the hearing, this Court reviewed with Applicant the consequences if post-conviction relief is granted in his case. This Court warned Applicant that he would be open to his original murder charge proceeding forward to trial and potentially being sentenced to thirty years to life in prison. Applicant testified he understood the risk and wanted to proceed forward with his post-conviction relief hearing.

During the evidentiary hearing, Applicant testified on his own behalf. Applicant testified he discussed the risks of proceeding with his post-conviction relief hearing with his attorney and told his attorney he wanted to go forward with the application. Applicant testified he was represented by Counsel from 2014 until he pled guilty in 2017. Applicant testified he did not meet with him at all and that he did not see Counsel for thirty-four months. Applicant testified

Counsel called him and told him to come and see him. Applicant testified during that meeting, Counsel showed him an animation produced by the State during discovery. Applicant testified he told Counsel the animation was not accurate and asked Counsel about a lesser charge. Applicant testified Counsel asked for permission to talk to the solicitor regarding a plea offer. Applicant testified Counsel met with Applicant the day before the plea offer and wrote "10-12 years" on the board. Applicant testified Counsel told him he would be home in ten years. Applicant testified Counsel explained the difference between murder and voluntary manslaughter. Applicant testified Counsel gave him no options other than to take the plea. Applicant testified he wanted to go to trial but Counsel was not prepared. Applicant testified Counsel told him they would play the animation over and over again and it would not be good. Applicant testified he would have gone to trial had he known the information Counsel gave him was not correct. Applicant testified Counsel should have challenged the animation because he maintained what occurred was an accident. Applicant testified Counsel did not hire an expert witness. Applicant testified he has met people in prison with less time for the same charge. Applicant testified Counsel told him the day before the trial started he had an option to take a plea or go to trial. Applicant testified Counsel was not prepared to go to trial. Applicant testified that had it not been for Counsel's bad advice and failure to file motions, he would have gone to trial.

On cross-examination, Applicant testified he recalled telling the plea judge he wanted to plead guilty. Applicant testified he recalled telling the plea judge he had time to talk to his lawyer about the case. Applicant testified he recalled telling the plea judge he did not have any complaints about his lawyer. Applicant testified he recalled telling the plea judge his attorney had done everything he wanted him to do. Applicant testified he recalled telling the plea judge he was

pleading guilty freely and voluntarily. Applicant testified he recalled waiving his constitutional rights.

Counsel's Testimony

Counsel also testified at the post-conviction relief hearing. Counsel testified he has been practicing law for twenty years and 80% of that has been in criminal law. Counsel testified he met with Applicant one time at jail prior to Applicant being released on bond. Counsel testified Applicant is a commercial truck driver and he was unable to meet with him because he was not in town. Counsel testified he did not believe the animation from the South Carolina Highway Patrol's Multi-disciplinary Accident Investigation Team (MAIT) animation would be admitted at trial. Counsel testified he took the animation to an expert in accident reconstruction and his opinion was the animation was accurate. Counsel testified Applicant's vehicle had an oil leak and the MAIT investigators were able to follow the oil leak to show Applicant's path of travel. Counsel testified the path of travel showed Applicant swerved in the direction of the victim. Counsel testified the incident occurred on a wet day, so the MAIT investigators were able to find acceleration marks and witnesses indicated Applicant revved his engine prior to hitting victim. Counsel testified because of the swerve marks and acceleration indicated it was not an accident. Counsel testified Applicant maintained it was an accident and they discussed that as a possible defense.

Counsel testified he reviewed discovery with Applicant and the discovery he reviewed with him was more than just the animation. Counsel testified Applicant appeared to understand the evidence against him and their conversations. Counsel testified he discussed with Applicant the uncle being a witness and, at the time prior to the plea, they discussed the uncle's mental stability because he was suffering from brain cancer and has since passed. Counsel testified he discussed the other two witnesses for the State who he felt were not that important. Counsel testified he met

with an expert witness regarding the MAIT investigator's findings and went to the scene himself with his investigator. Counsel testified he also met with the lead law enforcement investigator. Counsel testified his biggest concern was the testimony from the MAIT investigators.

