

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Orangeburg County

Honorable Kristi Lea Harrington, Circuit Court Judge

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DONTE JAROD STOKES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-002027

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APPENDIX

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S.C. SUPREME COURT

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EXHIBITS:

No exhibits were marked to this proceeding.

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2 THE COURT: All right, Counsel.

3 MR. SORENSON: Thank you. Please the Court, Your  
4 Honor.

5 THE COURT: Yes, sir.

6 MR. SORENSON: At this time, I believe I've been  
7 informed that we have a guilty plea. It's Indictment  
8 2012-GS-38-1421, State verses Donte Jarod Stokes, charging  
9 him with one count of murder. We negotiated the plea, Your  
10 Honor, to a negotiated plea range 35 to 40 years.  
11 Additionally, as part of the plea, we will be dismissing --  
12 there is an attempted murder and a possession of a weapon  
13 during the commission of a violent crime that stems out of  
14 the same incident that we will be nolle processing as a part  
15 of this guilty plea.

16 THE COURT: Ms. Ullman, you represent Mr. Stokes?

17 MS. ULLMAN: I do, Your Honor.

18 THE COURT: Has the Solicitor accurately stated, for  
19 the record, any and all negotiations?

20 MS. ULLMAN: Yes, sir.

21 THE COURT: It's my understanding, so it's clear, and  
22 I'm sure you've explained this to your client, it's not  
23 less than 35, not greater than 40 negotiated; is that your  
24 understanding of the negotiation?

25 MS. ULLMAN: Yes, sir.

1 THE COURT: And that's your client's understanding,  
2 also; you believe?

3 MS. ULLMAN: Yes, sir.

4 THE COURT: Now, Madam Clerk, would you please swear  
5 the defendant for me.

6 THE CLERK: Please raise your right hand.

7 (WHEREUPON, Donte Jarod Stokes was sworn to tell the  
8 truth.)

9 THE CLERK: Thank you.

10 THE COURT: Now, I'm going to ask you if you would,  
11 speak up so the court reporter can hear you, I can hear you  
12 and the people in the courtroom can hear you. Give me a  
13 verbal answer. Say yes or no. Don't shake your head or nod  
14 your head so the court reporter can take it down. Please do  
15 not say uh-huh or huh-uh so the court reporter knows exactly  
16 what you're saying yes or no. Do you understand what I just  
17 told you?

18 MR. STOKES: Yes, sir.

19 THE COURT: All right. Very good. State your full  
20 name for the record.

21 THE DEFENDANT: Donte Stokes, Donte Jarod Stokes.

22 THE COURT: Mr. Stokes, how old are you?

23 MR. STOKES: Twenty-two.

24 THE COURT: How old?

25 MR. STOKES: Twenty-two.

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1 THE COURT: Twenty-two. How far have you gone in  
2 school?

3 MR. STOKES: I ain't graduated.

4 THE COURT: How many grades did you complete?

5 MR. STOKES: Eleven.

6 THE COURT: Eleven?

7 MR. STOKES: Yes, sir.

8 THE COURT: All right. Have you ever been employed?

9 MR. STOKES: Yes, sir.

10 THE COURT: When you last worked, what kind of work did  
11 you do?

12 MR. STOKES: Sterilite, I've been making plastic  
13 containers.

14 THE COURT: Are you married?

15 MR. STOKES: No, sir.

16 THE COURT: Do you have any children?

17 MR. STOKES: Yes, sir.

18 THE COURT: How many?

19 MR. STOKES: One.

20 THE COURT: Does the child live with you?

21 MR. STOKES: No, sir.

22 THE COURT: How old is the child?

23 MR. STOKES: Four.

24 THE COURT: Do you pay child support?

25 MR. STOKES: No, sir.

1 THE COURT: Have you ever been treated in the past for  
2 drug abuse, alcohol abuse or mental illness?

3 MR. STOKES: No, sir.

4 THE COURT: Have you taken drugs and alcohol or  
5 anything else within the past 24-hours that might keep you  
6 from understanding what you're doing in Court today?

7 MR. STOKES: No, sir.

8 THE COURT: Ms. Ullman, I understand that you represent  
9 Mr. Stokes. Have you advised him of the charge in this  
10 indictment, as well as the maximum penalty or punishment and  
11 its direct consequences, as well as his constitutional  
12 right?

13 MS. ULLMAN: I have.

14 THE COURT: In your opinion, Counsel, does he  
15 understand the charge in the indictment, as well as the  
16 maximum penalty and its direct consequences, and, of course,  
17 I'm directly referring to the fact that murder is both  
18 violent and most serious, as an example of direct  
19 consequences, as well as his constitutional rights. Do you  
20 believe he understands all of those?

21 MS. ULLMAN: I have, Your Honor and I believe he  
22 understands all of them.

23 THE COURT: Very well. And how does he indicate to you  
24 that he desires to plead, guilty or not guilty?

25 MS. ULLMAN: May I have just one moment, Your Honor?

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1 (Pause. Ms. Ullman consults with Mr. Stokes.)

2 MS. ULLMAN: Your Honor, he would plead no contest.

3 THE COURT: Have you explained to him that a plea of no  
4 contest or nolo contendere has the exact same legal effect  
5 is a guilty plea?

6 MS. ULLMAN: I have, Your Honor.

7 THE COURT: And you believe he understands that?

8 MS. ULLMAN: Yes, sir.

9 THE COURT: He wishes to enter a plea of no contest to  
10 the offense of murder to the negotiations published by the  
11 Solicitor?

12 MS. ULLMAN: Yes, sir.

13 THE COURT: Very well. All right, Mr. Stokes, you've  
14 heard your lawyer tell me that she's advised you of the  
15 charge in this indictment, she's advised you of the maximum  
16 penalty and punishment for that charge and its consequences,  
17 and she's advised you of your constitutional right, and  
18 according to your attorney, you understand the charge, the  
19 penalty, the direct consequences and your constitutional  
20 right; is that correct?

21 MR. STOKES: Yes, sir.

22 THE COURT: I've been handed by the Solicitor  
23 Indictment 2012-GS-38-1421, the State verses Donte Jarod  
24 Stokes, indictment for murder, True Billed by the Orangeburg  
25 County Grand Jury. This indictment alleges that you did, in

1 Orangeburg County on or about June 21, 2012, with malice  
2 aforethought, that you did kill -- that you, Donte Jarod  
3 Stokes did kill one Kathy Mack -- M-a-c-k, Hilda -- by means  
4 of shooting the victim with a gun. That the victim did die  
5 as a proximate result thereof.

6 Do you understand that charge in that indictment for  
7 the offense of murder?

8 MR. STOKES: Yes, sir.

9 THE COURT: Solicitor, you agree it carries up to life?

10 MR. SORENSON: That would be correct, Your Honor.

11 THE COURT: You also agree, Counsel?

12 MS. ULLMAN: Yes, sir.

13 THE COURT: Mr. Stokes, you understand if I accept your  
14 plea to this offense that I can sentence you to a term of  
15 imprisonment of not less than 30 years, up to life in  
16 prison; do you understand that?

17 MR. STOKES: Yes sir, Your Honor.

18 THE COURT: As a maximum possible penalty. You  
19 understand that the offense -- I understand from your  
20 lawyer, that she's advised you of this, that murder is a  
21 violent and a most serious offense. Because it is violent I  
22 advise you that you would have to assume that you would have  
23 to serve day for day as to any sentence of imprisonment I  
24 might impose if I accept your plea. Do you understand that?

25 MR. STOKES: Yes, sir, Your Honor.

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1           THE COURT: Because it is most serious, if you're to be  
2 convicted at a later point in time in a combination of  
3 either serious or most serious offense under the laws of the  
4 State of South Carolina, you could, if so convicted in the  
5 future face the possibility of life imprisonment without any  
6 possibility of parole; you understand that?

7           MR. STOKES: Yes sir, Your Honor.

8           THE COURT: Counsel, I understand you've advised him on  
9 both of those things; is that correct?

10          MS. ULLMAN: Yes sir.

11          THE COURT: He understand he would have to serve day  
12 for day, he understands also that he could in the future  
13 face the possibility of life imprisonment without any  
14 possibility of parole if he were convicted of a combination  
15 of either serious or most serious offenses in the future; is  
16 that correct?

17          MS. ULLMAN: Yes, sir.

18          THE COURT: Any other direct consequences of the plea  
19 in which counsel for the state is aware?

20          MR. SORENSON: No, sir.

21          THE COURT: Any other direct consequence -- there is a  
22 federal consequence of owning or possessing a firearm, but  
23 other than that, anything else?

24          MR. SORENSON: No, sir.

25          MS. ULLMAN: No, sir.

1 THE COURT: Any other direct consequences which counsel  
2 for the defense is aware?

3 MS. ULLMAN: None that I know. No, sir.

4 THE COURT: Mr. Stokes, you understand if I accept your  
5 plea to this offense you would be barred by federal statute  
6 from owning or possessing any type of firearms?

7 MR. STOKES: Say that again?

8 THE COURT: Do you understand if I accept your plea to  
9 this offense that you would be barred by federal statute  
10 from owning or possessing any type of firearm?

11 MS. ULLMAN: That means when you get out you won't be  
12 allowed to have a gun.

13 MR. STOKES: Yes, --

14 THE COURT: Do you understand that?

15 MR. STOKES: Yes, sir, Your Honor.

16 THE COURT: All right. You understand that by pleading  
17 no contest you're giving up your constitutional right to  
18 remain silent?

19 MR. STOKES: Yes, sir.

20 THE COURT: Do you understand that by remaining silent  
21 you are giving up your constitutional right to a trial by  
22 jury?

23 MR. STOKES: Yes, sir, Your Honor.

24 THE COURT: You understand if you had a jury trial you  
25 would have the right to confront any witnesses or evidence

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1 which the state may have against you, and if you had a jury  
2 trial the state would be required -- they would have the  
3 burden of proving your guilt beyond a reasonable doubt, and  
4 if you had a jury trial you could put up any witnesses or  
5 evidence in your defense and compel their attendance, if you  
6 chose to do so. Do you understand you have each of those  
7 rights as to a jury trial?

8 MR. STOKES: Yes, sir, Your Honor.

9 THE COURT: Understanding your rights as to a jury  
10 trial, do you no want a jury trial or do you wish to plead  
11 guilty or nolo contendere?

12 MR. STOKES: No contest, Your Honor.

13 THE COURT: All right. Now, you heard the Solicitor  
14 tell me at the outset of his hearing and it was confirmed to  
15 me by your attorney, that is, there have been negotiations  
16 in regard to your plea. Negotiations were published to me  
17 as you pleading to the offense of murder for a sentence of  
18 not less than 35 years nor greater than 40 years. Is that  
19 your understanding of the negotiations, Mr. Stokes?

20 MR. STOKES: Yes, sir, Your Honor.

21 THE COURT: All right. You understand negotiations are  
22 a contract between the Solicitor and your attorney. I can't  
23 change those negotiations, but I do not have to accept your  
24 plea. Do you understand that?

