

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Diane S. Goodstein

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S.C. SUPREME COURT

Appellate Case No. 2021-000774

Tellaferro Randolph,Petitioner,

v.

State of South Carolina,Respondent.

APPENDIX

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I N D E X

WITNESS/DESCRIPTION PAGE NO.

Plea/Sentence

EXHIBITS:

There were no exhibits marked to this proceeding.

Certificate of Court Reporter 25

1 MR. SCOTT: State calls Tellaferro Randolph.

2 Your Honor, standing before you is Tellaferro
3 Randolph. He is represented by Mr. Doug Mellard. Your
4 Honor, Mr. Randolph is here today to enter a -- to plead
5 guilty to one count of voluntary manslaughter. This is on
6 2014-GS-38-1258 and one count of assault and battery of a
7 high and aggravated nature, 2014-GS-38-1257.

8 THE CLERK: Please raise your right hand.

9 (WHEREUPON, Tellaferro Randolph
10 was sworn to tell the truth)

11 THE CLERK: Thank you.

12 THE COURT: Voluntary manslaughter is between minimum of
13 2 and a maximum of 30?

14 MR. SCOTT: Yes, sir.

15 MR. MELLARD: Yes, Your Honor.

16 THE COURT: And the assault and battery of a high and
17 aggravated is?

18 MR. SCOTT: Carries up to 20, Your Honor. Both are
19 violent. I believe the voluntary is most serious. I believe
20 the assault and battery of a high and aggravated nature is
21 serious.

22 THE COURT: All right.

23 Mr. Mellard, you represent Mr. Randolph?

24 MR. MELLARD: Yes, sir, I do.

25 THE COURT: And you have had an opportunity to review

1 with him the evidence the State has against him regarding
2 these two charges?

3 MR. MELLARD: Yes, sir, I do.

4 THE COURT: And I see on the original indictment, True
5 Billed indictment he was originally indicted for attempted
6 murder and murder; is that correct?

7 MR. MELLARD: Yes, sir.

8 THE COURT: The State is allowing him to plead to these
9 two, voluntary manslaughter and assault and battery of a
10 high and aggravated nature; is that correct?

11 MR. MELLARD: That is correct, yes, sir.

12 THE COURT: You have explained to him the law that
13 applies?

14 MR. MELLARD: Yes, sir, I have.

15 THE COURT: And he's aware of the possible sentences --
16 you've made him aware of the possible sentences he's facing?

17 MR. MELLARD: Yes, sir.

18 THE COURT: You've also advised him of his
19 constitutional right?

20 MR. MELLARD: Yes, sir.

21 THE COURT: Do you believe that he understands
22 everything that you've told him?

23 MR. MELLARD: Yes, sir, I do.

24 THE COURT: And at some point he indicated he wishes to
25 plead guilty?

1 MR. MELLARD: He wishes to plead guilty under North
2 Carolina verses Alford, Your Honor.

3 THE COURT: Okay. So when you reviewed the evidence
4 with him and explained the law to him it was his opinion,
5 based on y'all's discussions that there was a substantial
6 likelihood that he would be convicted of this charge if he
7 went to trial?

8 MR. MELLARD: Yes.

9 THE COURT: So he wants to take advantage of this plea
10 offer?

11 MR. MELLARD: Yes, sir.

12 THE COURT: And you believe it's in his best interest to
13 do so?

14 MR. MELLARD: Yes, sir, I do.

15 THE COURT: All right. Mr. Randolph, my sentencing
16 sheet indicates that you are 39; is that correct?

17 MR. RANDOLPH: Yes, sir.

18 THE COURT: And Mr. Randolph, how far did you go in
19 school?

20 MR. RANDOLPH: I finished.

21 THE COURT: You graduated from --

22 MR. RANDOLPH: O.W.

23 THE COURT: -- O.W. Any education passed O.W.?

24 MR. RANDOLPH: A little technical.

25 THE COURT: Where did you study at Tech?

1 MR. RANDOLPH: Sir?

2 THE COURT: You said you had a little technical?

3 MR. RANDOLPH: Yes.

4 THE COURT: You went one semester?

5 MR. RANDOLPH: About three.

6 THE COURT: What were you studying?

7 MR. RANDOLPH: Nursing.

8 THE COURT: But you didn't get your degree?

9 MR. RANDOLPH: No, sir.

10 THE COURT: Okay. Have you -- before you were arrested
11 were you working somewhere?

12 MR. RANDOLPH: Yes, sir.

13 THE COURT: Where?

14 MR. RANDOLPH: Husqvarna.

15 THE COURT: And how long had you been at Husqvarna?

16 MR. RANDOLPH: About a year and two months.

17 THE COURT: Okay. All right. Have you ever been
18 treated for any mental health issues?

19 MR. RANDOLPH: No, sir.

20 THE COURT: Ever been treated for any drug or alcohol
21 abuse or dependance?

22 MR. RANDOLPH: No, sir.

23 THE COURT: Are you taking any kind of medication?

24 MR. RANDOLPH: No, sir.

25 THE COURT: Okay. Today are you under the influence of

1 any alcohol or any illegal drugs?

2 MR. RANDOLPH: No, sir.

3 THE COURT: So you are thinking clearly today?

4 MR. RANDOLPH: Yes.

5 THE COURT: Okay. Now, Mr. Mellard has indicated that
6 he has met with you and discussed with you the evidence that
7 the State has against you; is that correct?

8 MR. RANDOLPH: Yes, sir.

9 THE COURT: He's explained to you the law that applies?

10 MR. RANDOLPH: Yes.

11 THE COURT: And he went over the possible sentences
12 you're facing, you're facing up to 30 years on one charge
13 and -- you know that?

14 MR. RANDOLPH: Yes, sir.

15 THE COURT: Okay. He also advised you of your
16 constitutional rights?

17 MR. RANDOLPH: Yes.

18 THE COURT: You understand you have the right to have a
19 jury trial?

20 MR. RANDOLPH: Yes, sir.

21 THE COURT: Do you want one?

22 MR. RANDOLPH: No, sir.

23 THE COURT: Do you want to go forward with the guilty
24 plea?

25 MR. RANDOLPH: Yes.

1 THE COURT: Okay. It's my understanding you're pleading
2 guilty under North Carolina verses Alford?

3 MR. RANDOLPH: Yes.

4 THE COURT: That means that you've had these discussions
5 with Mr. Mellard and he advised you of the law and how the
6 law applies to these facts, you believe there's a
7 substantial likelihood you'd be convicted if you went to
8 trial?

9 MR. RANDOLPH: Yes.

10 THE COURT: So you want to take advantage of this?

11 MR. RANDOLPH: Yes, sir.

12 THE COURT: This plea offer?

13 MR. RANDOLPH: Yes, sir.

14 THE COURT: I want you to know that when I ask you
15 whether you're pleading guilty or not to this, I'm noting on
16 the record that you're pleading under North Carolina verses
17 Alford, okay?

18 MR. RANDOLPH: Okay, sir.

19 THE COURT: Okay. Now, have you understood everything
20 Mr. Mellard has told you?

21 MR. RANDOLPH: Yes, sir.

22 THE COURT: Are you satisfied with his services as your
23 attorney?

24 MR. RANDOLPH: Yes, sir.

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

1 MR. RANDOLPH: No, sir.

2 THE COURT: No, sir.

3 THE COURT: Okay. You understand when you plead guilty
4 whether it's under North Carolina verses Alford or straight
5 up you give up your right to remain silent; do you
6 understand that?

7 MR. RANDOLPH: Yes, sir.

8 THE COURT: You give up your right to present any
9 defenses you may have to this charge; do you understand
10 that?

11 MR. RANDOLPH: Yes, sir.

12 THE COURT: And you understand you give up the
13 requirement that the State has to prove you guilty beyond a
14 reasonable doubt on these charges; you understand that?

15 MR. RANDOLPH: Yes, sir.

16 THE COURT: You're waiving all those rights?

17 MR. RANDOLPH: Yes, sir.

18 THE COURT: You want to go forward with the plea?

19 MR. RANDOLPH: Yes, sir.

20 THE COURT: Has anybody promised you anything to get you
21 to plead guilty here today?

22 MR. RANDOLPH: No, sir.

23 THE COURT: Has anybody threatened or forced you in any
24 way to get you to plead guilty?

25 MR. RANDOLPH: No, sir.

1 THE COURT: You're doing this freely and voluntarily?

2 MR. RANDOLPH: Yes, sir.

3 THE COURT: You know exactly what you're doing?

4 MR. RANDOLPH: Yes, sir.

5 THE COURT: Okay. Mr. Scott.

6 MR. SCOTT: Thank Your Honor. Your Honor, this incident
7 took place on August 3, 2014. It happened at approximately
8 2:00 o'clock in the morning. It happened in the parking lot
9 of Club Ambition, which is located at 324 Neeses Camp Road
10 sort of in between Orangeburg and Neeses in Orangeburg
11 County. Your Honor, the victim of the homicide in this case
12 is Travis Wilson. He was twenty-eight years of age at the
13 time of the incident. The victim of the ABHAN is Mr.
14 Michael Davis. He was thirty-two years of age at the time of
15 the incident. Actually, I think he would have been thirty-
16 two the next day, but he was basically thirty-two years of
17 age. Mr. Michael Davis is seated on the front row behind
18 the State's table on the front row in the blue shirt.