Counsel testified he received a call from the solicitor indicating Applicant's case was being set for trial. Counsel testified he told Applicant he needed to come in because his case was coming up. Counsel testified he met with the solicitor and asked for a plea because he was fearful as to where the case would go. Counsel testified his notes indicate he needed to get murder off the table. Counsel testified Applicant could have entered a plea straight up before an unfavorable judge. Counsel testified it would have been a thirty year sentence for the straight up plea and that it is an 85% offense, so Counsel does not believe he told Applicant he would do ten years. Counsel testified the notes of the meeting were written by the assistant and the notes indicate he reviewed the difference between murder, involuntary manslaughter, and voluntary manslaughter. Counsel testified the notes indicate he told Applicant it was an 85% charge. Counsel testified Applicant and his family met with him and asked Counsel to go back and get a better deal. Counsel testified he was trying to get a 12-13 year offer and testified he may have asked for a ten year offer. Counsel testified he met with the solicitor again and was given a twenty-five year offer, which Applicant declined.

Counsel testified he received a negotiated fifteen year offer for Applicant from the solicitor's office after the investigator on the case passed away. Counsel testified he discussed the fifteen year negotiated offer with Applicant and Applicant did not want it. Counsel testified Applicant wanted a better offer, but that was the best he could do. Counsel testified he believed it was in Applicant's best interest to take the offer because the facts were so bad and the science was

on the State's side. Counsel testified it was Applicant's decision to plead guilty. Counsel testified if Applicant had wanted to proceed to trial he would have taken his case to trial.

On cross-examination, Counsel testified he asked the solicitor's office for involuntary manslaughter and he was shut down quickly. Counsel testified he has a lot of notes indicating Applicant reviewed all of the discovery. Counsel testified Applicant even said he reviewed the discovery with Counsel during the plea colloquy. Counsel testified he believed Applicant would lose at trial and be convicted of murder. Counsel testified he makes it very clear to each client that it is their choice whether to proceed to trial or plead. Counsel testified he agrees with Applicant that they did not meet often, but that was because Applicant was out of state due to his job. Counsel testified he had phone conversations with him and when he met with him in person the meetings lasted three to four hours. Counsel testified he was still working Applicant's case from 2014 until the plea in 2017, but during most of that time there was no movement on the case. Counsel testified as soon as the case was noticed for trial, he told Applicant he needed to come home.

IV. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 300 S.C. 115. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 300 S.C. 115. With respect to guilty plea counsel, the applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court viewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the plea transcript, and Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

This Court finds Applicant has failed to meet his burden of proving he is entitled to post-conviction relief on any of his allegations of ineffective assistance of counsel. Applicant has failed to prove both deficiency on the part of Counsel and any prejudice therefrom. Moreover, this Court

notes the record reflects the knowing and voluntary nature of Applicant's guilty plea. Furthermore, after observing the witnesses and passing on their credibility, this court finds Counsel's testimony to be credible. By contrast, this Court finds Applicant's testimony lacks credibility.

Counsel failed to meet with Applicant and review discovery

Applicant testified Counsel failed to meet with him for the thirty-four months before the guilty plea. Applicant testified he met with Counsel the day before the guilty plea and Counsel wrote "10-12 years" on the board. Applicant testified he only reviewed partial discovery with Counsel, which included the MAIT animation.

However, Counsel testified he could not meet with Applicant in person because Applicant was a commercial truck driver and constantly out of town. Counsel testified he did communicate with Applicant over the phone while the case was pending. Counsel testified when he was provided notice that Applicant's case was coming up for trial, he called Applicant and told him to come home. Counsel testified there was little movement on his case from 2014-2017, but he was still working it during that time. Counsel testified he met with Applicant to discuss his case and get Applicant's consent to approach the solicitor for a plea. Counsel testified the meetings he had with Applicant lasted three to four hours. Counsel testified he reviewed all of the discovery with Applicant, which included more than the animation. Counsel testified he has notes indicating Applicant received all of the discovery Counsel had in the case.

This Court finds Counsel's testimony with respect to this allegation very credible, whereas Applicant's testimony is not credible. Based on the foregoing, this Court finds Applicant has failed to establish Counsel was deficient or any resulting prejudice from Counsel's alleged deficiency. Therefore, this allegation is denied and dismissed with prejudice.

Counsel failed to investigate Applicant's charge

Applicant contends Counsel was ineffective for failing to investigate. "Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making 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) (citations omitted). "Although counsel should conduct a reasonable investigation into potential defenses, Strickland does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client." Tucker v. Ozmint, 350 F.3d 433, 442 (4th Cir. 2003) (quoting Green v. French, 143 F.3d 865, 892 (4th Cir. 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." Strickland, 466 U.S. at 691; Wiggins v. Smith, 539 U.S. 510, 521-22 (2003). Moreover, "failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result." Porter v. State, 368 S.C. at 385-86, 629 S.E.2d at 357, abrogated on other grounds by Smalls, 422 S.C. 174, 810 S.E.2d 836 (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

Here, Counsel testified he went to the scene with his investigator and met with the lead investigator from the law enforcement agency that was assigned to Applicant's case. Counsel testified he consulted with an expert in accident reconstruction regarding the MIAT investigator's animation and findings and the consultation confirmed the MAIT investigator's animation and findings were accurate. Counsel testified Applicant could not maintain the incident was an

accident because of the swerve marks and the engine revving. This Court further finds there was no reasonable basis for Counsel to believe any additional investigation would have been beneficial.