25 MR. STOKES: Yes, sir, Your Honor.

1 THE COURT: Other than that the negotiations, which I  
2 placed on the record of this hearing, has anybody promised  
3 you anything in order to get you to plead no contest or  
4 guilty?

5 MR. STOKES: No, sir, Your Honor.

6 THE COURT: Has anybody threatened you in any manner in  
7 order to try to get you to plead no contest or guilty?

8 MR. STOKES: No, sir, Your Honor.

9 THE COURT: Are you fully satisfied with the services  
10 of your attorney?

11 MR. STOKES: Yes, sir, Your Honor.

12 THE COURT: Has she done everything on your behalf that  
13 you feel like she should or could have done?

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

15 THE COURT: Have you had enough time to talk to your  
16 lawyer?

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

18 THE COURT: Have you understood all of your talks with  
19 your lawyer?

20 MR. STOKES: Yes, sir, Your Honor.

21 THE COURT: Are you completely satisfied with your  
22 lawyers services?

23 MR. STOKES: Yes, sir, Your Honor.

24 THE COURT: Do you have any complaints against any law  
25 enforcement officers, court officials or members of the

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1 solicitor's office?

2 MR. STOKES: No, sir, Your Honor.

3 THE COURT: And are you pleading guilty to this offense  
4 or pleading no contest to this offense of your own free will  
5 and your own accord?

6 MR. STOKES: Yes, sir, Your Honor.

7 THE COURT: Now I ask you, sir, have you understood  
8 each of the questions?

9 MR. STOKES: Yes, sir, Your Honor.

10 THE COURT: Have your answers to my questions been  
11 truthful answers?

12 MR. STOKES: Yes, sir, Your Honor.

13 THE COURT: Have they been your own answers and not  
14 suggested to you by anyone else?

15 MR. STOKES: No, sir,

16 THE COURT: They're your own answers?

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

18 THE COURT: And not someone else's?

19 MR. STOKES: Yes, sir, Your Honor.

20 THE COURT: You understand as to any sentence of  
21 imprisonment I might impose, if I accept your plea that you  
22 would have to serve day for day as to any sentence of  
23 imprisonment I might impose; do you understand that?

24 MR. STOKES: Yes, sir, Your Honor.

25 THE COURT: You understand you have the right to appeal

1 my sentence and this plea, but you must do so within 10 days  
2 of today by allowing a Notice of Intention to Appeal; you  
3 understand that?

4 MR. STOKES: Yes, sir, Your Honor.

5 THE COURT: Are you, in fact, Mr. Stokes, guilty of the  
6 offense of murder in Orangeburg County on or about June 21,  
7 2012, involving Kathy Mack?

8 MS. ULLMAN: Your Honor, he's --

9 THE COURT: I understand he's pleading Nolo.

10 I'm asking you, are you, in fact, guilty or you are  
11 pleading no contest to the offense of murder in Orangeburg  
12 County, on or about June 21, 2012. As I told you a plea of  
13 Nolo has the exact same legal effect as a guilty plea. Do  
14 you understand?

15 MR. STOKES: Yes, sir, Your Honor.

16 THE COURT: All right. Are you, in fact, guilty of  
17 that?

18 MR. STOKES: Yes, sir, Your Honor.

19 THE COURT: Solicitor.

20 MR. SORENSON: Thank you. May it please the Court.

21 One thing, I just had brought to my attention by Madam  
22 Probation Agent. I'm not sure it's something that we can  
23 deal with at this point in time, but he is on probation out  
24 of Laurens County. Also, I don't know if that's something  
25 you need to address with him at this point at all.

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1 THE COURT: Counsel, were you aware of that?

2 MS. ULLMAN: I was not.

3 THE COURT: All right. Tell me what he's on probation  
4 for?

5 MS. BRANTLEY: Your Honor, he's on probation for the  
6 offense of breach of peace, aggravated in nature. He was  
7 sentenced on January 26, 2012. He was given a sentence of a  
8 YOA, not to exceed five years, suspended upon the service of  
9 58 days and two years probation.

10 THE COURT: That's a new -- YOA -- suspended upon the  
11 service of 58 days. You don't see many of those, since you  
12 don't get any credit for time on a YOA, but -- so it's two  
13 years probation on aggravated breach of the peace and this  
14 plea would be a violation.

15 MS. BRANTLEY: Yes, sir. He actually has an active  
16 warrant on him that was issued on April 19, 2012 for failing  
17 to notify the agent of a CDV conviction, as well as,  
18 changing residence, as well as failing to pay on his monies.

19  
20 THE COURT: All right. I assume, then, you want to  
21 advise him and counsel that this plea would be a violation  
22 of his probation. You understand that? And I'm assuming --  
23 have y'all served him with anything?

24 MS. BRANTLEY: He's out of Laurens County, but I am  
25 trying to work on it right now, Your Honor.

1 MS. ULLMAN: Your Honor, I can advise him of that and,  
2 obviously, also advise him that when the revocation happens,  
3 anything that would occur here today would override that  
4 revocation and --

5 THE COURT: Well, I can't guarantee that -- MS.

6 ULLMAN: Yes, sir, I understand.

7 THE COURT: -- but I understand that you think that  
8 might be likely to occur, but I'm sure you're not making  
9 that promise to him, counsel?

10 MS. ULLMAN: No, sir.

11 THE COURT: You want to take a minute and tell him what  
12 we're talking about so you feel like he understands the  
13 effect of probation -- you can do it right there. You don't  
14 have to leave the room.

15 (Off the record conference with Ms. Ullman and Mr. Stokes.)

16 MS. ULLMAN: Your Honor, I've explained to him that his  
17 probation will be violated and once he's housed, --

18 THE COURT: All right.

19 MS. ULLMAN: -- somebody from Laurens probation will  
20 contact him --

21 MS. ULLMAN: -- and deal with that violation.

22 THE COURT: Mr. Stokes, that's been brought to my  
23 attention, you understand if you're on probation or parole  
24 and you plead guilty to this charge that your probation or  
25 parole could be revoked and resulting in additional

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1 incarceration; do you understand that?

2 MR. STOKES: Yes, sir, Your Honor.

3 THE COURT: I understand -- is that the only matter  
4 now, anything else, Solicitor?

5 MR. SORENSON: I believe that's all, Your Honor.

6 THE COURT: All right. Let me make sure I've covered  
7 everything I want to cover with him.

8 I have. Solicitor?

9 MR. SORENSON: May it please the Court, Your Honor.

10 We start off -- the victim in this case was 31-year-old  
11 Kathy Mack. Ms. Mack's family are seated in the front row.  
12 Her mother, father, two sisters and brother-in-law.

13 Your Honor, this incident occurred back on the  
14 afternoon of June 21, 2012. Somewhere right around 4:00  
15 o'clock or so in the afternoon Ms. Mack was out riding  
16 around as a passenger in a white work van that belonged to  
17 her boyfriend. The two of them had gone by and gotten gas  
18 at a gas station and they were heading out to the Eutawville  
19 area to go -- I think the initial plans was to go visit her  
20 father, and ultimately ended up pretty much kind of coming  
21 back towards Orangeburg. Lo and behold, little did they  
22 realize that they were being followed, basically, the entire  
23 time by a white Ford Explorer with five young men in it who  
24 had seen them at the gas station and had hatched a plan that  
25 they were going to attempt to rob her boyfriend, Mr. Felder,

1 who at least one of them was acquainted with prior to this  
2 incident.

3 They ultimately end up coming up on -- I believe it was  
4 Highway 6, just out of Santee near a bridge. The driver of  
5 the Ford Explorer, a young man by the name of Demetrice  
6 Quattlebaum pulls around in front of their van and stops in  
7 the roadway. Mr. Felder stopped his vehicle, his van a few  
8 feet behind the vehicle. I think at that time not quite  
9 knowing what was going on, when he saw two men hop out of  
10 the back of the vehicle with bandanas pulled up over their  
11 faces, ball caps kind of pulled down low over their eyes,  
12 both with handguns.

13 As the two of them approached the van Mr. Felder and Ms.  
14 Mack, I believe, ducked and kind of yelled no, and then  
15 duck. I don't know if these two young men thought something  
16 was going to happen, but at that point in time both of them  
17 opened fire.

18 The evidence ultimately showed that this young man,  
19 Donte Stokes was one of those individuals armed with a Ruger  
20 9 millimeter. He had gone around to the passenger side of  
21 the vehicle while another young man by the name of Deshawn  
22 Fordham had gone around on the driver's side. At least  
23 three shots were fired by the 9 millimeter. Ms. Mack was  
24 struck one time in the head and two times in, kind of, the  
25 upper arm, chest area. The shot to the head ultimately

1 being the fatal shot. At that point in time Mr. Felder  
2 put the van in drive and took off and accelerated around the  
3 Explorer heading towards Santee, driving at a pretty  
4 reckless pace at that point in time, realizing that his  
5 girlfriend was unresponsive, slumped over in the seat next  
6 to him.

7 As he came into Santee he observed those two Santee  
8 police officers that were basically sitting running radar in  
9 town. He pulled up, jumped out of his vehicle, went running  
10 up to them about what happened and indicated, pointing back,  
11 that the Explorer had continued to follow them into Santee,  
12 pointed the vehicle out as it peeled off and took off. So  
13 law enforcement was able to get a pretty accurate -- not  
14 only description but also the route that the Explorer had  
15 taken.

16 A brief chase, I believe, ensued with an Ellore office  
17 when the vehicle was lost. At that point in time a BOLO was  
18 put out over the air coming all the way back into  
19 Orangeburg. Ultimately, as you come back in on 301, kind of  
20 right around 301 and I-95 -- I'm sorry, I-26, Deputy Ryan  
21 Harder with the sheriff's office had come out and kind of  
22 just set up, just kind of watching and ultimately saw a  
23 white Ford Explorer with the description of several young  
24 black males in it pass him. He turned around, initiated a  
25 traffic stop, ended up questioning the five individuals in

1 there. They were all a little vague about where they were  
2 coming from, what they had been doing. Another officer  
3 getting out they ultimately observed in plain sight in the  
4 front of the vehicle what appeared to be two bandanas, which  
5 the descriptions they had of a blue and a black bandana that  
6 these individuals had.

7 They were subsequently brought down to the Sheriff's  
8 Office, a search warrant was obtained on the vehicle and  
9 ultimately kind of hidden up kind of around the engine block  
10 they ultimately recovered a Ruger 9 millimeter and a high  
11 point 380 pistol. The two of them ended up matching -- they  
12 found not only bullets that came from Ms. Mack -- the  
13 autopsy of Ms. Mack matched up to the Ruger, but also Mr.  
14 Felder -- Detective Godwin, who's now with the Calhoun  
15 County Sheriff's Office was with Orangeburg, back at the  
16 time, was the investigator assigned, took Mr. Felder and  
17 they were able to find the area that it happened. In the  
18 roadway they found several cell casings that came back  
19 matching that Ruger and that 380 that were discovered inside  
20 the vehicle.

21 These defendants were brought down, several of them did  
22 implicate Mr. Stokes as being one of the shooters,  
23 specifically the shooter of the Ruger 9 millimeter.  
24 Ultimately, he did give a statement to law enforcement the  
25 following day indicating that he had fired the Ruger at the

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1 van when he got out of his vehicle. This did happen where  
2 they found it was in Orangeburg County.

3 THE COURT: Mr. Sorenson, does the defendant have a  
4 prior record?

5 MR. SORENSON: He does, Your Honor. You've heard a  
6 little bit about it, but --

7 THE COURT: He's on probation?

8 MR. SORENSON: Yes, sir. In addition to that, he's got  
9 -- on his rap sheet he's got an adjudication in Family Court  
10 from back in 2005 for an assault and battery of a high and  
11 aggravated nature. He's got from 2011, a simple possession  
12 of marijuana and a criminal domestic violence, first. And  
13 then from 2012, as Your Honor has heard Laurens County, the  
14 conviction of breach of peace, aggravated in nature. That  
15 would be his record.

16 THE COURT: Very well. I find that there is sufficient  
17 factual basis for your plea, Mr. Stokes. I find that your  
18 decision to plead nolo contendere or guilty, is freely,  
19 voluntarily, knowingly, intelligently made. That you have  
20 had the advice and counsel of a competent lawyer with whom  
21 you tell me you are completely satisfied with your lawyer. I  
22 will accept your plea.

23 I'll be happy you hear from you, counselor, in  
24 mitigation.

25 MS. ULLMAN: Thank you, Your Honor. As he has told

1 you, he's 22 years old. His girlfriend is here today in the  
2 courtroom. She is the mother of his four-year-old child.  
3 He did tell you that he was not paying child support, Your  
4 Honor. At the time of this incident was living in  
5 Greenville with his child and his girlfriend. They were  
6 living together and he was working at Sterilite supporting  
7 them. So he was not technically paying child support, but  
8 he was caring for his child.

9 Your Honor, he is actually from Orangeburg County. He  
10 went to school here. Met a girl, she had family in  
11 Greenville and they left and got out of here. He'd been  
12 gone a couple of years by the time that this incident did  
13 occur. On the day in question, Your Honor, he had come back  
14 for a family birthday party. Every year they get together  
15 and celebrate their grandma's life. She's passed away and  
16 they do that every year for her birthday. So he came to  
17 town for a family event. He was not here for any bad  
18 purposes.

19 He got in the middle of being with these other four  
20 kids because he was at a family members house, a person who  
21 would lend the vehicle on this day in question, but for some  
22 reason was not arrested. He was at that person's house,  
23 actually working on his vehicle, not trying to get in any  
24 trouble.

25 He knew, obviously, the person he was with at this house,

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1 but the other co-defendants who were involved in this, he  
2 did not know them from school, he was not friends with them.  
3 So his involvement is literally because he was at a family  
4 members house working on his car and these other people show  
5 up and unfortunately young people very easily follow other  
6 young people into their stupid ideas, and that's exactly  
7 what happened with Donte. I spoke with the officer --

8 THE COURT: And you believe even though he's pleading  
9 nolo contendere, you believe there's clearly a factual basis  
10 for this plea?

11 MS. ULLMAN: Your Honor, I believe that the ballistics  
12 did prove that the 9 millimeter --

13 THE COURT: Well, that would be a factual --

14 MS. ULLMAN: Yes, sir.

15 THE COURT: -- basis for the plea. So the answer is  
16 yes?

17 MS. ULLMAN: Yes, sir.

18 THE COURT: Is that it?

19 MS. ULLMAN: I'm sorry, I lost my train of thought. I  
20 apologize.

21 THE COURT: You were telling me that he was involved  
22 with other people --

23 MS. ULLMAN: Yes, sir. I spoke with the officer who  
24 did the investigation in this case and he tells me, number  
25 one, he doesn't think that Donte is a bad kid who is a

1 trouble maker or who was spending his youth getting in  
2 trouble. He tells me that the one person involved in this  
3 case who is charged in other crimes, the 9 millimeter in  
4 this case was also stolen in another crime that Mr. Stokes  
5 had no involvement in. The point is, somebody else has  
6 numerous charges and he is the person who stole this weapon  
7 and he is the person that put the weapon in Donte's hand. I  
8 believe that officer, in speaking with me, believes that  
9 also. The problem is Donte is young and, excuse me, stupid  
10 and he listened and followed these other people into what  
11 happened.

12 Your Honor, the reason he is -- he's really battling  
13 with himself about saying the word guilty. It was never  
14 part of his plan to harm anybody. I understand that sounds  
15 crazy with guns, but part of the problem with young people  
16 and guns today is they don't get it that guns hurt people,  
17 and they use guns and they don't think anything bad will  
18 come of it and someone dies, and they're all amazed. I  
19 can't figure it out, but I really truly believe he went into  
20 this with the idea of physically harming anyone. It was a  
21 way to get money and it was stupid, but I don't believe that  
22 Donte even knew there was a passenger, let alone that  
23 passenger was or had any ill will towards that person or  
24 wanted that person dead. He's a follower and he's going to  
25 have lots of time to get over that, because the only way to

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1 make it through life is to lead yourself and that is not  
2 what he did on the day in question, but he can change and he  
3 can be the person he needs to be. He's young and he has  
4 plenty of time to grow up and change and come to terms with  
5 making sure he's responsible for his own actions.

6 He is not a person who is not supported, Your Honor.  
7 In Court today, he has family members. He has aunts, his  
8 mother, his girlfriend, and this is Ms. Annie Busby standing  
9 with me, his aunt. The rest of the family members are in  
10 the audience, Your Honor.

11 He is very remorseful that any of this happened. From  
12 day one he just looked at me in amazement and that's my  
13 point about young kids with guns. Nobody thinks that --  
14 what the results of guns is what is the results. So he's  
15 not taking responsibility. He's got plenty of time to think  
16 about what's happened.

17 Your Honor, he did write a letter that he's asked me to  
18 read just on his own behalf.

19 He says he wants to take the time to say that he's  
20 sorry for what happened. He obviously meant no harm towards  
21 Ms. Mack. He knows that saying he's sorry doesn't change  
22 anything, but it does come from the bottom of his heart. He  
23 plans to continue praying about this event and praying for  
24 Ms. Mack and her family. He says he hopes one day that he  
25 can be forgiven for this mistake and that he's using all

1 this time that he can to better himself and to overcome his  
2 pride, because he feels that was one of the biggest issues  
3 he had. He can see clearly now that overcoming pride was  
4 the only way to save himself. He says his part in this  
5 situation was a stupid thing to do, he never wanted anyone  
6 to get hurt. He says, we live and learn from our mistakes  
7 and whatever encouragement he needs he now turns to God and  
8 gets his encouragement from God. He says he hopes you take  
9 into consideration of his remorsefulness in your judgment  
10 and he also hopes that the family, again, knows that he is  
11 very sorry for this and that he is praying for their  
12 forgiveness and hopes that they may give that to him one  
13 day.

14 THE COURT: Thank you very much.

15 Mr. Stokes, is there anything you'd like to tell me  
16 that hasn't already been expressed by your lawyer reading  
17 the letter?

18 MR. STOKES: No, sir.

19 MS. ULLMAN: Your Honor, if I may. Ms. Busby would  
20 like to speak on behalf of the family.

21 THE COURT: Okay. If you would identify yourself for  
22 the record, please, ma'am?

23 MS. BUSBY: Yes. I'm Annie Busby, Donte aunt, and what  
24 I want to say is that Donte is a very good kid. He just get  
25 mixed up in a lot of things some time. He don't mean to do

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1 it, just like he had written on the letter. He just like to  
2 follow people, but when I spoke to him I realized that he  
3 know what he did was wrong, that if he had the chance he  
4 would not do that again.

5 He came from a good family. He went through a lot  
6 because of some serious things that was happening with his  
7 grandparents and that had a lot of effect on him, too. But  
8 other than that, like I say, he understand what he did and  
9 he's wrong, he was wrong for what he did to Ms. Mack, but he  
10 has learned from that, and while you're making his sentence,  
11 please consider all that, please, sir.

12 Thank you.

13 THE COURT: Solicitor, tell me if there's been  
14 disposition of any of the co-defendant's cases?

15 MR. SORENSON: No, sir. This would be the first one  
16 that we were looking at moving.

17 THE COURT: So there's been no disposition?

18 MR. SORENSON: The others are still pending, sir.

19 THE COURT: All right.

20 Mr. Stokes, I understand, I know you have family here  
21 -- does the victim's family wish to address the Court?

22 MR. SORENSON: I don't believe so. They didn't as of 30  
23 minutes ago, but I think they may have changed -- one of the  
24 sisters.

25 This is Ms. Amy Benjamin, Your Honor. This is one of

1 Kathy's sisters.

2 MS. BENJAMIN: Hi.

3 THE COURT: If you'll identify yourself for my court  
4 reporter, please?

5 MS. BENJAMIN: Amy Benjamin.

6 THE COURT: And your relationship to the victim?

7 MS. BENJAMIN: Sister.

8 THE COURT: Sister. Happy to hear from you.

9 MS. BENJAMIN: Thank you. The family, I do accept his  
10 apology. I understand that you are sorry, but this was  
11 planned. Thirty -- Orangeburg to Eutawville if like 30, 45  
12 minutes. This was planned. You guys knew what you was  
13 doing. You know, she has three kids that will never see  
14 their mother again. I accept your apology and I forgive  
15 you, but the kids, they don't understand it. They don't  
16 understand it. Their mother is gone. They will never get to  
17 see their mother again. I'm -- I don't have -- I ask you to  
18 have no mercy on him. Like I say, it was planned. If he  
19 had a job and the guys said come on Donte, let's go rob  
20 somebody to get money. I work, I work. I don't have to go  
21 rob nobody. So why would you get in that vehicle and go.  
22 You knew their intentions. They did it, they planned it and  
23 now she is gone. We will never see her again.

24 THE COURT: I understand.

25 MS. BENJAMIN: And her kids, what we supposed to do.

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1 The nine-year-old want to kill herself.

2 THE COURT: You need to talk to me, ma'am.

3 MS. BENJAMIN: The nine-year-old want to kill herself.  
4 She has no father or no mother.

5 THE COURT: I understand that.

6 MS. BENJAMIN: I mean, I have to take her to counseling  
7 every week. You know, she hasn't gotten over it yet. She  
8 never will, she probably never will. I mean, it's -- I'm  
9 sorry this happened to my sister, but they knew what they  
10 was doing. They knew their intentions, and then he still  
11 don't want to say -- admit to it, admit to it. You know, he  
12 don't even want to plead guilty because he don't really want  
13 to admit to it, which he did this. That's all I wanted to  
14 say.

15 THE COURT: Thank you for being here.

16 MS. BENJAMIN: Thank you.

17 THE COURT: Anything else from the State?

18 MR. SORENSON: Your Honor, the only other thing is  
19 Probation didn't get a hold of Laurens Probation and I mean  
20 I think we're probably prepared to handle the probation  
21 matter at this point in time. Also, we wanted to take care  
22 of that, just so it's --

23 THE COURT: Go ahead and do it. Let's take care of it.

24 Ms. Ullman, we're going to handle the probation matter  
25 now.

1 MS. ULLMAN: Yes, sir.

2 MS. BRANTLEY: The citation says he violated conditions  
3 six and 10 -- the YOA in general sessions -- he was  
4 convicted of the offense of murder on July 15, 2013.

5 THE COURT: Does somebody want to tell me a little bit  
6 about the probation. I know you told me the offense, and you  
7 told me it was a YOA, that he got credit for 58 days and  
8 suspended to probation, I believe?

9 MS. BRANTLEY: Yes, sir, he did.

10 THE COURT: What's the offense, what's the indictment  
11 number?

12 MS. BRANTLEY: The indictment number for this case is  
13 2012-GS-30-0182. Again, that was done by the Honorable  
14 Judge Addy in Laurens County, where he was given the  
15 sentence of -- a YOA not to exceed five years, suspended  
16 upon the service of 58 days and two years probation. He was  
17 reporting to the agent up until a warrant was issued on  
18 April 19, 2012. So roughly for three months he was seeing  
19 the agent then he stopped?

20 THE COURT: When was he arrested on this charge?

21 MR. SORENSON: June 21, the day of the incident. June  
22 21, 2012.

23 THE COURT: June 21, 2012?

24 MR. SORENSON: Yes, sir.

25 MS. BRANTLEY: And the agent charged him with failing to

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1 pay towards financial obligations, being \$25 in arrears for  
2 the public service employment fee, being \$20 in arrears on a  
3 drug test fee, being \$100 in arrears on supervision fees,  
4 being \$54 in arrears on a surcharge. By moving and changing  
5 his resident without the knowledge or consent of his agent  
6 thereby absconding supervision. This being referenced by  
7 home visits conducted on April 17, 2012. Also by committing  
8 the offense of criminal domestic violence on April 16 of  
9 2012. This being referenced by an incident report dated  
10 April 16, 2012. Such actions constitute a willful violation  
11 of the conditions, two, seven, nine, 10 and special  
12 conditions of his original probation agreement.

13 THE COURT: All right. And your recommendation?

14 MS. BRANTLEY: Your Honor, we're just asking that in  
15 lieu of the amount of time and so forth and the seriousness  
16 of the offense that he just run concurrent, that his monies  
17 with the respect to the fines --

18 THE COURT: Be reduced to a civil judgment?

19 MS. BRANTLEY: Yes, sir.

20 THE COURT: Is that everything?

21 MS. BRANTLEY: Yes, sir.

22 THE COURT: Does your client admit and in light of the  
23 fact that you've advised him now, does your client admit  
24 there have been willful violations of his probation?

25 MS. ULLMAN: Absolutely.

1 THE COURT: Do you wish to be heard in mitigation on  
2 the probation?

3 MS. ULLMAN: Your Honor, I just ask that you accept the  
4 recommendation that --

5 THE COURT: Accept the recommendation?

6 MS. ULLMAN: Yes, sir.

7 THE COURT: Very well.

8 MS. ULLMAN: Your Honor, the last thing, I just want to  
9 make sure I was clear when I was speaking. I know I  
10 mentioned that the 9 millimeter in this situation came from  
11 the co-defendant. Donte has maintained since the beginning  
12 of this when he spoke with the police that that person got  
13 out of the car and shot before giving him the gun and  
14 shooting, also. So that's part of his issue. He  
15 understands he was involved and hands of one -- felony  
16 murder, no matter what. He just wants to make sure --

17 THE COURT: That's why I asked you -- there was a  
18 factual basis for this plea. You told me your client  
19 admitted shooting the gun that fired the fatal bullet?

20 MS. ULLMAN: Yes, sir.

21 THE COURT: So regardless of who owned the gun and  
22 regardless if your client had not fired the gun, if he was  
23 present, aiding and abetting, the hand of one is the hand of  
24 all.

25 MS. ULLMAN: Yes, sir.

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1 THE COURT: So clearly from what the Solicitor has told  
2 me and from what you've told me there is clearly a factual  
3 basis for this plea, otherwise I would not have accepted the  
4 plea.

5 MS. ULLMAN: Yes, sir.

6 THE COURT: Mr. Stokes, I -- I understand that you have  
7 a prior record. I take that into consideration, which the  
8 Solicitor has published on the record. I also understand  
9 that you are admitting your guilt because a plea of Nolo  
10 Contendere has the exact same legal effect as a plea of  
11 guilty, which you've told me you understand. Is that  
12 correct?

13 MR. STOKES: Yes, sir, Your Honor.

14 THE COURT: All right.

15 Now, first of all on the probation matter --

16 MS. BRANTLEY: Yes, sir.

17 THE COURT: -- I'm going to run it concurrent to this.

18 MS. BRANTLEY: Yes, sir.

19 THE COURT: I'm revoking him in full. Run it  
20 concurrent, reduce the amounts to a civil judgment.

21 MS. BRANTLEY: Yes, sir.

22 THE COURT: Do you understand that; can you handle that  
23 for me?

24 MS. BRANTLEY: Yes, sir, I will.

25 THE COURT: Very well.

1           Now, on Indictment 2012-GS-38-1421, the State verses  
2 Donte Jarod Stokes. The sentence of this Court is the  
3 defendant is committed to the State Department of  
4 Corrections for a term of 38 years. The defendant is to be  
5 given credit for time served pursuant to South Carolina Code  
6 Section 24-13-40. That is to be calculated and applied by  
7 the State Department of Corrections.

8           Thank you very much.

9           MR. SORENSON: Thank you.

10          MS. ULLMAN: Thank Your Honor.

11         (This proceeding was concluded.)  
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C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PLEA IN THE CAPTIONED CAUSE, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 15 DAY OF JULY, 2013.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

\_\_\_\_\_  
Hilda M. Jordan, CVR-M

November 15, 2015

**WITNESSES**

Riley Godwin

Orangeburg County Sheriff

**ARREST WARRANT NUMBER**  
M807225

Arrested: June 25, 2012

**ACTION OF GRAND JURY**  
**TRUE BILL**



Date NOV 07 2012

Foreperson of Grand Jury  
Date: November 7, 2012

**VERDICT**

Foreperson of Petit Jury  
Date:

DOCKET NO. 2012GS38-1421

**The State of South Carolina**  
**County of ORANGEBURG**

**COURT OF GENERAL SESSIONS**  
**November 5, 2012 TERM**

**THE STATE**  
**vs.**

Donte' Jarod Stokes

**Indictment for**  
**MURDER**

SC Code: 16-3-10

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

36

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED FOR RECORD  
WINNIEFA B. CLARK  
CLERK OF COURT  
ORANGEBURG, SC  
2012 NOV -7 AM 11:54



STATE OF SOUTH CAROLINA )  
 COUNTY OF Orangeburg )  
 STATE VS. )  
 Donte' Jarod Stokes )  
 AKA: )  
 Race: BLACK Sex: M Age: 22 )  
 DOB: [REDACTED] SS#: [REDACTED] )  
 Address: [REDACTED] )  
 City, State, Zip: Orangeburg, SC 29115 )  
 DL#: [REDACTED] SID#: [REDACTED] )  
 \*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

IN THE COURT OF GENERAL SESSIONS  
 INDICTMENT/CASE#: 2012GS38-1421  
 A/W#: M807225  
 Date of Offense: 6/21/2012  
 S.C. Code § : 16-3-10  
 CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was TO: Murder  CONVICTED OF or  PLEADS

in violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

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

ATTEST: [Signature] 9512 [Signature] 35-40 years [Signature] 73286  
 Sprenson, Donald N. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
 for a determinate term of 38 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
 and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
 of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.  
 CONCURRENT or  CONSECUTIVE to sentence on:  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

§ 14-1-206 (Assessments 107.5 %)		\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$	100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$	
§ 56-5-2995 (DUI Assessment)	\$12	\$	
§ 56-1-286 (DUI Breath Test)	\$25	\$	
Proviso 47.9 (Public Def/Prob)	\$500	\$	
§ 14-1-212 (Law Enforce. Funding)	\$25	\$	25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$	
§ 50-21-114(BUI Breath Test Fee)	\$50	\$	
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	
Proviso 90.5 (SCCJA Surcharge)	\$5	\$	5.00
3% to County (if paid in installments)		\$	3.90
TOTAL		\$	133.90

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.  
 Presiding Judge [Signature]  
 Judge Code: 0122  
 Sentence Date: 7/15/13

Clerk of Court/ Deputy Clerk V. Glenn  
 Court Reporter: Hilda Jordan  
 SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA )  
 )  
County of ORANGEBURG )

IN THE COURT OF COMMON PLEAS

2014-CP-38-00799

2014 JUN 30 PM 1:22

Dente JAROD STOKES #356131 )  
Full name and prison number (if any) of Applicant )

FILED FOR RECORD  
VICTIM SERVICES  
CLERK OF COURT  
COURT HOUSE

v. )

APPLICATION FOR

State of South Carolina )  
 )  
 )  
 )

POST-CONVICTION RELIEF

**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention Lieber Correctional Institution

2. Name and location of Court which imposed sentence ORANGEBURG  
County, Court OF General Sessions

3. Name(s) of co-defendant(s) (if any) Demetrice Quattlebaum, Rakem Brown,  
DeShawn Fordham, Jerry McKnight

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

(a) Murder 2012-65-38-01421

- (b) W/A
- (c) N/A

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

- (a) 38 years - July 15, 2013
- (b) N/A
- (c) N/A

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty N/A
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere After a plea of Nolo Contendere

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

Yes

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

- (a) the name of each Court to which you appealed:
  - i. The State of South Carolina Court of Appeals
  - ii. N/A
  - iii. N/A
- (b) the result in each such Court to which you appealed:
  - i. Dismissed
  - ii. N/A
  - iii. N/A
- (c) the date of each such result:
  - i. September 16, 2013
  - ii. N/A
  - iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
  - i. N/A
  - ii. N/A
  - iii. N/A

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

- (a) N/A

- (b) N/A
- (c) N/A

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

- (a) Ineffective Assistance OF Counsel
- (b) // same as above //
- (c) // same as above //

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

- (a) Failure to Investigate
- (b) // same as above //
- (c) // same as above //

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. N/A
  - ii. N/A
  - iii. N/A
  - iv. N/A
- (b) the name and location of the Court in which each was filed:
  - i. N/A
  - ii. N/A
  - iii. N/A

- iv. N/A
- (c) the disposition thereof:
  - i. N/A
  - ii. N/A
  - iii. N/A
  - iv. N/A

- (d) the date of each such disposition:
  - i. N/A
  - ii. N/A
  - iii. N/A
  - iv. N/A

- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
  - i. N/A
  - ii. N/A
  - iii. N/A
  - iv. N/A

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

NO First Filing of PCR

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

- (a) which grounds have been presented:
  - i. N/A
  - ii. N/A
  - iii. N/A
- (b) the proceedings in which each ground was raised:
  - i. N/A
  - ii. N/A
  - iii. N/A

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

- (a) First filing OF PCR
- (b) N/A
- (c) N/A

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? N/A
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (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. Plea - Jillian Ullman, esquire - P.O. Box 1112 - ORANGEBURG SC
  - ii. Direct Appeal - Robert Duke - P.O. Box 11589 - Columbia SC
  - iii. N/A
- (b) the proceedings at which each such attorney represented you:
  - i. Plea and sentencing
  - ii. Direct Appeal
  - iii. N/A

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

Vacate sentence and conviction and remand  
for new trial

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA )  
 )  
County of DRANGERSBURG )

VERIFICATION

I, Donte Stokes, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Donte Stokes

SWORN to and subscribed before me this 26<sup>th</sup>  
day of June, 2014.

Ludrean Bryant (L.S.)  
Notary Public

My Commission Expires: May 26, 2020

FILED FOR RECORD  
WITH THE CLERK OF COURT  
DRANGERSBURG  
2014 JUN 30 PM 1:24

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

I, Donte Stokes, 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.

Donte Stokes  
Applicant

SWORN or affirmed to and subscribed before me this  
26<sup>th</sup> day of June, 2014.

Ludrean Bryant  
Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	FIRST JUDICIAL CIRCUIT
	)	
	)	
Donte Jarod Stokes,	)	C.A. No. 2014-CP-38-0799
S.C.D.C. No. 356131,	)	
	)	
Applicant,	)	
	)	<b>RETURN</b>
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed June 30, 2014, the Respondent would show this Court:

I. PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Orangeburg County Clerk of Court’s orders of commitment. The Orangeburg County Grand Jury indicted the Applicant at the November 2012 term of General Sessions for Murder (2012-GS-38-1421). Jillian Ullman, Esquire represented the Applicant. On July 15, 2013, the Applicant pled guilty as indicted. The Honorable Perry Buckner sentenced the Applicant to thirty-eight (38) years imprisonment. The Applicant did not appeal.

A notice of appeal was filed on the Applicant’s behalf at the South Carolina Court of Appeals. By order dated September 16, 2013, the Court of Appeals dismissed the appeal based on the Applicant’s failure to provide a written explanation as to what issues could be reviewed. See Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was issued on October 3, 2013.

## II. ALLEGATIONS

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

1. Ineffective assistance of counsel.
  - a. "Failure to investigate"

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

## III. INEFFECTIVE ASSISTANCE OF COUNSEL

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged 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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

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

professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

*{Conclusion and signature block on following page}*

## IV. CONCLUSION

The Respondent denies each allegation not expressly admitted, qualified or explained. WHEREFORE, having made its Return, the Respondent requests that a hearing be held for the purpose of determining whether Applicant's trial counsel was ineffective.

Respectfully submitted,

ALAN WILSON  
Attorney General

ROBERT BOLCHOZ  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

RUSTON W. NEELY  
Assistant Attorney General

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By:   
ATTORNEYS FOR RESPONDENT

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Telephone: (803) 734-3737

April 20<sup>th</sup>, 2017



1 STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS  
 )  
 2 COUNTY OF DORCHESTER ) CASE NO. 2014-CP-38-00799  
 )  
 3 DONTE JAROD STOKES, )  
 )  
 4 Plaintiff, ) Transcript of Record  
 )  
 5 vs. )  
 )  
 6 THE STATE OF SOUTH ) Date: December 12, 2017  
 CAROLINA, )  
 7 )  
 Defendant.

8 \* \* \* \* \*

9  
10 B E F O R E:

11 The Honorable Kristi Harrington  
12  
13  
14  
15  
16  
17

18 \* \* \* \* \*

19  
20 Denise J. Lauder, RPR  
21 Ninth Judicial Circuit  
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A P P E A R A N C E S

REPRESENTING THE APPLICANT:

CARL B. GRANT, ESQUIRE

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Orangeburg, South Carolina 29115

REPRESENTING THE RESPONDENT:

RUSTON NEELY, ESQUIRE

Office of the Attorney General

Rembert Dennis Building

1000 Assembly Street, Room 519

Columbia, South Carolina 29201

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I N D E X

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E X H I B I T S

(No Exhibits Proffered)

1                   (The following proceedings were had  
2   December 12, 2017, 11:41 a.m.)

3                   THE COURT:   Donte Stokes.

4                                   EXAMINATION

5   BY THE COURT:

6                   Q.    Sir, please state your name for the  
7   record.

8                   A.    Donte Stokes.

9                   Q.    Donte Stokes.  Do you know what you're  
10   doing here today?

11                  A.    Yes, ma'am.

12                  Q.    What are we doing here today?

13                  A.    We're gathered here today for the PCR.

14                  Q.    And that's a post-conviction relief.

15   And you were charged and indicted on November 7th  
16   of 2012, and you were -- you pled in front of Judge  
17   Buckner, and you pled no contest and you were given  
18   38 years.

19                               Do you understand that's the possible  
20   punishment?

21                  A.    Yes, ma'am.

22                  Q.    And there were some charges dismissed.

23   And you understand if I grant -- if your attorney  
24   Mr. Grant doesn't -- and I decide to do what you're  
25   asking me to do, the charges don't go away.  They

1 simply go back and they're presented back to the  
2 Solicitor, and you're potentially facing up to life  
3 in the Department of Corrections.

4 And in our state, life means life. Do  
5 you understand that, sir?

6 A. Yes, sir.

7 Q. And I understand 38 years -- you look  
8 very young to me. I don't know. How old are you?

9 A. Twenty-six.

10 Q. Twenty-six. And so 26 and 38, how much  
11 is that? Is that 64? So you do have the potential  
12 of walking out of the Department of Corrections.  
13 If we send this back and you're sentenced to life,  
14 do you know what will happen?

15 A. Yes, ma'am.

16 Q. You potentially would not walk out of  
17 the Department of Corrections. So have you had  
18 that conversation with Mr. Grant?

19 A. Yes, ma'am.

20 Q. And do you need any more time to talk  
21 to him?

22 A. No, ma'am.

23 Q. All right. Are you ready to go forward  
24 here today?

25 A. Yes, ma'am.

1           Q.     All right.  You may have a seat.

2           THE COURT:  And this was a negotiated  
3 sentence as I understand on a no contest plea.

4           MR. GRANT:  That's my understanding,  
5 Your Honor.

6           THE COURT:  And so what -- what are the  
7 grounds that we are going forward on today?  I just  
8 understand that it's a failure -- ineffective  
9 assistance of counsel on a failure to investigate.

10          MR. GRANT:  That's the assertion,  
11 Judge.  He alleges that counsel -- well, has  
12 indicated failed to investigate, and of course,  
13 he's also indicating that his plea was involuntary  
14 despite his responses on the record.

15          THE COURT:  And, Mr. Neely, you're  
16 prepared to go on an involuntary plea as well?

17          MR. NEELY:  Yes, Your Honor.

18          THE COURT:  Any other grounds,  
19 Mr. Grant?

20          MR. GRANT:  No, Your Honor.

21          THE COURT:  I'm happy -- could we take  
22 at least Ms. Ullman's testimony?  I don't know what  
23 your presentation was.  If we could just go ahead  
24 and get her testimony out of order if that was not  
25 your first witness.

1 MR. GRANT: Those are my intentions,  
2 Judge.

3 THE COURT: All right. Ms. Ullman,  
4 please come forward and be sworn.

5 State your full name for the record.

6 THE WITNESS: Jillian Denise Ullman.

7 JILLIAN DENISE ULLMAN,

8 being first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. GRANT:

11 Q. Ms. Ullman, you represented my client  
12 Donte Stokes in a murder charge; is that correct?

13 A. Yes, sir.

14 Q. And there were some other charges as  
15 well?

16 A. Yes, sir. There was an attempted  
17 murder charge and a possession of a weapon during  
18 the commission of a violent crime.

19 Q. Please relate to the Court the factual  
20 circumstances that led to these charges.

21 A. Mr. Stokes was accused of being in a  
22 vehicle with three or four other occupants. They  
23 followed a van and shot at the van. I believe the  
24 intent, as Mr. Stokes and a few others, I believe,  
25 wrote statements, was to rob the driver.

1           I think he was possibly a known drug  
2 person, and I believe they also knew he had  
3 recently cashed a check because they had seen him  
4 at a convenience store or somewhere of that nature  
5 where you could cash checks. So they followed this  
6 van with the intent of robbing him.

7           Got out of the van, shot at the van, I  
8 believe the intent was to shoot out the tires so  
9 that they could easily rob the person.  
10 Unfortunately, the bullet went through the back  
11 window of a van. There was a passenger in the van,  
12 a female, and she was struck, I believe, in the  
13 head and killed almost instantly. That was the  
14 murder charge.

15           The attempted murder would have been  
16 because the driver of the van was in the vehicle  
17 when they were shooting at the van. And then the  
18 possession of the weapon; obviously, Mr. Stokes in  
19 his statement, I believe, admitted to having a gun  
20 and firing it.

21           Q.     And firing it. Did your investigation  
22 establish which gun actually shot the -- made the  
23 fatal shot to the victim?

24           A.     Originally, the SLED investigation was  
25 where that came from first. Obviously, Mr. Stokes

1 admitted to having a weapon. I believe he said  
2 which weapon it was. There were different calibers  
3 that were fired that day.

4 And the SLED investigation came back to  
5 show that the weapon Mr. Stokes admitted to firing  
6 is, unfortunately, the caliber weapon that  
7 terminated the passenger's life.

8 I then also employed an expert myself  
9 because we were actually going to trial. The day  
10 that Mr. Stokes pled was the day I believe we were  
11 supposed to start picking the jury. I do not  
12 believe we got to that point.

13 I think we pled that morning before we  
14 officially started the trial, but I did have an  
15 expert, Kelly Fite, F-I-T-E. She was a retired  
16 firearms investigative person, a scene  
17 reconstruction expert, a firearms examiner for 31  
18 years. I had her subpoenaed and ready to testify  
19 on our behalf.

20 Basically, she came back with the same  
21 information. I was just going to maybe use her to  
22 try to show SLED didn't do things quite the same  
23 way she would have, but I did involve Kelly Fite;  
24 and then we also have an investigator within our  
25 office.

1           And as there were codefendants, I  
2 cannot remember if it was Danny McDaniel, which is  
3 our normal investigator that was involved, or if we  
4 got a second person involved. I honestly don't  
5 remember offhand, but I know I did have an  
6 investigator involved, also, that went out and  
7 tried to speak with the driver of the vehicle and  
8 any other witnesses.

9           I also obtained video from the  
10 convenience store where they said that this pretty  
11 much first started, where it did show the vehicle  
12 Mr. Stokes was in leaving the scene of that place  
13 and following the van. So I did have an  
14 investigator.

15           Q. All right. Mr. Stokes asserts that,  
16 number one, you failed to investigate exactly what  
17 happened. What is your response to that  
18 allegation?

19           A. Beyond going through the extensive  
20 discovery that was provided myself personally and  
21 with Mr. Stokes, I also employed a private  
22 investigator who tried to verify or contradict any  
23 of the information in the file that was received.

24           I also hired a firearms expert to deal  
25 with the firearm issue because that truly was the

1 issue of -- I mean, hand of one hand of all; they  
2 were all going to be charged with this, but whose  
3 bullet did the fatal shot was really what the  
4 Solicitor was looking at as to who they were going  
5 after the hardest, so that's why I got the firearms  
6 person.

7 I met with Mr. Stokes when he was in  
8 the Bamberg County jail; I met with him when he was  
9 in Orangeburg County jail. I believe I spoke with  
10 his family numerous times. I don't know what else  
11 I could have done.

12 Q. He asserts that you spoke to him about  
13 three times. What is your response to that  
14 assertion?

15 A. I don't have specific every time I  
16 spoke to him, but I know I spoke to him at least  
17 twice, possibly three times in the Bamberg County  
18 jail alone. When he first was arrested with the  
19 co-defendants, he informed the jail that he felt  
20 unsafe; so they moved him to Bamberg County, which  
21 required me to travel to Bamberg.

22 I traveled there before I had discovery  
23 and then I went after I had discovery also so we  
24 could actually go over the file, and I gave him a  
25 copy at that time. And then once he was back in

1 the Orangeburg County jail, I had him brought to  
2 the jail, again, I don't know how many times.

3 I know I met with him more than three  
4 times. I also involved a co-worker of mine, Mark  
5 Weiss, who was another attorney in my office. And  
6 I know he personally met with Dante -- excuse me,  
7 Mr. Stokes numerous times also.

8 Leading up to the week of trial,  
9 Mr. Weiss met with Mr. Stokes more often than I did  
10 because I was trying to prepare the experts and the  
11 other witnesses that we had while Mr. Weiss was  
12 meeting with Mr. Stokes to prepare him more for  
13 trial.

14 So the week leading up to trial, it was  
15 Mr. Weiss that met with Mr. Stokes more often than  
16 I did.

17 Q. Do you know or remember whether a  
18 gunpowder residue test indicated that he had not  
19 fired a weapon?

20 A. I will be honest, I don't remember if  
21 they did gunshot residue test on anybody. I know  
22 they arrested him. I don't want to misspeak, but I  
23 know that his own statement admitting to firing a  
24 gun and said what the gun was, and that was the gun  
25 that ballistically linked to the victim.

1           Q.     What about the assertion by Mr. Stokes  
2     that he wanted to recant, that is withdraw his  
3     statement, and that you told him that he could not?  
4     What is your response to that assertion?

5           A.     This was four or five years ago.  So I  
6     will not say I remember a specific conversation to  
7     that effect.  As an attorney, what I would have  
8     advised him was at trial, the first thing we would  
9     have done was a Jackson Denno hearing where we  
10    would try to argue that his statement was not  
11    voluntary and get the Court to take the statement  
12    and not allow it into the Court.

13                 The only other way really to recant a  
14    statement would be to testify that that's not what  
15    really happened and that I didn't do the things  
16    that I said in that statement.

17                 I know Mr. Stokes did tell me  
18    originally that he was afraid of some of the people  
19    that were involved in this, and that, again, is why  
20    he moved to Bamberg; but other than the Jackson  
21    Denno hearing, there is no really -- there is no  
22    way to recant a statement other than to say, well,  
23    I didn't really mean what I said.

24                 At that point, I mean, you can write  
25    that down, but it doesn't mean your charges are

1 going away. And you can testify in court that  
2 that's not what really happened, and at that point  
3 it's for a jury to decide.

4 Q. Ultimately, Mr. Stokes pled guilty; is  
5 that correct?

6 A. I believe he actually pled no contest.  
7 I don't remember -- sometimes in a criminal court  
8 they'll allow a North Carolina v Alford plea. And  
9 I cannot remember if the judge we were before  
10 doesn't like those kind of pleas or why exactly it  
11 was a no contest plea per se, but Mr. Stokes did  
12 not want to go into court and admit that he had  
13 shot somebody because that was never his intent.

14 His intent, along with the  
15 co-defendants, was to rob somebody, and I believe  
16 everyone's statement was that they shot at the  
17 wheels intending to disable the vehicle.  
18 Unfortunately, we don't have control over bullets  
19 when they leave our guns, and the results were  
20 different than what they intended.

21 My memory is, he was a very, very young  
22 man and that he just couldn't go bring himself to  
23 admit in the courtroom that he murdered somebody  
24 because he never intended to shoot anybody.

25 Q. Did you explain to him the law

1 pertaining to the hand of one is the hand of all?

2 A. I did. I explained that intent --  
3 legally intent doesn't always mean exactly what you  
4 feel it means when you intend to hurt somebody.  
5 So, you know, in a courtroom I think the best that  
6 could have happened, if we went forward with a  
7 trial, if a jury really believed the intent issue  
8 and went against the law, they could have maybe  
9 found voluntary manslaughter.

10 But at the end of the day, hand of one,  
11 hand of all, there were five people in a car; two,  
12 possibly three exited and shot. He admitted to  
13 being one of the men who exited the vehicle and  
14 shot a weapon. So under those circumstances the  
15 hands of one are the hands of all.

16 The intent himself to kill somebody  
17 wasn't necessary, and I do not believe that he was  
18 the only person that ended up pleading guilty to  
19 this incident. I believe the co-defendants also  
20 pled at differing levels dependent upon their  
21 involvement, but he certainly was not the only one  
22 that under the hands of one are the hands of all.

23 Q. Whose decision was it to plead?

24 A. It was Mr. Stokes'.

25 Q. And what is your response to his

1 allegation or assertion that it was involuntary,  
2 that you essentially made him plea?

3 A. I certainly did not make him plea.  
4 Again, honestly, the week leading up to trial,  
5 Mr. Weiss spent more time with him than I did  
6 discussing his options and the likelihood of him  
7 getting life if we went to trial.

8 I know I spoke with his family. I  
9 believe we let him speak with his family. I know  
10 the family was present as we were about to start  
11 the trial.

12 And I don't make anybody plead. It is  
13 certainly on -- and it's one of the first things I  
14 tell people when I meet with them is, what we do is  
15 your choice because at the end of the day the  
16 results are what you have to live with. Not me.  
17 So it was his choice.

18 MR. GRANT: Okay. Thank you.

19 May I have a moment to consult with my  
20 client?

21 THE COURT: Take all the time you need,  
22 Mr. Grant.

23 (A brief recess transpired.)

24 BY MR. GRANT:

25 Q. With regards to Mr. Stokes being housed

1 in Bamberg, do you know or remember whether he was  
2 housed in Bamberg because he was afraid or they  
3 kept him there because they said they wanted all of  
4 the defendants separated?

5 A. My memory from meeting with him is that  
6 he indicated he was afraid and asked to be moved  
7 because he and the three co-defendants -- so there  
8 were four all together -- were all housed at the  
9 Orangeburg County jail. From my memory -- again,  
10 this was back in late 2012.

11 From my memory, Mr. Stokes was the only  
12 one that ended up out of the county, and once he  
13 basically made the choice to come back to  
14 Orangeburg, they brought him back. And from that  
15 point on, him and -- he and all four -- or all  
16 three codefendants were housed in Orangeburg.

17 I don't remember that they were all  
18 separated at any time, other than he himself.

19 Q. Mr. Stokes also asserts that as far as  
20 the assertion that you gave him poor advice, that  
21 he was on probation at the time when he pled  
22 guilty. Were you aware of that?

23 A. He was on probation at the time, and we  
24 actually dealt with his probation violation during  
25 his guilty plea to this charge. I think it was out

1 of Laurens County. And they revoked him, possibly,  
2 in full, I honestly don't remember that, ran it  
3 concurrent with the time that he got on the charge  
4 that he pled to.

5 He had some sort of restitution in that  
6 charge -- or in the probation, and they converted  
7 that to a civil judgment.

8 Q. So because it was concurrent, he didn't  
9 have to do additional time that the Court gave him?

10 A. Correct, it just got the probation off  
11 the books. And that way, when he does get out,  
12 there shouldn't be anything waiting for him.

13 MR. GRANT: Okay. Thank you.

14 That's all the questions I have, Your  
15 Honor.

16 THE COURT: Was he on a YOA, do you  
17 remember? Is that what -- that's what I'm reading  
18 looks like page 15 of the transcript, he was on  
19 probation and he was given -- oh, probationary  
20 sentence suspended to YOA.

21 Is that right, Mr. Grant? Do you know?

22 MR. GRANT: I'm sorry, Judge, he was  
23 talking. I apologize.

24 THE COURT: No. No. Do you need some  
25 time to talk to him?

1 MR. GRANT: He was saying something to  
2 me and I couldn't understand. Will you please tell  
3 me again --

4 THE COURT: I was just trying to  
5 clarify what -- about the probation, whether it was  
6 revoked in full. What I understand from reading  
7 the transcript beginning on about page 15, that he  
8 was on a suspended Y. They had placed him on  
9 probation, but it was youthful offender.

10 MR. GRANT: Right.

11 THE COURT: So they went ahead and just  
12 took care of that. Probably activated the Y and  
13 then converted it to an active sentence because he  
14 couldn't have done both.

15 MR. GRANT: That is my understanding.

16 THE COURT: That was actually a benefit  
17 to him as well --

18 MR. GRANT: Right.

19 THE COURT: -- correct?

20 MR. GRANT: Yes, ma'am.

21 THE COURT: Do you know why -- does  
22 Judge Buckner just not take Alford pleas?

23 THE WITNESS: My memory -- and, again,  
24 Judge Buckner wasn't my resident judge; I didn't go  
25 in front of him often. My memory is that he does

1 not like Alford pleas. He did allow the no contest  
2 which I was comfortable with because, again,  
3 Mr. Stokes' issue was he didn't want to go into  
4 court and basically admit to intending to kill the  
5 passenger. He wasn't comfortable with that.

6 THE COURT: Okay. Mr. Neely, any  
7 questions?

8 CROSS-EXAMINATION

9 BY MR. NEELY:

10 Q. Just to clarify. The expert you hired,  
11 from what you've said, you said she came up with  
12 the same conclusion that SLED did?

13 A. Yes.

14 MR. NEELY: That's all I have, Your  
15 Honor.

16 MR. GRANT: No further questions.

17 THE COURT: And, Mr. Grant, I asked  
18 some additional questions. Feel free to ask her  
19 anything further.

20 MR. GRANT: No additional questions of  
21 this witness, Your Honor.

22 THE COURT: And may she be excused?

23 MR. GRANT: She can be.

24 THE COURT: Seven minutes behind.

25 THE WITNESS: Thank you.

1 MR. GRANT: I will briefly call  
2 Mr. Stokes to the stand.

3 THE CLERK: State your full name for  
4 the record.

5 THE APPLICANT: Donte Jarod Stokes.

6 DONTE JAROD STOKES,

7 being first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. GRANT:

10 Q. All right. Mr. Stokes.

11 A. Yes.

12 Q. You have heard the testimony of  
13 Ms. Ullman, your lawyer who represented you at the  
14 trial and directed your no contest plea; is that  
15 correct?

16 A. Yes, sir.

17 Q. Okay. One of the things you have  
18 asserted in your application for post-conviction  
19 relief is that when you did decide to plead no  
20 contest, that it was involuntary; in other words,  
21 that you did not make the decision of your own free  
22 will.

23 Tell the Court why you feel that way.

24 A. I feel that way because, like I said  
25 before, she was unable to come see me, you know, to

1 be able to talk to me and discuss these things.  
2 And every time we did speak, she was telling me  
3 that her and the Solicitor didn't speak about those  
4 things.

5 And once it was time for court, you  
6 know, like she admitted, she was sending other  
7 lawyers twice as herself coming even to my  
8 preliminary hearing. She was unable to be at my  
9 preliminary hearing to see what was really going  
10 on.

11 And I also discussed with her that due  
12 to the statement, I had one co-defendant who was  
13 actually my half brother that was home, you know  
14 what I mean, making threats towards my family. And  
15 if you look at the records, it would show that I  
16 didn't write no statement when they first captured  
17 us. You know, I wrote the statement afterward,  
18 days afterward.

19 Q. Did you put in your statement that you  
20 did have a gun?

21 A. Yes, sir. I mean, what would anybody  
22 in there do if they know their family, their mom,  
23 and they know somebody's on the street they can't  
24 get charged with nothing.

25 Q. All right. So the statement that you

1 gave the police, I want to make sure I understand  
2 it. You're telling the Court that you gave the  
3 statement because you didn't feel safe in giving  
4 that statement? Tell the Court, why did you give  
5 the statement.

6 A. I mean, my family was at risk. My  
7 family was at risk, but as far as me and my  
8 codefendant, that's not -- that's not the case. It  
9 wasn't because I was scared of my co-defendants,  
10 none of that.

11 Q. Okay. Did you ever tell Ms. Ullman  
12 that you had any kind of alibi defense as though  
13 you were not even there at all?

14 A. No, sir; we never got to that point.  
15 Like, she never allowed me to have a conversation  
16 to get to that point.

17 Q. Well, the logical question is, did you  
18 have an alibi defense, or were you at least there?

19 A. Yes, sir.

20 Q. Yes, sir, to which question?

21 A. I got a alibi.

22 Q. Oh, you're saying you weren't even  
23 there?

24 A. I was there, but I wasn't there.

25 Q. Okay. How is that possible?

1           A.     Because the story -- the story that  
2 they're talking about, it happened. It wasn't  
3 really no, like, we got out of no van and all that  
4 crazy stuff. It was just -- you know, it was just  
5 a spur of the moment thing.

6           We was at the store, certain people  
7 seen certain people, whatever, whatever and things  
8 happened.

9           Q.     Okay. All right.

10          A.     And that the evidence even showed --  
11 the scientific evidence even showed that I didn't  
12 even have no gun in my hand. They caught us like  
13 minutes afterward and they -- you know, they was --  
14 they had all of us in less than a minute.

15          Q.     All right.

16          A.     Even the one that was on the street  
17 that didn't get no time.

18          Q.     Did Ms. Ullman ever explain to you the  
19 legal theory in South Carolina about hand of one is  
20 the hand of all?

21          A.     Yes, sir.

22          Q.     Okay. And understood that legal  
23 principle?

24          A.     Yes, sir.

25          Q.     Whose decision was it to plead no

1 contest? Was it yours or Ms. Ullman's?

2 A. It was my decision to plead no contest  
3 only because she made me -- her and the other  
4 lawyer in the office, or whatever, came to me after  
5 me saying I wanted to go to trial and I felt  
6 comfortable with going to trial, but then they made  
7 me back out of it.

8 Because they kept saying I would get  
9 life, and my mom would be old or probably dead by  
10 the time I get out. You know, stuff of that  
11 nature. It just threw me off course.

12 I didn't feel comfortable going into  
13 the courtroom saying -- admitting to something  
14 that I didn't do. So that's why I took the option  
15 of pleading no contest.

16 Q. What more do you feel Ms. Ullman could  
17 have done for you that she didn't do?

18 A. Investigate and, you know, be more --  
19 be more -- be more determined and -- you know, she  
20 didn't have no -- no hope in nothing. She didn't  
21 have no hope in nothing. She was telling me that  
22 she don't feel like we would win.

23 I mean, do you blame me for not taking  
24 that advice at the time being that I lacked the  
25 knowledge that I know now? I didn't know the

1 knowledge of the law and I didn't know the facts of  
2 the law, and at that time she just kept telling me  
3 this, that and the third.

4           Somebody who is representing you don't  
5 have no hope in you, I can't -- I can't go through  
6 no trial with somebody like this.

7           Q.    You informed me that Ms. Ullman only  
8 spoke to you three times --

9           A.    Yes.

10          Q.    -- is that correct?

11          A.    Yes, sir.

12          Q.    But you mentioned, though, that the  
13 other lawyers spoke to you about the case; is that  
14 right?

15          A.    Only time they came -- every time they  
16 came to me, Mr. Grant, was when they were trying to  
17 get me to take 30 years.

18          Q.    All right. Do you feel you had enough  
19 time to speak to her about your case?

20          A.    No, sir. I've been in county 13 -- 13  
21 months and only spoke to her three times. And the  
22 first time was when she brought me my discovery.

23          Q.    So you did have your discovery?

24          A.    Yes, sir.

25          Q.    Before you made your decision?

1           A.    Yes, sir.  And on top of that, I was  
2 getting paperwork like in the midst of time being  
3 passed by late -- you know, some of the stuff they  
4 didn't have any results of.  Like the clothes, they  
5 took my clothes.

6                    They did a lot of things that no  
7 results was ever shown or proven or shown to me at  
8 all.

9           Q.    Now, you understand if the judge grants  
10 your post-conviction relief, that she told you  
11 before we got started, the only relief is -- she  
12 cannot reduce your sentence.  The only thing she  
13 can possibly do is give you a new trial and you  
14 would be looking at life in prison all over again.  
15 Is that a chance you're willing to take?

16           A.    Yes, sir, I mean, I'd be willing to  
17 take the chance now that I know, you know, those  
18 things that I know and, hopefully, I would find  
19 that I have better representation lawyer-wise,  
20 better legal advice.

21           Q.    What things do you think, if you went  
22 to trial on a second chance, could be brought  
23 before the trial that could make a difference in  
24 the outcome of your case where you would literally  
25 be found not guilty?  What things do you think

1 could be told to the jury where they would say, you  
2 know what, this guy is not guilty? Tell us what  
3 you think the jury could hear where they would make  
4 that decision.

5 A. First of all, you know, I'm not saying  
6 I was the best guy then or the best guy now, but  
7 the man that I became, I have bettered myself, used  
8 the time to better myself, got my education and  
9 things of that nature.

10 And, also, I feel like the scientific  
11 evidence shows and proves -- even on top of that --  
12 not to get off what you're asking me, but even on  
13 top of that, like, the lead investigator who was on  
14 my case at the time, he got fired because -- and I  
15 heard all of this, that he got fired during the  
16 investigation of my case.

17 And a guy that -- like I said, it's  
18 reasonable why people are home and people ain't  
19 home. There's a reason why.

20 Q. Okay. Is there anything else you want  
21 the Court to know about your assertions that  
22 Ms. Ullman was ineffective as your lawyer before I  
23 finish with my examination of you as a witness?  
24 Anything else you want the Court to know?

25 A. No, sir.

1 Q. That's it?

2 A. Yes, sir.

3 MR. GRANT: Thank you, Judge. No  
4 further questions for the witness.

5 THE COURT: Mr. Neely.

6 MR. NEELY: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. NEELY:

9 Q. Mr. Stokes, do you recall the day that  
10 you pled guilty?

11 A. Yes, sir.

12 Q. Or pled no contest?

13 A. Yes, sir.

14 Q. Do you recall Judge Buckner going over  
15 your plea and your understanding of the plea?

16 A. Yes, sir. And I understand that -- and  
17 I may have admitted to the somewhat guilt towards  
18 the charge that, you know, that I was convicted for  
19 -- or convicted for and all that, and I may have  
20 said that I agree with the plea counsel  
21 representation at the moment because I lacked  
22 necessary knowledge and facts of the law. I didn't  
23 know the law. I didn't know the facts.

24 Q. What law and facts do you know now that  
25 you didn't know then?

1           A.    I have a Sixth Amendment right, which  
2    is the ineffective assistance of counsel and  
3    Fourteenth Amendment right, which is due process of  
4    the law.

5           Q.    How does that apply to your case?

6           A.    Because, for one, my lawyer -- if you  
7    represented me, I feel like we should be able to  
8    relate regardless of whether you're a public  
9    defender or a paid lawyer. We should be able to  
10   relate and at least have some hope in me, you know,  
11   in the case and some kind of motivation in the  
12   case.

13          Q.    You realize it's not your attorney's  
14   job to tell you what you want to hear, right?

15          A.    Yes, sir.

16          Q.    If the attorney believed that you had  
17   -- that you would likely be found guilty, it's your  
18   attorney's job to advise you of that fact, right?

19          A.    I mean, it's impossible to advise  
20   somebody when you barely know the case.

21          Q.    I'm sorry, I missed the last part of  
22   that.

23          A.    When you barely know the case, meaning  
24   that you didn't even look into the case like that,  
25   how can you -- how can you give me advice?

1           Q.     Well, I heard from the stand that she  
2 hired --

3           A.     I heard a lot of things too, sir. I  
4 heard a lot of things. I heard that my  
5 codefendants have videos. I ain't seen none of  
6 those. I heard they had a video from the station.  
7 I ain't seen none of those. I heard a lot of  
8 things too.

9           Q.     So your assertion that what you know  
10 now that you didn't know then affected -- the  
11 reason that you said you were satisfied with your  
12 attorney is because why again?

13          A.     Why I'm satisfied with my attorney?

14          Q.     Whenever you were in front of Judge  
15 Buckner you told Judge Buckner that you had enough  
16 time to talk with your attorney, correct?

17          A.     I don't remember exactly saying that,  
18 but I know I admitted to the plea counsel  
19 representation at the time.

20                   MR. NEELY: Your Honor, may I approach?

21                   THE COURT: You may.

22 BY MR. NEELY:

23           Q.     I'm looking at page 12 of the guilty  
24 plea transcript starting at line 9 and going to  
25 line 23.

1                    Didn't you tell Judge Buckner that you  
2 were satisfied with your lawyer?

3            A.    Yes, sir.

4            Q.    And that you had enough time to speak  
5 with her?

6            A.    Yes, sir.

7            Q.    And that you understood all of your  
8 talks?

9            A.    Yes, sir.

10           Q.    And when you told Judge Buckner these  
11 things, that was understanding the statement that  
12 you had given to law enforcement, correct?

13           A.    No, sir. That was -- that was  
14 understanding -- describing the understanding  
15 something that I -- I expected somebody to have my  
16 best interest and they didn't, and they were giving  
17 me advice to do it.

18                    Like I said, I didn't know anything  
19 about the law. I didn't know -- you know, I'd  
20 never been through this process before.

21            Q.    Well, you haven't said anything  
22 factually or legally that would change your  
23 circumstances today from what it was then.

24                    You said the Sixth Amendment and the  
25 Fourteenth Amendment, but you didn't say how that

1 applies. In fact, when your attorney, Mr. Grant,  
2 asked you what would show a jury that you were  
3 innocent, you just talked about how you improved  
4 yourself while you were in jail, right?

5 A. Yes, sir.

6 Q. And that doesn't affect what happened  
7 that day -- the day of the incident, does it?

8 A. No, sir. What I'm saying is, if I did  
9 go to trial, the scientific evidence, it shows and  
10 proves a lot. I mean, if I got the motion of  
11 discovery, I understand that you-all may have it  
12 too and the facts are right there.

13 Q. You keep saying the scientific  
14 evidence; what scientific evidence are you  
15 referring to?

16 A. The gun that they got, everything like  
17 -- everything. The whole investigation was poor  
18 because the lead investigator wasn't even there to  
19 investigate it, people getting fired at the time  
20 that back -- all of a sudden now, you know. All  
21 kinds of things going on.

22 Q. How does any of that affect your case?

23 A. I mean, it does when you ain't got the  
24 right representation. You know, I need somebody to  
25 represent me that's going to -- that's going to

1 help -- help me.

2 MR. NEELY: That's all the questions I  
3 have, Your Honor.

4 MR. GRANT: No redirect, Your Honor.

5 THE COURT: You may step down. Thank  
6 you.

7 Call your next witness.

8 MR. GRANT: That's the applicant's  
9 case, Your Honor.

10 THE COURT: Any additional witnesses?

11 MR. NEELY: None from the State, Your  
12 Honor.

13 THE COURT: Happy to hear argument,  
14 Mr. Grant.

15 MR. GRANT: Your Honor, no real  
16 argument. We'll stand upon the record presented  
17 before the Court and simply ask that the  
18 applicant's motion is granted.

19 THE COURT: All right. Mr. Neely,  
20 anything else?

21 MR. NEELY: I think it's pretty clear  
22 Ms. Ullman did a fantastic job representing  
23 Mr. Stokes, and he just didn't hear what he wanted  
24 to hear.

25 THE COURT: Any response? Anything

1 further?

2 MR. GRANT: No rebuttal.

3 THE COURT: I will take the matter  
4 under advisement, Mr. Neely. And, Mr. Grant, I  
5 will be happy to accept proposed orders. Thank  
6 you.

7 Sir, I'm taking the matter under  
8 advisement. I want to think about it for a few  
9 days and then I will issue my ruling. Mr. Grant  
10 will be in touch. Good luck to you, sir.

11 THE APPLICANT: All right. Thank you.

12 (These proceedings were concluded at  
13 12:15 p.m.)

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CERTIFICATE OF REPORTER

I, Carol Denise Lauder, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 17th day of March, 2019 at Charleston, Charleston County, South Carolina.

S/Carol Denise Lauder  
Carol Denise Lauder  
Registered Professional  
Reporter, CP  
My Commission expires  
February 27, 2028

STATE OF SOUTH CAROLINA )  
 COUNTY OF ORANGEBURG )  
 )  
 Donte Jarod Stokes, )  
 S.C.D.C. No. 356131, )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 THE FIRST JUDICIAL CIRCUIT

CASE NO. 2014-CP-38-0799

ORDER OF DISMISSAL

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 8c

The above-captioned matter is before the court based on a post-conviction relief (PCR) application filed Donte Stokes, on June 30, 2014. This Court convened an evidentiary hearing into this matter on December 12, 2017 at the Dorchester County Courthouse. Applicant was present at the hearing and represented by Carl B. Grant, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General’s Office, represented Respondent. Applicant’s plea counsel was Jillian Ullman (Counsel), Esquire, who was present and testified. This Court had the opportunity to listen to the testimony of Applicant and Counsel. This Court had before it the records of the Orangeburg County Clerk of Court regarding the subject conviction, the guilty plea transcript, Applicant’s records from the South Carolina Department of Corrections, and the pleadings in this matter.

**I. PROCEDURAL HISTORY**

The Orangeburg County Grand Jury indicted the Applicant at the November 2012 term of General Sessions for Murder (2012-GS-38-1421). On July 15, 2013, the Applicant pled guilty as indicted. The Honorable Perry Buckner sentenced the Applicant to thirty-eight (38) years imprisonment. Applicant did not appeal.

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. By order dated September 16, 2013, the Court of Appeals dismissed the appeal based on Applicant's failure to provide a written explanation as to what issues could be reviewed. See Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was issued on October 3, 2013.

## II. ALLEGATIONS

In his PCR application, Applicant alleged he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel
  - a. Failure to investigate
  - b. Involuntary guilty plea

## III. SUMMARY OF TESTIMONY

Applicant testified Counsel did not come to see him enough and was not there for his preliminary hearing. He claimed he wrote the statement because he was scared for his family. Applicant stated he was at the scene, but also not really there. He admitted Counsel discussed the legal theory that the hand of one is the hand of all. He admitted it was his decision to plead no contest. Applicant asserted Counsel should have investigated more and should have had more hope because she did not think he would be found not guilty at trial. When asked what evidence Counsel could have found indicating his innocence, Applicant was unable to point to any facts or evidence tending towards innocence.

Counsel testified Applicant wrote statements admitting to his guilt. Counsel testified she had an investigator and hired an expert to help her prepare for Applicant's case. She testified the expert witness, a retired firearms examiner and scene reconstruction expert, agreed with SLED's findings. Counsel testified her investigator went out and spoke with witnesses and obtained the convenience store's security video of the incident. She testified she went over all the discovery

and potential testimony with Applicant on at least three different occasions. Further, she had Mark Wise, her second chair for Applicant's potential trial, also spoke with Applicant when she was too busy preparing for trial to speak with Applicant. Counsel testified she explained challenging his statement in a *Jackson v. Denno* hearing and any recantation would come from his contrary testimony. Counsel stated Applicant told her he pleaded under Alford because he did not intent to kill the victim when he fired the bullet. However, Counsel explained the hand of one is the hand of all and Applicant's intentional firing of the pistol while attempting to rob the victims would result in his conviction if the jury believed the State's evidence. Counsel told Applicant it was his decision whether to plead or not and she was prepared to go to trial. Counsel testified she went over all the elements and repercussions of his charges with him.

#### **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court reviewed the record in its entirety, listened to the testimony given, and heard the arguments presented at the evidentiary hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. This Court finds Counsel's testimony was credible and persuasive and Applicant's testimony lacked credibility. Therefore, this Court dismisses Applicant's application for the reasons set out below:

##### **A. Ineffective Assistance of Plea Counsel**

This Court finds the record fully supports the knowing and voluntary nature of Applicant's guilty plea. Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that

there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Thus, an applicant must show both error and prejudice to win relief in a PCR proceeding." *Roscoe v. State*, 345 S.C.16, 546 S.E.2d 417 (2001).

The court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* The Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. The transcript reflects the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. *See Crawford v. U.S.*, 519 F.2d 347, 350 (4<sup>th</sup> Cir. 1975) (overruled on other grounds by *U.S. v. Whitley*, 759 F.2d 327 (4<sup>th</sup> Cir.1985)). Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing. For the reasons set out below, this Court finds the record and credible testimony support Applicant had a full understanding of the charges and consequences of his guilty plea.

### 1. *Involuntary Guilty Plea*

Applicant asserts his guilty plea was entered involuntarily as the result of ineffective assistance of counsel. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. *See Boykin*, 395 U.S. at 243. In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. *See Harris v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

The transcript reflects the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *See Blackledge*, 431 U.S. at 73-74. Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. *See Crawford*, 519 F.2d at 350. Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and there is a reasonable probability, but for trial counsel's errors, he would not have pleaded guilty, but would have insisted on going to trial instead. *See Roscoe*, 345 S.C. at 20, 546 S.E.2d at 419. Given the Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

An applicant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *Roddy*, 339 S.C. at 34, 528 S.E.2d at 421. "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874. Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." *Id.* at 137-38, 654 S.E.2d at 874.

Having reviewed the pleadings, considered the applicable law, and reflected upon the plea transcript and testimony provided at the evidentiary hearing, this Court denies and dismisses Applicant's allegation that his guilty plea was involuntary. Applicant's assertion he didn't go to trial because Counsel told him he could receive life imprisonment does not make his plea involuntary. Likewise, Applicant's assertion Counsel should have had more hope in his case is meritless. It is not counsel's responsibility to tell their client what they want to hear, but to advise their client accurately. Here, the evidence against Applicant was also overwhelming. His own statement placed him at the incident scene firing the murder weapon. Based on the record, this Court also finds the evidence against Applicant was overwhelming and any error of Counsel would not have prejudiced Applicant. Therefore, Applicant cannot prove prejudice where the evidence against her was overwhelming. *See Harris v. State*, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008).

This Court finds Counsel's advice was well within the range of competence required of defense attorneys. This Court also finds Applicant's guilty plea was voluntarily, intelligently,

and knowingly made, just as the plea court found. Tr. 21. Therefore, this Court denies and dismisses this allegation.

## **2. Failure to Investigate**

Applicant failed to show how further investigation by Counsel would have benefited Applicant at trial. Applicant's assertion Counsel should have investigated further is purely speculative. Applicant did not prove what Counsel would have found if she had hired an investigator sooner or done further investigation. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Strickland*, 466 U.S. 668. "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." *State v. Glover*, 318 S.C. 496, 498-499, 458 S.E.2d 538, 540. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." *Moorehead v. State*, 329 S.C. 329, 496 S.E.2d 415 (1998). The only evidence Applicant presented regarding witness testimony or further investigation was speculation on the part of Applicant. This Court finds Applicant failed to prove he was prejudiced by any lack of investigation by Counsel.

Further, Counsel testified she hired an investigator and an expert witness to review Applicant's case. Counsel testified her expert witness made the same conclusion as SLED's expert witness, indicating Applicant's guilt. Counsel testified she went over all the evidence and discovery with Applicant and Applicant's own statement placed him at the scene firing the

murder weapon. This Court finds Counsel adequately investigated this case and was not deficient.

Accordingly, this Court finds Applicant failed to prove Counsel failed to properly investigate. This Court also finds Applicant failed to prove he was prejudiced by Counsel's lack of investigation such that there was a reasonable probability the result of the proceeding would have been different had Counsel investigated further. Accordingly, this Court denies and dismisses this allegation.

#### IV. CONCLUSION

Based on the foregoing, this 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.

This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from receipt of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

[Signature page to follow]

**IT IS THEREFORE ORDERED THAT:**

1. The Application for post-conviction relief is denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 24<sup>th</sup> day of July, 2019.

  
EDGAR W. DICKSON

Chief Administrative Judge  
1<sup>st</sup> Judicial Circuit  
Orangeburg and Calhoun County

Orangeburg, South Carolina