19 Your Honor, Mr. Davis and Mr. Wilson, they were
20 brothers. They traveled to the club that night along with
21 another brother by the name of Brandon Wilson, also they had
22 multiple other friends and family that went with them. A
23 Cedrick Fowler, Christopher Bradley, Ayesha Aiken and
24 Whitney Bonaparte. These seven individuals, Your Honor,
25 they went to the club. They were basically in four

1 different cars. They went to the club. When they arrived
2 at the club, Your Honor, the parking lot was crowded, if not
3 completely full. Mr. Michael Davis, he pulled into the
4 parking lot first. Then Whitney Bonaparte pulled into the
5 parking lot. When Ms. Bonaparte pulled in second, Your
6 Honor, she saw a parking space, I think, off to the left and
7 she was able to sort of quickly back into that parking spot.

8 Your Honor, the defendant, I believe, was already in
9 his vehicle driving in the parking lot when the victim and
10 their friends and family got to the club. I believe the
11 defendant had an intention of parking in the spot that Ms.
12 Whitney Bonaparte pulled into. This led, Your Honor, to an
13 altercation, a verbal altercation. I guess it began with
14 the defendant and Ms. Bonaparte. Mr. Michael Davis and
15 Ayesha Aiken also got involved into the verbal altercation.
16 I believe Mr. Michael Davis knew the defendant. I believe
17 he knew him by the nickname of "Butney" (sp).

18 The exact details, Your Honor, of what happened next
19 are a little unclear. We have six statements from basically
20 the victims side. Mr. Michael Davis, his friends and
21 family, they all gave statements in this case. They are all
22 consistent with the fact that the defendant at some point
23 started shooting. Started shooting a firearm that struck
24 Mr. Michael Davis, I believe three times. Struck Travis
25 Wilson two times, including once in the back. I believe Mr.

1 Wilson was able to run about 30 or 40 feet after getting
2 shot across the highway where he collapsed behind some
3 parked cars and passed away.

4 The witness statements are also consistent with the
5 fact that when the shots started coming out from the
6 defendants gun that Mr. Travis Wilson tried to run towards
7 his brother, Michael Davis, who I believe was the initial
8 target of the defendant, to try to protect his brother.
9 That is when Mr. Wilson was shot.

10 Mr. Michael Davis, Your Honor, he was transported by
11 personal vehicle to the Regional Medical Center. He spent
12 about three weeks in the hospital. I believe they recovered
13 two of the bullets from him. They were not able to recover
14 the third. All six witnesses, Your Honor, they either knew
15 the defendant -- not all six. Most of the witnesses either
16 knew the defendant, at least by a nickname or were able to
17 pick him out of a photo lineup.

18 The witnesses statements from the victims side, Your
19 Honor, they were all consistent that neither Michael nor
20 Travis had a gun.

21 There was one witness by the name of Anthony Jamison.
22 He goes by the nickname of "Ant live". He was at the club
23 that night. He was in the parking lot. He gave a statement
24 that when the verbal altercation began that Mr. Michael
25 Davis had a small caliber handgun in his hand. And that the

1 defendant did not produce a gun until Mr. Davis had produced
2 his small caliber handgun. Initially, I didn't put too much
3 stock into Mr. Jamison's statement because obviously I had
4 six witness statements to the contrary. Mr. Jamison also
5 has a very significant prior record and I also believed he
6 was, I guess, more bias towards the defendant than he was
7 towards the victims family.

8 So initially when the investigation began we had our
9 six witness statements along with Anthony Jamison's
10 statement. At the time of the defendant's arrest, he was
11 arrested within a few days of this incident. At the time of
12 his arrest he basically gave -- he didn't give a statement
13 but he gave some sort of utterance that he wasn't at the
14 club. So not really consistent with a self-defense claim.

15 Crime scene did respond to the incident location. When
16 they got there they found one .25 caliber shell casing at
17 the scene. They did not find any other shell casings even
18 though we know the victims were shot a total of five times.
19 The bullets that were recovered at autopsy were sent to SLED
20 for analysis. Although they didn't have any guns or shell
21 casings to compare these projectiles to, these projectiles
22 were consistent with bullets that are loaded into .44
23 Special or .44 caliber cartridges, which would be cartridges
24 that are typically fired by a revolver. Your .44 calibers,
25 .44 Magnums are typically revolvers which would explain why

1 there were no other shell casings found at the crime scene.

2 Investigators, Your Honor, they also collected a
3 gunshot residue kit on Travis Wilson, the deceased
4 individual. That GSR kit was sent to SLED. The results of
5 that examination, Your Honor, revealed that Mr. Wilson, he
6 did not have any gunshot residue on his left hand, but that
7 he did have gunshot residue on his left palm -- I'm sorry,
8 on his right palm as well as the back of his right hand.

9 So once that information started coming in, the
10 forensic evidence, the .25 caliber shell casing, the gunshot
11 residue. I took a closer look at that Anthony Jamison
12 statement that said Mr. Davis had possession of a small
13 caliber handgun. So I met with Mr. Davis again about four
14 months about the incident. I asked him if he owned a .25
15 caliber handgun. He said he did. I asked him if it was in
16 his car that night, but, you know, he never produced it. He
17 voluntarily turned that over to deputies with the Orangeburg
18 County Sheriff's Office and it was sent to SLED for analysis
19 and it was compared at the cartridge casing that was found
20 at the crime scene and it was found to have fired that
21 cartridge casing.

22 And so, Your Honor, this is sort of how we've arrived
23 at this point. I mean, on the one hand, there is some
24 evidence that Michael Davis had a gun in his hand that
25 night. That would be according to Anthony Jamison's

1 statement. There is significant evidence that Travis Wilson
2 fired a gun that night at some point, because he has GSR on
3 his hand. I think a good argument can be made that he fired
4 his gun, though, after Anthony Jamison [sic] fired at least
5 five times if not more and there is definitive evidence that
6 Michael Davis' gun was discharged at some point on the
7 scene.

8 So we have all that on one hand. On the other hand,
9 the defendant, we know he fired multiple times, at least
10 five. He struck one victim three times. He struck another
11 victim two times, at least once in the back.

12 I've been over the law with the victim's family. We've
13 talked about murder, we've talked about voluntary
14 manslaughter, we've talked about self-defense. If we were
15 to go to trial I think this is where we end up. I think the
16 defendant would be convicted of voluntary manslaughter and
17 ABHAN. That is what he is pleading to.

18 THE COURT: Okay.

19 MR. SCOTT: That is the factual basis for the plea.

20 He does have some prior record I can give you and we do
21 have some victim impact at the appropriate time.

22 THE COURT: If you don't mind, you can go ahead and give
23 me the priors.

24 MR. SCOTT: Yes, Your Honor. Nothing is very recent.
25 He's got a 1994 distribution of marijuana. In 1999 he has

1 two convictions for failure to stop for a blue light. In
2 2000 he has a conviction for failure to stop for a blue
3 light and unlawful carrying of a pistol. In 2003 he's got a
4 distribution of crack and a proximity charge that he might
5 actually -- even though it was 12 years ago he might still
6 be on supervision for it.

7 AGENT KITTRELL: He is, Your Honor. He's still on
8 supervision.

9 THE COURT: Really?

10 AGENT KITTRELL: Yes, sir. The warrant is a violation
11 has to keep the case open.

12 THE COURT: What else?

13 MR. SCOTT: Just victim impact.

14 THE COURT: Oh, so you --

15 MR. SCOTT: That's the extent of his convictions.

16 THE COURT: His last was 12 years ago?

17 MR. SCOTT: Yes, Your Honor.

18 THE COURT: All right.

19 MR. SCOTT: Your Honor, we have multiple family members
20 here today. As I pointed out Michael Davis to you. He is on
21 the aisle. He is the victim of the ABHAN.

22 THE COURT: You know what I'd like to do. And Tammy
23 hold on one second.

24 VICTIM ADVOCATE: Okay.

25 THE COURT: What I'd like to do is let me take the plea

1 and then if you don't mind let me hear -- and Mr. Mellard
2 what I want to do is after I take the plea I want to hear
3 from the victim impact before you make your comments. I'll
4 have everybody at about the same time.

5 MR. MELLARD: All right. Yes, sir.

6 THE COURT: Is that all right?

7 MR. MELLARD: Yes, sir.

8 THE COURT: All right. Mr. Randolph, you've heard what
9 the Solicitor has told me about the evidence that they would
10 produce at trial?

11 MR. RANDOLPH: Yes, sir.

12 THE COURT: And the way they interpret that evidence and
13 how they apply the law. That's how they got to charging you
14 with these two --

15 MR. RANDOLPH: Yes, sir.

16 THE COURT: -- crimes?

17 MR. RANDOLPH: Yes, sir.

18 THE COURT: Okay. All right, and I understand and I
19 want to ask you, do you believe if you went to trial on
20 these matters that you -- that there's a substantial
21 likelihood that you would be convicted of these two charges?

22 MR. RANDOLPH: Yes.

23 THE COURT: All right. As to the charge of assault and
24 battery of a high and aggravated nature, you understand
25 that's a violent and serious offense?

1 MR. RANDOLPH: Yes, sir.

2 THE COURT: And that counts as a strike against you?

3 MR. RANDOLPH: Yes, sir.

4 THE COURT: You get up to two more serious offenses
5 you'd be subject to life without possibility of parole?

6 MR. RANDOLPH: Yes, sir.

7 THE COURT: Okay. And you're pleading under North
8 Carolina verses Alford to this charge; is that right?

9 MR. RANDOLPH: Yes, sir.

10 THE COURT: How do you plead to this charge?

11 MR. RANDOLPH: I pled guilty.

12 THE COURT: All right, sir. The next charge was
13 originally a murder charge that was True Billed. The State
14 is allowing you to plead to voluntary manslaughter; is that
15 your understanding?

16 MR. RANDOLPH: Yes, sir.

17 THE COURT: And it's my understanding that you are
18 pleading -- as I mentioned earlier if you went to trial on
19 this there is a substantial likelihood you'd be convicted of
20 this charge; is that correct?

21 MR. RANDOLPH: Yes, sir.

22 THE COURT: You're pleading guilty to this under North
23 Carolina verses Alford; is that correct?

24 MR. RANDOLPH: Yes, sir.

25 THE COURT: How do you plead to the charge of voluntary

1 manslaughter?

2 MR. RANDOLPH: Guilty.

3 THE COURT: All right. Mr. Randolph, understand you've
4 got 10 days from today to appeal my decision?

5 MR. RANDOLPH: Yes, sir.

6 THE COURT: You understand that the voluntary
7 manslaughter is a violent and a most serious offense?

8 MR. RANDOLPH: Yes, sir.

9 THE COURT: You understand if you have a most serious,
10 another most serious offense you'd be subject to life
11 without possibility of parole if you ever do anything like
12 that again; do you understand that?

13 MR. RANDOLPH: Yes, sir.

14 THE COURT: Okay. All right. Do you want me to accept
15 your guilty pleas to voluntary manslaughter and assault and
16 battery of a high and aggravated nature?

17 MR. RANDOLPH: Yes, sir.

18 THE COURT: Mr. Randolph, I find your decision to plead
19 guilty to these two charges under North Carolina verses
20 Alford is freely, voluntarily and intelligently made. I
21 find you've had the advice of counsel, a competent lawyer,
22 and I find that you are satisfied with the services of your
23 lawyer. I find there's a factual basis on which to base
24 your guilty pleas to these charges and I further find that
25 the evidence that the Solicitor has told me about and

1 presented to me that should this matter go to trial there is
2 a substantial likelihood you would have been convicted of
3 these two charges, so I am going to accept your guilty plea
4 to both of them.

5 MR. RANDOLPH: Yes, sir.

6 THE COURT: All right. Yes, sir.

7 MR. SCOTT: May it please the Court, Your Honor?

8 THE COURT: Yes, sir.

9 MR. SCOTT: Present today from the victim's side of the
10 family. We have Michael Davis who I have already pointed
11 out to you. He's the victim of the ABHAN. Seated next to
12 him is Ms. Brenda Wilson. She is the mother of both Travis
13 and Michael. Seated next to her is the father, Your Honor.
14 That is Mr. Mike Wilson. And Delphine Fowler. She is an
15 aunt of Michael Davis. She is sisters with Brenda Wilson.
16 Seated next to Ms. Fowler is Andrianna Mosick, who is Mr.
17 Travis' fiancée. They have designated April Patterson
18 Davis, who is Michael Davis' wife to speak on behalf of the
19 family.

20 I'll tell Your Honor I had a very emotional discussion
21 yesterday with Mr. and Ms. Wilson and Mr. Wilson told me he
22 didn't know if he would have the strength to address you
23 today. And that is why they have designated Ms. Patterson-
24 Davis to address Your Honor.

25 THE COURT: Okay.

1 MS. PATTERSON-DAVIS: Good morning, Your Honor, how are
2 you?

3 THE COURT: I'm fine. I'm sorry you've gone through
4 this. That would be your brother-in-law killed, as well as
5 your husband?

6 MS. PATTERSON-DAVIS: Yes, sir. Thank you.

7 THE COURT: He's still got a bullet in him?

8 MS. PATTERSON-DAVIS: Yes, sir.

9 THE COURT: If you don't mind my asking, where's the
10 bullet?

11 MS. PATTERSON-DAVIS: In his leg, left leg.

12 THE COURT: His left leg?

13 MS. PATTERSON-DAVIS: Yes, sir.

14 THE COURT: Okay. All right. I'm sorry, I didn't mean
15 to interrupt you.

16 MS. PATTERSON-DAVIS: No, you're fine. On August 4, we
17 lost a very special person and the same hurt and the
18 emptiness that we felt that day we still feel today. It
19 doesn't get better with time. We try. We just continue to
20 pray each day and stay strong for each other. A life was
21 taken so tragically and unnecessarily. A mother and father
22 lost a son and his son Trey has to grow up without a father.
23 Family and friends no longer have their cousin, brother and
24 friend, and Michael Davis, my husband, the survivor
25 survived, which is a blessing, but he still relives the

1 tragic moments each and every day, as well as grieving for
2 his brother and he has scars from surgery that he still
3 suffers from. A chain has been broken and the family
4 struggles to become complacent with what has happened.
5 Years will pass but he will never fully be regained. But
6 just allowing justice to be served and the man committed
7 this crime to be punished to the highest will give the
8 family some type of closure. We're asking that you give him
9 the highest that is possible.

10 THE COURT: Okay.

11 MS. PATTERSON-DAVIS: Thank you.

12 THE COURT: Thank you, ma'am.

13 Anything else, Mr. Scott?

14 MR. SCOTT: I would commend the Orangeburg Sheriff's
15 Office. They did a great job investigating this case. I
16 had multiple meetings after the fact with Investigator
17 Kittrell and also crime scene Investigator William
18 Ketcherside. The forensic evidence in this case said one
19 thing, the statements said another thing. We spent
20 considerable amount of time trying to decipher what we
21 thought might have happened. I commend them on their
22 efforts.

23 THE COURT: I can tell you it looks to me from what
24 you've told me about what they had to do and like that,
25 y'all did a great job.

1 MR. SCOTT: Thank you.

2 THE COURT: So I'm particularly pleased.

3 MR. SCOTT: Thank Your Honor.

4 THE COURT: All right. Mr. Mellard.

5 MR. MELLARD: Yes, sir. He's thirty-nine years old.

6 He's a high school graduate. As you heard he went to O.W.
7 He did have some technical schooling. He was going to be a
8 nurse. He was working at Husqvarna, he's been there for a
9 year and two months. His family is also in the courtroom.
10 His mother is here. His father has just recently passed
11 away. But his mom is here and there's other family members
12 in this courtroom, Your Honor.

13 He's been locked up since August 4, 2014. That's a
14 period of 452 days. As you heard, he has no history of
15 violent offenses. There are some drug offenses on his
16 record, but no history of violent offenses, Your Honor.

17 I've talked to Mr. Randolph about trial. I've talked
18 to him about the defenses that we have and he has made this
19 decision to plea under Alford because he feels it's in his
20 -- he feels that's the way to resolve this case for
21 everybody, but we want the Court to know there are -- I
22 think the Solicitor pretty much clearly laid it out, there's
23 two sides to this story, your Honor. We would just leave it
24 to the mercy of the Court, but did want the Court to know
25 that his family members are here.

1 THE COURT: Anything else?

2 MR. MELLARD: No, sir.

3 THE COURT: Mr. Randolph?

4 MR. RANDOLPH: No, sir.

5 THE COURT: All right. Based on the way this -- the
6 evidence would play out, Mr. Scott I agree with you if we'd
7 gone to trial it would probably play out just the way that
8 it was presented to me as far as this plea has gone. There
9 is some conflicting evidence so I think this is a good
10 resolution of this matter.

11 Having said that, Mr. Randolph, the sentence of this
12 Court on each one of these is that you're committed to the
13 State Department of Corrections for a period of 15 years on
14 each one of these. I'll give you credit for the time you've
15 served since August 4, 2014. And the sentences are
16 concurrent.

17 MR. MELLARD: Thank Your Honor.

18 MR. SCOTT: Thank Your Honor.

19 THE COURT: Thank you.

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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 29 DAY OF OCTOBER, 2015.

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



Hilda M. Jordan, CVR-M

March 8, 2016

STATE OF SOUTH CAROLINA)

County of Orangeburg)

Chellaferro Randolph #296483)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2016-CP-38-00674

APPLICATION FOR
POST-CONVICTION RELIEF

FILED FOR RECORD
MINNIFA BELLARIK
2016 MAY 18 9A 11:18
CLERK OF COURT
ORANGEBURG, SC

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Broad River Correctional Institution
2. Name and location of Court which imposed sentence Court of General Session 151 Docket St. PO Box 9000 Orangeburg, SC 29116
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014 Ad 38-1257 - Att: ABHAN
 - (b) 2014 Ad 38-1258 - Voluntary Manslaughter

MAILED

5-25-16

AG

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) CIBHAN - 15 yrs 10-29-15 concurrent
- (b) Voluntary Manslaughter - 15 yrs 10-29-15
- (c) _____

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 MINORNA B. FLANN
 JUDGE
 MAY 18 AM 11:18
 CLERK OF COURT
 ORANGEBURG, SC

6. Check whether a finding of guilty was made:
- (a) after a plea of guilty
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO

8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Trial Counsel failed to appeal.
- (b) _____

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MAY 1 1974
CLERK OF COURT
RANGERS

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Trial Counsel
 - (b) Subject Matter of Jurisdiction
 - (c) Violation of U.S. Constitution 4th, 5th, 6th, 14th Amendments
11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Counsel failed to appeal; Counsel misinformed me
 - (b) Court of General Session failed to have Jurisdiction
 - (c) US Constitution Violation
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: NO
- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

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

(a) which grounds have been presented:

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

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

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

FILED FOR RECORD
 WINTERVILLE, GEORGIA
 2019 MAR 18 A.M. 11:18
 CLERK OF COURT
 ORANGE COUNTY, SC

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) Counsel failed to Appeal
- (b) Defective Indictment
- (c) Illegal Search & Seizure

FILED FOR RECORD
JAMES B. CLARK
CLERK OF COURT
ORANGEBURG, SC
MAY 18 AM 11:18

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? no
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? no
- (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. Robert Douglas Wellard Esq. P.O. Box 1112 Orangeburg SC 29116

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Guilty Plea & Sentencing

ii. _____

iii. _____

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

Vacated or Lesser Sentence

FILED FOR RECORD
WILMUNA CLARK
2016 MAY 18
CLERK COURT
ORANGEBURG, SC

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

NO

STATE OF SOUTH CAROLINA)
County of Orangeburg)

VERIFICATION

I, TELLAFERRO RANDOLPH, 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.

Tellaferro Randolph

SWORN to and subscribed before me this 16th day of MAY 2016.

Janelle Spearman (L.S.)
Notary Public

My Commission Expires August 26, 2025
JANELLE B. SPEARMAN
Notary Public - State of South Carolina

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

I, TELLAFERRO RANDOLPH, 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 proceed without prepayment of fees or costs or security therefor.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Tellaferra Randolph
Applicant

FILED FOR RECORD
WITH THE B. CLERK
JULY 18 4 18
CLERK OF COURT
ORANGEBURG, S.C.

SWORN or affirmed to and subscribed before me this
16th day of MAY 2014.
Janelle T. Spearman
Notary Public

My Commission Expires:
JANELLE T. SPEARMAN
Notary Public - State of South Carolina
My Commission Expires
August 26, 2025

Orangeburg County Clerk of Court Office

WINNIFA B. CLARK
CLERK OF COURT

YOJUANA T. CREWS
DEPUTY CLERK OF COURT

SANDRA P. OWEN
DEPUTY CLERK OF COURT



CLERK OF COURT
ORANGEBURG, SC

2016 11 18 A 11:18

FILED
ORANGEBURG, SC 29116-9000
PHONE: (803) 533-6260
FAX: (803) 534-3848

RECORD
CLERK

fm

PCR APPLICATION

PLEASE BE ADVISED OF THE FOLLOWING WHEN FILING YOUR PCR APPLICATION:

1. To receive a copy of your application you must provide a copy with your original application and a self addressed stamped envelope for its return.
2. If you request any information by mail you must send a self addressed stamped envelope for the response to your question to be returned to you. This includes: Case number/warrant number; attorney's name; charge(s); previous address; date of birth, etc.

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
Tellaferro Randolph, #296483,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2016-CP-38-0674

Amendment to Application for
Post Conviction Relief

FILED FOR RECORD
MINNIE B. CLARK
2017 DEC 14 PM 12:29
CLERK OF COURT
ORANGEBURG, SC

Applicant, by and through his Attorney, Jonathan D. Waller, Esquire, would amend his Application for Post Conviction Relief filed on May 25, 2016, by adding the specific claims and allegations of ineffective assistance of counsel of counsel:

1. Counsel was ineffective for failing to provide to, and discuss with, Applicant, discovery materials related to his case, rendering his guilty plea involuntary.
2. Counsel was ineffective for failing to challenge the search and seizure of items related to his case.

Respectfully submitted,



Jonathan D. Waller
Attorney for Applicant
Waller Law Group
1116 Blanding Street
Suite 2B
Columbia, South Carolina 29201

December 12, 2017

Columbia, SC

AP

FILED FOR RECORD
WINNIFA B. CLARK

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG

2021 JUN 11 PM 12:02

FIRST JUDICIAL CIRCUIT

Tellaferro Randolph, #296483,

CLERK OF COURT
ORANGEBURG, SC 2016-CP-38-0674

Applicant,

**RETURN AND MOTION FOR A
MORE DEFINITE STATEMENT**

v.

State of South Carolina,

Respondent.

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on May 25, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. Applicant was indicted by the October 2015 term of the Grand Jury for Orangeburg County for one count of Murder (2014-GS-38-1258), and one count of Attempted Murder (2014-GS-38-1257). Applicant was represented by Robert Douglas Mellard, Esq. On October 29, 2015, Applicant pled guilty to the lesser included offenses of Voluntary Manslaughter (2014-GS-38-1258) and Assault and Battery of a High and Aggravated Nature (2014-GS-38-1257). Applicant was sentenced on October 29, 2015, by the Honorable Edgar W. Dickson to fifteen years imprisonment for Voluntary Manslaughter and fifteen years imprisonment for Assault and Battery of a High and Aggravated Nature, to be served concurrently.

Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated by reference herein are the records of the Orangeburg County Clerk of Court regarding the subject convictions, the transcript from

Applicant's plea, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Counsel failed to appeal."
 - b. "Counsel misinformed me."
2. Subject Matter Jurisdiction
 - a. "Court of General Sessions failed to have jurisdiction."
 - b. "Defective indictment."
3. "Violation of U.S. Constitution 4th, 5th, 6th, and 14th amendments."

III.

Respondent moves pursuant to Rule 12(e), SCRCF, to require Applicant to provide a more definite statement of the allegation of "Violation of U.S. Constitution 4th, 5th, 6th, and 14th amendments" enumerated in his original application for post-conviction relief. The Uniform Post-Conviction Procedure Act requires applicants to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985). Furthermore, Rule 8(a), SCRCF, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief."

Respondent submits Applicant's allegations are so vague and ambiguous that Respondent cannot be reasonably required to frame a responsive return. Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter.

IV.

Notwithstanding the above motion for a more definite statement, Respondent contends that Applicant's claim of ineffective assistance of counsel is without merit. Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C.

at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

V.

The Respondent alleges that trial counsel failed to inform of him of his right to appeal. Counsel has a constitutionally-imposed duty to consult with defendant about appeal when there is reason to think either (1) that rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S. Ct. 1029, 145 L. Ed. 2d 985 (2000). Although not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings. Id. 528 U.S. at 480, 120 S. Ct. at 1036. To show prejudice in these circumstances, a defendant must demonstrate that there is a reasonable probability that, but for counsel's deficient failure to consult with him about an appeal, he would have timely appealed. Id. 528 U.S. at 484, 120 S. Ct. at 1038.

In White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), the South Carolina Supreme Court held that even if the post-conviction relief court finds that the Applicant never voluntarily and

intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. Therefore, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

While trial counsel is required to make certain the defendant is made fully aware of the right to appeal, the standard for a guilty plea differs. Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Id. at 225, 670 S.E.2d at 374 (citing Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000); Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995)). “Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver.” Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981) (citing 92 C.J.S. Waiver, p. 1063 (1955)).

Respondent submits that this allegation is without merit and demands strict proof thereof. Nevertheless, the allegation raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

VI.

The Applicant has claimed that the trial court lacked subject matter jurisdiction due to defects in his indictment. Defects in the indictment do not affect subject matter jurisdiction. *See*

State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). *See also* S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. *See Gentry, supra*; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness. *See* S.C. Code §§ 17-27-45 and -90 (2003).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. *See Brown v. State*, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by Gentry, supra*. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, supra, 610 S.E.2d at 499; *See also* S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

VII.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for

summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VIII.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

IX.

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

X.

WHEREFORE, having made its Return, Respondent requests that Applicant submit an amended application with more specific facts and allegations in response to questions number 10(c) and 11(c).

[Signature Block on Following Page]

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

RUSTON NEELY
Assistant Attorney General

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

By: 
ATTORNEYS FOR RESPONDENT

Jan 3rd, 2017

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
 2 COUNTY OF ORANGEBURG) CASE NO. 2016-CP-38-11549
 3 TELLFERO RANDOLPH,)
 4 Plaintiff,) Transcript of Record
 5 vs.)
 6 STATE OF SOUTH) Date: December 14, 2017
 7 CAROLINA,)
 8 Defendant.)

9 * * * * *

10 B E F O R E:

11 The Honorable Kristi Harrington
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 21 Denise J. Lauder, RPR
 22 Ninth Judicial Circuit
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A P P E A R A N C E S

REPRESENTING THE APPLICANT:

JONATHAN D. WALLER, ESQUIRE
1116 Blanding Street
Suite 2B
Columbia, SC 29201-2840

REPRESENTING THE STATE OF SOUTH CAROLINA:

RUSTON NEELY, ESQUIRE
PO Box 11549
Columbia, SC 29211-1549

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E X H I B I T S

(No Exhibits Proffered)

1 (The following proceedings were had
2 12/14/17, in re Randolph v. State of South
3 Carolina, 1:46 p.m.)

4 THE COURT: Sir, can you tell me your
5 name?

6 THE DEFENDANT: Tellafero Randolph.

7 THE COURT: All right. And so,
8 Mr. Randolph, I'm going to get off the bench, and
9 I'm going to have everyone leave the courtroom so
10 that Mr. Waller can have an opportunity to speak
11 with you. We'll just do it that way.

12 So Mr. Mallard, if you'll wait outside
13 or wherever, and Mr. Neely and Ms. Allen, if you
14 could have the victims wait outside, I would be
15 appreciative. That way he can have the opportunity
16 to speak with his attorney freely, and we don't
17 have to keep moving up and down.

18 So let me know how much time you need,
19 and then that way we can make a decision about
20 breaking for lunch.

21 MR. WALLER: Thank you, Your Honor, I
22 appreciate it.

23 THE COURT: The sooner the better. If
24 you think it's going to go, let me know so that we
25 can all break for lunch. If you think there may be

1 another resolution, let me know as well.

2 MR. WALLER: Thank you, Your Honor.

3 THE COURT: Thank you.

4 (A recess transpired.)

5 MR. WALLER: Your Honor, I've had a
6 chance over the break to speak with my client, and
7 we do intend to go forward. And I don't know what
8 Your Honor intends as far as the schedule.

9 THE COURT: All right. Counsel
10 approach. Mr. Mallard, I'm going to ask you to
11 approach as well.

12 (Bench conference)

13 THE COURT: Mr. Allen, we're going to
14 break for lunch, everybody is hungry, and some
15 things -- we're going to take about 30 minutes. So
16 maybe about 1:25, 1:30, if you'll just have the
17 victims come back -- I apologize for the
18 inconvenience -- and we'll get started, but we're
19 going to take a lunch break, everybody is hungry,
20 and we'll be rested, then get started.

21 All right? So if you'll just please
22 bring Mr. Randolph and have him come back at --
23 have him ready at about 1:20.

24 All right. We're at ease.

25 (A luncheon recess transpired.)

1 THE COURT: We're back on the record
2 with Tellafero Randolph; is that correct,
3 Mr. Waller?

4 MR. WALLER: That's correct, Your
5 Honor.

6 THE COURT: And he was indicted for
7 assault and battery of a high and aggravated nature
8 under the new statute punishable by up to 20 years.

9 MR. WALLER: Your Honor, he pled guilty
10 to that. He was indicted for murder, and I believe
11 attempted murder.

12 THE COURT: And so that was an Alford
13 plea on the affiant, which was the lesser included
14 of attempted murder, and then he also pled on the
15 -- under Alford on a lesser included of murder to
16 voluntary manslaughter, punishable by 2 to 30.

17 That was a violent and a most serious
18 -- AB HAN is violent and serious. So he was
19 sentenced to 15 years concurrent, and the total
20 possible sentence if they were run consecutive
21 would be 50 years.

22 Mr. Randolph, do you understand the
23 potential punishment?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: And you know what is going

1 to happen here today? You're asking for post
2 conviction relief?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: If I grant your -- your
5 request, it doesn't mean this case goes away. It
6 simply means that it will go back to the
7 solicitor's office, and you'll start on two --
8 you'll start on a murder and an attempted murder
9 charge.

10 And I'm sure you were advised by your
11 previous attorney, and if not, by Mr. Waller here
12 today that murder carries up to life in prison.

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And I don't know how old
15 you are or what your life expectancy is, but life
16 is significantly more than 15 years. Do you
17 understand?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Do you still wish to go
20 forward here today understanding the benefits and
21 the consequences of what we're doing?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: All right. And,
24 Mr. Waller, you've gone over all of that with him?

25 MR. WALLER: I have, Your Honor.

1 THE COURT: And you feel he understood
2 the benefits and the consequences?

3 MR. WALLER: I do, Your Honor.

4 THE COURT: You may have a seat,
5 Mr. Randolph.

6 What are we going forward --
7 ineffective assistance of counsel, failure to
8 appeal, that counsel misinformed him, subject
9 matter jurisdiction, a defective indictment,
10 violation of the Constitution's Fourth, Fifth,
11 Sixth, and Fourteenth Amendment, illegal search and
12 seizure.

13 MR. WALLER: Your Honor, the State
14 filed a motion for a more definite statement. In
15 response to that I filed an amendment which I think
16 will clarify the issue. I will pass up a copy of
17 that.

18 THE COURT: Mr. Neely, any objection
19 or --

20 MR. NEELY: No, Your Honor, no
21 objection.

22 THE COURT: So are these the two
23 grounds we're going forward on, or in addition to?

24 MR. WALLER: Those are the -- these are
25 the two grounds, Your Honor.

1 THE COURT: The only two grounds we're
2 moving forward on?

3 MR. WALLER: Yes, Your Honor;
4 ineffective -- or, excuse me, an involuntary guilty
5 plea based on ineffective assistance of counsel and
6 that touches both of the -- the challenging of the
7 search as well.

8 THE COURT: Great. All right. Happy
9 to hear from you.

10 MR. WALLER: Thank you, Your Honor. I
11 will call Tellafero Randolph.

12 THE CLERK: State your name for the
13 record.

14 THE DEFENDANT: Tellafero Randolph.

15 TELLAFERO RANDOLPH,
16 being first duly sworn, testified as follows:

17 MR. WALLER: May it please the Court?

18 THE COURT: Yes, sir.

19 DIRECT EXAMINATION

20 BY MR. WALLER:

21 Q. Good, afternoon, Mr. Randolph.

22 A. How are you doing?

23 Q. I'm doing well. Thank you for asking.

24 Mr. Randolph, if I could get you to make sure you
25 speak into that microphone so that our court

1 reporter can take everything down that you say?

2 A. Yes, sir.

3 Q. So there'll be a record of it.

4 Mr. Randolph, you recall when you were
5 arrested?

6 A. Yes, sir.

7 Q. Okay. And you were charged with a
8 couple of different things; is that right?

9 A. Yes, sir.

10 Q. You were charged with murder?

11 A. Yes, sir.

12 Q. Okay. Who was your attorney?

13 A. Mr. Douglas Mallard.

14 Q. Okay. And about how long after your
15 arrest, did Mr. Mallard get appointed to represent
16 you?

17 A. Hmm, it was a few months.

18 Q. Okay. Do you remember how long it was
19 from when you were arrested until when you met with
20 him?

21 A. A few months.

22 Q. Okay. How many times do you think you
23 met with him overall?

24 A. A total of five to ten times.

25 Q. Okay. So several times?

1 A. Yes, sir.

2 Q. Okay. What did you all talk about?

3 A. Different types of defenses we could go
4 over --

5 Q. Okay.

6 A. -- of the charges.

7 Q. Okay. Would you tell us what the
8 defenses that you all talked about?

9 A. Like defenses of others, third-party
10 defense, self-defense. And I couldn't raise the
11 self-defense because I wasn't shooting at the time
12 of that night, so he said I couldn't raise that
13 part, so -- and I didn't see a third-party shooter,
14 so I couldn't raise that part.

15 Q. All right. Well, let me ask you this:
16 Did you all discuss some of the witnesses that had
17 given statements in your case?

18 A. No, not really, but I had a set of
19 statements from the victim's side, though.

20 Q. Okay. Now, did you have a -- did you
21 have a copy of all the discovery?

22 A. I had statements from two parties on my
23 side and about seven parties on the other side,
24 like my driving record, my NCI report, and stuff
25 like that, but like ballistics, autopsies, and

1 stuff like that I never seen.

2 Q. Okay. So you didn't have -- you had
3 some statements, but you didn't have all the
4 testing or anything like that?

5 A. I didn't have none of that stuff, sir.

6 Q. Okay. And when you pled, you pled
7 under North Carolina versus Alford?

8 A. Yes, sir.

9 Q. You didn't admit your guilt?

10 A. No, sir.

11 Q. Okay. What did you -- you testified
12 that you and Mr. Mallard discussed some defenses.
13 When you all were discussing those defenses, did
14 you all discuss the statements that other
15 individuals had given?

16 A. Yeah. Everything was pointing towards
17 me.

18 Q. Okay. Did you all discuss any of the
19 searches that were done in this case?

20 A. No, sir.

21 Q. Okay. Were there some searches done in
22 this case?

23 A. There was a search of my residence --

24 Q. Okay.

25 A. -- and my car. They got my car too.

1 Q. Okay. Were there any search warrants
2 that you ever saw issued in your case?

3 A. I'm not sure. I think the warrant for
4 the car was issued to my mom since it was in her
5 name. And the house, I don't think -- I don't know
6 if there was a warrant, but I was in the county
7 jail and my brother was there at the time, and I
8 think he let them search the house. I don't know
9 about that part.

10 Q. Okay. What -- let me ask it to you
11 like this, Mr. Randolph. At some point you and
12 Mr. Mallard were discussing defenses. Did you all
13 ever discuss going to trial?

14 A. Yes.

15 Q. Okay. What did you all talk about?

16 A. He was -- he had sent me a letter typed
17 -- pertaining to trial for me, you know. And like
18 he was telling me he didn't have any type of
19 defense to represent me on because I don't know no
20 shooter, and I ain't never seen no shooter, and I
21 wasn't the shooter so -- and we got to the point of
22 this plea. That's how we got to the point of the
23 plea.

24 And, like, I felt it was -- like, had a
25 complete motion of what was said after my guilty

1 plea trial from my solicitor, I would have taken my
2 chances at trial because both parties played a part
3 in this situation.

4 Q. Okay. Hang on. Let me back you up
5 just a little bit. There were allegations from the
6 statements that you were -- that someone was shot
7 and that you were the one doing the shooting.

8 A. Yeah, I was the only one shooting at
9 the time.

10 Q. Okay. There was -- and you've
11 maintained your innocence that you were not the one
12 shooting?

13 A. Yes, sir.

14 Q. Someone else was doing the shooting?

15 A. Yes, sir.

16 Q. And you didn't know who that third
17 person was?

18 A. No, sir.

19 Q. Okay. Is that what you and Mr. Mallard
20 discussed?

21 A. Yes, sir.

22 Q. Okay. At what point -- what changed in
23 your mind that led you to plea?

24 A. After he sent me the letter appointing
25 the trial and what was going to be said at the

1 trial, how all the evidence was pointing to me.
2 And by previous -- through life, I know what murder
3 carries and that kind of shook me up, you know.

4 Q. Okay. You testified earlier that you
5 did not have a complete copy of your discovery?

6 A. No, sir.

7 Q. But you wanted one?

8 A. Yes, sir.

9 Q. Would that have changed your decision
10 whether to plead?

11 A. After -- after -- after what came out
12 and after what was said through the solicitor at
13 the time of the plea, yes, sir, I would have went
14 to trial.

15 Q. Okay. So the facts presented to the
16 judge by the solicitor at your plea, you didn't
17 agree with those facts?

18 A. No.

19 Q. Okay. Why didn't you tell the judge
20 you didn't agree with them?

21 A. I didn't know I could've really said
22 something at that time.

23 Q. Okay. And you -- you did not -- you
24 pled under Alford, you did not admit your guilt?

25 A. Yes, sir.

1 Q. Okay. If you had had a copy of your
2 complete discovery, would you have plead guilty?

3 A. No, sir.

4 Q. Would you have gone to trial?

5 A. Yes, sir.

6 Q. Okay. Mr. Randolph, I've asked you all
7 the questions that I have for you. Is there
8 anything that the Court needs to be aware of of
9 Mr. Mallard's representation of you?

10 A. Not right at this time.

11 MR. WALLER: Please answer any
12 questions Mr. Neely has.

13 THE DEFENDANT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. NEELY:

16 Q. Mr. Randolph, how you doing today?

17 A. How you doing, sir?

18 Q. Doing good. Just kind of going over
19 briefly over some of the issues Mr. Waller asked
20 you on, you said there were two searches, your
21 mom's car and your old house?

22 A. Yes, sir.

23 Q. And that for the mom's car they had a
24 search warrant?

25 A. I'm not sure. She's present at the --

1 Q. Okay. But you just don't know?

2 A. I don't know. I was in the county
3 jail.

4 Q. Okay. But you heard that your brother
5 gave consent for them to search your old house?

6 A. Yeah. I see that in my -- in my --
7 what it was -- in my police incident report.

8 Q. Okay. And so that's your Rule 5
9 discovery packet?

10 A. Yes, sir.

11 Q. And so you did receive an initial
12 discovery packet from Mr. Mallard?

13 A. I received a packet probably four
14 times, and it been the same time. And I keep
15 requesting the autopsy, ballistics and all, but I
16 never received none of that.

17 Q. Okay. So do you even know if that
18 exists?

19 A. That's what -- I don't even know if
20 somebody's dead.

21 Q. Okay. So you're saying that your
22 attorney didn't give you something, but you're not
23 even sure if it exists?

24 A. It got to be if I'm charged with a
25 murder, so there's got to be an autopsy on the

1 murder.

2 Q. Okay. But you don't know?

3 A. I don't know.

4 MR. NEELY: Okay. That's all the
5 questions I have, Your Honor.

6 THE COURT: Any redirect?

7 MR. WALLER: Just very briefly.

8 REDIRECT EXAMINATION

9 BY MR. WALLER:

10 Q. Mr. Randolph, have you ever gotten any
11 additional discovery since you pled?

12 A. No, sir.

13 Q. And so --

14 A. I got it again while I was in the
15 Department of Corrections, but it's been the same
16 thing that I received previously.

17 Q. So everything that you've received was
18 what you had at the very beginning?

19 A. Yes, sir.

20 Q. And there was no testing or anything
21 like that?

22 A. I even wrote SLED for it, and I still
23 ain't got it.

24 MR. WALLER: No further questions.

25 MR. NEELY: No recross, Your Honor.

1 THE COURT: You may step down. Thank
2 you.

3 MR. WALLER: The applicant will call
4 Doug Mallard.

5 THE CLERK: Will you state your full
6 name?

7 THE WITNESS: Robert Douglas Sims
8 Mallard.

9 ROBERT DOUGLAS SIMS MALLARD,
10 being first duly sworn, testified as follows:

11 MR. WALLER: May it please the Court,
12 Your Honor?

13 THE COURT: Yes.

14 DIRECT EXAMINATION

15 BY MR. WALLER:

16 Q. Good afternoon, Mr. Mallard. How are
17 you today?

18 A. I'm doing pretty good.

19 Q. Mr. Mallard, how did you come to
20 represent Tellafero Randolph?

21 A. I was appointed to his case looks like
22 September 12th, 2014.

23 Q. Okay. And if you recall, what were the
24 general allegations against him?

25 A. This is a fight over a parking place.

1 Two people wanted the same parking place; there was
2 a little bit of an argument, and then shots were
3 fired. One person was hit and one person was
4 killed.

5 Q. Okay. And there were several
6 statements given in this case; is that right?

7 A. Yes.

8 Q. And they were -- some of them were
9 inconsistent is the best way to put it?

10 A. Yeah. Some of them -- some of them
11 were. It was a gun fight, so, yeah.

12 Q. Okay. How many times do you think you
13 met with Mr. Randolph?

14 A. Let's see, well, when I got the case,
15 the first thing I did was send him a letter with a
16 copy of discovery. That would be October 10th,
17 2014. And then I met with him October 21st, 2014,
18 then December 9th, 2014, and January 15th, 2015.

19 Then, myself and my investigator met
20 with him on March 11th, 2015, and we tried to call
21 some of his witnesses. He had two witnesses; one
22 was a Luciano Connerly, and the other was -- I
23 think his name was Anthony Jamison.

24 And then I met with him again on --
25 let's see, looks like I met with his parents

1 May 8th, and then I met with him June 1st, then
2 June 2nd, 2015, looks like September 11th, 2015,
3 September 15th, October 16th, October 22nd,
4 October 26th, and October 27th of 2015.

5 Q. So you met him a significant amount of
6 time?

7 A. Yes, sir.

8 Q. The discovery you testified you
9 provided, I believe, it was December 10th?

10 A. Yes.

11 Q. Was there any -- do you have any record
12 of what that all contained?

13 A. I think it would have been the --
14 pretty much what he testified to. It would have
15 been statements of the people; it would have been
16 the statements of the people that were with him.
17 It would be probably his driving record, his past
18 convictions, the incident reports, things of that
19 nature.

20 Q. Did you ever receive any supplemental
21 discovery in the case?

22 A. I believe we did. I would have to
23 check real quick. I don't have anything in my file
24 that we did, but I'm sure we did. I mean, usually
25 in a murder case you get things trickling in.

1 Q. Do you have anything in your file where
2 you would have given him a copy of the supplemental
3 discovery?

4 A. Let me double check. No, sir.

5 Q. Okay.

6 A. Not to my knowledge.

7 Q. Okay. Do you -- was an autopsy done in
8 this case?

9 A. That I don't know. When he was talking
10 about that, I looked through the file, and I did
11 not see an autopsy. I'm sure it was done, but I
12 did not have it.

13 Q. Is that typical in a murder
14 investigation?

15 A. Yeah. They always want to --
16 generally, they want to extract the bullets out of
17 the body.

18 Q. Okay. Is ballistics testing typically
19 done?

20 A. It depends. It depends on whether or
21 not you have the weapon that you think fired the
22 gun, that kind of stuff.

23 Q. Okay. Do you have any recollection of
24 any ballistics testing being done in this case?

25 A. No.

1 Q. Other than the statements, was there
2 any evidence linking Mr. Randolph to this case?

3 A. Not to my knowledge. The statements
4 were from the people that were kind of, I guess you
5 could say, on his side, and also the people that
6 were, I guess you would say, the victims.

7 There were some -- the two people that
8 he had was a Connerly and a Jamison. Jamison wrote
9 a statement saying that he had a gun, that
10 Mr. Randolph had a gun. I believe he said he
11 wasn't sure, he didn't see him firing, but he heard
12 it being fired.

13 And I think Ms. Connerly -- she wasn't
14 sure because she started running when all things
15 started happening.

16 Q. To your knowledge, was any -- was any
17 evidence collected at the scene that would indicate
18 more than one shooter?

19 A. I believe that there was one bullet --
20 or shell casing, rather. I think it was like a .22
21 caliber or something like that, and then there were
22 also -- the allegations were that he shot five or
23 six times.

24 I think Tommy Scott during the plea, he
25 said that he believed that one of the victims may

1 have fired one shot. And I believe that's the .22
2 caliber.

3 Q. Okay. What, ultimately, led to the
4 Alford plea versus a regular guilty plea?

5 A. Well, we -- like I said, we went out,
6 and my investigator was trying to locate these
7 people and talk to them and things of that nature.
8 And at point, June the 2nd -- or it might have been
9 the 3rd, I'm not real sure, my handwriting is not
10 very good -- of 2015, myself and my investigator
11 met with Mr. Randolph.

12 We talked about what he was talking
13 about earlier, third-party defenses. We talked
14 about alibi, we talked about self-defense, things
15 of that nature. At that point, Mr. Randolph asked
16 me to explore a potential voluntary offer. So I
17 did that.

18 We met again September 11th, 2015, with
19 my investigator. At that point, we were going to
20 be up for trial in November. At that point, he
21 told us he wanted to explore a voluntary. So
22 between those two dates, I started talking to the
23 solicitor.

24 On September 15th of 2015, the
25 solicitor -- I think I just bothered him enough, or

1 whatever, but anyway, he said he was considering a
2 voluntary plea; it was a range of 12 to 15. And so
3 at that point, that's -- that's when we started
4 talking about maybe doing the Alford.

5 Q. What preparations at that point had you
6 all done for trial?

7 A. We had -- like I said, I had gotten my
8 investigator to go out and try to find some of
9 these witnesses. We had explored -- there was no
10 alibi defense, because he was saying that he was
11 actually there. Self-defense, that was kind of
12 iffy.

13 At some point -- there was some
14 question whether or not he had a gun. Obviously,
15 if he did not have a gun, you can't defend yourself
16 with a gun if you don't have a gun. If he was to
17 say that he did have a gun, then that would be
18 self-defense. So there was all this discussion
19 going on.

20 Q. Okay. So if he doesn't have a gun,
21 obviously, he couldn't use a gun to defend himself?

22 A. Correct.

23 Q. If he does have a gun, admits that he
24 has a gun, then he's admitting that he was there
25 and had a gun?

1 A. Correct. That would take out the
2 alibi, maybe self-defense. You've got a problem
3 with maybe causing the problems that started it,
4 things of that nature, but it at least gets you in
5 the door.

6 MR. WALLER: Beg the Court's
7 indulgence.

8 THE COURT: Take your time.

9 MR. WALLER: No further questions.
10 Thank you very much.

11 THE COURT: Mr. Neely?

12 CROSS-EXAMINATION

13 BY MR. NEELY:

14 Q. Just briefly, Mr. Martin. Mallard.

15 THE COURT: It's Mallard, isn't it?

16 THE WITNESS: It is.

17 MR. NEELY: Mallard, I'm sorry.

18 THE WITNESS: But I'll answer to pretty
19 much anything.

20 BY MR. NEELY:

21 Q. You said you received supplemental
22 discovery in this case?

23 A. I think I did. The problem is I don't
24 know what I received. That's -- I can't tell you
25 what I received.

1 Q. Okay.

2 A. Generally, in cases like this, things
3 trickle in; the closer it gets to trial, the more
4 stuff trickles in.

5 Q. As evidence or discovery trickled in,
6 you met with Mr. Randolph a number of times. Would
7 you have discussed that evidence that came in?

8 A. Yeah. If something new comes in, I sit
9 down and talk to the people about it.

10 Q. Okay. And do you normally give them a
11 copy of it as it comes in?

12 A. Sometimes I do. It depends on what it
13 is. I mean, if it's pictures of the victims or
14 things like that, I do not. So it really depends
15 on what the evidence is.

16 Q. Okay. But --

17 A. Sometimes people don't want it too. I
18 mean, you know, there's people in the jail that
19 tend to get ahold of your discovery and rat you out
20 and stuff like that, so you can't say for every
21 case we do this.

22 Q. But as in regards to the two pieces of
23 evidence that Mr. Randolph testified that he
24 wanted, the autopsy and the ballistics, those are
25 not in your possession and never were?

1 A. They are not in my possession. I'm
2 sure we -- if -- we would have -- we're not going
3 to trial until we get an autopsy, but, like I said,
4 the trial was scheduled for November. So that
5 might have been when the stuff would have trickled
6 in towards the end.

7 Q. Okay. And an autopsy in this case, it
8 would have been unlikely to show any evidence that
9 would have been beneficial?

10 A. The whole purpose of the autopsy is so
11 that the lady from Newberry Pathology can come in
12 and say the victim was dead and how he died.

13 Q. And that was really undisputed at this
14 time?

15 A. It was undisputed, yeah.

16 MR. NEELY: Those are all the questions
17 I have, Your Honor.

18 THE COURT: Redirect?

19 REDIRECT EXAMINATION

20 BY MR. WALLER:

21 Q. Mr. Mallard, do you have any record of
22 any GSR testing or anything like that done?

23 A. No, huh-uh.

24 MR. WALLER: Nothing further, Your
25 Honor.

1 THE COURT: Anything further?

2 MR. WALLER: Nothing further from the
3 affiant.

4 MR. NEELY: Not from the State either,
5 Your Honor.

6 THE COURT: All right. Any objections
7 to Mr. Mallard being released?

8 MR. NEELY: None whatsoever.

9 MR. WALLER: Nothing further from the
10 affiant, Your Honor.

11 THE COURT: You may step down. You're
12 free to go, or you're free to stay with us.

13 THE WITNESS: Thank you very much.

14 THE COURT: Safe traveling.

15 MR. WALLER: Your Honor, there's
16 nothing further from the applicant except for some
17 very brief summation.

18 THE COURT: I will be happy to hear
19 from you.

20 MR. WALLER: Your Honor, I would just
21 ask you to consider the testimony by both the
22 applicant and Mr. Mallard regarding what was
23 initially provided in discovery and submitted to
24 the applicant and the lack of anything further.

25 I would refer Your Honor to lines 13 --

1 or, excuse me, pages 13 through 15 of the
2 transcript. Your Honor, there was at least gunshot
3 residue testing done. There was evidence that
4 there was several other people firing shots,
5 including the victim and including an individual
6 named Anthony Jamison. The solicitor's office
7 believes he fired at least five times.

8 Your Honor, based on the testimony of
9 both the applicant and counsel, I would ask the
10 Court to find that the plea was involuntarily
11 entered into and grant Mr. Randolph post-conviction
12 relief.

13 THE COURT: Mr. Neely.

14 MR. NEELY: Thank you, Your Honor.

15 What Mr. Waller has argued in favor of his client
16 is all defenses that Mr. Randolph would have had if
17 he had proceeded to trial. Whenever he chose to
18 plead guilty, he waived all defenses. And that's
19 what he's here alleging is that he wishes he had
20 more discovery, that he had pursued his defenses.

21 Certainly, Mr. Mallard testified he
22 would have required more discovery be given if they
23 were going to trial; however, a 15 year deal on AB
24 HAN for murder is a pretty drastic reduction in
25 charge and sentence.

1 Mr. Randolph testified that he wouldn't
2 have gone to trial had he known what the solicitor
3 was going to say. On page 17, Mr. Randolph's
4 testimony at his guilty plea really goes directly
5 against his testimony today.

6 The judge asked him if he had heard all
7 of the evidence, and he said that he had. And
8 asked if he believes there was a substantial
9 likelihood he would be convicted of the charges
10 based on the evidence, and he said there was. And
11 that's really all that is required for an Alford
12 plea.

13 So on these two allegations that he did
14 not have discovery materials like he wanted and
15 that counsel was ineffective for failing to
16 challenge search and seizure, the applicant has
17 certainly failed to produce evidence on the search
18 and seizure charges.

19 He doesn't even know if there was a
20 search warrant on his mother's car, in fact, he
21 doesn't have standing to challenge a search warrant
22 on his mother's car, and understood that his
23 brother gave consent to enter the residence his
24 brother was living at where certainly his brother
25 had standing to give law enforcement consent to

1 search the residence.

2 In regards to discovery material, as
3 far as the two pieces of evidence that he really
4 wanted, were ballistics and autopsy. Those were
5 never in counsel's possession and, certainly, were
6 not key pieces of evidence to this matter and could
7 have been procured if he had gone to trial.

8 Although, as Mr. Mallard testified,
9 there would have been no ballistics testing because
10 there was no gun recovered. So it doesn't -- at
11 that point, it doesn't really matter what the
12 ballistics and the bullets tell you because there's
13 nothing to compare them to.

14 THE COURT: Any response?

15 MR. WALLER: No response, Your Honor.

16 THE COURT: Okay. So I will take the
17 matter under advisement. I'll accept proposed
18 orders in 30 days. Is that the same timeframe as
19 the previous case? Will that work for you?

20 MR. NEELY: That works for me, Your
21 Honor.

22 MR. WALLER: That will work, Your
23 Honor.

24 THE COURT: All right. And, again, if
25 you need any additional time -- I know it's the

1 holidays. If you need any additional times, please
2 let me know.

3 Mr. Randolph, I'm going to take the
4 matter under advisement, which means I'm going to
5 study on it a little bit more, and your attorney is
6 going to send me a proposed order. I will have my
7 ruling, hopefully, within 45 days. Good luck to
8 you, sir.

9 THE DEFENDANT: All right.

10 THE COURT: Thank you.

11 MR. WALLER: Thank you, Your Honor.

12 (These proceedings were concluded at
13 3:07 p.m.)

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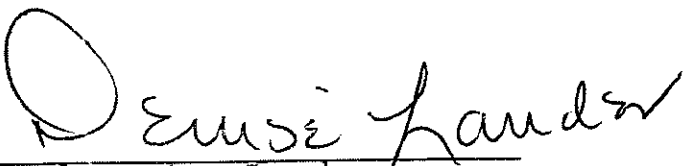
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CERTIFICATE OF REPORTER

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 20th day of July, 2018 at Charleston, Charleston County, South Carolina.



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

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 Tellaferro Randolph, #296483,)
)
 Applicant,)
 vs.)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FIRST JUDICIAL CIRCUIT

MOTION PURSUANT TO RULE 59(a)
 SCRPC, FOR NEW TRIAL

Case No. 2016-C-0006

FILED FOR RECORD
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 CLERK OF COURT
 ORANGEBURG, S.C.
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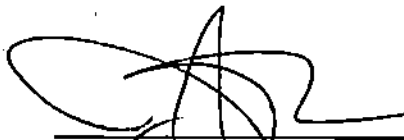
YOU WILL PLEASE TAKE NOTICE that the Applicant, Tellaferro Randolph, and through his undersigned counsel, hereby gives notice of his intent to move and does so move the Court pursuant to Rule 59(a), SCRPC, for a new trial or evidentiary hearing in his above captioned Post Conviction Relief action.

The Applicant filed a timely application for post-conviction relief (PCR) on May 25, 2016. This Court convened an evidentiary hearing into this matter on December 13, 2017 at the Dorchester County Courthouse. Applicant was present at the hearing and represented by Jonathan Waller, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Applicant's plea counsel was Robert Douglas Mellard (Counsel), Esquire, who was present and testified. The matter was heard by the Honorable Kristi Harrington, retired, and was taken under advisement following the hearing. At the time Judge Harrington retired from the bench, the matter remained under advisement and without ruling.

While the transcript of the evidentiary hearing has been obtained by the parties, Applicant contends that the necessary credibility findings cannot be accurately made by transcript alone and therefore requests that this court convene a new evidentiary hearing into the matter.

For the foregoing reasons, Applicant requests that the Court award a new trial or evidentiary hearing in the matter, despite the lack of a final judgment, so that Applicant can receive his full “bite at the apple.”

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jonathan D. Waller', written over a horizontal line.

Jonathan D. Waller
SC Bar No.: 76290
Waller Law Group
1821 Hampton Street
Columbia, South Carolina 29201

ATTORNEY FOR THE APPLICANT

May 13, 2021

Columbia, South Carolina



May 13, 2021

The Honorable Winnifa Brown-Clark
Clerk of Court, Orangeburg County
PO Box 9000
Orangeburg, SC 29115-9000

Re: Tellaferro Randolph v. State of South Carolina
C/A No: 2016-CP-38-0674

FILED FOR RECORD
WINNIFAB. CLARK
2021 MAY 19 AM 10:57
CLERK OF COURT
ORANGEBURG, SC

Dear Madam Clerk:

Please find enclosed one (1) original and one (1) copy of Applicant's Motion Pursuant to Rule 59(a), SCRPC for New Trial for filing and scheduling in the above referenced matter. Please file the original and return the clocked copy to me in the enclosed envelope. Please note that PCR matters are **EXEMPT** from e-filing requirements.

By copy of this letter, I am serving a copy of the motion on counsel for the Respondent. If you have any questions, please do not hesitate to ask. My telephone number is 803-520-7278.

Sincerely,

Jonathan D. Waller

Enclosures

Cc: Megan Jameson, Esquire



FILED FOR RECORD
WINNIFA B. CLARK

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) JUL -7 THE FIRST JUDICIAL CIRCUIT

Tellaferro Randolph, #296483,)
Applicant,) CLERK OF COURT
ORANGEBURG, SC 2016-CP-38-0674

v.)
State of South Carolina,) **ORDER OF DISMISSAL**
Respondent.)

This matter is before the Court based on an application for post-conviction relief filed by Applicant Tellaferro Randolph on May 25, 2016. Respondent the State of South Carolina filed a return requesting an evidentiary hearing. An evidentiary hearing was convened December 14, 2017, before the Honorable Kristi L. Harrington, then-circuit court judge. At the conclusion of the hearing, Judge Harrington took the matter under advisement and requested both parties submit proposed orders. Before issuing a final order, Judge Harrington retired from the bench, leaving the matter unresolved.

Pursuant to Rule 63, SCRCF, this matter has come before this Court as a resident judge of the First Judicial Circuit.¹ As provide in Rule 63, SCRCF, this Court has been provided with and thoroughly reviewed the entire record, including the transcript of the evidentiary hearing before Judge Harrington. After this review of the record, this Court certifies familiarity with the record and determines that the matter may be completed based on the record without prejudice to the Applicant or Respondent. Moreover, this Court determines Applicant has failed to establish any constitutional deprivations or other grounds entitling him to post-conviction relief and denies this application with prejudice. Specific findings of fact and conclusions of law are set forth

¹ The Honorable Edgar W. Dickson, the current Chief Administrative Judge for Common Pleas for the First Judicial Circuit, presided over Applicant's plea proceeding.

below as required pursuant to S.C. Code Ann. § 17-27-80.

I. PROCEDURAL HISTORY

Applicant was indicted by the October 2015 term of the Grand Jury for Orangeburg County for murder (2014-GS-38-1258), and attempted murder (2014-GS-38-1257). On October 29, 2015, Applicant appeared before the Honorable Edgar W. Dickson and pled guilty to the lesser-included offenses of voluntary manslaughter (2014-GS-38-1258) and assault and battery of a high and aggravated nature (ABHAN) (2014-GS-38-1257). Judge Dickson sentenced Applicant to fifteen years' imprisonment for voluntary manslaughter and fifteen years' imprisonment for ABHAN, to be served concurrently. Applicant did not appeal the conviction or sentence.

II. CURRENT ACTION BEFORE THE COURT

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

1. Ineffective Assistance of Counsel
 - a. "Counsel failed to appeal."
 - b. "Counsel misinformed me."
2. Subject Matter Jurisdiction
 - a. "Court of General Sessions failed to have jurisdiction."
 - b. "Defective indictment."
3. "Violation of U.S. Constitution 4th, 5th, 6th, and 14th amendments."

In response, Respondent served a return and motion for more definite statement, requesting amendments with specific allegations and an evidentiary hearing to resolve the claims.

An evidentiary hearing was convened December 14, 2017 before Judge Harrington. Applicant was represented by Jonathan D. Waller, Esquire. Respondent was represented by then-Assistant Attorney General Ruston W. Neely of the South Carolina Attorney General's Office.

At the evidentiary hearing, Applicant proceeded forward solely on the following claims:

1. Ineffective assistance of counsel.
 - a. Involuntary guilty plea
 - i. Failure to provide with discovery materials.
 - ii. Failure to challenge search and seizure

As reflected in the transcript, Applicant testified on his own behalf and presented testimony from plea counsel Robert Douglas Mellard. No other witnesses were presented and no additional evidence was introduced. At the conclusion of the evidentiary hearing, Judge Harrington took the matter under advisement and requested proposed orders from both parties within thirty days. Proposed orders were submitted to Judge Harrington. As discussed previously, Judge Harrington retired from the bench before ruling on this matter, and accordingly, this matter is before this Court pursuant to Rule 63, SCRCP.

III. SUMMARY OF TESTIMONY

Applicant testified he met with Counsel five to ten times and discussed potential defenses to his charges. Applicant testified he received the incident report, witness statements, consent to search form, and NCIC report, but did not receive a ballistics or an autopsy report. Applicant testified they searched his residence with the consent of his brother, who resided there. He testified his mother's car was searched, but he did not know whether they got a search warrant or consent. Applicant stated he pleaded guilty because he was scared of the sentence murder carries and the evidence the State had against him. Applicant testified if he had known what the solicitor was going to allege the facts were he would not have pleaded guilty. On cross-examination, he testified he didn't know he could say anything to stop the plea despite the fact he continued to answer the plea judge's colloquy questions correctly.

Counsel testified he met with Applicant over ten times. Counsel said Applicant gave him contact information for two witnesses, who his office tried to contact. Counsel testified he never received an autopsy or ballistics report, but he would not have let the case go to trial without

receiving an autopsy report. Counsel testified there were no ballistics tests done to his knowledge. Counsel testified Applicant wanted to plead guilty and wanted Counsel to get the charge reduced to voluntary manslaughter. Counsel testified Applicant insisted he didn't have a gun, but was at the scene. Counsel testified if he received supplemental discovery he would have gone over it with Applicant.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety, including the transcript from the evidentiary hearing, which allowed this Court to weigh the testimony of both Applicant and plea counsel. After this thorough review of the record as required under Rule 63, SCRPC, this Court finds no additional proceedings are necessary and a ruling can be rendered based on the record. Furthermore, this Court determines Applicant has failed to establish any constitutional deprivations or other grounds entitling him to post-conviction relief and denies this application with prejudice. Specific findings of fact and conclusions of law are set forth below as required pursuant to S.C. Code Ann. § 17-27-80.

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. United States, 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir.1985)). Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing. 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 for the reasons set out below:

a. Failure to provide Applicant with discovery materials.

Applicant testified he wanted and never received a ballistics and autopsy report. Applicant further testified he had no proof that a ballistics or autopsy report existed. Counsel testified he never received the autopsy report and there was no ballistics report. Counsel stated Applicant wanted to plead guilty and the autopsy report would have been obtained before Applicant went to trial, had he wished to go to trial. Counsel also testified Applicant's story was that he never fired a bullet and the gun was never recovered. Therefore, there was no critical evidence that could have been obtained from the autopsy. Counsel provided Applicant with the State's discovery evidence and explained it to Applicant. This Court finds Counsel's actions and advice were not deficient nor was Applicant prejudiced by Counsel's alleged deficiency. This Court finds Applicant knew he had not seen a ballistics report or autopsy report when he pleaded guilty and it did not affect the voluntarily, intelligent, and knowing nature of Applicant's guilty plea.

This Court finds Counsel's advice was well within the range of competence required of defense attorneys. Therefore, this Court denies and dismisses this allegation.

b. Failure to challenge search and seizure.

Applicant failed to show how Counsel challenging the search and seizure would have benefitted his case. Applicant did not prove what Counsel would have found if he had challenged the search and seizure. 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.

The only evidence Applicant presented regarding the search was speculation on the part of Applicant. Applicant testified his brother consented to the search of he and his brother's residence by law enforcement, which is a legal search. Applicant also testified the other search was of his mother's vehicle and did not know whether law enforcement had a search warrant or not. Based on Applicant's own testimony, any challenge of the vehicle search by Counsel would have been denied due to Applicant's lack of standing to challenge the search. Law enforcement obtained proper consent to search the house and Applicant did not prove the search of his mother's car could have or should have been challenged. Applicant also waived any potential defenses when he pleaded guilty. Further, the majority of the evidence in the case was witness statements against Applicant, and no evidence was alleged to have been developed from the

searches. This Court finds Applicant failed to prove he was prejudiced by any lack of investigation by Counsel.

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 days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203 and Rule 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, 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.

IT IS THEREFORE ORDERED THAT:

1. Applicant Tellaferro Randolph's application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain remanded to the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 15 day of July, 2021.


DIANE S. GOODSTEIN
Resident Judge of the First Judicial Circuit

 , South Carolina



FILED FOR RECORD
WINNIFER B. CLARK



2021 JUL -7 PM 12: 17

State of South Carolina
CLERK OF COURT
The Circuit Court of the First Judicial Circuit

DIANE SCHAFER GOODSTEIN
JUDGE

POST OFFICE BOX 234
ST. GEORGE, SOUTH CAROLINA 29477
TELEPHONE: (843) 832-0332
FAX: (843) 832-0389
E-MAIL: dgoodstein@sccourts.org

July 2, 2021

Orangeburg County Clerk of Court
Attn: Common Pleas Clerk
Post Office Box 9000
Orangeburg, SC 29116

Re: Tellaferro Randolph, #296483 v. State of SC
Case No.: 2016-CP-38-00674

Dear Madam Clerk:

I have enclosed signed original order in regards to the above referenced matter. Please file and forward a clocked copy to all parties.

Thank you for your assistance in this matter. Please do not hesitate to give me a call should you have any questions.

Sincerely,

Karen "Kaye" M. Parker
Administrative Assistant to
Judge Diane S. Goodstein

Enclosure

MAILED
7/8/21