This Court further finds Applicant has failed to establish any resulting prejudice from the alleged deficiency. Applicant failed to testify as to what additional investigation Counsel should have conducted or what benefit he could have realized from any additional investigation. Applicant's bare assertions, without more, do not give rise to the level of proof required for Applicant to meet his burden. See Porter, 368 S.C. at 385-86, 629 S.E.2d at 357 ("Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result."). Accordingly, this allegation must be denied and dismissed with prejudice.

Applicant accepted the State's plea offer because Counsel failed to prepare for trial.

Applicant alleges Counsel did not prepare his case for trial and that led to Applicant accepting the State's plea offer. Specifically, Applicant alleges Counsel did not meet with any witnesses, or evaluate any possible defenses or mitigating factors in his case. Applicant testified he had to accept the State's plea offer because he did not feel Counsel was prepared for trial. As an initial matter, this Court finds Counsel's testimony with respect to this issue very credible, whereas Applicant's testimony is not credible.

This Court finds Applicant has failed to establish Counsel was deficient. "There is a strong presumption counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decision in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). Moreover, when there is evidence that counsel met with Applicant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective. See Harris v. State, 377 S.C. 66,

659, S.E.2d 140 (2008), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). To establish counsel was inadequately prepared, an applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998).

Here, Counsel testified, although he was unable to meet with Applicant in person while the case was pending due to Applicant's job, he was able to discuss Applicant's case with him over the phone. Counsel also testified when Applicant's case was noticed for trial, he met with Applicant multiple times and those meetings lasted three to four hours. Counsel testified he reviewed Applicant's charges with him and discussed the MAIT report and the findings of his accident reconstruction expert. Counsel testified based on his investigation, Applicant would not have been successful at trial with the defense that the incident was an accident. Counsel testified he was not able to locate any favorable witnesses to testify on Applicant's behalf at trial. Counsel testified it was Applicant's decision to plead guilty and he believed that was in Applicant's best interest. Counsel testified had Applicant wanted to proceed to trial, he would have taken the case to trial.

This Court finds this allegation is without merit, and Applicant has failed to carry his burden of proving that Counsel was deficient in preparing his case for trial. This Court finds Applicant entered his guilty plea freely and voluntarily. This Court also finds Applicant has failed to establish any resulting prejudice from the alleged deficiency. "A guilty plea generally acts as a waiver of all non-jurisdictional defects and defenses." State v. Thomason, 341 S.C. 524, 526, 534 S.E.2d 708, 710 (Ct. App. 2000) (citing State v. Munsch, 287 S.C. 313, 338 S.E.2d 329 (1985)). Additionally, Applicant waived his right to a jury trial, his right to remain silent, and his right to put up a defense to this charge. (GP Tr. 5.) Applicant indicated he understood his constitutional

rights and, understanding those rights, still wanted to enter a guilty plea. (GP Tr. 6.) Applicant further testified Counsel had answered all of his questions, reviewed discovery with him, and had done everything Applicant wanted him to do during his representation. (GP Tr. 4.) Based on Applicant's solemn admission of guilt at the plea, this Court finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. Accordingly, this allegation must be denied and dismissed with prejudice.

CONCLUSION

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

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

IT IS THEREFORE ORDERED THAT:

1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 7th day of May, 2019.

Kristi F. Curtis
 KRISTI F. CURTIS
 Presiding Judge
 Eighth Judicial Circuit

Sumter, South Carolina

WITNESSES

Inv. Eric Rosdail, CCSO

DOCKET NO. 2014-GS-14-0347

The State of South Carolina

County of CLARENDON

COURT OF GENERAL SESSIONS

October TERM 2014

THE STATE

vs.

ROOSEVELT SABB JR

ARREST WARRANT NUMBER

2014A1410100447

Indictment for

MURDER

ACTION OF GRAND JURY

True Bill

James C. Campbell

Foreperson of Grand Jury

Date: 10/9/2014

VERDICT

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

Foreperson of Petit Jury

Date:

